DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03066
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Dondi S. West, Esq.

01/05/2021

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Decision

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline I, psychological conditions. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On November 25, 2019, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The DCSA CAF acted 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On January 17, 2020, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 26, 2020. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on July 8, 2020, and the hearing was set for August 19, 2020. On August 16, 2020, Applicant's counsel requested a continuance, for good cause shown, which was unopposed by Department Counsel. The motion was granted. A second notice of hearing was issued by DOHA on October 7, 2020, setting the hearing for October 22, 2020. On October 22, 2020, Appellant's counsel requested a continuance based upon an emergency situation. The request was unopposed by Department Counsel and I granted it. On October 30, 2020, a hearing notice was issued setting the hearing for November 6, 2020. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection, except for GE 4, which was objected to on the basis of relevancy. That objection was overruled. The Government's exhibit list was marked as hearing exhibit (HE) I and the discovery letter was marked as HE II. The Government also called one witness.

Applicant testified, offered one witness, and produced exhibits (AE) A and B, which were admitted. I also took administrative notice of a law review article and a Federal District Court case submitted by Applicant and marked as HE III and IV (California Law Review, Vol 62: 693-752; Taylor v. Comm., 2013 U.S. Dist. Lexis 44339). At the close of the hearing I asked both counsel to submit a curriculum vitae (CV) for their respective expert witnesses, which they both did and the CVs were admitted as GE 5 and AE 3. DOHA received the hearing transcript (Tr.) on November 23, 2020.

Findings of Fact

In Applicant's answer, he admitted in part and denied in part both of the SOR allegations, with explanations. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 38 years old. He is single, never married, and has no children. He has worked for his current defense contractor-employee since 2009. He has held a security clearance since 2004 and has never had a security incident or violation. He holds master's degrees in electrical engineering and business administration. He has owned a home since December 2016. (Tr. at 108-111, 139; GE 1; AE B)

The SOR alleged Applicant: (1) was diagnosed with Schizoaffective Disorder (depressive type, with catatonia) and Non-adherence to Medical Treatment (by history) in August 2019 by a licensed clinical psychologist (Dr. 2), which are conditions that may impair judgment, stability, reliability, or trustworthiness; and (2) has received mental health treatment since February 2010 from a psychiatrist (Dr. 1) and that in May 2017, this provider indicated that Applicant had a condition that could impair judgment, reliability, or ability to properly safeguard classified information. The provider further stated that Applicant has psychotic symptoms if he stops taking his medication and gave a prognosis of "guarded to fair." (SOR ¶¶ 1.a and 2.a).

In 2002, Applicant was hospitalized for the first time for a mental health issue. He was working in a state away from where his parents lived and an acquaintance died, which caused Applicant to have a severe depressive episode. This caused his parents to go to Applicant's out-of-state location and see to his hospitalization. Applicant described his actions at that time as being depressed, not talking, and "just shutting down". No contemporaneous medical records are available to describe this incident, however, later medical records from 2009 and 2012 refer to the 2002 incident when describing Applicant's medical history with the information usually coming from either Applicant or his parents. The records refer to a psychotic incident occurring in 2002. (Note: None of the previous medical incidents in 2002, herein described, or in 2009 and 2012, described below, were specifically alleged in the SOR, therefore, I will not use this evidence for disqualifying purposes, but I will consider it in the application of any mitigating conditions, whole-person factors, and in assessing Applicant's credibility.) After Applicant's hospitalization, he returned to his parents' home state where he remained while finishing his bachelor's degree in 2004 and his master's degree in 2006. Applicant also saw a psychiatrist for approximately three years and was prescribed Zyprexa, Geodon, and Ativan. No diagnosis or prognosis was contained in the record from this time frame. Applicant testified that he came off the prescribed medicine in 2005 because he was not seeing a doctor at the time and there was no requirement to stay on the medication. In July 2009, Applicant was employed at his current location, which required a move to a different state. (Tr. at 121-127; GE 1, 3, 4 (p. 40 of pp. 101)

In December 2009, Applicant experienced another psychological incident that resulted in a hospitalization. Records indicate that Applicant was seen standing outside his home, unmoving, for approximately two hours. Medical personnel were alerted and he was hospitalized where he presented with "thought blocking, disorganized thought process, paranoia, and denial about his condition." His admission diagnosis was: mood disorder NOS, a rule out of major depressive disorder, recurrent, with catatonic features, and a rule out of schizophrenia. (*See:* The criteria set forth in the Diagnostic Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)). At that time, he was prescribed Zyprexa and Ativan. He was hospitalized for approximately one week and upon discharge he returned with his parents to their home state where he remained for about two months. His discharge diagnosis was: bipolar disorder, depressed, versus major depressive disorder with psychotic features and catatonia, most possibly depressive disorder, severe, recurrent, with psychotic features. After his hospitalization, he began therapy with two doctors (their specialties were not indicated in the record). In either late 2009 or early 2010, Applicant began seeing his current psychiatrist (Dr. 1) every three months for medication management. (GE 2, 3, 4 (p. 36-38 of pp. 101); AE A)

Applicant testified that leading up to his 2009 hospitalization he was unable to sleep for three days. As a result, he was not functioning well. He confirmed that he stood outside his home for some time until a neighbor saw him and called for help. He recalls being admitted to the hospital and being diagnosed with a bipolar disorder and depressive disorder. He was not on medication at the time of this incident, but during his hospitalization he was prescribed Geodon and Ativan. Sometime after this

hospitalization, in early 2010, he began seeing his current psychiatrist, Dr. 1. During the early part of his treatment by Dr. 1, he was seen more than once every three months. Now, the frequency of his appointments are about once every three months. He went to live with his parents for about two months after his hospitalization. He then returned to work with no repercussions from his hospitalization or his lengthy absence. (Tr. 127-130; GE 3; AE A.

In April 2012, Applicant was admitted to the hospital after a visit from his parents who found him to be acting in an odd manner and took him to see his doctor. It was discovered that Applicant had not been to work for over a month and had lost a significant amount of weight. He also had stopped taking his prescribed medicine in May 2011. He remained hospitalized for ten days and was given a discharge diagnosis of: major depression with psychotic features, schizophrenia also remains part of differential, and general anxiety disorder. He was prescribed Ziprasidone, Citalopram, Buspirone, and Ativan upon his discharge. During his testimony, Applicant admitted that he stopped taking his medication because he thought he could manage his condition without the medication and because the medication led to significant weight gain. While he continued to see Dr. 1 before this hospitalization he did not recall if he told Dr.1 that he stopped taking his medication. He described his behavior which led to his hospitalization as "shutting down." This resulted in him not going to work, not communicating with other people, and just staying in his house. He believes the only trigger for this hospitalization was that he stopped taking his medication. He was put back on medication during and after this hospitalization. He again returned to work without any repercussions from his earlier missed time. Between 2012 and 2014, he was not 100 percent compliant with taking his medication because he experienced side effects from it. Dr. 1 made an adjustment to his medication in 2014 and since then he has been 100 percent compliant with taking the medication, which at this time only includes taking Abilify for his mental health conditions. (Tr. at 130-135; GE 3, GE 4 (pp. 56-59, 91-92 of 101); AE A)

As stated above, none of Applicant's three hospitalizations were specifically alleged in the SOR. I have described the uses I can make of this evidence (credibility, application of mitigating conditions, and the whole-person factors). I will also consider the evidence as background information as it may help explain or amplify the diagnoses that have been alleged in the SOR.

In May 2017, as part of Applicant's background investigation, an investigator sent Dr. 1 a questionnaire that asked the provider to answer "yes" or "no" to the question of whether the Applicant had a condition that could impair his judgment, reliability, or ability to protect classified information. Dr. 1 answered "yes." Dr. 1 was also asked to state the nature of the condition, which she stated as: "He has psychotic symptoms if he goes off of his medication." Dr. 1 stated that his prognosis was: "guarded to fair." The period of treatment was listed as February 23, 2010, to the present. As part of his answer to the SOR, Applicant included a letter by Dr. 1 from January 2020. In this letter, Dr. 1 described her treatment of Applicant since February 2010, with his last appointment coming in January 2020; that he has been psychiatrically stable since September 2014;

and that he has been compliant in taking his medication and making every appointment since September 2014. (GE2; Answer to SOR (*See* attachment labeled Exhibit A))

In furtherance of Applicant's background investigation, the CAF contracted to have Dr. 2 perform a psychological evaluation of Applicant. The examination was conducted in August 2019 and Dr. 2's report was completed in September 2019 (GE 3). Dr. 2 also testified at Applicant's hearing. Dr. 2 is a Ph.D. (Doctor of philosophy) of clinical psychology. Her CV is part of the record. (GE 5) I find that Dr. 2 is a duly qualified mental health professional approved by the U.S. Government. (Tr. 19-22)

As part of her evaluation, Dr. 2 reviewed Applicant's medical records, conducted a clinical interview with him, made clinical observations, and administered the personality assessment inventory (PAI) test. Dr. 2 observed that Applicant arrived for his appointment on time and appeared neat and clean. He seemed relaxed, with no observable signs of anxiety or psychomotor agitation. Dr. 2 believed his insight and memory were poor because he denied aspects of his mental health history believing that he had a tendency to minimize the severity of his mental health condition by stating that it was "just depression." He was respectful and cooperative throughout the evaluation and there were no attempts at deception. Dr. 2 noted that on one aspect of the PAI test, Applicant indicated that he was portraying himself in an unrealistically favorable light. Dr. 2 further stated that Applicant's inconsistent medication adherence and his ongoing denial about the severity of his condition places him at an increased risk for future relapse. Dr. 2 stated that his diagnostic profile was: Schizoaffective Disorder (depressive type, with catatonia) and non-adherence to medical treatment (by history). Dr. 2 also noted that the risk of future psychotic episodes can be mitigated, provided Applicant continues to take his prescribed medicine. She admitted that records indicate he has been medically compliant since 2014 and that there is no evidence of a psychotic episode since that time. Dr. 2 read Dr. 3's evaluation report, but nothing in it caused her to change her opinion about Applicant's lack of insight that could result in his future non adherence to taking his medication. (Tr. at 21-24, 27, 43; GE 3, 5)

In August 2020, Applicant sought and participated in an independent psychological evaluation conducted by Dr. 3. Dr. 3 prepared a resulting evaluation report in October 2020. (AE A) Dr. 3 also testified at Applicant's hearing. Dr. 3 is a PsyD. (Doctor of psychology) of clinical and forensic psychology. (Generally, Ph.D. programs emphasize research, while PsyD. programs emphasize clinical work) Her CV is part of the record. (AE C) I find that Dr. 3 is a duly qualified mental health professional and because she has contracted with the U.S. Department of Veterans Affairs (VA) and several state agencies to conduct psychological evaluations she is also approved by the U.S. Government. (Tr. 61-64; AE A, C)

As part of her evaluation of Applicant, Dr. 3 conducted a clinical interview, a mental status exam, a competency evaluation, a psychological assessment, records review, and a series of psychological testing, including: the Reynolds Adaptable Intelligence Test (RAIT), Millon Clinical Multiaxial Inventory (MCMI-IV), Beck Anxiety Inventory (BAI), Beck Depression Inventory (BDI-II), Adult Substance Abuse Subtle

Screening Inventory-4 (SASSI-4). Dr. 3's evaluation report traces a very similar psychological history for Applicant as did Dr. 2. Some differences exist. Dr. 3 pointed out that Applicant has not been hospitalized since 2012 and that he has not received any reprimands or discipline from his employer. Dr. 3 also pointed out that Applicant has not been violent or displayed any abnormal behavior since 2012. An evaluation of Applicant's MCMI test results showed, *inter alia*, an appropriate amount of self-disclosure and that no defensive test-taking attitudes were apparent. Applicant was cooperative throughout the evaluation. Dr. 3 stated, "The personality assessment was consistent with his presentation which is an individual who is guarded, shy, mostly introverted and has low self-esteem." She also responded to Dr. 2's point that future psychotic episodes can be mitigated by continuing medication compliance by explaining that Applicant's level of intelligence, positive family support, reliability, responsibility, and work-related compliance are also mitigating factors. Dr. 3 related that Applicant's diagnosis was a schizoaffective disorder (by history). She also offered a strong prognosis for Applicant based upon the level of support he receives from his parents and his continued compliance with taking his medication. Dr. 3 also opined that Applicant accepts his disorder and the need to stay on his medication and that the last six to eight years of staying on his medication is evidence of his acceptance. (Tr. at 65-76, 93, 98, 101; AE A)

Applicant testified that he realizes he has a mental health condition and takes it seriously. He also realizes he must continue to take his medication. To insure taking his medication, he has developed a regular schedule for taking it, which he follows. He knows how important taking his medication is. If he stopped taking his medication, his symptoms would recur, which could put him back into the hospital. He did not like his hospital experiences and wants to avoid those in the future. He believes his taking the medication now is different than it was before when he stopped because now he has to take other medications, not mental health-related, and he accepts taking medication as a way to promote his overall health and wellbeing. The only mental health medication he currently takes is Abilify and he takes it once in the evening as he has done since 2014. (Tr. at 112-116, 141-142)

Policies

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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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 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 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. They are:

> (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;
>
> (c) voluntary or involuntary inpatient hospitalization; and
>
> (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

During her closing argument, Department Counsel cited a DOHA Appeal Board case for the proposition that an Applicant's procurement and evaluation by a psychological practitioner, which is deemed favorable, after the issuance of an SOR may be self-serving in order to obtain a positive result. (ISCR Case No. 18-02085 at p. 6, January 3, 2020) I believe the cited case is factually distinguishable from this case in that in the cited case the applicant failed to cooperate with the Government-aligned evaluator, but cooperated completely with his own evaluator. In our case, the evidence establishes Applicant's complete cooperation with both evaluators. Therefore, I do not find that there is an inference that Applicant's procured psychological evaluation was self-serving.

The SOR only alleged the diagnoses by Dr. 1 and Dr. 2. Of the listed disqualifying conditions, only AG ¶ 28(b) applies in this case. No behavior was alleged in the SOR that would trigger the application of AG ¶ 28(a), no hospitalization was alleged in the SOR to trigger application of AG ¶ 28(c), and "Non-adherence to Medical Treatment (by history)." was alleged in the SOR, which triggers the application of AG ¶ 28(d).

The adjudicative guidelines also include examples of conditions that could mitigate security concerns, as set forth in AG ¶ 29. Those conditions include:

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

> (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.

All three doctors agree that Applicant staying on his medication is the key to his mental health stability. In January 2020, Dr. 1 indicated Applicant had been psychiatrically stable since 2014. In September, 2019, Dr. 2 stated that future psychotic episodes can be mitigated provided Applicant remain on his medication. In October 2020, Dr. 3 stated that Applicant has accepted that he must take his medication along with other medication to ensure adequate functioning. Applicant credibly testified to his understanding of the need to take his medication and he has faithfully done so since 2014. Dr. 3 opined that based upon Applicant's evaluation and the strong protective factors existing in his life, namely his family support and his stability at work, combine to increase his chances of a good prognosis. Both AG ¶¶ 29(a) and 29(c) apply. Additionally, even if I had determined that disqualifying conditions AG ¶¶ 28(a) and 28(c) applied in this case, I conclude that they would also have been mitigated by AG ¶¶ 29(a) and 29(c).

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 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.

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. I considered Applicant's education, family status, and contractor service. I also considered his mental health history as developed in the record, as well as the opinions and conclusions of Drs. 1, 2, and 3. Applicant provided sufficient evidence to mitigate the psychological conditions security concerns.

Overall the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under Guideline I.

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:	FOR APPLICANT
Subparagraphs 1.a - 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher
Administrative Judge