



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02352

**Appearances**

For Government:  
Andrew Henderson, Esquire, Department Counsel

For Applicant:  
*Pro se*

January 4, 2019

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**Decision**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on August 7, 2014. (Government Exhibit 1.) On December 28, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline I (Psychological Conditions). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudication Guidelines for Determining Eligibility for Access to Classified*

*Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on January 22, 2018, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 1, 2018. The case was assigned to me on March 7, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 15, 2018. I convened the hearing as scheduled on April 25, 2018. The Government offered Government Exhibits 1 through 10, which were admitted without objection. Applicant offered Applicant Exhibits A through C, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing on May 3, 2018.

### **Findings of Fact**

Applicant is 59 years old and employed by a defense contractor. He is married, with no children. Applicant was honorably retired from the Air Force as a technical sergeant (E-6) in 2001, and has an Associate of Arts degree. He is seeking to retain national security eligibility for a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13C, 15, 17.)

#### **Paragraph 1 (Guideline I, Psychological Conditions)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he suffers from an emotional, mental or personality condition that can impair his judgment, reliability or trustworthiness. Applicant admitted all the allegations in the SOR with explanations. He also submitted additional documentation to support a finding of national security eligibility.

Applicant's mental health issues were first identified when he attempted to commit suicide on November 14, 2009. He changed his mind, called the police, and was committed to a hospital for observation and mental health treatment. (Government Exhibits 6, 7; Tr. 31.)

Applicant was discharged from the hospital on November 25, 2009, with a diagnosis of Major Depressive Disorder, Recurrent, Severe, With Psychotic Features. Progress notes from his hospitalization are found in Government Exhibit 8. The notes are replete with statements by Applicant that he felt he was being covertly observed, even while he was in the hospital. (See Tr. 33.)

Pertinent excerpts from his Discharge Summary (Government Exhibit 9) are as follows:

**HISTORY OF PRESENT ILLNESS:** This is a 50-year-old Caucasian male with no past psychiatric diagnosis. He was brought in by police on a 5150 for danger to self after patient [Applicant] cut both of his wrists superficially and was observed to be sitting in warm water in a bathtub. The patient stated, "I cut a little more initially, but it didn't work. I got scared and called the police." The patient stated that he had been feeling that people were following him for the last year and a half. The patient believed they were military personnel. The patient was unsure why they were following him, but they were looking at him in the home as well as following him around wherever he went. The patient stated he believed he was being monitored, "Because I stare at children too long." . . . The patient denied auditory or visual hallucinations. The patient however was preoccupied with his delusions to the point of feeling that people were following him even in the hospital. The patient reported history of recurrent episodes of depression, but no psychosis in the past. . . The patient stated that he felt that he needed to kill himself to save his wife.

The hospital records further state, under "COURSE OF HOSPITALIZATION":

The patient demonstrated gradual improvement to his symptoms with treatment. . . The patient reported significant decrease in the intensity and frequency of his paranoid delusions. The patient states that he was no longer bothered by them. The patient initially had thoughts of ending his life to save his wife. The patient, however, reported resolution of any suicidal or homicidal ideations.

Applicant was prescribed drugs, and also advised to obtain counseling. He continues on a drug regimen, as well as counseling, as further described below. (Applicant Exhibits A and B.)

Applicant was interviewed by an investigator for the Office of Personnel Management (OPM) on September 11, 2014. The investigator prepared a Report of Investigation (ROI), which stated as follows concerning Applicant's "PSYCHOLOGICAL/EMOTIONAL HEALTH":

The subject's anxiety stems from the constant feeling that people are watching him, at work, going to the bathroom, at home, when he is driving, to "suggest he is doing things he isn't supposed to do" in order to get rid of him. The subject could not elaborate on what he meant by "things he isn't supposed to do." These feelings first started in about 2003 date not recalled, at home, then in about 2005, date not recalled, at work. The subject has spoken with his supervisor about his belief that people are watching him to

get him on something. The subject's supervisor has told the subject that no one is trying to watch him or get things on him. The subject thinks that his supervisor thinks he is "a bit off." The subject has not had any disciplinary actions or confrontations. (See Tr. 26-27.)

The subject's counseling and medication have helped him to understand that people are not out to get him, but he still can't help getting the feeling that people are watching him. (Government Exhibit 2 at 2.)

Based in part on this interview a staff psychologist at the DoD CAF recommended that Applicant receive a medical evaluation. The psychologist stated, "Even in the face of the very limited favorable medical testimony, a concern exists about the subject's judgment and reliability based upon his intrusive thoughts/anxieties he expressed to the OPM investigator during his 11 SEP 14 PSI [Personal Subject Interview]." (Government Exhibit 4.)

Applicant received a psychological evaluation from a licensed psychologist/clinical neuropsychologist (Evaluator) on November 3 and 10, 2017. (See Tr. 36.) The Evaluator's report is Government Exhibit 3. Pertinent excerpts from this document are as follows:

#### COLLATERAL INTERVIEWS (CONDUCTED BY PHONE):

[Applicant] provided a signed authorization for this evaluator to speak with his treating psychiatrist Dr. [A]. On November 8, 2017, Dr. [A] reported that [Applicant] is being treated for Major Depressive Disorder, recurrent, severe, with psychotic features and Delusional Disorder. He has been treating [Applicant] since December 2009. Dr. [A] first began providing treatment on a monthly basis and reduced it to one time every two months. [Applicant] is reported to be consistent with his appointments. The current prescribed psychotropic medications are as follows: Risperdal .5 mg, Wellbutrin 150 mg, Lexapro 20 mg, and Klonopin .5 mg. Dr. [A] is aware of [Applicant's] persecutory/paranoid delusions, and reports Risperdal .5 mg is a low dose, but he has been unable to increase the dose due to reported side-effects. Dr. [A], reports Risperdal is about the only antipsychotic medication that [Applicant] will tolerate. Some of the paranoid delusions that Dr. [A] is aware of are as follows: Co-workers are talking about him, playing games with him, his work is trying to fire him, he is being monitored by his computer and his telephone. Dr. [A] reports that [Applicant] is guarded and does not go into detail about the paranoid delusions. Dr. [A] reports that he does not believe that there would be a problem in [Applicant's] judgment or reliability in safeguarding secret/confidential information because of the following: He has known [Applicant] for so long, he is able to perform his job, has been relatively free of disciplinary actions, has not been fired from his job, and [Applicant] is at baseline/not deteriorating.

## BRIEF HISTORY OF RELEVANT ISSUES:

Although he continues to work as a . . . Assistant Site Manager, and has been with the same company for many years, [Applicant] reports having the following complaints (persecutory/paranoid delusions): His work is trying to fire him because he stares at women too long; co-workers are talking about him, playing games with him; he is being monitored by his computer and his telephone, "People are working on getting me fired; they track how many times I look at women; security guards on the base can read my mind or put things in my mind." [Applicant] reports ongoing treatment with Dr. [A], psychiatrist, for medication management, and [Dr. B], PhD, MFCC, for individual therapy. [Applicant] reports ongoing discussions, on the above ideations, with both treatment providers. Dr. [A] reports he is aware of the above delusions.

## PSYCHOLOGICAL EVALUATION/TESTING RESULTS:

*Mental Status Exam:* . . . [Applicant] reported suffering stress due to people at his work trying to get him fired . . . No obvious or unusual anxiety symptoms were noticed, beyond closing his eyes when reporting paranoid ideations. [Applicant's] thought process was linear; his thought content was irrational when discussing paranoid delusions; thought content was relevant to the topic being discussed. . . .

*Personality Assessment Inventory (PAI):* This evaluator administered the PAI to [Applicant], which resulted in a valid profile, validity indices were well within the normal range, suggesting that he answered in a consistent manner, attended appropriately to the item content, and had an ability to identify positive and negative qualities/attributes about himself.

[Applicant] elevated several of the clinical scales, indicating that he suffers from significant anxiety, depression, and psychotic symptoms. The most significantly elevated clinical scales suggest that [Applicant] is hypervigilant and overly suspicious; he spends much time monitoring his environment for evidence that others are trying to harm or discredit him. He also has persecutory beliefs that people are plotting against him in some sort of conspiracy (e.g., "People want to fire me"). People may view him as odd and eccentric, due to his hypervigilance and unconventional ideas. As a result of his paranoid ideations (e.g., "Security guards on base can read my mind and put things in my mind") and related anxiety, he socially isolates and detaches, which may serve to decrease his social discomfort.

Although he is not aware that many of his thoughts are delusional in nature, he acknowledges that he has major emotional difficulties and believes he needs help.

Based on the foregoing, under the section "DIAGNOSTIC IMPRESSIONS," the Evaluator found the following diagnoses, which are consistent with those of Dr. A, set forth above: Major Depressive Disorder, recurrent, severe, with psychotic features; and, Delusional Disorder, Persecutory Type.

The report concludes:

#### IMMEDIATE AND LONG-TERM PROGNOSIS

Long-term prognosis is fair if [Applicant] is willing/able to tolerate an increase in Risperdal (or another antipsychotic medication as recommended by Dr. [A]). In the past, [Applicant] adhered to a higher dose of Risperdal, resulting in an improved mental state and stability. However, at this time, [Applicant's] immediate prognosis is poor. He continues to have significant paranoid delusions, depressed mood, anxiety, and periodic suicide ideation. Insight into his delusions is currently poor. There is currently significant interpersonal functional impairment in [Applicant's] life. He also has a history of occupational difficulties (e.g., Unable to work as a result of psychiatric hospitalization in 2009, security clearance was revoked in 2009) without mental health treatment. Without an increase in Risperdal (or another antipsychotic), his prognosis is likely to remain poor.

#### CONCLUSIONS/RECOMMENDATIONS

At this time, [Applicant's] current mental state and functioning impacts his ability, reliability, judgment, stability and trustworthiness in handling or safeguarding classified information. I agree with Dr. [A] that [Applicant] is able to perform his job, and does not have a history of aggression or being fired from his place of employment. However, [Applicant] is not in touch with reality, at this time, due to his continued paranoid delusions; furthermore, he continues to experience depression and anxiety, and periodic suicide ideation; this dysregulation of neurotransmitters could affect the frontal lobes, and areas involved in decision making and metacognition. As a result of his current mental state, and poor insight, there is significant concern that [Applicant] could pose a risk of unauthorized disclosure or mishandling of classified information.

Applicant's treating psychiatrist, Dr. A, provided a written statement dated April 23, 2018. It is Applicant Exhibit A and reads as follows:

Please be advised that [Applicant] has been under my psychiatric care since 12/15/2009 for the medication management of major depression with psychotic features and the delusional disorder, persecutory type. He is seen every one to two months for medication management and his current medications are Lexapro 20 mg at bedtime, Zyprexa 2.5 mg at bedtime and Klonopin 0.5 mg as needed.<sup>2</sup> [Applicant] attends his sessions regularly and has been compliant with the recommendations for medication management.

Applicant testified that his psychiatrist had changed his prescription from Risperdal to Zyprexa because of some suicidal thoughts he was having. He also thought that Dr. A put him on Zyprexa because of the recommendation from the Evaluator that Applicant's medication either be changed or increased. (Tr. 37-38.)

Applicant also has a treating psychologist, Dr. B, who also submitted a written statement, dated March 22, 2018. He has been seeing Applicant since approximately 2005. (Tr. 25, 38-39.) The statement is Applicant Exhibit B and reads as follows:

I am writing this letter to confirm that [Applicant] has been in individual counseling with me. [Applicant] has been showing good progress in dealing with his anxiety issues. We have been utilizing Cognitive Behavioral Therapy and Solution Focused Therapy as the basis for affecting change in his life. [Applicant] reports improvement in dealing with the stressors of his life. He is a very willing and cooperative client who has an excellent prognosis.

Applicant testified concerning his issues at some length. He confirmed that his issues began in 2004 or 2005 with a constant feeling that people were watching him at work, while going to the bathroom, at home, while he was driving, and suggesting that he was doing things he wasn't supposed to be doing. Applicant testified that he continued to have these feelings today about his fellow workers. He also believed at the time of the hearing that such observation was being done covertly by his management and investigators, though not as much as during earlier days. (Tr. 24-32.)

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<sup>2</sup> I take administrative notice of the following facts concerning the drugs that are currently prescribed for Applicant. Lexapro is an anti-depressant. (WebMD, *Lexapro*, <https://www.webmd.com/drugs/2/drug-63990/lexapro-oral/details> (accessed December 28, 2018).) Zyprexa is an anti-psychotic. (WebMD, *Zyprexa*, <https://www.webmd.com/drugs/2/drug-1699/zyprexa-oral/details> (accessed December 28, 2018).) Klonopin is used to treat panic disorder and anxiety. (WebMD, *Klonopin*, <https://www.webmd.com/drugs/2/drug-920-6006/klonopin-oral/clonazepam-oral/details> (accessed December 28, 2018).)

Applicant testified that he did not believe the security guards at work were reading his mind and putting thoughts in his head. He further testified:

There's this one Security outfit that has some kind of device or something, if you've seen on the news and whatnot. They've had ways where they can go, where people can go and use hearing – brain-connecting hearing aids – to brain waves so deaf people can hear and whatnot. So, it's not really a stretch for those same waves to be – if they have the right frequency – could go and listen and understand them. (Tr. 46.)

He was asked by me, "And you believe this is happening with you?" Applicant responded, "It happened yes." I also asked him, "Is it currently happening, or in the past?" Applicant stated, "In the past, yes, Your Honor." (*Ibid.*)

Applicant provided a letter of recommendation from a retired member of the Air Force who knows Applicant well. The writer met Applicant at church, believes Applicant to be a trustworthy person, and recommends him to receive national security eligibility. (Applicant Exhibit C; Tr. 39-40.)

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.



Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in § 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, § 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline I, Psychological Conditions)**

The security concern relating to the guideline 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 at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions are established:

(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;

(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.

Applicant has been suffering from several diagnosed, severe, mental health conditions since at least 2009. He was psychiatrically hospitalized at that time because of a suicide attempt. His diagnosed conditions include major depression with psychotic features, and a delusional disorder, persecutory type. These delusions are specifically related to his work, where he believes he is being covertly watched, that his management is conspiring against him, and that a security outfit has been able to use a device to read his mind and put ideas into his head. Applicant testified about his delusions, which he continues to believe. In addition, Government Exhibit 3 is an extensive report from a DoD-approved mental health consultant who opined that Applicant's conditions are not under control and may impair his judgment, stability, reliability, and trustworthiness.

The guideline at AG ¶ 29 contains four conditions that could mitigate security concerns:

(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; and

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

After evaluating all the available evidence, I find that none of these mitigating conditions apply with force enough to overcome the weight of evidence. First, it must be understood that there is no allegation that Applicant has ever mishandled classified information. However, that is not the determining factor in this case.

Mitigating condition ¶ 29(a) does not apply because there is little to no evidence that Applicant's condition is controllable with treatment. He is compliant with the treatment plan, but the evidence shows that he is still subject to delusions.

Mitigating condition ¶ 29(b) does not supply sufficient mitigation because there is little evidence that the counseling Applicant is receiving has resulted in a relevant favorable prognosis by either of his mental health professionals. The Government is concerned with Applicant's diagnosed delusions and depressive psychosis. The letter from Dr. A merely stated that Applicant is medication compliant. Dr. B's letter stated that Applicant has an "excellent prognosis." However, it is noted that the letter also stated that Applicant is being treated by Dr. B for "anxiety issues," which are distinct from the depressive, psychotic, and delusional mental health concerns diagnosed by the psychiatrist.

Mitigating conditions ¶ 29(c) does not apply because the Evaluator had specific concerns about Applicant, set forth in Government Exhibit 3, which have not been answered. He found that Applicant's condition is not under control or remission, and that there was a high probability of exacerbation.

Finally, mitigating condition ¶ 29(e) does not apply. Based on the report of the Evaluator, and Applicant's testimony, there is more than sufficient evidence of a current problem.

The simple fact is that Applicant does not currently meet the conditions for a granting of national security eligibility. There is always the possibility that his condition will stabilize, and that he will receive a favorable prognosis specifically concerning his diagnoses of major depression with psychotic features, and delusional disorder, persecutory type. Until that happens, he is not eligible. Paragraph 1 is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his psychological conditions, which are involuntary but serious and likely to continue. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility, and a security clearance.

### **Formal Findings**

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

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge