



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



In the matter of:)
)
) ISCR Case No. 21-00752
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.

02/22/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the psychological conditions security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 1, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline I (psychological conditions). Applicant responded to the SOR on June 26, 2021, and requested a hearing before an administrative judge. The case was assigned to me on November 18, 2021.

The hearing was convened as scheduled on December 15, 2021. Government Exhibit (GE) 1 was admitted in evidence without objection. The objections to GE 2 through 4 (Office of Personnel Management reports of investigation (OPM ROI)) were sustained. GE 5 is a report of a psychological evaluation requested by the Department of Defense Consolidated Adjudications Facility (DOD CAF). Applicant objected to the report because it relied on information that was inadmissible at the hearing (e.g. GE 2-4). The objection to GE 5 was overruled, but Applicant's objection is not without some

merit as the report contains facts from OPM ROIs that would not otherwise be admissible without an authenticating witness (Additional Procedural Guidance E3.1.20.) and a statement from a therapist that might not be admissible without giving Applicant the opportunity to cross-examine the therapist (Additional Procedural Guidance E3.1.22.). The objection will go to the weight given to those facts not the admissibility of the exhibit.

Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. The Government's and Applicant's exhibits are identified in Hearing Exhibits I and II. The record was held open for Applicant to submit additional documentary information. No additional evidence was submitted. At Applicant's request and without objection, I take administrative notice of certain provisions of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

Findings of Fact

Background

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer since about September 2018. He attended college for a period, but he has not earned a degree. He has never married, but he has a girlfriend that he expects will be his fiancée. He has no children. (Transcript (Tr.) at 20, 23, 26-27; GE 1; AE A)

Applicant's Conduct and History of Mental Health Treatment

Applicant has a history of depression and mental health treatment. When he was in high school, he took his father's gun and hid it in his room. He stated that he thought he was a failure and his father was abusing him. He told a teacher who reported it to the police. He was hospitalized for three days in 1999 when he was about 18 or 19 years old, after suffering from depression. He may have been diagnosed with bipolar disorder. He was prescribed medication, which he found helpful, and his medication was discontinued in about 2000 or 2001. (Tr. at 23-24, 43-50; GE 5; AE F)

Applicant was depressed and had suicidal thoughts following his uncle's death in 2003. During the same time period, Applicant had an argument with a co-worker and attacked him because Applicant "wasn't in the right mindset." Applicant stated that during the fight, the co-worker was choking him, and Applicant was able to grab scissors off a desk and stabbed him in the back. He asserted that he stabbed the co-worker in self-defense to stop the choking. He went to a hospital and reported he had suicidal thoughts. He was hospitalized for three days. He may have been diagnosed with bipolar disorder and borderline personality disorder.¹ In his December 2018

¹ The evidence of the borderline personality disorder comes from the DOD records that were reviewed by the psychologist for the DOD CAF but not offered into evidence. No actual medical records were reviewed by the DOD CAF psychologist or Applicant's psychologist, nor were any medical records offered into evidence by either side.

Questionnaire for National Security Positions (SF 86), he reported the treatment was “for suicidal tendencies.” (Tr. at 28-36, 47, 50-58; Applicant’s response to SOR; GE 1, 5; AE F)

Applicant was charged, apparently with some type of assault. He pleaded *nolo contendere* and was sentenced to probation for three years. He continued taking medication until about 2005. Applicant stated it was the last time he was in a fight. (Tr. at 28-36, 47, 50-58; Applicant’s response to SOR; GE 1, 5; AE F)

Applicant worked for a large federal contractor, primarily overseas, from 2013 until he was terminated in January 2018 after allegations of misconduct. He stated that the termination letter contained words to the effect that he was “terminated for aggressive behavior.” He stated that he was dealing with bullies at work, and there was an incident where they pulled his pants down. They took a video of his private parts and posted it on social media. On another occasion, he was recovering from surgery and had to wear adult diapers because of the bleeding. His co-workers pulled his pants down exposing the diapers and again posted the video on social media. Applicant kicked a drawer out of embarrassment and frustration with his co-workers. He complained to management, but “it was kind of swept under the rug.” He asserted that his tormentors falsely accused him of unprofessional conduct, including racism, arguing with customers, and creating a hostile work environment. He stated that his tormentors were doing to him exactly what they reported that he was doing. Applicant stated that he was the subject of racial remarks by several employees. (Tr. at 37-43, 59-63; Applicant’s response to SOR; GE 1, 5; AE F, H)

Applicant also stated that he refused to lie to cover up management’s unethical practices and systemic security violations. He complained to management as early as January 2017. He also stated a subordinate confronted him, would not comply with Applicant’s directives, shouted at Applicant, and tried to block Applicant from leaving his office. Applicant was terminated after an internal company investigation. Applicant filed a complaint with a defense agency’s inspector general (IG). He reported several employees for unethical conduct; fraud, waste, and abuse; and violating security procedures. The investigation is apparently still pending. (Tr. at 37-43, 59-63; Applicant’s response to SOR; GE 1, 5; AE F, H)

Applicant returned to counseling after the termination. He moved at one point and saw several therapists, including an online therapist for about four to six months. The online therapist thought Applicant was non-compliant,² but Applicant stated it was because he had started seeing his current physician who prescribed his medication. (Tr. at 47, 63-65; Applicant’s response to SOR; GE 5; AE F)

² The evidence that Applicant was noncompliant comes from a statement by the therapist that was in the DOD records reviewed by the psychologist for the DOD CAF, but not offered into evidence.

DOD CAF Psychological Evaluation - February 2021

The DOD CAF requested that Applicant undergo a psychological evaluation. The evaluation was conducted on February 1, 2021, by a licensed psychologist (hereinafter referred to as psychologist or DOD CAF psychologist) who was contracted from private practice by the DOD CAF. A report of the evaluation was prepared on February 28, 2021. The psychologist was provided with a “DOD CAF Psych Consult,” Applicant’s December 2018 SF 86, and “Investigative Results Report 20190516.” The SF 86 is in evidence; the other two documents are not. The Psych Consult is apparently the request for the evaluation and the Investigative Results Report is apparently the OPM background investigation.

The psychologist used the DOD records at her disposal to interview Applicant about his history. No actual medical records were available to the psychologist. They discussed his hospitalizations in 1999 and 2003. She reported that he “was diagnosed with Bipolar Disorder and Borderline Personality Disorder, according to DOD records, although he reported only Bipolar Disorder.” She did not explain when he was diagnosed and under what circumstances. She reported:

Due to the lack of records and data, it is unclear if [Applicant’s] previous diagnoses are accurate, if there are other diagnoses present, and/or if he continues to experience significant mental health issues, as he was not forthcoming and provided contradictory information about his psychological status. [Applicant’s] behavioral presentation could suggest a mood or personality disorder, but further data is needed to confirm these diagnoses. Regardless of the fact that specific diagnoses are unclear, his history suggests that there have been serious mood issues. Currently, however, [Applicant] reported experiencing anxiety symptoms related to stress.

The psychologist also noted that Applicant received counseling from February 2018 through May 2019. She indicated that a statement from the therapist “indicated that he was not compliant with most of the therapist’s recommendations, including seeking psychiatric care; however, no records were able to be obtained.” The psychologist provided the following diagnosis:

Adjustment Disorder with anxiety
R/O Bipolar Disorder (by history)
R/O Borderline Personality Disorder (by history)

In psychological evaluations, the term “R/O” followed by a disorder does not mean that the individual is diagnosed with that disorder. It means the evaluator has to “rule out” that diagnosis. See e.g., <https://www.medfriendly.com/rule-out-diagnosis.html>:

Rule out means to eliminate as a possibility. For example, a doctor may have a patient’s blood pressure tested to rule out high blood pressure. That is, the doctor wants to know if the results from the test will eliminate

the possibility that the patient has high blood pressure. Rule out is commonly abbreviated as R/O in medical charts. In the example above, the doctor's note to the health care worker that performs the test may say: R/O high blood pressure. It is important to note that this does not mean that the patient has been diagnosed with high blood pressure. In doctor notes, rule outs are typically listed underneath diagnoses that have already been established.

The psychologist concluded:

[Applicant] presents with a psychiatric condition that could pose a significant risk to his judgment, reliability or trustworthiness concerning classified information. [Applicant] reported that he is not and has not experienced significant mood symptoms, although his history suggests otherwise. Throughout the evaluation process, [Applicant] has been a poor historian and has provided conflicting information, and he has minimized his condition. The fact that [Applicant] attacked a coworker and kicked an object while at work is extremely concerning. He was terminated, but he feels that this was unjustified. These are the only scenarios that he has admitted to, while there were allegations of "unprofessional conduct, fighting with customers, targeting employees, racism, and creating a hostile work environment." These all suggest poor judgment, which would only be exacerbated by the fact that [Applicant] is not in treatment; and if his previous diagnoses are accurate, his current medication is not addressing those symptoms. [Applicant's] mental health status appears to have had negative impacts on his work performance and his ability to maintain working relationships with others.

For the reasons stated above, [Applicant's] prognosis is guarded to poor. His denial of mental health issues only further demonstrates his poor judgment, which was evident behaviorally at his last job. His symptoms have required hospitalization in the past, and his online therapist indicated that he was noncompliant. While [Applicant] does not appear willing to engage in psychotherapy, it could potentially improve his prognosis.

Applicant's Psychological Evaluation - August 2021

Applicant sought his own evaluation from a licensed clinical forensic psychologist (hereinafter psychologist or Applicant's psychologist) with extensive experience in forensic psychology. The psychologist considered documents provided by Applicant, including the DOD CAF evaluation, the SOR, and a "Defense Legal Services Agency, letter to [Applicant] dated August 13, 2021," which I assume is the "discovery" letter from Department Counsel to Applicant. The psychologist conducted a psychological test on Applicant and interviewed him for about two hours. The report of that evaluation is dated August 30, 2021. (AE F)

The diagnosis was major depressive disorder, recurrent episode, in full remission (with medication). The report included a lay description of depression from the Mayo Clinic:

Depression is a mood disorder that causes a persistent feeling of sadness and loss of interest. Also called major depressive disorder or clinical depression, it affects how you feel, think and behave and can lead to a variety of emotional and physical problems. You may have trouble doing normal day-to-day activities, and sometimes you may feel as if life isn't worth living.

More than just a bout of the blues, depression isn't a weakness and you can't simply "snap out" of it. Depression may require long-term treatment, psychological counseling or both.

Symptoms of depression include (some symptoms not included in this decision but available in the report and the DSM-5):

- Feelings of sadness, tearfulness, emptiness or hopelessness
- Angry outbursts, irritability or frustration, even over small matters
- Anxiety, agitation or restlessness
- Trouble thinking, concentration, making decisions and remembering things
- Frequent or recurrent thoughts of death, suicidal thoughts, suicide attempts or suicide

The psychologist concluded:

[Applicant] has experienced several episodes of depression, all of which have responded well to medication. During one such episode, [Applicant], as a result of his depressed mood, engaged in criminal behavior involving an assault. That was in 2003. [Applicant] has as far as is known, been free from criminal behavior subsequently.

Although [Applicant] is subject to depression, he is able to seek appropriate treatment and has responded well to prescribed medications. [Applicant] is insightful regarding his need for treatment and his need for medication compliance to maintain his stability.

Applicant's psychologist agreed with the DOD CAF psychologist's evaluation that Applicant suffers from a mental health disorder and that he needs ongoing medication treatment. He disagreed with the DOD CAF psychologist's "implication that all allegations against [Applicant] are, in fact, accurate and that allegations with which Applicant has disagreed are merely instances of [Applicant] not having 'admitted' to them." He noted that the fact that the DOD CAF psychologist had "no basis for determining which allegations are accurate yet forges ahead with the conclusion that the worst beliefs about [Applicant] are correct demonstrates such an extreme degree of bias that her report should be discarded."

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)

Adjustment Disorder with Anxiety

According to the DSM-5, the essential feature of adjustment disorders is the presence of emotional or behavioral symptoms in response to an identifiable stressor. By definition, the disturbance in adjustment disorders begins within three months of onset of a stressor and lasts no longer than six months after the stressor or its consequences have ceased. A stressor may be a single event (e.g., a termination of a romantic relationship), or there may be multiple stressors (e.g., marked business difficulties and marital problems). Stressors may be recurrent (e.g., associated with seasonal business crises, unfulfilling sexual relationships) or continuous (e.g., a persistent painful illness with increasing disability, living in a crime-ridden neighborhood).

Symptoms or behaviors are clinically significant, as evidenced by one or both of the following:

1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.
2. Significant impairment in social, occupational, or other important areas of functioning.

For adjustment disorder with anxiety, the symptom of nervousness, worry, jitteriness, or separation anxiety is predominant.

Major Depressive Disorder

The criterion symptoms for major depressive disorder must be present nearly every day to be considered present, with the exception of weight change and suicidal ideation. Fatigue and sleep disturbance are present in a high proportion of cases; psychomotor disturbances are much less common but are indicative of greater overall severity, as is the presence of delusional or near-delusional guilt.

The essential feature of a major depressive episode is a period of at least two weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities. Many individuals report or exhibit increased irritability (e.g., persistent anger, a tendency to respond to events with angry outbursts or blaming others, an exaggerated sense of frustration over minor events).

A major depressive episode that occurs in response to a psychosocial stressor is distinguished from adjustment disorder with depressed mood by the fact that the full criteria for a major depressive episode are not met in adjustment disorder.

In full remission means that during the past two months, no significant signs or symptoms of the disturbance were present.

Applicant's Current Treatment

Applicant is seeing a therapist. He has a physician who prescribes him medication for his depression. He stated that his bouts of depression are usually mild, but if it gets bad, he reaches out to the doctor to see if the medication needs to be upgraded or updated. He will also talk to his girlfriend and other friends who support him. (Tr. at 24-28, 63-65; AE F, G)

Character Evidence

Applicant submitted documents and letters attesting to his excellent work performance, strong moral character, and mental stability. He received bonuses in 2015 and 2016 and incentive pay in 2017. His performance evaluations for 2019 to 2021 were very good. He is praised for his responsibility, honesty, reliability, maturity, trustworthiness, kindness, loyalty, leadership, judgment, work ethic, dedication, dependability, technical skills, and professionalism. (AE B-E)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(c), 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."

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 mental health counseling.

AG ¶ 28 provides conditions that could raise security concerns. AG ¶ 29 provides conditions that could mitigate those security concerns. The following are potentially applicable:

28(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;

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;

28(c) voluntary or involuntary inpatient hospitalization;

28(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;

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

29(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;

29(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;

29(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

29(e) there is no indication of a current problem.

SOR ¶ 1.a

SOR ¶ 1.a alleges that Applicant received mental health treatment in 2003 for suicidal tendencies, and that he was diagnosed with bipolar I without psychosis and borderline personality disorder. SOR ¶ 1.b alleges that Applicant received mental health treatment in 2019 following his termination for misconduct. Both allegations suffer from the same problem - that receiving mental health treatment raises a security concern. It does not. See AG ¶ 27(a): "No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling."

Applicant denied receiving mental health treatment for "suicidal tendencies." However, that is not a medical term; the language came directly from Applicant's SF 86. There is no dispute that Applicant was hospitalized for three days in 2003. While that

was not specifically alleged in SOR ¶ 1.a, I find it was fairly embraced in the allegation. Moreover, it was alleged in SOR ¶ 1.c. AG ¶ 28(c) is applicable.

There is some evidence in the DOD CAF psychological evaluation that Applicant was diagnosed at some point with bipolar disorder and borderline personality disorder. She based that on “DOD records” that were not made available for Applicant’s hearing. She did not explain when he was diagnosed and under what circumstances. She also reported that “[d]ue to the lack of records and data, it is unclear if [Applicant’s] previous diagnoses are accurate.” There is some evidence that AG ¶ 28(b) may have been applicable at some point, but there is no evidence that Applicant currently suffers from those disorders. To the extent that AG ¶ 28(b) was applicable; it is also mitigated.

SOR ¶ 1.b

SOR ¶ 1.b alleges that Applicant received mental health treatment in 2019 following his termination for misconduct. As previously indicated, the mental health treatment does not raise a security concern. Workplace misconduct can constitute behavior that casts doubt on an individual’s judgment, stability, reliability, and trustworthiness. However, that behavior is covered under the personal conduct guideline, and by definition under AG ¶ 28(a) it cannot be “behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline.” As such, the workplace misconduct cannot be used to establish AG ¶ 28(a) as a disqualifying condition. SOR ¶ 1.b is concluded for Applicant.

SOR ¶ 1.c

SOR ¶ 1.c alleges the DOD CAF evaluation. It arguably also alleges the hospitalizations, the workplace misconduct that is already alleged in SOR ¶ 1.b, and that Applicant was noncompliant with his online therapist’s recommendations.

Hospitalizations - AG ¶ 28(c)

AG ¶ 28(c) is established by Applicant’s hospitalizations in 1999 and 2003.

Workplace Misconduct - AG ¶ 28(a)

As discussed above, workplace misconduct cannot be used to establish AG ¶ 28(a) as a disqualifying condition.

Noncompliance - AG ¶ 28(d)

SOR ¶ 1.c has the following language: “your online therapist indicated that you were noncompliant with her recommendations.” There is a slight, but important difference between the language in the allegation and the language in AG ¶ 28(d), which requires “a prescribed treatment plan” and not just a recommendation. In any event, I accept Applicant’s testimony that he was not noncompliant with his therapist’s recommendations, he merely switched providers. AG ¶ 28(d) is not applicable.

DOD CAF Evaluation - AG ¶ 28(b)

The DOD CAF psychologist diagnosed Applicant with adjustment disorder with anxiety. She also reported “[Applicant] presents with a psychiatric condition that could pose a significant risk to his judgment, reliability or trustworthiness concerning classified information.” On its face, that statement is enough to establish AG ¶ 28(b).

AG ¶ 28(b) requires 1) an opinion by a duly qualified mental health professional that the individual has a condition; and 2) that the condition may impair judgment, stability, reliability, or trustworthiness. Some conditions, such as schizophrenia and delusional disorder (not present in this case), clearly impair judgment, stability, reliability, and trustworthiness, and can be accepted as such without further elaboration by the mental health professional. Other conditions may require elaboration by the mental health professional as to how the condition may impair the individual’s judgment, stability, reliability, or trustworthiness.

There are several issues with the DOD CAF psychologist’s opinion. It is unclear what condition the psychologist is referring to. I can only assume it is the diagnosis of adjustment disorder with anxiety. That disorder requires the presence of emotional or behavioral symptoms in response to an identifiable stressor, with the disturbance in adjustment disorders beginning within three months of onset of a stressor and lasting no longer than six months after the stressor or its consequences have ceased. The DOD CAF psychologist never identified a stressor. The psychologist also never indicated why, unless the stressor was recurrent (e.g., associated with seasonal business crises, unfulfilling sexual relationships) or continuous (e.g., a persistent painful illness with increasing disability, living in a crime-ridden neighborhood), it would still be a problem after more than six months have passed.

For adjustment disorder with anxiety, the DSM-5 states that the symptom of nervousness, worry, jitteriness, or separation anxiety is predominant. The DOD CAF psychologist made a conclusory statement, but she never explained why a disorder with those symptoms is a condition that may impair judgment, stability, reliability, or trustworthiness.

Applicant’s psychologist agreed with the DOD CAF psychologist’s evaluation that Applicant suffers from a mental health disorder, and that he needs ongoing medication treatment. He disagreed with the DOD CAF evaluator’s diagnosis and diagnosed Applicant with major depressive disorder, recurrent episode, in full remission (with medication). I am satisfied that Applicant has a mental health disorder, and I believe it is more likely major depressive disorder than adjustment disorder.

Of note, from a security clearance perspective, major depressive disorder may raise more concerns than adjustment disorder. The DSM-5 reports that many individuals with major depressive disorder report or exhibit increased irritability (e.g., persistent anger, a tendency to respond to events with angry outbursts or blaming others, an exaggerated sense of frustration over minor events). This is consistent with

Applicant's psychologist's statement that in 2003, Applicant "as a result of his depressed mood, engaged in criminal behavior involving an assault."

The two psychologists differ on Applicant's conduct, as apparently contained in ROIs that were available to the DOD CAF psychologist and possibly Applicant's psychologist, but not to me. Applicant's psychologist took issue with the "implication that all allegations against [Applicant] are, in fact, accurate and that allegations with which Applicant has disagreed are merely instances of [Applicant] not having 'admitted' to them." I do not agree that it is inappropriate for an evaluating psychologist to use other information to form an opinion or even arrive at conclusions about the accuracy of that information. Unfortunately, in this case I do not have any of those records that would enable me to form my own opinion. Additionally, even if Applicant committed the workplace misconduct, it is difficult for me to attribute that conduct to adjustment disorder. I also note that criminal conduct and workplace misconduct should not be alleged under Guideline I, and the conduct was not alleged under any other guidelines.

I further note that Applicant was terminated in January 2018, and he has worked for his current employer since about September 2018, but there is no evidence of the recurrence of any problematic conduct. There is evidence that he was a good employee through 2017, and he reported other employees in January 2017, a full year before he was terminated. I also note there is evidence that he has been a good employee for his current company.

Conclusion

I am satisfied that Applicant has suffered from some form of depression since at least high school. He was hospitalized in 1999 and was arrested and hospitalized in 2003. He was terminated from a job in 2018, but it is unclear if his mental health condition had anything to do with the termination. His work record is otherwise good. I do not find that he was noncompliant with his therapist's recommendations; he simply changed providers. He is currently in counseling and is prescribed medication. I find that the identified condition is readily controllable with treatment, and Applicant has demonstrated ongoing and consistent compliance with his treatment plan. AG ¶ 29(a) is applicable. Psychological conditions security concerns are mitigated.

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. 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 have incorporated my comments under Guideline I in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the psychological conditions security concerns.

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.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge