



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



In the matter of:)	
)	
)	ISCR Case No. 19-00090
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/05/2019

Decision

Curry, Marc E., Administrative Judge:

Although Applicant has a mental health condition, it is currently asymptomatic, and does not impair his judgment, reliability, or trustworthiness, per his psychiatrist. This information, together with the positive work evaluations, and the stellar references from colleagues and friends, compel me to conclude that he has mitigated the psychological conditions security concern. Clearance is granted.

Statement of the Case

On March 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline I, psychological conditions, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and 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 June 8, 2017.

On April 4, 2019, Applicant answered the SOR, admitting the allegations, and requesting a hearing. On June 4, 2019, the case was assigned to me. On July 16, 2019, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for August 28, 2019. The hearing was held as scheduled. I received five Government exhibits (GE 1 – GE 5), seven Applicant exhibits (AE A - AE G), and a copy of the discovery letter from Department Counsel to Applicant, dated May 8, 2019. (Hearing Exhibit I) Also, I considered Applicant's testimony. At the close of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted three additional exhibits that I incorporated into the record as AE H through AE J. The transcript was received on September 9, 2019.

Findings of Fact

Applicant is a 30-year-old man. He graduated from college in 2012, majoring in history. (GE 2 at 2) He and his wife married the year he finished college. Since 2016, he has been working for a defense contractor as a test engineer. Specifically, he tests software to ascertain whether it is functioning properly. (Tr. 15)

Applicant has been struggling with depression and anxiety since 2008 when he was in high school. (Tr. 18) For the first few years that he experienced these symptoms, he did not seek treatment because he thought his symptoms were part of his "normal . . . day-to-day" life. (Tr. 19) By 2013, he began to suspect that his depressed and anxious feelings had a clinical dimension. Consequently, he consulted a therapist and began receiving treatment.

Applicant saw the therapist three times that year, then stopped because he could not afford the treatment. (Tr. 20) In 2013, Applicant's wife became seriously ill. At or about this time, Applicant's symptoms worsened. In February 2014, he attempted to hang himself in his closet, surviving only after the closet bar to which he had tied the make-shift noose could not support his weight and broke. (GE 2 at 3; GE 4 at 53)

At Applicant's wife's prompting, he began seeing a psychiatrist. (GE 4 at 53) He received treatment from the psychiatrist approximately once per week for two months until he relocated with his wife to another state. In July 2014, after relocating, Applicant met with a psychiatrist who diagnosed him with depression and anxiety. The doctor prescribed him antidepressants and anti-anxiety medications, and recommended that he attend psychotherapy. (GE 3 at 8; Tr. 19)

Applicant's symptoms continued to worsen. One day in early December 2014, while driving a school bus (his job at the time), Applicant wet his pants. Embarrassed and angry with himself, Applicant returned home after finishing his route, and took a shower. While in the shower, he began to have suicidal thoughts. (Tr. 33) He called his psychiatrist who told him to go to the hospital as soon as Applicant's wife returned home. Applicant followed his psychiatrist's advice.

While at the hospital, Applicant was evaluated and diagnosed with major depressive disorder. Subsequently, he was admitted, staying in the hospital for four days. (Tr. 34) Upon discharge, Applicant was prescribed another medication to supplement the ones that he had already been taking. (Tr. 28)

Applicant continued to receive treatment from his psychiatrist approximately three to four times between the date of his discharge and his psychiatrist's retirement in 2015. (Tr. 29, 34) During this time, he also met regularly with his pastor. (Tr. 30)

In January 2016, Applicant began seeing psychiatrists through a practice affiliated with his current insurance company. (AE H) There was an approximate three-month gap in treatment from the time Applicant's previous psychiatrist retired and the time Applicant began receiving treatment from the practice that is currently serving him. (Tr. 36) According to Applicant's psychiatrist, he does not currently have any psychiatric or psychological conditions that impair his judgment, reliability, or trustworthiness. (AE H at 2)

Applicant excels on the job, succeeding in a highly stressful environment. (GEs G, I - K) He has an extensive network of friends through his church where he serves as a worship leader, the top elected position for a layperson. (AE E at 2) Applicant continues to meet with his pastor approximately once per month for counseling. (AE C) Per the pastor, Applicant is dependable and reliable, and has consistently demonstrated trustworthiness and stability. (AE C)

One of Applicant's friends from church is a retired military officer with significant experience working with subordinates struggling with mental health issues. (AE D at 2) Per the retired officer, Applicant was forthcoming with the church about his mental health problems, and has the "special trust and confidence" of the pastor. (AE D at 2) In sum, he expressed absolute confidence in Applicant's trustworthiness and reliability. (AE D at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied together with the factors listed in the adjudicative process. The administrative judge's overall 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline I: Psychological Conditions:

Under this guideline, “certain emotional, mental, and personality conditions can impair judgment, reliability, and trustworthiness.” (AG ¶ 27) Applicant’s diagnosis of major

depressive disorder, together with his suicide attempt in 2014, history of suicide ideation, and an inpatient psychiatric hospitalization, trigger the following 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 behavior behaviors;
- (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
- (c) voluntary or involuntary inpatient hospitalization.

The following mitigating conditions under AG ¶ 29 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.

With the exception of a three-month gap in treatment after Applicant's psychiatrist retired and the date he began receiving treatment from his current psychiatrist, Applicant has consistently been receiving treatment. According to his current psychiatrist, Applicant has no psychiatric or psychological problem that would impair his judgment, reliability, or stability.

Applicant's stint at his current employer has been successful, and he is thriving in his community, as an elected church leader and teen mentor. Under these circumstances, I conclude that all of the mitigating conditions apply.

Whole-Person Concept

Applicant's mental health condition is a serious problem that could impact his judgment, trustworthiness, and reliability. He is successfully controlling it through ongoing counseling and psychiatric consultations. His strong work record and good character references constitute additional evidence of stability. Also, he has been forthcoming about his mental illness with his family, friends, and fellow parishioners, negating any vulnerability to coercion. Under these circumstances, I conclude that the presence of rehabilitation outweighs the nature and seriousness of the problem, rendering the possibility of recurrence minimal. Applicant has mitigated the security concern.

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.d:	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 a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge