



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03388
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
For Applicant; Frederic Nicola, Esquire, Applicant's Counsel

March 18, 2021

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

On May 19, 2015, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 2, 2020, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on March 27, 2020, and requested a hearing before an administrative judge. I received the case assignment on November 12, 2020. DOHA issued a Notice of Hearing on November 17, 2020, and I convened the hearing as scheduled on January 29, 2021. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified and submitted Exhibits (AppXs) A through G, which were also admitted without objection. DOHA received the transcript of the hearing (TR) on February 11, 2021. Based upon a review

of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegation in Sub Paragraph 1.a. of the SOR, but denied the factual allegation of Sub Paragraph 2.b., with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 29 years old, and married. He has a Bachelor's degree in science and electrical engineering. He works for a defense contractor. (TR at page 30 line 19 to page 38 line 3, and GX 1 at page 5.)

### **Guideline I – Psychological Conditions**

1.a. In November of 2013, more than seven years ago, Applicant received voluntary, inpatient psychiatric treatment for a condition diagnosed as “Schizophrenia, paranoid type.” (TR at page 19 line 3 to page 24 line 3, at page 40 line 23 to page 42 line 2, at page 44 line 17 to page 46 line 7, and GX 2 at page 4.)

1.b. In June of 2019, Applicant was evaluated by a licensed psychologist. Although this psychologist could not “confirm his [Applicant's] former diagnosis of Schizophrenia,” she found that Applicant “has experienced unusual perception experiences, distortions in thinking, and functional impairment, which support a diagnosis of Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.” (GX 3 at page 9.) This psychologist further concluded that there was “concern regarding his [Applicant's] trustworthiness, reliability, and judgment.” (GX 3 at page 10.)

To counter this assessment, Applicant has offered a March 2020 evaluation of a licensed clinical psychologist. She discounts any history of Schizophrenia, but rather attributes any mental-health symptoms to withdrawal from a prescribed drug he used to treat Depression. (AppX F at page 7, see *also* TR at page 46 line 16 to page 47 line 11.) Her “Diagnostic Impressions” are, “Persistent Depressive Disorder, with Anxious Distress, early onset, in full remission,” and a “History of Major Depressive Disorder, in full remission.” (*Id.*) Furthermore, this psychologist opined that, “At this time, it appears . . . [Applicant] does not pose a threat to receiving classified status based on his current psychological functioning.”

Applicant is also currently receiving “weekly psychotherapy sessions . . . for symptoms of anxiety and depression.” (AppX A.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, administrative judges apply the guidelines 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(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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 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 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 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).

## Analysis

### Guideline I – Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set forth at 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.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (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.

Appellant received voluntary inpatient treatment for Schizophrenia in 2013. In 2019, he was assessed by a licensed psychologist who had serious concern as to his trustworthiness, reliability and judgment. Therefore, AG ¶ 28 is established.

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns. Five conditions may be applicable:

- (a) the identified condition is readily controlled 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.

Appellant has been recently assessed as suffering not from Schizophrenia, but from Depression, in remission. That being said, where national security is at issue; and in an abundance of caution, I defer to the 2019 opinion "by a duly qualified mental-health professional employed by, or acceptable to and approved by, or acceptable to and approved by the U.S. Government that an individual's previous condition" is not under control nor in remission. Therefore, AG ¶ 29 is not established. Psychological Conditions is found against Applicant.

### **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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. While Applicant is well respected in the workplace (AppXs B and C), overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his Psychological Conditions.

