



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 18-01937
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2019

Decision

MURPHY, Braden M., Administrative Judge:

The psychological evaluation which led to the Statement of Reasons does not establish that Applicant has a current psychological condition that impacts his judgment, reliability or trustworthiness. Nor is his alleged failure to comply with recommended treatment and medication found to be a security concern. Security concerns under Guideline I, psychological conditions, are not established. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 13, 2013. On September 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The DOD CAF took the action under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the

National Security Adjudicative Guidelines (AG) effective within the DOD as of June 8, 2017.

Applicant answered the SOR on October 11, 2018, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 3, 2019. On February 1, 2019, DOHA issued a notice of hearing was issued scheduling the case for February 20, 2019.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified. He did not provide any exhibits as part of his case. I left the record open to allow him the opportunity to submit additional evidence. DOHA received the hearing transcript (Tr.) on March 6, 2019.

After the hearing, Applicant timely submitted one document, which was marked as Applicant's Exhibit (AE) A and admitted without objection. AE A concerned his medical treatment. Upon reviewing AE A, I reopened the record, first until April 19, 2019, and then until June 21, 2019, to allow Applicant the opportunity to supplement the record. Applicant responded by e-mail on each occasion with some additional information, but did not otherwise provide updated documentation. His e-mails, on March 20, 2019 and June 13, 2019, are marked as AE B and AE C, and admitted. Other post-hearing e-mails are marked as Hearing Exhibit III. The record closed on June 21, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations (SOR ¶¶ 1.a-1.e) without comment. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, Applicant's testimony and the exhibits, I make the following findings of fact.

Applicant is 26 years old. He is not married and has no children. He graduated from high school in 2011. Since June 2013, he has worked at a naval shipyard for a defense contractor. (SCA) He previously had an interim clearance, but does not hold a clearance currently. He earns about \$27 an hour. (Tr. 16, 27, 49)

The SOR concerns allegations that Applicant has a history of diagnosed psychological conditions and has failed to follow the treatment recommendations of medical professionals in addressing them responsibly, resulting in a poor prognosis.

In March 2018, in connection with the adjudication of his clearance application, Applicant was evaluated by a licensed clinical psychologist (Ph.D.) at the DOD CAF's request, to determine if Applicant had any mental, emotional, or personality conditions that could impair his judgment, reliability, or trustworthiness. The evaluation also addressed Applicant's history of irresponsible behavior and his problems with impulse control, including a police record and delinquent debts. (GE 2)

In the summary of the evaluation, the “BLUF,” or “bottom line up front,” the DOD evaluator found that Applicant “displays characteristics that could impair his judgment, reliability, or trustworthiness. He has been diagnosed with ADHD, combined type, and is not currently taking the medication recommended to him by his treating provider.” (GE 2 at 1) The evaluator also noted Applicant’s prior aggressive behavior, and evasion of responsibility, in both criminal and financial contexts. The evaluator found that Applicant did not display the insight and commitment to treatment that are prerequisites for real change, resulting in a poor prognosis. (GE 2 at 1)

In 2011, the year he graduated high school, Applicant was charged with misdemeanor reckless driving and felony eluding a police officer, after he “spun tires” in a parking lot and drove away from an approaching police car. He may also have been street racing. (GE 1 at 24-25; GE 2 at 3; Tr. 30-31) The police report regarding this charge is not in the record, and this conduct is not alleged in the SOR.

In 2014, Applicant was involved in an altercation between his mother and her then-husband, his stepfather. Applicant reported that his stepfather “tried to kill her.” In response, Applicant pulled out a handgun and fired a warning shot into the ground in an effort to protect his mother from physical harm. Applicant was charged with brandishing a firearm. The charge was dismissed after he attended anger management counseling and a gun safety class. (Tr. 29-30; GE 2 at 3) The police report regarding this charge is not in the record, and this conduct is not alleged in the SOR.

The 2018 DOD evaluation notes that, in about October 2014, Applicant was diagnosed with attention deficit hyperactivity disorder (ADHD), combined type, and adjustment disorder with anxiety and depressed mood. (SOR ¶ 1.b) The diagnosing provider, Mr. G, is described as an “LPC” (licensed professional counselor). (GE 2 at 4) Elsewhere in the evaluation, it is noted that the diagnosis was made by Mr. B, a physician’s assistant. (GE 2 at 3)

Applicant acknowledged at hearing that he sought treatment from his physician in October 2014, after he found himself losing focus at work. He was diagnosed with ADHD and prescribed medication. (Tr. 52) He said he stopped taking his medication after a few months because he was having financial trouble and could not afford it. (Tr. 37-40, 52-54; GE 2 at 2)

Earlier, Applicant sought treatment from his primary care physician for anxiety in 2012, after he was terminated from a job. (SOR ¶ 1.a) (Tr. 32-33; GE 2 at 1, 2) The anxiety diagnosis itself is not specifically referenced in the DOD CAF evaluation, or otherwise documented. Applicant attended one therapy session and was prescribed medication. He stopped taking the medication on his own after about two weeks because it was affecting his sleep. (Tr. 28-29, 33-35, 56)

The fact that Applicant discontinued treatment and stopped taking his medication in the past on these two occasions is alleged at SOR ¶ 1.d. Applicant’s courses of

treatment and medication regimen on both occasions are undocumented, except as referenced in the DOD evaluation.

On his SCA, Applicant disclosed that he had once been “admitted as inpatient” for mental health treatment. (GE 1) He clarified at hearing that this was a misunderstanding, and that all of his treatment and counseling had been “outpatient.” (Tr. 63-65)

The DOD evaluator noted that Applicant “appears to have a valid diagnosis of ADHD, based on a pattern of impulsivity and neglect of responsibilities, as documented in his record.” (Emphasis added). Applicant denied experiencing ADHD symptoms in his interview, so the evaluator found that “an independent diagnosis cannot be definitively made.” The evaluator’s conclusion was based largely on a review of Applicant’s records, since Applicant denied any current issues during his evaluation and was skeptical that the prior recommendations for treatment he had received were necessary or appropriate. The evaluator found that the information in the interview was not sufficient to overcome the diagnoses of his past providers. (GE 2 at 3, 4)

The evaluator concluded that Applicant “could address his ADHD with treatment compliance and could potentially decrease his aggression and irresponsibility with appropriate treatment. But first, he needs “insight that his impulsivity, aggression, and irresponsibility are problematic and [needs to] comply with treatment consistently, for a number of years.” The evaluator concluded that were Applicant to demonstrate two or more years of treatment compliance, that might lead to a good prognosis by a treatment provider or independent evaluator. However, Applicant has yet to demonstrate the necessary level of insight or treatment compliance. (GE 3 at 5) Nevertheless, the evaluator did not specifically diagnose Applicant with ADHD.

The evaluator diagnosed Applicant with attention deficit disorder (ADD), combined type, by history, with a poor prognosis. (GE 2 at 5) (SOR ¶ 1.d) The evaluator did not note a diagnostic code from the Diagnostics and Statistical Manual of Mental Disorders (DSM-V) to clarify whether the ADD diagnosis was mild, moderate, or severe. (See DSM-V at 60-61)

As noted in the summary, the evaluator found that Applicant had other psychological characteristics that interfere with his judgment, trustworthiness, and reliability, including his “history of impulsive aggression, poor judgment in evading police, and evasion of financial responsibilities.” (GE 3 at 5) But the evaluator did not conclude that Applicant’s ADD was sufficient to impact his judgment, trustworthiness, or reliability.

Applicant testified that he loves his job at the shipyard. Without a clearance, he is significantly restricted on what he can do and where he can go at work. He wants to advance professionally and is willing to do what is necessary to do that. (Tr. 48-49)

In January 2019, after receiving the SOR, Applicant sought out his primary care physician. (Tr. 44-48) The progress notes from their March 2019 treatment session (post-

hearing) reflect that Applicant had presented with a past history of ADD and was requesting assistance with his appeal for a government security clearance. He was prescribed ADD medications as a child. Some medications were more effective than others. Applicant expressed a willingness to see a clinical psychologist for counseling and would like to try medication. (AE A at 6) Applicant's primary care doctor diagnosed him with adult ADD, referred him to counseling, and prescribed Wellbutrin. (AE A at 1, 8)

Applicant later reported that he had been unable to locate a psychiatrist with new patient openings or with office hours outside of his work schedule. He meets with an informal counselor at his church once or twice a week. (AE B, AE C)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." (*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988))

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline I: Psychological Conditions

The security concern for psychological conditions is set forth in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. The following are potentially applicable in this case:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Applicant is a 26-year-old employee of defense contractor who works at a shipyard. He needs a clearance for his job. He has a history of ADD and ADHD. At most, the SOR alleges that he has a recent diagnosis of ADD, combined type, by history. The DOD evaluation on which the SOR is based does not establish that Applicant has even “mild” ADD, let alone “moderate” or “severe” ADD, on a current, ongoing basis.

The evaluator found that Applicant displays characteristics that impair his judgment, trustworthiness, and reliability. However, the evaluator did not conclude that Applicant currently has ADHD, only that he had such a diagnosis in the past, as well as a prior history of failing to comply with treatment and medication.

As the evaluation notes, and as Applicant admits, he has a history of troubling behavior. He has a charge of reckless driving, and a charge of felony evading the police. That incident occurred in about 2011 (the year he graduated high school), or perhaps 2012, a year later. He reported the charges on his SCA, in 2013. The charges are otherwise undocumented.

A year later, in 2014, he was involved in a domestic disturbance with his stepfather, who was arguing with his mother. He pulled out a firearm and fired a warning shot into the ground in an attempt to protect her. He was charged with brandishing a firearm, but the charge was dismissed after he attended counseling and a gun safety class. The charges are otherwise undocumented.

Importantly, these charges are not alleged in the SOR as security significant conduct, under Guideline J (criminal conduct) or Guideline E (personal conduct). Nor are Applicant's "delinquent debts," as referenced in the evaluation, alleged in the SOR. Thus, I cannot, and do not, consider any of that evidence as disqualifying conduct. Further, that conduct, while admitted, is now also between five and eight years old, and there is no indication that it has been repeated recently.

What is left in this case, then, is an applicant with a recent diagnosis of ADD, combined type, by history (in the DOD evaluation) confirmed by his primary care doctor. In weighing the security significance of that condition. I note that I am not aware of any DOHA cases involving applicants whose history of ADD constitutes an ongoing security concern on that basis alone. I have seen several other DOHA cases involving applicants with ADD. But in those cases, the security concern has never been the condition itself (under Guideline I, as here), but rather an applicant's history of self-medication through misuse of prescription drugs (conduct that is a security concern under AG ¶ 24 Guideline H, for drug involvement), or other concerns. But here we have only the diagnosis.

In this case, the Government has brought an SOR under the theory that attention deficit disorder, combined type, by history, is a psychological condition that impacts an individual's judgment, trustworthiness, and reliability to such a significant degree that the individual is an ongoing security risk. I decline to adopt that view. AG ¶ 28(b) does not apply to that condition. Nor does it apply to Applicant's earlier conditions (anxiety and ADHD), neither of which were confirmed by the evaluator. The fact that Applicant displays "characteristics that could impair his judgment, reliability, or trustworthiness" is not sufficient.

The Government also alleges, and Applicant admits, a past history of non-compliance with treatment recommendations and medication regimens. But this, too, was five years ago, concerning a diagnosis of ADHD that has not been confirmed as a current, ongoing security concern. Without a psychological condition that is shown to be a security concern, Applicant's failure to follow appropriate medical recommendations to treat that psychological condition cannot be a security concern, either. AG ¶ 28(d) is not established.

Since I have concluded that no disqualifying conditions apply, I need not address the application of the available mitigating conditions. I note, however, that Applicant has addressed his condition frankly with his primary care physician, is open to taking medication for it as deemed medically appropriate, and is pursuing counseling, albeit informally.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline I in my whole-person analysis.

Applicant is a 26-year-old employee of a defense contractor at a naval shipyard. He has worked there since 2013. He has a history of poor judgment and impulsive behavior, but that conduct is neither alleged in the SOR, nor is it particularly current. While Applicant has been found to have characteristics that could impair his judgment, trustworthiness, and reliability, it is not established that he has a psychological condition that impacts his suitability for a security clearance. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge