



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



In the matter of:)
)
) ISCR Case No. 18-02536
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

06/11/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the psychological conditions security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 14, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline I (psychological conditions). Applicant responded to the SOR on January 4, 2019, and requested a hearing before an administrative judge. The case was assigned to me on April 8, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 11, 2019, scheduling the hearing for May 9, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 2 and 3 were admitted in evidence without objection. GE 1 was admitted over Applicant's objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. She has worked for her current employer since 2012. She seeks to retain a security clearance, which she has held since about 2014. She has a bachelor's degree that was awarded in 2010, a master's degree that was awarded in 2012, and additional educational certifications. She has never married, and she has no children.¹

Applicant is an honest, intelligent woman who displayed issues at her work in late 2015 and early 2016. She was off work for a period. She sent an e-mail to a co-worker in January 2016 in which she explained her problems:

Following the discussion we had prior to the Holidays, I am seriously concerned about my safety at the office. I don't care if the whole world thinks I am crazy. Below are my experiences at the office for the past several months. I believe:

1. My eye movements are being tracked while I am working. I believe it tracks your emotions such as Anger, Happy, Hatred etc.
2. They are watching what I eat, the time it takes (the duration of every task that I do), the frequency of my restroom breaks, etc.
3. What really bothers me is the fact that I am being monitored while I am off work, when I am at home or in my car, the conversations that I have at home and in my car.

I don't care if you think I am totally crazy, but this has been my experience at the office. I am sick to my stomach. The thought of being tracked of every move I make is draining me out mentally, physically and emotionally. I cannot eat, I cannot sleep and I can't even function properly not knowing what is going on. There is definitely something going on at the office. No person just simply thinks that these kinds of things are happening to them. I have been calling in sick because I am truly terrified to go to work not knowing what is going on. They are doing something to harm me. They will hurt me for sure. I am truly concerned about my safety at the office. . . .²

Applicant's employer placed her on involuntary leave and recommended that she see a psychiatrist and attend counseling through the employee assistance program (EAP). She saw a psychiatrist and attended about nine sessions with a licensed professional counselor (LPC). Her psychiatrist wrote a letter in February 2016 and stated that on examination, he "could confirm no psychiatric contraindication to

¹ Transcript (Tr.) at 25-27; GE 1; AE C.

² AE D.

[Applicant] performing her job,” and she was “released psychiatrically to return to work full-time, without restriction.” She returned to work in early March 2016.³

Applicant was evaluated at the DOD’s request by a licensed psychologist in April 2018. The psychologist wrote:

[Applicant] struggles with the symptoms of a serious mental illness. She qualifies for a diagnosis of Schizophrenia, First Episode, currently in partial remission. Additionally, she qualifies for a diagnosis of Schizotypal Personality Disorder. Her primary symptoms include bizarre delusions of reference and paranoia (she was being watched by eye-tracking software, her mood was monitored, and she was an unwilling participant in a research study; she developed delusions about “black projects” funded by shadow budgets and staffed by people with aliases who were hidden by [Employer]) and auditory hallucinations (women talking about her, discussing her, conducting a commentary about her life). Her hallucinations are a classic auditory type hallucination in that they come from outside of her body (she identified a location), they were generally in a fixed point of reference (she identified the source as an empty cubicle), they were same-gender voices (women), and they were carrying on a running commentary that was consistent with her delusions and did not interact with her.

The psychologist concluded:

Reliability, Judgment, Stability, and Trustworthiness: Due to the nature of her mental illness and personality disorder, and due to her inconsistent level of insight and demonstrated ability to be evasive during an interview, it is my clinical and professional opinion that [Applicant’s] Schizophrenia symptom potential and her ongoing Schizotypal Personality Disorder symptoms significantly impair her reliability, judgment, stability, and trustworthiness. It is clear that she has no specific malicious intent and she is most likely uninterested in any financial or personal gain that could arise from violating her position of trust. However, when dealing with her delusions, and when in environments that activate distress related to her schizotypal features, she is at high risk for inappropriately using, disclosing, or otherwise compromising classified or secure information or systems. Although she presents as a sympathetic case, the risk posed by her mental illness and personality disorder cannot be ignored.

The prognosis was poor to guarded:

Although her symptoms are generally mild and controllable with effort, they can be magnified to the moderate range, as indicated by the events of September 2015 to December 2015, especially if she is in an

³ Tr. at 22, 50-54, 58, 60; GE 1, 3; AE E.

unfavorable or stressful environment. Even with her high level skills and advanced technical education, there is no guarantee that she will not find herself in an environment she does not find favorable. If she does find herself transferred to such an environment (such as where she was with [defense project]) the likelihood of relapse is very high. This likelihood of relapse is magnified by her refusal to get treatment or follow through with recommendations for psychiatric care.

The psychologist opined that Applicant presented an unacceptable security risk. However, he also emphasized that “no part of this report or recommendations should be taken to indicate that [Applicant] is not an appropriate and trustworthy employee under typical circumstances.” He concluded that she “should be allowed to continue work in her current environment and there is no indication that she would not be an effective and productive employee in a non-classified military or Government environment.”

Applicant believes that she was targeted and monitored by cyber security at her office, at a conference, in her car, and at home for about four to five months through early 2016. She would overhear co-workers at work discussing what she did at home the night before. She submitted evidence, and I find, that there is technology that can monitor her in the way that she described.⁴

Applicant has not experienced direct evidence of the monitoring since early 2016. However, in July 2016, she recorded people in her apartment who were supposed to be pest control. It was suspicious because there are three distinct voices, two females and a male, on the recording, and an actual pest control person had come by earlier in the day. She also indicated that the apartment complex had three maintenance workers who were all male. Applicant played the recording at the hearing, and her description of the voices is accurate. She did not ask the apartment complex if additional maintenance workers were in her apartment. Instead, she reported it to the FBI in September 2016. She never heard anything back from the FBI. She does not know if she has continued to be monitored without her knowledge. She moved to a house, which has more privacy than an apartment.⁵

Applicant disagrees with the psychological evaluation. She asserted that there is information in the evaluation that is inaccurate, and she is quoted with statements that she never said. She is not resistant to treatment if she felt it necessary, but she does not believe it is necessary.⁶

⁴ Tr. at 22-29, 37, 44-50, 53-56, 65-68; AE A, B.

⁵ Tr. at 30-36, 58-60.

⁶ Tr. at 22, 38-43, 63-65, 70; Applicant’s response to SOR.

Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These 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(c), 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I: Psychological Conditions

The security concern for psychological conditions is set out 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 is potentially applicable in this case:

(b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness.

The psychologist opined that Applicant “qualifies for a diagnosis of Schizophrenia, First Episode, currently in partial remission . . . [and] Schizotypal Personality Disorder.” He concluded that her “symptoms significantly impair her reliability, judgment, stability, and trustworthiness.” AG ¶ 28(b) is applicable.

AG ¶ 29 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 shows indications of emotional instability; and

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

Applicant is an honest, intelligent woman who believes that she was targeted and monitored by cyber security at her office, at a conference, in her car, and at home for about four to five months through early 2016. She believes co-workers would discuss what she did at home the night before. If the monitoring did not occur, she is suffering from delusions that significantly impair her judgment, reliability, and ability to properly safeguard classified information. Based on the record, Applicant's testimony, my observation of her demeanor, and the nature of her assertions, I find that Applicant has not rebutted the findings in the psychological evaluation. None of the above mitigating conditions, individually or collectively, are sufficient to alleviate psychological conditions security concerns.

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 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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline I in my whole-person analysis.

I was very impressed by Applicant. I believe that but for her psychological issues, she would be a valued employee without any security concerns. However, the protection of the national security is the paramount consideration. It is required that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." I agree with the psychologist that Applicant presented an unacceptable security risk, but I also agree that there is no indication that she is not an appropriate and trustworthy employee under typical circumstances or that she would not be an effective and productive employee in a non-classified environment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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
---------------------------	-------------------

Subparagraph 1.a:	Against Applicant
-------------------	-------------------

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge