



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-02670
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., and John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

09/02/20202

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on March 12, 2014. On October 29, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I. The DOD CAF acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on November 14, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 22, 2020. The case was assigned to me on February 10, 2020. On March 12, 2020, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 2, 2020. On March 17, 2020, the hearing was cancelled because of DOD workplace and travel restrictions based on health concerns posed by the COVID-19 virus.

On July 24, 2020, DOHA notified Applicant that the hearing was rescheduled for August 25, 2020. I convened the hearing as rescheduled. Government Exhibits (GX) 1, 3, and 4 were admitted in evidence without objection. GX 2, an unauthenticated summary on an interview with Applicant during his background investigation, was not admitted. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection.

I kept the record open until September 11, 2020, to enable Applicant to present additional medical evidence and character references. He timely submitted AX H through O, which were received without objection. DOHA received the transcript (Tr.) on September 2, 2020.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations except SOR ¶ 1.f, which he denied. His admissions in his answer and at the hearing are incorporated in my findings of fact. The facts alleged in the SOR are identified by parenthetical citations to the SOR in italics and bold print.

Applicant is a 29-year-old information technology (IT) specialist employed by a defense contractor. He is a site lead and supervises an eight-member team. (Tr. 23-24.) He served on active duty in the U.S. Army from November 2012 to March 2019 and received an honorable discharge. He was discharged early after a medical evaluation board determined that he was suffering from fibromyalgia, a musculoskeletal disorder often accompanied by fatigue, sleep issues, and mood issues.¹ (Tr. 23-24.) He held a security clearance while on active duty and retained it as the employee of a defense contractor. (Tr. 6.) He married in May 2011 and has two children and two stepchildren. (Tr. 23.) He has taken college classes online but does not have a degree. (GX 2 at 5.)

In February 2014, while deployed overseas, Applicant complained of daily headaches and chest pain. He was sent back to the United States before completing his tour of duty. (Tr. 25.) In the United States, he underwent a CT scan of his head and brain to determine the cause of more than two months of daily headaches and dizziness. The scan reflected "no appreciable parenchymal mass, hemorrhage, or edema" and no acute intracranial abnormality. The medical report recommended that an MRI be conducted if clinical concerns persisted. (AX B.) He received no treatment, except for injections of Botox to relieve his headaches. (Tr. 27.)

¹ The fibromyalgia definition is at www.mayoclinic.org/diseases/conditions/fibromyalgia/symptoms-causes.

In early 2017, Applicant was again deployed overseas and separated from his family. In April and May 2017, Applicant went to his unit's behavioral health clinic and reported that he was irritable and tired and experiencing stress due to poor leadership in his unit. He was diagnosed with an adjustment disorder with anxiety and depressed mood. (GX 4 at 2.) At the hearing, he testified that he experienced recurrent and severe headaches. He was in a high-pressure job, working 12-hour shifts, and unable to sleep. He testified that he sought medical help, but his supervisors made him cancel his appointments. He told his superiors that he had considered suicide. (Tr. 28.) **(SOR ¶ 1.a)** He threatened his detachment sergeant and platoon sergeant, because he believed they were the cause of his continuous pain. (Tr. 29) **(SOR ¶ 1.b)** An incident report reflects that he threatened to "kill/injure" them, but he testified at the hearing that he wanted to hurt them but not kill them. (GX 3; Tr. 29-30.) He was admitted as an inpatient in a psychiatric unit during June and July 2017 and was prescribed sleep medication and psychotropic medications. **(SOR ¶ 1.c)** He was moved to a less stressful job, where he quickly established himself as a solid worker and a natural leader. His commander, an Army captain, described him as one of the top performers in his command and recommended him for promotion. (AX F.)

In August 2017, Applicant was diagnosed with a major depressive disorder in partial remission. **(SOR ¶ 1.g)** He received "maintenance therapy" until December 2017.

In March 2018, Applicant was evaluated at a behavioral health clinic and diagnosed with an adjustment disorder. A psychiatrist reported that he had "limited coping skills, persistent depression, and work-related stressors for which he has few coping skills." **(SOR ¶ 1.h)** In January 2019, a psychiatrist diagnosed him with persistent depressive disorder with work-related stress, few coping skills and adjustment disorder with disturbance of emotions and conduct. (GX 4 at 2.) **(SOR ¶ 1.i.)**

In February 2019, after Applicant returned to the United States, a psychologist evaluated him while he was on terminal leave pending the results of a medical evaluation board. In her report, the psychologist expressed concern about the accuracy of the tests that she administered because she believed Applicant presented himself in an extremely positive light by denying many minor faults and shortcomings that most people acknowledge. However, she also noted that during the psychological interview that "he was forthcoming and did not appear to be attempting to portray himself in a positive light." (GX 4 at 5.)

The psychologist noted Applicant's history of suicidal ideation and threatening behavior. She found significant thought dysfunction, based on persecutory ideation such as believing that others seek to harm him. She noted that Applicant believed that his noncommissioned officer (NCO) followed him to make sure that he kept his medical appointments, that his NCO punished him without cause, that his NCO stole his work and presented it as his own, and that his NCO "talked trash" about him. She also noted that Applicant made his own appointment in violation of normal protocol, after being told that the evaluation could only be scheduled through his security officer, and she concluded

that his violation of the scheduling protocol evidenced an unwillingness to follow rules and a disregard for instructions.

The psychologist diagnosed Applicant with dysthymic disorder, a form of depression, but ruled out a personality disorder. **(SOR ¶ 1.d)** She concluded that, based on his history of high risk, irresponsible, aggressive, antisocial, or emotionally unstable behavior, there may be a material deficit in his ability or willingness to properly safeguard classified information or perform sensitive duties, especially if he was not happy with his assignment or believed he knew a better way to perform his duties. **(SOR ¶ 1.e)** She concluded that Applicant's deficits or problems could impact his reliability or trustworthiness and could cause unwillingness or resistance to follow rules and regulations. **(SOR ¶ 1.f)**

The psychologist apparently based her conclusion about Applicant's inability or unwillingness to follow rule and regulations solely on his failure to follow the protocol for scheduling a mental health evaluation. The record reflects no disciplinary or administrative measures imposed on him during his military service for failure to obey orders, follow instructions, or obey regulations.

The psychologist found that Applicant's psychological functioning was stable and that he did not report any significant symptoms of depression or anxiety at the time of her evaluation. She concluded that his social functioning and occupational functioning were good. However, she also concluded that her interview of Applicant revealed deficits or problems with judgment and revealed traits that could affect his reliability or trustworthiness. She concluded from the psychological interview that his current psychiatric condition was stable, but that he likely has a chronic mood disorder that affects his ability to cope with stressful situations.

Based on Applicant's record of seeking assistance from behavioral health professionals, the psychologist concluded that he likely will seek help again if he feels the need. She noted that Applicant reported that he is compliant with his medications, but she expressed concern that noncompliance might cause him to decompensate to his previous level of self-injury or threatening behaviors. Her prognosis was "guarded" because of Applicant's "inability to adequately cope with his personal and professional stressors, even though he seeks help when he feels that he needs it." (GX 4 at 6-7.)

Applicant returned to the United States in early 2018. An Army staff sergeant who was Applicant's supervisor from February 2018 to March 2019 observed that he provided "immaculate communications support" to his unit and that he demonstrated exceptional leadership and decision-making and earned the trust of the command's senior leadership as well as his co-workers and immediate supervisor. (AX E.)

After Applicant's discharge in March 2019, he sought medical treatment from the Department of Veterans Affairs (VA). He testified that his headaches returned but that the VA medical personnel kept giving him intravenous injections and sending him home. (Tr. 21.)

At some time in 2019, VA medical personnel discovered a mass growing in Applicant's brain. In December 29, 2019, Applicant underwent a CT scan and an MRI, to determine whether a pituitary mass growing in his brain was a pituitary adenoma (a slow-growing tumor on the pituitary gland). (AX A.) The MRI reflected a "sellar mass with suprasellar extension and areas of internal high density which may represent hemorrhage and pituitary apoplexy. (AX L at 4.) He was admitted to a hospital immediately, with indications of "pituitary apoplexy with pituitary adenoma." He underwent surgery, which found hemorrhagic pituitary macro adenoma, and the pituitary mass was removed. He was released from the hospital on January 2, 2020. (AX M; AX O at 18.) A follow-up MRI in March 2020 indicated that the surgery was successful and the mass was gone. (AX M; AX O at 5; Tr. 32.) Applicant testified that the doctors told him that mass was at least three or four years old. (Tr. 31.)

At the hearing, Applicant presented medical literature reflecting that pituitary adenomas can cause recurrent headaches, anxiety, decreased concentration, fatigue, depression, and hormonal dysregulation that causes mood disorders. (AX C and D.) A medical professional from the VA opined that Applicant's depression, anxiety, and anger were likely exacerbated by a brain tumor. (AX G.)

Applicant's treatment plan provides for annual CT scans for the next five years. (Tr. 47.) He is also being treated by an endocrinologist, because the pituitary gland dysfunction damaged his hormonal system. He testified that his headaches are less severe, and he treats them with over-the-counter drugs instead of the stronger drugs that he received previously. His mood is "happier." (Tr. 32-33.)

Applicant continues to receive treatment for his mental health. He takes Propranolol (an anti-anxiety drug) and Cymbalta (an antidepressant). He sees a behavioral health professional from the VA once a month. (Tr. 37.) His VA provider states that he has been compliant with his treatment. (AX G.)

Two co-workers who have observed Applicant during the past year attested to his technical skill, leadership skill, and his trustworthiness under pressure, which led to his promotion to a leadership position one month after beginning his current job,. One co-worker commented specifically on his communication skills and management style that make customers and his team members feel important and valued. (AX I; AX J.)

An Air Force senior master sergeant who is Applicant's government office manager describes him as motivated, hard-working, and skilled. He states: "I have been impressed by his strong communication skills and his ability to establish a comfortable rapport with others. He comes across as confident, mature, and highly capable to handle short notice taskers. . . ." (AX K.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to

“control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline I, Psychological Conditions

The concern under this guideline 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.

Applicant’s admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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;

AG ¶ 28(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

AG ¶ 28(c): voluntary or involuntary inpatient hospitalization.

The following mitigating conditions are potentially applicable:

AG ¶ 29(a): the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

AG ¶ 29(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;

AG ¶ 29(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;

AG ¶ 29(d): the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

AG ¶ 29(e): there is no indication of a current problem.

AG ¶ 29(a) is established. Applicant's depression and behavioral problems appear to have been caused in large part by a hemorrhagic pituitary adenoma, which was removed on December 29, 2019. He is taking medications for anxiety and depression, receiving behavioral health counseling, and is compliant with his treatment program.

AG ¶ 29(b) is partially established. Applicant is voluntarily participating in a VA treatment program, receiving counseling and medication, and is compliant with the program's requirements. He submitted evidence that his surgery was successful. However, he submitted no evidence of a prognosis regarding his mental health and behavior.

AG ¶ 29(c) is partially established. Applicant provided evidence that his pituitary adenoma has been resolved by surgery, but he did not provide any recent evidence from a medical professional regarding his mental and behavioral health.

AG ¶ 29(d) and AG ¶ 20(e) are established. Applicant's surgery appears to have removed the cause of his depression, anxiety, and threatening behavior. The testimonials from Applicant's current supervisor and two of his co-workers indicate that his behavioral problems have not recurred since his surgery.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline I in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline(s), but some warrant additional comment.

Applicant held a security clearance during his active duty, apparently without incident. His military record oscillated between periods of brilliant performance and periods of anxiety, depression, suicidal ideation, and threatening behavior. He was diagnosed in February 2019 with depression, but not with a personality disorder. He also suffers from fibromyalgia, a painful disease is sometimes accompanied by fluctuating mood swings.

Applicant began complaining about his headaches in February 2014, but it was not until December 2019, after his discharge from the Army, that the source of his pain and mood disorders was discovered and repaired. After a significant cause of his mood swings was removed, he appears to have established himself as a talented, effective, respected, and well-liked IT professional in the civilian world. He is complying with his program of counseling and medication. After weighing the disqualifying and mitigating conditions under Guideline I, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his psychological conditions.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline I, Psychological Conditions: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge