



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 19-02819  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

09/22/2020

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant suffers from a permanent developmental disorder that impairs his judgment, reliability, and trustworthiness with respect to his psychosocial functioning, perceptions, and decision making. He has not fully mitigated the psychological conditions security concerns. Clearance eligibility is denied.

**Statement of the Case**

On November 29, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing a security concern under Guideline I, psychological conditions. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

*Classified Information or Eligibility to Hold a Sensitive Position (AG)* effective within the DOD on June 8, 2017.

On December 30, 2019, Applicant responded to the SOR allegation and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On May 12, 2020, the Government submitted a File of Relevant Material (FORM), including six items consisting of its documentary evidence. DOHA forwarded a copy of the FORM to Applicant, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on July 2, 2020. On July 29, 2020, he submitted a response dated July 12, 2020. On July 30, 2020, Department Counsel indicated that the Government had no objection to consideration of Applicant's response to the FORM.

On August 24, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on September 2, 2020.

### **Evidentiary Rulings**

Department Counsel submitted as Item 5 in the FORM a summary report of a personal subject interview (PSI) of Applicant conducted on May 2, 2017, and follow-up contacts with Applicant on May 5, 2017, May 12, 2017, and September 5, 2017. The summary report was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant's attention was directed to the following important notice:

### **Important Notice to Applicant**

**The enclosed summary of your [PSI] (exhibit 5) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this [FORM], you can comment on whether the summary accurately reflects the information you provided to the authorized investigator(s) and you may make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the**

**report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.**

In his response to the FORM, Applicant referenced the employment issues detailed in the PSI in the context of discussing mitigating circumstances for his conduct. He raised no objections about the accuracy of the PSI. He expressed some concerns about the lack of informed judgments and the “hearsay, if not improperly and unfairly worded” statements of those who reported his behavioral issues at work and in college, but it is not clear that he was objecting to the PSI. Rather, he cited some specific concerns with respect to information reported in records reviewed by a licensed psychologist for the DOD as referenced in a psychological evaluation report. (Item 6.) He did not dispute the reported behaviors exhibited by him but asked that they be considered as incidents overcome, stating:

Though these judgments come from periods of time prior to [his involvement with his present employer], they nonetheless grasp at points that, when clarified and corrected, offer information highly relevant to any summative judgment: of [his] judgment, reliability, and trustworthiness.

After considering Applicant’s comments, I accepted Items 1 through 6 in evidence, with the weight afforded the information in the PSI (Item 5) and the psychologist’s evaluation report (Item 6) to be evaluated in light of the record evidence as a whole. Applicant’s response to the FORM was admitted as Applicant exhibit (AE) A.

### **Findings of Fact**

The SOR (Item 1) alleges under Guideline I that Applicant was diagnosed by a licensed psychologist in January 2019 with high functioning Autism Spectrum Disorder without accompanying intellectual impairment and with generalized anxiety; that Applicant’s condition affects his judgment, reliability, and trustworthiness; and that he has a fair prognosis (SOR ¶ 1.a). When he responded to the SOR, Applicant did not dispute the diagnosis, which he stated was “in line with previous diagnoses,” but he indicated that his condition should not in and of itself disqualify him from security clearance eligibility. He indicated that he makes “multiple careful judgment calls in a workplace environment where tools are delicate,” and that he continues to have no issues with keeping confidential matters that come to his attention. (Item 3.)

After considering the FORM and Applicant’s rebuttal to the FORM (AE A), I make the following findings of fact:

Applicant is a 29-year-old unmarried college graduate who has worked for a defense contractor since March 2015 as a groundskeeper at a defense agency. He seeks a security

clearance for duties as a mail clerk, where he would be handling classified information. He earned his bachelor's degree with honors in May 2013. (Items 3-6.)

Applicant was diagnosed with Asperger's Syndrome as a youth. That condition is currently diagnosed as Autism Spectrum Disorder (ASD) under the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition (DSM-5). ASD is properly diagnosed when there are persistent deficits in social communication and social interaction across multiple contexts, as manifested by deficits in social-emotional reciprocity (e.g., abnormal social approach; reduced sharing of interests, emotions, or affect; or failure to respond to social interactions), and restricted, repetitive patterns of behavior, interest, or activities, as manifested by two or more of stereotyped or repetitive motor movements; insistence on sameness, inflexible adherence to routines, or ritualized patterns of nonverbal behavior; highly restricted, fixated interests abnormal in intensity or focus; or hyper- or hypo-activity to sensory input or unusual interest in sensory aspects of the environment. According to the DSM-5, symptoms of ASD cause clinically significant impairment in social, occupational, other important areas of current functioning. Even those persons whose symptoms are least severe (Level 1) require some support to manage their deficits in social communication or their restricted, repetitive behaviors, which cause significant interference with functioning in one or more contexts. See the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition* (May 2013). As a high-functioning individual with ASD without accompanying intellectual impairment, Applicant prefers the DSM-4's designation of Asperger's Syndrome for his disability and submits that it can be compensated for throughout life. (AE A.)

Applicant's ASD has manifested itself in part in limited social interactions and few friendships. He considers his married sister to be his closest friend. (Item 6.) He lives with his mother in her home. (Items 2-4.) His father died in October 2019 following a period of declining health that started in December 2018. (AE A.)

Applicant lived on campus during academic semesters while in college from August 2009 to May 2013. (Item 5.) He had counseling in college, reportedly due to his "odd behaviors" and for not performing up to his perfectionist expectations. (Item 6.) He held summer internships in 2010 and 2012 with his county's board of elections where his father worked. He worked as a receptionist and then associate in his college's art gallery to fulfill a work-study scholarship requirement during the academic semesters from 2010 to 2013. He moved back in with his parents after he graduated from college in May 2013 and was unemployed until he began working as a groundskeeper for his current employer in March 2015. He also volunteered part time at a bird sanctuary starting in July 2014. (Items 4, 6.)

On May 22, 2015, Applicant completed and executed a Questionnaire for National Security Positions (SF 86) in application for a security clearance for a position as a mail clerk for his employer. He responded negatively to whether he had consulted with a health care professional for an emotional or mental health condition in the last seven years. (Item 4.)

On May 2, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant disclosed that he had received written reprimands from his employer in 2016 for being chronically late to work; that he was reprimanded after he intentionally banged his head on a dumpster when he lost or misplaced his identification badge; and that he was suspended from work after becoming upset about retrieving a leaf blower near the end of his shift. He explained that he felt stressed at the time, which he attributed to his Asperger's Syndrome. Applicant also disclosed that he had consulted with a counselor during his senior year of college. During a subsequent contact with the investigator on May 5, 2017, Applicant explained that the counseling in college was for anxiety related to school and social issues. When re-contacted by the investigator on May 12, 2017, Applicant explained about his work incident involving the leaf blower that he became upset because it was near the end of his shift, and the weather was deteriorating. (Item 5.)

At the request of the DOD Consolidated Adjudications Facility (DOD CAF), Applicant was evaluated by an independent licensed psychologist on January 18, 2019, after records showed some inappropriate behavior by Applicant in college (excessive questioning and inability to control that behavior) and at his workplace (angry outbursts, head-banging, running through the workplace, and emotional dysregulation in front of customers), and counseling in college for anxiety, poor sleep patterns, and help with social skills. The psychologist reviewed some records provided by the DOD CAF, interviewed Applicant, and administered a Psychological Assessment Inventory to him. (Item 6.)

Applicant told the psychologist that he had not had any counseling for his ASD since college, but that he has been taking an anti-depressant for the past several years to help him with his moods and behavioral outbursts. Applicant acknowledged his history of reprimands at work for tardiness and emotional outbursts, although he also reported some improvement lately on those issues. The psychologist observed that Applicant had some difficulty articulating his thoughts, and while he was pleasant, he was anxious and frequently requested her feedback about his performance. When asked whether he had a mental health problem, Applicant admitted he had social anxiety and some addictive behaviors. He disclosed that when he becomes upset with himself, he feels stressed, and that he had engaged in self-harming behaviors in the past, including banging his head and poking himself with a sharp object. Applicant denied attempting any self-injurious behavior since the incident at work where he was reprimanded by his employer. He reported that he is easily distracted, has experienced anxiety about his future, and does not cope well when his routine is disrupted or when he feels uncomfortable. The results of the Psychological Assessment Inventory were consistent with "significant problems with [Applicant's] thinking and concentration, as well as ruminative worry and distress." by Applicant. The psychologist diagnosed Applicant with high functioning ASD without accompanying intellectual impairment and with generalized anxiety. She opined that Applicant's ASD is a condition that affects his judgment, reliability, and trustworthiness, and explained:

His high functioning autism affects how he perceives information and communicates with others, and his coping mechanism is to ask questions until he feels sufficiently reassured that he understands and his uncertainty

and anxiety about being perfect is alleviated. Given that [ASD] is a permanent condition and he does not have an intellectual impairment, his prognosis is fair. Although [Applicant] is capable of following directions and he has an awareness of his symptoms, he will likely continue to have problems with his psychosocial functioning, perceptions, and decision making.

Yet the psychologist also found Applicant's condition to be relatively stable at the time, and she concluded he was not in immediate need of treatment. (Item 6.)

Applicant strongly denies that his ASD should disqualify him from having a security clearance. He maintains that he has demonstrated his trustworthiness and reliability on the job by making "multiple careful judgment calls in a workplace environment where tools are delicate and there are watchful eyes on all parts of the premises;" and by calmly completing his tasks. He denies having had any problems with keeping confidential matters about his job, and there is no evidence to the contrary. (Item 3.) Applicant presented no evidence from others about his judgment and reliability on the job.

In response to the FORM, Applicant indicated that claims made of his "odd behaviors" and physical outbursts in class in college were "exaggerated and un-nuanced," and he was not ordered to counseling for such behaviors. He explained that his counseling was voluntary for stresses in his life as a student and that at most he asked more questions than his peers or talked more in group discussions. Applicant did not dispute the workplace incidents, which he explained happened during a particularly stressful time at home due to his father's "ill-tempered behavior," including "open fits of rage" about being forced into early retirement. His father's impatience and verbal anger directed at Applicant in the evenings "would become the baggage that [Applicant would] carry into the workplace the following mornings." Applicant described the incidents as "deeply isolated" and "particular to substantially stressful and unique situations at the workplace, when [he] was still in the midst of then-newer routines a few years ago and made more vulnerable by [his] Asperger's – a condition that can put an inordinate amount of importance on routine and order." He became upset about the leaf blower because his "perfectionist-self" was stressed by finding things out of order, and he feared reprisal for not having a "major tool accounted for at that time." He surmised that his head-banging on a metal dumpster at work was "an overreaction to something that a newer then-on-site supervisor said, likely a joke that [he] took too seriously." (AE A.)

When his father was hospitalized in December 2018, Applicant began to pursue some solutions to deal with the stress at home. He began to drive himself to work after having relied on his father to drive him to work for the previous two years. In June 2019, his family had a counseling session, but Applicant primarily found support through a program at work for people with disabilities where he had meetings with a job coach and other staff "to process other issues and otherwise decompress." Throughout the summer 2019, he engaged in an exercise routine at a fitness center at his worksite to relieve some of his daily stresses as his father's health declined. He submits that these efforts "bore frequent and fruitful results" in his employment," and that he has learned to be more accepting of

unpredictable situations or react in calmer ways (AE A.) He provided no details or corroboration from management or co-workers in that regard. Applicant submits that he can continue to make strides in compensating for his ASD, and learn to suppress repetitive behaviors in public. His job is of vital importance to him. He plans to seek counseling after the current virus pandemic is resolved, but he was not specific as to the source or nature of the counseling. (AE A.)

## 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 in conjunction 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(a), 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 EO 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline I: Psychological Conditions

The security concerns about psychological conditions are articulated 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 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.

As a youth, Applicant was diagnosed with Asperger's Syndrome (now diagnosed as ASD under the DSM-5), a developmental disorder that is characterized by impaired social interaction, repetitive patterns of behavior, restricted interests, atypical sensory responses, and some pragmatic deficits. He disputes the validity of college reports of his "odd behaviors" and "physical outbursts in class," and the evidence of that behavior is largely hearsay. However, Applicant did admit to a licensed psychologist in January 2019 that he dominated classes in college by asking questions excessively and that he lacked some control over that behavior, and that he had counseling in college for social anxiety and disinterest in socializing with others. In his present job, his ASD has reportedly manifested itself in head banging, angry outbursts, running throughout the workplace, and emotional dysregulation in front of customers. During his PSI, he disclosed that he had been reprimanded at work for chronic tardiness; that he intentionally banged his head on a dumpster when he was angry; and that he was suspended from work after he became upset, ran around, and cried about retrieving a leaf blower near his shift's end. During his January 2019 psychological evaluation, he admitted that he has attempted to injure himself with a sharp object in the past. Disqualifying condition AG ¶ 28(a) under Guideline I has some applicability. It provides:

(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.

In January 2019, a licensed psychologist diagnosed Applicant with highly-functioning ASD without accompanying intellectual impairment and with generalized anxiety. In her opinion, his ASD is a permanent condition that affects his judgment, reliability, and trustworthiness with respect to his psychosocial functioning, perceptions, and decision making. 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,"



is also established. While Applicant strongly disagrees with the psychologist's assessment, her clinical opinion is entitled to weight in light of her qualifications and the absence of a contrary assessment by a duly-qualified medical or mental-health professional.

Applicant has the burden of establishing one or more of the following mitigating conditions 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.

AG ¶¶ 29(a) and 29(b) do not apply because it was not shown that Applicant is currently undergoing treatment and following a plan managed by a qualified clinician. The psychologist who evaluated Applicant for the DOD found Applicant's ASD to be relatively stable as of the January 2019 evaluation and that he was not in immediate need of treatment. She opined that Applicant is capable of following directions, which is a factor in Applicant's favor when determining whether he can be counted on to understand and comply with the rules and regulations for the handling and safeguarding classified information. However, the psychologist also opined that Applicant is likely to continue to have problems with decision making. Even if Applicant's ASD can be considered to be currently in control within the context of AG ¶ 29(c), the psychologist gave him only a fair prognosis as to the risk of recurrence or exacerbation. Regarding AG ¶¶ 29(d) and 29(e), there is no recent evidence of incidents by Applicant reflective of emotional instability, but ASD is a permanent condition. Even those persons with the least severe level of ASD are in need of support for their disorder according to the DSM-5. The inflexibility of their behavior causes significant interference with functioning in one or more contexts. Applicant's ASD has manifested itself at his workplace in behaviors (head banging, crying, angry outbursts) which reflect difficulty in adapting to unexpected situations and in responding to stress. While ASD without intellectual impairment is not a condition that is per se disqualifying, Applicant did not sufficiently rebut the opinion of a duly-qualified mental

health professional that his ASD affects his judgment, reliability, and trustworthiness. Applicant's uncorroborated assertion of personal improvement since the psychological evaluation is not enough to overcome the psychological conditions security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination of whether the granting or continuing of national security clearance eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the [pertinent] guidelines" and the whole-person concept. My comments under Guideline I are incorporated in my whole-person analysis.

I do not doubt that Applicant's job is important to him. However, the impact of an adverse decision is not a relevant consideration in determining national security eligibility. See ISCR Case No. 19-01759 at 3 (App. Bd. June 8, 2020). Because Applicant chose to have his security clearance eligibility evaluated without a hearing, I was unable to assess his sincerity and demeanor. The Appeal Board recently held that credibility determinations without the benefit of in-person demeanor observations are indistinguishable from a judge's fact-finding about purely documentary evidence. See ISCR Case No. 19-02544 (App. Bd. Aug. 31, 2020). Applicant presented no employment or character references attesting to his current judgment and reliability in handling his personal and work affairs. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F. 2d 230, 238-39 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegation 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:	Against Applicant

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge