



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



In the matter of:)
)
) ISCR Case No. 17-04128
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2020

Decision

Curry, Marc E., Administrative Judge:

Although Applicant is complying with his mental-health treatment plan and has made progress, it is too soon to conclude that his mental-health disorder no longer generates a security concern. Applicant has made minimal progress in addressing his delinquent finances. I conclude that he has not mitigated the psychological conditions and financial conditions security concern.

Statement of the Case

On September 20, 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, and Guideline F, financial considerations, 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 August 25, 2019, Applicant answered the SOR, admitting the allegations. He requested a hearing. On November 20, 2019, the case was assigned to me, and on December 6, 2019, DOHA issued a notice of hearing scheduling the case for January 23, 2020. The hearing was held as scheduled. I received six government exhibits (GE 1 – GE 6), three exhibits from Applicant (AE A – AE C), and a copy of the discovery letter from Department Counsel to Applicant, dated November 7, 2019 (Hearing Exhibit I). At the close of the hearing, I left the record open through close of business February 7, 2020, at Applicant's request, to allow him the opportunity to submit additional exhibits. Applicant did not submit any supplementary exhibits by the deadline, whereupon, I closed the record. The transcript was received on January 31, 2020.

Findings of Fact

Applicant is a 43-year-old single man. He was previously married from 1995 to 1999. The marriage ended in divorce. He has an adult child from this relationship. Currently, he is engaged to his longtime girlfriend.

Applicant earned a bachelor's of science degree in accounting in 2011, and he earned a master's degree in the same field in 2014. (Tr. 17) He has been working as a consultant for an accounting firm since June 2016. (GE 1 at 11)

In August 2016, Applicant's girlfriend caught him cheating on her. (Answer at 5) Applicant had engaged in infidelity, with random strangers whom he met online, 20 to 30 times in the previous 12 months before his girlfriend discovered it. (Tr. 30) Applicant's "feeling of powerlessness to stop [his] behavior drove [him] to attempt" suicide by ingesting three bottles of prescription medicines. (Answer at 5) Fortunately, Applicant began vomiting immediately after ingesting the pills, and was admitted into a ten-day inpatient psychiatric program. (Answer at 4) Upon discharge, he was diagnosed with bipolar disorder and prescribed various medications. Since then, Applicant has been attending therapy approximately every two weeks and seeing a psychiatrist every two months to monitor his medication. (GE 2 at 5; Tr. 21)) In addition, he began attending a sexual-addictions support group for his promiscuous behavior. He attended the support group meetings for approximately 18 months.

Applicant's mental-health condition is characterized by manic behavior. (Tr. 22) When Applicant is in a manic state he becomes "overly energetic" and anxious, prompting him to engage in impulsive behavior in an attempt to calm himself, such as promiscuous, risky sex with strangers and excessive shopping. (Tr. 22, 30; GE 6 at 4) From 2002 to 2009, Applicant drank alcohol excessively to manage his symptoms. (Tr. 22) Excessive alcohol consumption is no longer a problem.

Ascertaining the proper balance of medications was challenging. Specifically, if the daily amount of Applicant's anti-anxiety prescription was too small, he would continue to experience anxiety. Conversely, if the prescribed dosage was too high, Applicant would

become depressed. Things “finally clicked” for Applicant with respect to a proper balance of medication approximately a year and a half ago. (Tr. 41- 42)

Applicant has been taking his medication “religiously, every morning and night.” (Tr. 35) His therapist taught him coping strategies for dealing with his bipolar disorder. He has not cheated on his girlfriend since the 2016 episode that prompted his suicide attempt, and he has not engaged in any other risky, impulsive behavior. Now, when Applicant occasionally experiences manic feelings, he responds by “hyperfocus[ing] on work and walking his dog. (GE 5 at 1) His work history shows a pattern of stability. (GE 6)

In September 2018, Applicant underwent a psychological evaluation from an independent medical examiner. (GE 6) Per the psychologist, although Applicant “appears to be on a positive trajectory in terms of remediating what has been a longstanding mental-health condition, he still has a medical condition that could negatively impact his judgment, reliability, and trustworthiness in the context of safeguarding sensitive information and working in a cleared setting.”(GE 6 at 6-7) Specifically, Applicant, during his consultation, demonstrated limited self-awareness and only minimally monitored what he was saying, leading the psychologist to conclude that “[Applicant’s] talkativeness along with residual impulsivity led [the psychologist] to believe that a nefarious person could extract sensitive information from [Applicant] with little effort.” (GE 6 at 6)

Approximately a year after the psychological examination with the independent medical examiner, Applicant’s treating therapist prepared a report. Applicant began receiving treatment from her in April 2018 and he continued to consistently attend therapy sessions through August 19, 2019, when she prepared her report. (GE 5) Per the therapist, Applicant still experienced manic episodes; however, he was engaged in the therapy sessions, which focused on coping strategies for his manic and depressive symptoms. (GE 5) Her report does not address whether his mental-health disorder could affect his ability to safeguard sensitive information.

Applicant has approximately \$150,000 of delinquent debt. The majority of the debt consists of delinquent income taxes (\$27,730) and delinquent student loans (\$119,000). Applicant’s financial problems began in 2012 after relocating from State 1 to State 2. Applicant was briefly responsible for two lease payments, as his girlfriend remained in their State 1 residence for approximately a year until their lease expired. Shortly after Applicant moved to State 2, his ex-wife, a military member who had physical custody of their then teenage daughter since the divorce, was deployed abroad, prompting Applicant who had never previous had physical custody of his daughter more than two weeks per year, now had to assume physical custody of the daughter during his ex-wife’s deployment. (Tr. 25) Applicant recognized that continuing to support his girlfriend financially until she relocated to his new home in State 2, while at the same time taking in his daughter posed a tremendous financial burden; however, “in [his] particular manic state, [he] felt like [he] could do it all.” (Tr. 25)

Overwhelmed, Applicant increased his income tax withholdings to generate more take-home income. (Tr. 73) By 2017, he owed \$15,800 in delinquent federal income taxes

from tax years 2012 through 2016, as alleged in SOR subparagraph 2.a, and he owed approximately \$14,000 in delinquent state income taxes. (Answer at 1) In 2017, Applicant began satisfying his federal income-tax debt through a payment plan, under which he paid the IRS \$220 per month. (Tr. 79) Applicant has missed half of the scheduled payments, and he has not made a payment in the past six months. (Tr. 80, 82) Recently, the IRS applied a \$2,000 refund from Applicant's 2019 income tax return to the delinquency. (Tr. 27) The current debt totals \$13,575. (AE A)

Applicant owes approximately \$14,155 in delinquent state income taxes, as alleged in SOR subparagraph 2.b. When he researched the delinquency, he realized that he had not filed his tax returns for 2012 and 2014. After he filed these returns, the tax burden was reduced to \$7,140, as the refunds were applied to the delinquency. (Tr. 27; AE B) He then set up a payment plan. He has not made any payments in more than a year. (Tr. 83-84)

The debts alleged in SOR subparagraphs 2.c, 2.e, 2.f, and 2.i through 2.m are delinquent credit-card accounts, totaling approximately \$6,200. Applicant has made no payments and they remain outstanding. (Tr. 88-89) These bills became delinquent in September 2017 after Applicant "drew the line" and concluded that he could not simultaneously pay for mental-health treatment and meet his debt payments. (Tr. 97)

SOR subparagraph 2.d, totaling \$2,275, is owed to a company that publishes study materials for accountants. (Tr. 86; GE 1 at 13) Applicant disputes this bill, contending that his then employer was supposed to have satisfied it. (Tr. 86) He provided no evidence in support of this contention.

The debts alleged in SOR subparagraphs 2.g and 2.h are student-loan accounts. They total approximately \$119,000. In April 2019, Applicant entered a rehabilitation agreement to satisfy the loans. Under the plan, he was to pay \$345 monthly for a ten-month probationary period. (Tr. 90) If Applicant were to conform to the agreement, the creditor would no longer consider the loan to be in delinquent status. (Tr. 90) Applicant made payments for the first three months, as agreed, but he missed the payment for August 2019. He provided evidence of a September 2019 payment, but he did not provide any proof that he made the payments for October through December of 2019.

Applicant earns \$114,000 per year. (Tr. 65) He has \$3,000 invested in a 401k account. (Tr. 72) He has not attended any credit counseling. (Tr. 90) There is no record evidence that he maintains a budget.

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). The factors under AG ¶ 2(a) 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 bipolar disorder, together with his suicide attempt in 2016, followed by 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 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 are potentially applicable 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 shows indications of emotional instability; and
- (e) there is no indication of a current problem.

Applicant's therapist concluded that, although Applicant still has manic episodes, he has been learning to cope with them through therapy, which he has attended consistently. His progress has also corresponded as his medication treatment regime has evolved. Conversely, the psychologist who performed the independent medical examination concluded that Applicant still has manic symptoms, which are manifested in limited self-control, impulsivity, and excessive talkativeness. Most importantly, the psychologist concluded that these residual symptoms continue to raise questions about Applicant's ability to safeguard classified information.

Applicant saw the psychologist only once. In comparison, he has an ongoing relationship with his therapist. In addition, the record therapist report is more recent than the psychologist report. The therapist report, however, does not explicitly address the issue of whether Applicant's mental-health condition is under control. Consequently, although Applicant's progress is sufficient to conclude that his long-term prognosis is favorable as long as he continues to participate in therapy, there is insufficient evidence to conclude that he has no indications of a current problem. I conclude that AG ¶ 29(a) and 29(b) apply, but AG ¶¶ (c) through 29(e) do not apply.

Financial Considerations

The security concern under this guideline are set forth under AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's history of delinquent debts generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant's outstanding federal and state income tax debt triggers the application of AG ¶ 19(f), "failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required."

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those

Applicant became financially overextended in 2012 when his daughter, who had never lived with him for any extended length of time, moved in with him after her mother was deployed, and after he relocated and continued to support his girlfriend financially, paying their rent payments until she joined him in State 2. Although the situation involving his daughter was arguably unexpected, the situation involving his girlfriend and his decision to continue paying their lease after he relocated was not unexpected. Moreover, regardless of whether Applicant's financial problems were caused by circumstances beyond his control, he has not made adequate efforts to satisfy his debts for me to conclude that he acted responsibly. AG ¶ 20(b) does not apply.

Applicant has not participated in credit counseling. Although he made arrangements to pay his income taxes and his student-loan debts, the most significant debts, he did not adhere to the agreements. As for the disputed debt, he provided no evidence supporting the basis of his contention. Under these circumstances, Applicant's initiation of good-faith efforts to repay his debts is sufficient to trigger the partial application of AG ¶ 20(d), but none of the remaining mitigating conditions applies.

Whole-Person Concept

Applicant deserves credit for taking steps to gain control of his mental-health condition. He no longer engages in destructive behavior, such as compulsive, high-risk sexual intercourse with strangers, or heavy drinking. However, given the evaluation of the psychologist, it is too soon to conclude that Applicant's mental-health condition does not pose a security concern. In reaching this decision, I was particularly cognizant of Applicant's testimony that he was unable to simultaneously manage his mental-health and pay down his delinquent debts. Applicant has failed to mitigate the 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 – 1.e:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.m:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge