



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



In the matter of:)
)
) ISCR Case No. 20-01652
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

October 18, 2021

Decision

CEFOLA, Richard A., Administrative Judge:

On March 2, 2018, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On September 21, 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 acknowledged receipt of the SOR on March 3, 2021. She answered the SOR in writing on March 17, 2021, and requested a hearing before an administrative judge. I received the case assignment on June 8, 2021. DOHA issued a Notice of Hearing on June 9, 2021, and I convened the hearing as scheduled on July 13, 2021. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified and offered Exhibits (AppXs) A and B, which were received without objection. She also asked that the record be kept open until September 10,

2021, for the receipt of additional documentation. On August 18, 2021, Applicant also submitted AppX C, which was received without objection. DOHA received the transcript of the hearing (TR) on July 19, 2021. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR Applicant admitted the factual allegations in Paragraph 1.a. of the SOR, and denied the factual allegations in Paragraph 1.b. of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 35 years old, married, and has two children. She has a General Education Degree (GED). Applicant has been working for a defense contractor for “just over three years.” She currently does not hold a security clearance. (TR at page 17 line 21 to page 20 line 7.)

Guideline I – Psychological Conditions

1.a. and 1.b. In December of 2019, Applicant was diagnosed as having “a history of Stimulant Use Disorder, Severe, In Sustained Remission, due to her previous dependence on methamphetamine.” (GX 3 at page 9.) The Licensed Clinical Psychologist (LCP) based this diagnosis on Applicant’s “history of methamphetamine dependence” following her father’s death, prior to her “completing treatment in 2007,” and Applicant’s one-time relapse “during the course of her wedding celebration in 2017.” (*Id.*) This LCP concluded, in part, the following: “While . . . [Applicant] does not demonstrate current or imminent concerns about her trustworthiness and reliability, she demonstrates a longstanding history of emotional and behavioral dysregulation, with historical lapses in impulse control and judgment. . . . As such her prognosis is considered to be guarded.” (GX 3 at page 10.)

Applicant takes issue with the above LCP’s conclusions, and has offered the August 2021 Psychological Evaluation of another Licensed Psychologist (LP). (TR at page 20 line 16 to page 26 line 2, and AppX C.) This LP “summarized” her findings as follows: “1. . . . [Applicant] does not currently have symptoms of any mental health disorder. Her mood is currently stable. 2. . . . she no longer meets criteria for mental health disorder. 3. . . . [Applicant] is not currently prescribed any psychotropic medications. 4. It is highly likely that . . . [Applicant] will manage a stressful work situation effectively.” (AppX C at page 9.) Finally, this LP opined “Ultimately, it is my opinion that . . . [Applicant] should receive psychological clearance.” (AppX C at page 10.)

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:

- (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, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

Applicant received treatment in 2007, and was diagnosed in 2019 by an LCP as suffering from Stimulus Use Disorder, Severe (In Sustained Remission). Therefore, AG ¶ 28 is established.

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

- (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.

According to the Government's LCP in 2019, Appellant's condition is "In Sustained Remission," and was based on the use of an illegal stimulus, methamphetamine. There is absolutely no showing of any current drug abuse, since a one time usage in 2017, about four years ago. More recently in 2021, Applicant's LP found no current mental health disorder. Therefore, AG ¶ 29 is established. I find there is no indication of a current problem. Psychological Conditions is found for 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. Applicant is well respected at work and in her community. (AppXs A and B.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her Psychological Conditions.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I: FOR APPLICANT

Subparagraphs 1.a. and 1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge