



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



In the matter of:)
)
) ISCR Case No. 19-02301
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Melissa L. Watkins, Esq.

05/12/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant received inpatient psychiatric treatment three times. She attempted suicide. She failed to follow treatment recommendations from her treating psychiatrist. Guideline I (psychological conditions) security concerns are not mitigated at this time. Access to classified information is denied.

Statement of the Case

On February 3, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On January 9, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2) The SOR in the file was incorrectly dated January 9, 2019. (Transcript (Tr.) 68-69; HE 2) I changed the SOR's date from "2019" to "2020" and initialed and dated the change. (Tr. 68-69; HE 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline I.

On March 14, 2020, Applicant responded to the SOR, and she requested a hearing. (HE 3) On November 11, 2020, Department Counsel was ready to proceed. On November 16, 2020, the case was assigned to me. Processing of the case was delayed due to COVID-19. On March 3, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 24, 2021. (HE 1) Her hearing was held as scheduled in the vicinity of Arlington, Virginia using the U.S. Cyber Command video teleconference system. (*Id.*)

During the hearing, Department Counsel offered four exhibits; Applicant offered three groups of documents; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 14-16; Government Exhibit (GE) 1-4; Applicant Exhibit (AE) A-C (123 pages)) All citations to Applicant Exhibits are to the page numbers of her documents rather than the exhibit letters. On March 31, 2021, DOHA received a transcript of the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations, except SOR ¶ 1.e, which she denied with explanations. (AE at 12-15) She also provided mitigating information. Her admissions are accepted as findings of fact.

Applicant is a 32-year-old technical report writer who has been employed by a government contractor since 2017. (Tr. 17; GE 1 at 7) She has also been assigned duties in program management, planning operations, and purchasing. (Tr. 19, 104) Her resume provides a detailed description of her employment history, education, training, publications, and community involvement. (AE at 26-31) She has not served in the military. (GE 1 at 24) In 2016, she married. (Tr. 102, 116) In February 2021, her daughter was born. She does not have any other children. At the time of her hearing, she was on maternity leave. (Tr. 19) She has never held a security clearance. (Tr. 19)

In 2010, Applicant received a bachelor's degree, and in 2016, she received a master's degree. (Tr. 20; GE 1 at 13-14; AE at 28) Her bachelor's degree was cum laude with distinction. (Tr. 20)

SOR ¶ 1.a alleges and Applicant admitted that in approximately October 2010, she was hospitalized for suicidal ideations, depression, anxiety, and an emotional breakdown. Prior to her inpatient treatment, Applicant was receiving counseling, but not medication. (Tr. 23) In 2010, Applicant was under stress from classes and her relationship with a boyfriend, and she became depressed. (Tr. 22) She had a plan to end her life, either by jumping from a balcony or getting hit by a vehicle. (Tr. 65) A classmate reported her to a

school counselor, who arranged to have her admitted for inpatient treatment. (Tr. 65) She received about one week of inpatient and one week of intensive outpatient treatment. (Tr. 23, 65) She was diagnosed as having depression and anxiety, and she was prescribed psychotropic medication. (Tr. 23) She followed treatment advice; however, her medication was not as effective as it should have been, and she was hospitalized in February 2011. (Tr. 24)

SOR ¶ 1.b alleges and Applicant admitted that in approximately February 2011, she was hospitalized for psychiatric treatment, a suicide attempt, suicidal ideations, depression, anxiety, and medication adjustments. Applicant attempted to hang herself with a scarf. (Tr. 66) She explained that the following stressors affected her mental status: she graduated early from college; her relationship with her boyfriend ended; she was in a car accident; and she needed her medications adjusted. (Tr. 24-26) She voluntarily sought inpatient treatment. (Tr. 25) The medication she received in 2010 caused “rapid cycling” or going from depression to a kind of hypomania. (Tr. 25-26) Her medication was changed to Zoloft for depression and Wellbutrin for mood stabilization. (Tr. 25-26) She received post inpatient follow-up treatment from two psychiatrists and a therapist. (Tr. 26) She received multiple medication changes or adjustments. (Tr. 27)

SOR ¶ 1.c alleges and Applicant admitted that in approximately November 2014, she was hospitalized for psychiatric treatment, depression, anxiety, general mental breakdown, and medication adjustments. She was under stress because of difficulty in the completion of her thesis for her master’s program. (Tr. 27) She did not have any friends in graduate school, and she had suicidal ideation and engaged in self harm. (Tr. 27) She cut herself; however, the cuts were shallow and not sufficiently harmful for her to seek medical attention for them. (Tr. 66-67) She also took six extra pills; however, she did not seek medical attention for the overdose. (Tr. 67) In 2014, her father picked her up at graduate school and brought her to her home state for inpatient treatment. (Tr. 67-68) She was hospitalized to monitor her reactions from medication changes and to enable her to receive more intensive counseling. (Tr. 28) She was prescribed Prozac, her Wellbutrin dosage was adjusted upward, and she received Klonopin to treat her anxiety. (Tr. 29)

SOR ¶ 1.d alleges and Applicant admits that she received a psychological evaluation from a licensed clinical psychologist, Dr. K, in December 2017. (GE 3a) Dr. K diagnosed her with: Major Depressive Disorder, severe, without psychotic features; Generalized Anxiety Disorder; Attention-Deficit Disorder (ADD) without hyperactivity; and Post-Traumatic Stress Disorder (PTSD). (GE 3a at 4) Applicant agreed with Dr. K’s diagnoses. (Tr. 30) She was prescribed the following medications: Adderall XR (15 mg); Wellbutrin (200 mg); Klonopin (0.5 mg); and Prozac (40 mg). (GE 3a at 4) Dr. K interviewed her for two hours, and two hours of tests were conducted. (Tr. 30) Dr. K recommended that she receive psychiatric medication and medication management, and he indicated she would benefit from a variety of individual therapies. (Tr. 31) Dr. K said:

With respect to suicidal ideation, she reports experiencing intense and recurrent suicidal thoughts, hence, potential for suicide should be evaluated regularly by her therapist and appropriate interventions should be

implemented, as needed. Data also indicates that [Applicant] may also, at times, be somewhat emotionally labile, manifesting fairly rapid and extreme mood swings, which may also include intense emotional (i.e. anger) outbursts. [She] also endorsed the following symptoms of depression on the [Beck's Depression Inventory]: feeling sad all the time, sense of failure, feeling discouraged about the future, reduced satisfaction, feeling dissatisfied or bored with everything, feelings of guilt, self-hate, self-criticism, loss of interest in others, trouble making decisions, reduced interest in socializing, negative self-image, crying more than usual, self-annoyance and irritability, trouble with concentration, sleep and appetite disturbances, fatigue, suicidal ideations without intent or plan, . . . and psychosomatic complaints. (GE 3a at 6)

SOR ¶ 1.e alleges that on May 18, 2019, the CAF sent Applicant for an evaluation by Dr. W, a psychologist, who considered her background information, a clinical interview, observations, and psychological testing. Applicant said Dr. W interviewed her for about an hour, and she was tested for about an hour. (Tr. 32) Dr. W concluded that Applicant met the criteria for Major Depressive Disorder recurrent, moderate; PTSD, chronic; and Generalized Anxiety Disorder. (GE 4 at 7) Dr. W said:

With respect to suicidal ideation, [Applicant] reports experiencing intense and recurrent suicidal thoughts at a level typical of individuals who are placed on suicide precautions. Whereas she denied suicidal ideation during the interview, a careful follow-up regarding the details of her suicidal thoughts and the potential for suicidal behavior is warranted, along with an evaluation of her life circumstances and available support systems as potential mediating factors. (GE 4 at 6)

Dr. W concluded that suicidal thoughts continue to pose a concern for Applicant, and that there is a risk of future mental health problems based on difficulties with anxiety, insomnia, and PTSD symptoms. Dr. W concluded that Applicant was not engaged in enough of the right type of counseling or other medical treatment, and that her conditions and symptoms may impact her judgment, reliability, or trustworthiness, and that her prognosis is guarded. (GE 4 at 7) Dr. W did not advise Applicant of the type of counseling or therapy that she needed. (Tr. 70) At the time of Dr. W's evaluation, Applicant was receiving therapy every two weeks, and a psychiatrist managed her medications. (Tr. 33)

SOR ¶ 1.f alleges that from January 2016 to present Applicant received treatment from Dr. F for Generalized Anxiety Disorder, and Major Depressive Disorder, recurrent episode, moderate. Applicant met with Dr. F every two or three months to ascertain the effectiveness of her medications, and when she became pregnant, the frequency of her appointments was increased to a monthly basis. (Tr. 35) Dr. F repeatedly indicated in Applicant's medical records "Negative for agitation, behavioral problems, decreased concentration, dysphoric mood, hallucinations, self-injury, sleep disturbance and suicidal ideas." (GE 3b) In May 2020, her Zoloft dosage was reduced from 100 milligrams to 50 milligrams, she stopped taking Vibryd, another antidepressant, Wellbutrin, and Klonopin because of her pregnancy. (Tr. 35-36) After her baby was born, she remained exclusively

on Zoloft, and she has not suffered from depression. (Tr. 36) Her doctor has been considering changing her medications. (Tr. 37)

SOR ¶ 1.g alleges that from November 2017 to present Applicant received treatment from Licensed Professional Counselor (LPC) J for Major Depressive Disorder Moderate, PTSD, and General Anxiety. Initially, she met with LPC J every week for 45 minutes, and then in 2018 and 2019, she met LPC J every two weeks for 45-minute therapy sessions involving “talk and cognitive behavioral therapy to allow [Applicant] to talk through potential stressors and provide [her] with coping mechanisms that enable [her] to successfully manage her mental health.” (Tr. 43; SOR response at 5-6) LPC J also provided dialectical behavioral therapy to Applicant. (Tr. 43) The frequency of LPC J’s sessions was reduced to every two weeks based on LPC J’s recommendation. (Tr. 43-44)

On January 31, 2020, LPC J wrote that Applicant had increased feelings of depression and Dr. F increased her antidepressant dosage. (Tr. 58; AE at 62) Applicant told LPC J that “work has been stressful and she had to be spoken to by her supervisor because she has made multiple mistakes. She also added that she feels unorganized.” (Tr. 58-59; AE at 62) At the next session with LPC J on February 14, 2020, Applicant’s “mood appeared to be Anxious, Depressed and Irritable, Full range/appropriate and reactive and tearful.” (AE at 64) LPC J wrote in Applicant’s medical record that Applicant disclosed that her “‘brain shut off’ and she started to self harm while at work. [Applicant] reported she made mistakes at work and felt disappointed and embarrassed of herself. Therapist helped [Applicant] explore her feelings and patient shared she self harmed to punish herself and to relieve her anger.” (Tr. 60; AE at 64)

After COVID-19 became a national problem around March 2020, Applicant’s appointments were by telephone or video telephone and not in person with LPC J. (Tr. 71) Her next four sessions after the February 14, 2020 session with LPC J were on March 7, 2020; April 15, 2020; June 19, 2020; and July 1, 2020. (Tr. 60-62; AE at 66, 72, 78, 80) Applicant did not recall meeting with LPC J after July 1, 2020, and her medical records do not reflect meeting with a therapist after July 1, 2020. (Tr. 62, 75)

Applicant said she reduced her sessions with LPC J because she thought some of LPC J’s comments relating to her pregnancy and the prospective birth of her daughter were inappropriate and less professional than her previous counseling sessions. (Tr. 72, 78, 113) Applicant did not tell LPC J that she was uncomfortable because of LPC J’s comments. (Tr. 75) LPC J left her practice in 2020, and Applicant has been looking for a new therapist since then. (Tr. 41, 45) She attempted to employ one therapist; however, due to an insurance issue, it did not work out. (Tr. 76) She hopes to resume appointments with a therapist in the next month after her hearing. (Tr. 42, 114)

From November 2019 to December 2020, Applicant and her husband met with a couple’s counselor about once a month. (Tr. 73) She told the counselor about her mental-health history. (Tr. 77) She did not indicate whether the couple’s counselor assessed her for work-related stress, suicidal ideations, and the need for medication adjustments.

At her December 9, 2020 session with Dr. F, she informed him that she was not seeing a therapist, and he “strongly encouraged [her] to resume counseling/therapy.” (Tr. 63-64; AE at 91) At her February 16, 2021 session with Dr. F, he concluded Applicant “is feeling more anxious and somewhat low. This may very well be a result of sleep deprivation. Since she is no longer nursing therefore the dose of Zoloft will be increased to treat the residual symptoms. . . . She was strongly encouraged to resume counseling/therapy.” (Tr. 64; AE at 95) At her March 2021 appointment with Dr. F, he gave her a list of suggested therapists to see. (Tr. 64)

Applicant is active in her church, volunteers in youth education, and as a church officer. (Tr. 54; AE at 28) She also plays an instrument on a symphony orchestra and in a musical capacity for her church. (Tr. 54; AE at 28)

Applicant first had suicidal ideations at age 13. (GE 4 at 2) She has been working with various therapists since 2007 or 2008. (Tr. 40) Over the last 11 years, Applicant’s medications have been changed about 20 times. (Tr. 37) At age 23, she “was violently raped.” (GE 4 at 3) “[A]fter she was raped, she experienced flashbacks, hypervigilance, increased startle, feelings of guilt, anger, shame and blame and she avoided sexual encounters.” (*Id.*) Based on genetic testing about two years ago, her medications and dosages have been more effective because they are specifically designed for her body chemistry. (Tr. 37-39) She increased the frequency of her meetings with Dr. F mostly for medication management. (Tr. 41-42, 51) She said she always complied with treatment recommendations. (Tr. 46) Her treatment has always been voluntary. (Tr. 46) She is feeling much better than she did several years ago. (Tr. 47) She has not had a panic attack since 2019. (Tr. 47) The most stressful part of Applicant’s life was her work environment. (Tr. 73-74) She worked in a large room with about 50 employees in the same room, and they worked from their cubicles. (Tr. 74) Circumstances beyond her control adversely affected her productivity, and supervisors became upset. (Tr. 74) She believed that she could return to her work environment after the pandemic, and she could handle the stress and her anxiety. (Tr. 75)

Applicant said she has been doing better for the last 18 months. (Tr. 55) She believed her prognosis was good so long as she keeps going to therapy and complies with medication recommendations. (Tr. 47) Her stress level is lower; she is happily married; she has a baby; and she has the support of her family and church. (Tr. 48, 50) If she felt stress from work, she planned to talk to her therapist and family and take actions to manage the stress. (Tr. 48-49) Due to the COVID-19 pandemic, she is able to work at home “a lot better,” and the stress from work is less. (Tr. 69) Her family support network is closer now than it was in 2014 when she sought her most recent inpatient treatment. (Tr. 49) Dr. F, Applicant’s husband, and her parents monitored her for signs of depression during her pregnancy and after the birth of her baby. (Tr. 51)

Character Evidence

Applicant’s supervisor for the last 42 months described Applicant as dedicated, friendly, having good judgment, reliable, and trustworthy. (Tr. 82-85) Her mental health

issues have not affected her judgment, reliability, and trustworthiness. (Tr. 85) She recommended approval of Applicant's access to classified information. (Tr. 86)

A friend from church and a colleague at work described Applicant as reliable and trustworthy, and as having good judgment. (Tr. 127-130) He recommended that Applicant receive access to classified information. (Tr. 130)

Applicant's mother indicated Applicant's mood and mental state have stabilized and improved with her marriage, pregnancy, and birth of her daughter. (Tr. 95) Applicant has a happy marriage, and she is happier now than she was before 2016 when she married. (Tr. 96, 103) She had some problems with stress at work when she was moved from writing technical reports to purchasing because she was not getting enough support or information to be successful. (Tr. 104) Applicant's husband said:

[Applicant] has never been a rule breaker and is not the type of person to [be] disrespect[ful to] authority. If she were to be put in a position of trust with the U.S. Government, I have no doubt that she would be a valuable asset in protecting our national secrets. She is very reliable and certainly would not be considered dysfunctional. She has a strong moral character and always wants to do the right thing. . . . I would not hesitate to trust [her] with company-confidential information, and in the event that she is granted a clearance, any classified information in which she has a need to know. (AE at 8)

Applicant's mother and spouse described her as trustworthy, reliable, and intelligent, honest, and as having good judgment. (Tr. 97, 101, 116-119; AE at 37-39) She receives support from her family, friends, and psychiatrist. (Tr. 119) Her mother and spouse recommended that Applicant receive access to classified information. (Tr. 101, 118-120)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

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 provides conditions that could raise a security concern and may be disqualifying in this case:

(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 received inpatient mental-health treatment three times. Dr. W concluded that Applicant's psychological conditions and symptoms may impact her judgment, reliability or trustworthiness, and that her prognosis is guarded. She attempted suicide on one occasion, and she engaged in self harm on several occasions. The record establishes AG ¶¶ 28(a), 28(b), and 28(c). Further details will be discussed in the mitigation analysis, *infra*.

Five mitigating conditions under AG ¶ 29 are potentially applicable:

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

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

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

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

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant presented some important mitigating evidence. She said she has been doing better for the last 18 months. Her stress level is lower; she is happily married; she has a baby; and she has the support of her family and church. If she felt stress from work, she would talk to her therapist and family and take action to manage the stress. Due to the COVID-19 pandemic, she is able to work at home "a lot better," and the stress from work is less. Her family support network is closer now than it was in 2014 when she had her most recent inpatient mental-health treatment. Dr. F, Applicant's husband, and her parents have monitored her for signs of depression during her pregnancy and after the birth of her baby.

There is evidence of one non-SOR allegation: Applicant failed to comply with Dr. F's treatment recommendation, that is, she continue to receive counseling or therapy. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). This non-SOR allegation will not be considered except for the five purposes listed above.

The evidence against mitigation is more persuasive at this time. Applicant was hospitalized for inpatient mental-health treatment in 2010, 2011, and 2014. Dr. W concluded that Applicant was not receiving an appropriate form of therapy nor with

sufficient frequency. Her conditions and symptoms may impact her judgment, reliability or trustworthiness; and her prognosis is guarded. She attempted suicide on one occasion when she tried to hang herself with a scarf while she was living at home. Her death was prevented when the pole that held the scarf broke, and her parents found her. She engaged in self harm on several occasions. At her December 9, 2020 session with Dr. F, she informed him that she was not seeing a therapist, and he “strongly encouraged [her] to resume counseling/therapy.” (AE at 91) She has not seen a therapist for mental-health counseling since July 2020. Frequent therapist meetings are an important check on her level of depression, and suicidal ideations, and they reduce the possibility of suicide. Dr. F did not provide a prognosis indicating that she was stable and unlikely to attempt suicide in the future. Dr. F did not provide a recommendation that she have access to classified information. Under a totality of the circumstances, there is insufficient evidence to support mitigation of psychological conditions security concerns at this time.

Whole-Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the whole-person concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline I in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 32-year-old technical report writer who has been employed by a government contractor since 2017. She has also been assigned duties in program management, planning operations, and purchasing. In 2016, she married, and in February 2021, her daughter was born.

Applicant is a dedicated employee, community member, spouse, and friend. She is active in her community, church, and symphony orchestra. Her supervisor at work, a

friend from church and colleague at work, her spouse, and her mother described Applicant as honest, reliable, and trustworthy. Their statements support approval of Applicant's access to classified information.

As indicated in the psychological conditions section, Applicant has a lengthy history of mental-health issues. Her suicidal ideation, attempted suicide, and incidents of self harm are concerning. The Department of Defense encourages employees to seek needed mental-health therapy and treatment, and AG ¶¶ 1.f and 1.g do not raise a security concern. She sought and received inpatient mental-health treatment in 2010, 2011, and 2014, and her continued participation in mental-health counseling and treatments are mitigating; however, the underlying reasons she sought treatment, severe depression and self-injury, remain a security concern. Since July 2020, she has not been receiving recommended therapy. Stress is likely to increase when she returns to the workplace. The lack of ongoing therapy sessions to assess her mental status results in lingering security concerns. The record established that Applicant is an intelligent, caring, dedicated, and diligent employee who will be an important asset to DOD upon full mitigation of security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Psychological conditions security concerns are not mitigated at this time.

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 |
| Subparagraphs 1.a through 1.e: | Against Applicant |
| Subparagraphs 1.f and 1.g: | For 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's eligibility for a security clearance at this time. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge