



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



In the matter of:	)	
	)	
	)	ADP Case No. 18-02097
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: Ryan Nerney, Esq.

03/26/2019

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the trustworthiness concerns arising from her psychological conditions security concern. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 27, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline I (Psychological Conditions). The action was taken under 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 on June 8, 2017.

Applicant answered the SOR on October 17, 2018, and requested a hearing before an administrative judge. She provided eleven documents, labeled as Applicant Exhibits (AE) A-K. She denied and admitted, in part, SOR allegation ¶ 1.a, and she admitted SOR allegation ¶ 1.b. On December 31, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for January 15, 2019. On January 3, 2019, the case was assigned to me.

During the hearing, Department Counsel offered Government Exhibit (GE) 1 through 5, and they were admitted into evidence without objection. Applicant's counsel offered AE A through P, which I entered into evidence without objection. I held the record open until February 15, 2019, in the event either party wanted to submit additional documentation. On January 28, 2019, Applicant's counsel submitted AE Q, which I entered into evidence without objection. DOHA received the hearing transcript (Tr.) on January 25, 2019, and the record was closed on February 15, 2019.

### **Findings of Fact**

Applicant is 49 years old. She earned a master's degree in communication arts in 2001. She married her spouse in 2011. She has a 12-year-old stepdaughter, who currently lives with Applicant and her spouse. Since May 2016, she has been employed full time for a defense contractor as a contract technical writer.<sup>1</sup>

### **Psychological Conditions**

The SOR alleges psychological conditions security concerns based on Applicant's diagnosis in approximately 2005 of delusional disorder – chronic, paranoid type. In May 2018, she was diagnosed with delusional disorder chronic - paranoid type; major depressive disorder, severe, in partial remission; and unspecified anxiety disorder. Her prognosis was listed as poor.

In 2004, Applicant was advised by her general practitioner to see a psychiatrist. She had been diagnosed in 2002 with two sexually transmitted diseases (STD), which caused her severe anxiety. She had thoughts about dying of cancer, feelings of depression, and her condition caused her to excessively pick at her skin. She also believed people were talking negatively about her. She began seeing a psychiatrist in 2004, who referred her to a psychologist in 2005. Applicant claimed she was diagnosed with anxiety and depression only, and denied being aware of the delusional disorder diagnosis. She claimed she learned that she had been diagnosed with that condition after she received the SOR in September 2018. Applicant was prescribed an anti-depressant, an anti-seizure medication for her fear of flight, and an anti-psychotic drug. She believed the medications prescribed were to treat her anxiety and depression. She stopped seeing the psychologist in 2006, but continued her appointments with the psychiatrist.<sup>2</sup>

Beginning in 2007, Applicant started to wean herself from her prescribed medications without consulting or notifying her psychiatrist. She claimed she had asked her psychiatrist why she was taking an anti-psychotic drug, but he stated he could not remember. She asked him how long she would continue taking all of the prescribed medications, and his reply was that she would most likely remain on the medication for the rest of her life. Applicant believed the medication caused her to feel obsessive, sad, and added stress. She began to taper off from her medications over a period of time. She

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<sup>1</sup> Tr. 17-18.

<sup>2</sup> Tr. 21-23, 26, 40, 52-56; GE 3, GE 5; AE Q.

also attributed her weight gain - almost 100 pounds, to the medication. In September 2008, Applicant informed her psychiatrist that she had completely weaned herself from the prescribed medications. She also let him know that she would not continue further treatment with him.<sup>3</sup>

Since September 2008, Applicant has not treated with any other mental health practitioner, nor has she taken any prescribed medication for her mental health conditions. She attended a one-day self-help seminar in 2007. It was a 12-step program entitled Self Abuse Finally Ends (SAFE). Applicant was attending church at the time, and she correlated Bible stories with the information she learned from the SAFE seminar. She asked her minister if she could start a 12-week group at the church to connect with people who had similar issues. Beginning in 2008, she led five 12-week self-help sessions. One or two other people attended the support sessions. The sessions ended in approximately 2009. Applicant attended a Christian-based recovery program through a different church. Within six months, another minister asked her to lead the group. This support group ended in 2011. Applicant feels that her life is good, she is supported by her husband, and she claims that she no longer suffers from any mental health-related issues.<sup>4</sup>

Applicant applied for a DOD security clearance in 2007. During her background interview, she reported that her psychiatrist approved of her tapering off of her prescribed medications. Shortly after the interview, her investigation was terminated since Applicant no longer worked for the employer who sponsored her for the security clearance.<sup>5</sup>

In May 2018, in connection with her current application, Applicant was asked by DOD to undergo an evaluation with a licensed clinical psychologist, during the course of her investigation for a position of trust. After the evaluation and psychological testing, Applicant was diagnosed with delusional disorder, chronic, paranoid type; major depressive disorder, severe, in partial remission; and unspecified anxiety disorder. During the evaluation, she again expressed thoughts that others were talking about her in a negative manner. Although she has been diagnosed with a STD that can lead to cancer, the psychologist noted her preoccupation with having cancer bordered on delusional. Applicant discontinued her hobbies of exercising and going to church, which had helped improve her mental health status in the past. Applicant's previous treatment records were also considered in the evaluation. The DOD psychologist determined that given Applicant's mental health history, lack of treatment, lack of engagement of activities that reportedly helped stabilize her mood, and her limited insight, Applicant's prognosis was poor. The psychologist opined that her mental health status may impair her judgment, reliability, or ability to properly safeguard classified information.<sup>6</sup>

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<sup>3</sup> Tr. 23-29, 39-44, 56-57; GE 3, GE 5.

<sup>4</sup> Tr. 30-33, 35-36, 45-47, 57, 63-64.

<sup>5</sup> GE 5.

<sup>6</sup> GE 3. Note – this is for a position of trust, not a DOD security clearance.

On December 27, 2018, Applicant participated a psychological evaluation via video teleconference at her counsel's request. The examination showed Applicant had logical, clear thought patterns, rational ideation, and normal perceptive processing. The evaluator determined that Applicant suffered from post-traumatic stress disorder (PTSD) due to a traumatic break-up of a relationship and the resulting STD.<sup>7</sup> Applicant was found to be a well-adjusted wife, stepmother, and employee, and has successfully overcome the trauma from the past that negatively impacted her life. Applicant has not had any depressive or self-harming incidents within the last decade. Applicant's diagnosis by the credentialed licensed clinical social worker, certified substance abuse counselor, master addiction counselor, and substance abuse professional, was "no disorder" with" no treatment recommended."<sup>8</sup> The social worker did not have Applicant's previous medical records, but she did have a copy of the SOR.

Applicant's previous psychologist, who had treated her in 2005-2006, provided a letter dated January 19, 2019.<sup>9</sup> It pertinent part, it reads as follows:

**"I am writing this treatment summary letter at the request of (Applicant). ...I saw her for a total of 52 visits between (January 2005) and (July 2006). ...She reported that she was finally terminated because she sent a 'paranoid' email, which was deemed inappropriate. ...She indicated that she had difficulties at that job because she complained that other team members were surreptitiously reading the documents she was working on. As (Applicant) and I continued to work together, she began to reveal more overtly paranoid ideation. For example, she complained of being watched in her home and that there were cameras in her house. Because of this she felt compelled to dress in the dark. ...she reported that she overheard people talking about her in the places she was interviewing. ...she seemed to misinterpret far off conversations. In June 2005, she told me that she no longer wanted to see (psychiatrist) because she heard him playing a tape recording of herself very loudly in his office (while she was in the waiting room). ...In July 2005, (Applicant) reported that she was fearful she would be fired at work because she contacted her supervisor and complained that people at work were talking about her. (Psychiatrist) increased her medication (Seroquel) in July 2005. By August 2005, her thinking had become much more frankly paranoid. She asked me directly if I had discussed our meetings with other people. She also asked me if my office was 'bugged' or if I electronically recorded our sessions. ...In the same session, she indicated that she felt the City of [Redacted] was going to pay her money because of all the 'torment' she had been through.**

**Her delusions had crystalized around a woman named 'Karen', who she felt was orchestrating all the difficulties she was experiencing. She continued to believe that people were watching her and talking about her at work. She**

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<sup>7</sup> Tr. 50-53

<sup>8</sup> AE O.

<sup>9</sup> AE Q. During the hearing I requested Applicant provide any treatment records from her psychiatrist or psychologist during the 2004-2008 time period. Applicant's counsel timely submitted this letter in January 2019. See also Tr. 57-58, 72.

thought they were taking pictures of her ...and circulating them. ... (Applicant) began to become more concerned that her neighbors were talking about her and that they had microphones and cameras in her house. She reported that at one point she went outside and yelled at them. In March 2006, (Applicant) got a job in [State 1]. She was there for a week and quit. She told me she thought 'Karen' was there and was 'passing pictures around, trying to get me fired.' Similarly, she got a job in [State 2] and returned within a month with similar concerns. I last saw her on July 19, 2006.

...we worked on identifying her delusional thoughts and dismissing them as 'faulty processing.' ...During therapy, I felt (Applicant) made marginal progress in dealing with her distressing thoughts, as is common with such patients because of the intractability of their belief system. The working diagnosis in her treatment was DSM 5 Delusional Disorder (297.1). Delusional Disorder is characterized by at least one month of delusions, but no other psychotic symptoms. Delusions are false beliefs based on incorrect inferences about external reality that persist despite the evidence to the contrary. Since I have not seen (Applicant) since July 2006, her condition and/or her circumstances may have substantially changed."

## Character Evidence

Applicant submitted several character reference letters from her current employer, past co-workers, associates and friends. These individuals described Applicant's character traits to include "outstanding, invaluable, professional, team player, and trusted." She also provided documentation of numerous awards, medals, and positive performance evaluations she has received over the years. Applicant submitted records of her volunteer services during 2008-2011.<sup>10</sup>

## Policies

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.

A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of

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<sup>10</sup> AE D, AE E, AE G, AE J.

human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR.<sup>11</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>12</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>13</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## Analysis

### Guideline I: Psychological Conditions

*The Concern.* 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. (AG ¶ 27)

The medical information and reports in evidence raised the following Psychological Conditions Disqualifying Conditions under AG ¶ 28:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

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<sup>11</sup> Directive ¶ E3.1.14.

<sup>12</sup> Directive ¶ E3.1.15.

<sup>13</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

(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, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The SOR alleges psychological conditions security concerns based on Applicant's diagnosis in approximately 2005 of delusional disorder – chronic, paranoid type. In May 2018, she was diagnosed with delusional disorder chronic - paranoid type; major depressive disorder, severe, in partial remission; and unspecified anxiety disorder. Her prognosis was listed as poor. She admitted that she stopped following the psychiatrist's treatment plan in 2008, which included taking prescribed psychotropic medications.

I considered the following mitigating conditions under AG ¶ 29:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer has indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant has not received professional treatment for her diagnosed psychological issues since late 2008. Her support group counseling through the church ended in 2011. She does not have any plans to seek mental health counseling in the future. In May 2018, a qualified mental health professional determined that Applicant's condition was not under control and her prognosis was poor. Mitigating conditions AG ¶¶ 29 (a), (b), and (c) do not apply.

There is a contradictory psychological report from a social worker stating that: Applicant's mental health issues were temporary; she no longer shows signs of emotional

instability; and the security concerns are therefore resolved. The social worker reported in the December 2018 psychological evaluation that Applicant presented symptoms of PTSD. The final conclusion was that Applicant did not have any other diagnosis and was not in need of further treatment. The social worker had obtained a copy of the SOR, but did not review Applicant's previous treatment records from 2004-2008, unlike the psychologist who performed the May 2018 evaluation.

I find that the information obtained from her earlier treatment record documents that Applicant's delusions were a consistent and serious problem over a long period of time. The information also revealed new details than what were not disclosed during her hearing. Lastly, the credentials of the social worker, who performed the December 2018 evaluation during a video-teleconference, focused her training in the area of substance abuse or addiction issues, and not in psychological testing, diagnoses, and disorders. I give more weight to the May 2018 evaluation, which included Applicant's previous treatment information and testing, and the evaluation was conducted by a licensed clinical psychologist. Mitigating conditions AG ¶¶ 29 (d) and (e) are not applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant 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(c), the ultimate determination of whether to grant eligibility for a public trust position 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to positions of trust. In deciding whether to grant or continue access to sensitive information or sensitive duties, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, her off-duty conduct or



circumstances can have security significance and may be considered in evaluating the applicant's trustworthiness eligibility. Moreover, to the extent that Applicant's personal conduct sheds any light on her mental condition, it could be relevant to the Guideline I issues in this case. In this instance, Applicant's history of mental illness, which has been untreated since 2008 is serious and concerning, and is not outweighed by positive recommendations from friends, colleagues, or her employer.

Applicant's mental health problems have persisted since 2005, and there is no evidence that these problems are under control or unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the psychological conditions security concerns.

### **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:	AGAINST APPLICANT
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Subparagraphs 1.a.-1.b.:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for public trust position is denied.

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Pamela C. Benson  
Administrative Judge