



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



In the matter of:)	
)	
)	ISCR Case No. 20-00950
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

06/23/2021

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline I (Psychological Conditions). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2019. On July 27, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I. The DCSA CAF acted under Executive Order (Exec. Or.) 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 (AG) effective June 8, 2017.

Applicant answered the SOR (undated) (Ans.), and requested a decision based on the written record without a hearing. The Government’s written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on December 11, 2020. A complete copy of the FORM was provided to

Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM on December 21, 2020, and did not reply to the FORM, submit evidence in mitigation, or object to any documents submitted for the record. The case was assigned to me on March 18, 2021. Government Exhibits (GE) 1 through 6 are admitted into evidence.

Findings of Fact

Applicant is a 27-year-old laborer, employed by a government contractor since November 2017. He graduated from high school in 2012 and completed some college courses. He served in the U.S. Navy from 2013 to 2015. While on active duty, Applicant was disciplined for falsifying logs in 2015, and reduced in rate. He was honorably discharged. He is unmarried.

The SOR alleges under Guideline I that Applicant was involuntarily hospitalized in June 2015 based on referral from his Navy command after he showed a noose he created to his supervisor with suicidal threats. He was diagnosed with adjustment disorder, dependent personality disorder, and borderline personality disorder. The SOR also alleges Applicant was evaluated by a psychologist in February 2020, and diagnosed with untreated borderline personality disorder and major depressive disorder, recurrent, moderate. The psychologist noted that Applicant has a history of suicidal ideations and self-harm when presented with significant stressors, coupled with a lack of recent psychiatric treatment or robust support structure. He opined that Applicant posed a significant risk to protecting classified information due to his judgment, reliability and trustworthiness. Applicant admitted the SOR allegations.

Applicant was first referred to a mental health professional on May 8, 2013, for screening after completing a submarine screening questionnaire. The provider noted no evidence of a clinically significant disorder of thought, mood, or anxiety based on the Applicant's answers to screening questions, and he was found to be suitable for submarine duty. Applicant returned to the mental health facility for a follow-up on May 14 and June 12, 2015. In June 2015, Applicant was diagnosed with adjustment disorder, dependent personality disorder, and borderline personality disorder. He was referred for additional treatment.

The DCSA CAF referred Applicant for a psychiatric evaluation on February 7, 2020. During the evaluation, Applicant described the incident on his submarine with the noose and stated that as a result, he was hospitalized for two to three weeks. He superficially cut himself during his hospitalization and again in 2017 after his fiancée reported to him that she had been raped. Applicant saw his psychologist for outpatient medication management but did not seek psychiatric treatment after being discharged from the Navy in 2015. Applicant expressed that medications typically work on a placebo effect, and that one has to believe in them to work saying "the mind has a lot of healing."

Applicant was fired from a fast-food employment in 2017 after failing a drug test. He admitted to using marijuana to assist with his sleep and to manage migraine headaches. He stated that he stopped using marijuana after being fired.

Applicant was diagnosed by the DCSA CAF's evaluating psychologist with major depressive disorder, recurrent, moderate, and borderline personality disorder. Applicant attempts to control his condition with self-help methods, and does not believe he needs ongoing professional care. Applicant's prognosis is "guarded," and Applicant's judgment and reliability may be impaired if his mental health problems are not treated. The evaluator suggested Applicant seek psychiatric treatment and education on coping and emotional management skills.

In his Answer to the SOR, Applicant agreed with the psychological assessment and stated that he was dealing with his issues and has been continuously improving. Although Applicant has access to free mental health counseling from his employer, he has not seen a professional since 2015. He acknowledged that he is dealing with depression and that his moods can change rapidly, but his 2015 counseling was helpful and he has a family that he lives with and other people to help him. He noted that he was working hard to improve himself and as an employee, and has taken the initiative to learn the skills necessary to gain a supervisory position.

Policies

"[N]o 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 applicants 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 § 2.

National security eligibility 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, an administrative judge applies these guidelines 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline I, Psychological Conditions

The security concern for psychological conditions 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 seeking mental health counseling.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. Three are potentially applicable 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 attempted to harm himself in 2015, was hospitalized and diagnosed with adjustment disorder, dependent personality disorder, and borderline personality disorder. He was again evaluated in 2020 and diagnosed with untreated borderline personality disorder and major depressive disorder, recurrent, moderate. A mental health professional noted that Applicant's condition, untreated, may impair his judgment and reliability in the protection of classified information. AG ¶¶ 28(a), (b), and (c) apply.

The adjudicative guidelines also include examples of conditions that could mitigate security concerns, as set forth in AG ¶ 29. I reviewed each mitigating condition and found none that fully apply to Applicant's current situation. He has not taken advantage of treatment since he was hospitalized, and he continued to self-medicate and harm himself when confronted with stressful situations. Although Applicant is working toward a supervisory position, he has not shown sufficient mitigation to overcome the Government's concerns.

Whole-Person Concept

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. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. AG ¶¶ 2(a), 2(c), and 2(d). The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline I in my whole-person analysis. I also considered Applicant's efforts to help himself, work attitude, and Navy service. However, he has not shown that he has overcome the Guideline I concerns raised in the SOR.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant or continue eligibility for access to classified information.

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 and 1.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant or continue Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

Gregg A. Cervi
Administrative Judge