



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



In the matter of:)	
)	
)	ISCR Case No. 18-02540
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Cheryl Van Ackeren, Esq. (Response only); *Pro se* at hearing

05/17/2021

Decision

WHITE, David M., Administrative Judge:

Applicant mitigated the psychological conditions security concerns. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

History of Case

On June 11, 2014, Applicant submitted a Questionnaire for National Security Positions (SF 86). On March 26, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I (Psychological Conditions). The action was taken 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 for national security eligibility effective within the DoD on June 8, 2017.

Applicant received the SOR on March 26, 2019. He retained an attorney to assist him in responding to the SOR on April 10, 2019. That attorney requested an extension of time to respond to the SOR. Having not received notice that the extension had been approved, Applicant personally responded to the SOR in writing on April 19, 2019 (Answer), without the assistance of his attorney. He admitted each of the SOR allegations, with explanations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 20, 2019. I attempted to schedule Applicant's hearing during September 2019, but his counsel requested a continuance, which I granted. On September 17, 2019, Applicant and his counsel submitted an amended SOR response (Response) to "further clarify" and supplement his Answer. (See Transcript at 81-89.) DOHA issued a Notice of Hearing to Applicant's counsel on October 15, 2019, setting the hearing for November 7, 2019. His counsel responded on the same day with a letter advising that she was immediately withdrawing from any further representation of Applicant.

At his hearing on November 7, 2019, Applicant explained that he had chosen not to pay the fees that his attorney would have required to represent him during the hearing, and that he wished to proceed *pro se*. I found him to be capable of self-representation, and his election to be knowing and voluntary. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. GE 1 through 3 were admitted without objection. Applicant objected to the admission of GE 4 because he disagreed with some of its contents. GE 4 was admitted into evidence over this objection, with the assurance that any contradictory, supplementary, or corroborative evidence would also be fully considered. Applicant testified and offered Applicant Exhibits A through G, which were admitted without objection. I granted Applicant's request to leave the record open until November 21, 2019, for submission of additional evidence. On November 18, 2019, Applicant submitted AE H, which was admitted into the record without objection. DOHA received the hearing transcript (Tr.) on November 26, 2019.

Findings of Fact

Applicant is 53 years old. He has worked for a major aerospace company since March 2014 as a mission systems engineer, and applied for a security clearance in connection with that employment. He graduated from high school in 1985, and earned a bachelor of science degree in 1999. He completed his master's degree in electrical engineering in 2013, and suspended his participation in an engineering Ph.D. program when he relocated to accept his current position. He is recently married and has no children. (Answer; Response; GE 1; GE 2; Tr. 87, 104, 113.)

Applicant's parents divorced when he was an adolescent. They, and Applicant's siblings, all moved away and left him to live with family friends until he graduated from high school in 1985. He joined the Army shortly thereafter, but was separated from the service with an uncharacterized entry-level discharge for "failure to adapt," before completing his initial training. For the next six or seven years he was unemployed and homeless, surviving through public assistance and crime while increasingly abusing various drugs. He does not remember specific dates and details of this period of his life,

but confirmed that it included several periods of incarceration, several inpatient admissions in a psychiatric hospital unit for mental health treatment, and a year of residence in a large “unlocked residential facility . . . for adults with mental illness . . . [where] residents are allowed to come and go freely and are afforded the same rights as all other Americans.” It was only in that residential facility that he was ever diagnosed, vaguely, with a schizoaffective disorder; and he paid for this arrangement by signing over all of his resulting Supplemental Security Income (SSI) disability benefits, while receiving back a small stipend. After living there for a year, he moved into a motel across the street where he could retain a larger portion of his SSI funds. (GE 1; GE 2; GE 3; AE A; AE D; AE E; Tr. 43-45, 108-113.)

Applicant reported that he lived in California from 2002 to 2008, then in Arizona from 2008 to March 2014, all in Federally subsidized Section 8 rental housing. From 2002 to 2010, he was unemployed or worked in short-term temporary-placement-agency jobs. He then entered graduate school at a major state university, pursuing a master’s degree. His drug abuse stopped when he obtained the Section 8 housing, but he continued to pursue mental health treatment, which allowed him to qualify for vocational rehabilitation program benefits and to continue receiving SSI. In Arizona, during 2008, he started with a new outpatient mental health counseling service so he could continue to receive medications. In 2010, he was diagnosed with bipolar disorder by his treating psychiatric nurse practitioner (NP). His medical records reflect continuous and successful participation in treatment until 2013, when the time demands of finishing his master’s degree prevented his regular attendance. (Answer; Response; AE D; AE G; Tr. 23, 52-53, 61, 66, 72, 78-79, 97, 113-121, 128.)

During a therapy session in 2013, Applicant discussed the emerging technologies that permit “smart” televisions to collect and send information about people to data-collection companies. This was a subject that had come up during his electrical engineering studies. He did not consider it to be a personal problem, because he considered himself not to be important enough for anyone to be spying on him, and it did not lead to a diagnosis of, or treatment for, paranoia. He adamantly denied ever having, or reporting, thoughts of harming himself, as alleged in the SOR. The record medical evidence corroborates the absence of any such reports. (GE 3; GE 4; AE D; AE G; Tr. 70-78, 91-92, 122-125.)

After completing his master’s degree, Applicant was accepted into the engineering Ph.D. program at the same university. Again, academic demands on his time prevented him from fully participating in continued treatment at the counselling service. However, the service’s records indicate that he returned for significant periods of counselling until he decided to leave school for his current employment in 2014. As part of his decision-making process, and aware that he would need to apply for a security clearance, he consulted with NP concerning the potential for psychological issues to raise security concerns. She assured him that his mental health was under good control and that she would certify that there was no current basis for such concerns. She, in fact, did provide a positive prognosis to that effect. Before that time and under her direction, he had

stopped taking any psychiatric medications. (Answer; Response; AE G; Tr. 60-62, 70, 126-129.)

On April 8, 2018, at the request of the DoD CAF, a licensed clinical psychologist performed a psychological evaluation of Applicant. She issued her report on April 18, 2018. (GE 4) She based this report and her opinions on some investigatory records provided by the DoD CAF, her clinical interview and observations, and the results of the Personality Assessment Inventory (PAI) that she had Applicant complete. Although she was provided Applicant's release of information authorization to speak with NP, she chose not to contact NP because she considered her review of the records provided by the DoD CAF to be sufficient for purposes of her assessment. Most of the allegations in the SOR are based on comments in this report, several of which are factually incorrect. For instance, she states that he was diagnosed with bipolar disorder with psychotic features, which appears nowhere else in his extensive medical records. (GE 4; AE C; AE D; AE G; Tr. 52, 56, 62-72, 90-91, 121.)

A complete analysis of GE 4 reveals that the selectively quoted language contained in the SOR portrays a misunderstanding of the evaluation's results and report. Pertinent sections of the report state:

Overall, [Applicant's] clinical profile on the PAI did not result in any elevations that would be indicative of clinically significant mental health issues, despite his mental health and treatment history. Due to [Applicant's] apparent guardedness and positive impression management . . . diagnostic impressions were unable to be yielded through the PAI. . . . The validity of personality testing is subsequently questionable, and diagnostic impressions were unable to be determined.

Nevertheless, the psychologist neither performed any additional testing nor contacted NP to discuss Applicant's most recent course of mental health treatment. She expressed concern that Applicant's symptoms might recur in the absence of ongoing psychotropic medication, although he had been functioning well without any formal treatment or recurrence of symptoms since 2014. Her formally stated diagnosis, "(per applicant report)," was: Schizoaffective Disorder, Bipolar Type, Multiple Episodes, currently in full remission R/O Bipolar Disorder, with Psychotic Features, currently in full remission. (Note: R/O (Rule Out) is a common, but not formally proper, way of saying that there is not sufficient evidence to make the diagnosis but it might be worth exploring further to rule it out.) She concluded that his prognosis was guarded, given his current lack of mental health services. (GE 4.)

Although he continued to function well, both personally and professionally, Applicant sought mental health treatment from a highly qualified psychiatrist starting June 4, 2019, to address the DoD CAF's concerns regarding his national security eligibility. She diagnosed Applicant with Adjustment Disorder with anxious features, stemming from fear of losing his job. She reported that she does not believe he has a thought disorder (schizophrenia or schizoaffective disorder), or bipolar affective disorder. She found no

symptoms of a thought disorder or mood disorder and that any earlier, probably drug-related, psychiatric issues were in remission. She reported that he was undergoing a regular course of treatment with her, and had been fully compliant. She concluded that there is no indication of a current problem, and does not foresee him relapsing. (AE F.) Applicant has continued a regular and successful course of treatment with this psychiatrist every two weeks since June 2019. (AE H; Tr. 79-80, 129-130.)

Applicant's performance evaluations reflect excellent performance with no mention of any behavioral or psychological issues. He is now married, owns a home, and lives a stable and responsible life. (Answer; Response; AE F.)

Policies

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

According to AG ¶¶ 2(b) and 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 any doubt concerning personnel being considered for national security eligibility 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 avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 requires that 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 applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. 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 information.

Section 7 of EO 10865 provides, "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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I: Psychological Conditions

The security concern relating to 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.

AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Four conditions were raised by the allegations in Applicant's SOR:

- (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;
- (c) voluntary or involuntary inpatient hospitalization; and
- (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Applicant admittedly had a lengthy history of diagnosed behavioral and mental health problems, many of which were related to his substance abuse several decades ago. He underwent several periods of voluntary inpatient hospitalization for these problems. At the end of his postgraduate education, he did not fully comply with his previous treatment program, resulting in several periods of disenrollment and re-enrollment. These facts raise prima facie concerns under the foregoing disqualifying conditions, and shift the burden to Applicant to establish mitigation.

The guideline at AG ¶ 29 contains five conditions that could mitigate psychological security concerns. Four of them apply in this case:

- (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;
- (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 has a lengthy record of seeking and benefitting from mental health treatment to address symptoms and concerns that were present at the time. After concluding his academic career and beginning his current employment, he found no need for ongoing treatment since he was functioning well. However, the concerns alleged in the SOR caused him to resume regular mental health treatment with a highly qualified psychiatrist, who reports that there is no indication of a current problem outside his anxiety over possibly losing his job should he not achieve national security eligibility. She continues to successfully monitor and help him manage his mental health, and provides a favorable prognosis based on their ongoing course of treatment. Her diagnosis and prognosis are far more credible and recent than the one-day assessment provided to the DoD CAF in the clinical psychologist's 2018 report. Applicant's prior symptoms are fully resolved and under control. There is no indication of a current psychological or psychiatric problem. Full mitigation of the formerly valid psychological concerns was established under AG ¶¶ 29(a), (b), (d), and (e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. Applicant is a mature person, who has overcome severe problems he experienced during the 1980s and 1990s. He demonstrated rehabilitation through a successful course of education in a highly demanding field, and more than six years of successful employment. Any potential for pressure, coercion, exploitation, or duress has been ameliorated, and the likelihood of recurrence is minimal due to his ongoing participation in psychiatric treatment.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant met his burden to mitigate the psychological security concerns raised by the facts of this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for 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:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	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 access to classified information. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge