



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01708
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: Abdellah Benadada, Esq. and Sara McDonough, Esq.

03/22/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 29, 2020, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on December 22, 2020, and requested a hearing before an administrative judge. The case was assigned to me on September 1, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 20, 2021, scheduling the hearing for October 26, 2021. Applicant requested

a continuance, which was granted and the hearing was reschedule for January 4, 2022. Applicant's attorney contracted the COVID-19 virus and requested another continuance, which was granted, and the hearing was rescheduled for January 18, 2022. Due to inclement weather, the hearing was again rescheduled for February 15, 2022. I convened the hearing as rescheduled. The Government offered exhibits (GE) 1 through 8. Applicant and four witnesses testified. He offered Applicant Exhibits (AE) A through H. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on February 23, 2022.

Findings of Fact

Applicant admitted all of the allegations in the SOR, with explanations. I have incorporated those admissions into my findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 38 years old. He is unmarried and has no children. He earned a bachelor's degree in 2006 and has worked for a federal contractor since May 2017. (Tr. 72-73; GE 1)

In approximately 2000, Applicant was diagnosed with attention deficit/hyperactivity disorder (ADHD) when he was 16 years old. He had a decreased attention span and an inability to focus. He was treated with Adderall and continued to see a doctor while in college. In about 2005, when he was 21 years old, he was diagnosed with Bipolar Disorder. His doctor prescribed various mood stabilizers, including lithium. (Answer to the SOR)

In 2007, Applicant was voluntarily admitted to a hospital for mental health treatment. He was given a diagnosis of Bipolar I Disorder, Manic, Adderall Dependence, and Cannabis Dependence. (SOR ¶ 1.a) He testified that he took Adderall as prescribed and did not abuse it. His history of marijuana use will be discussed below. (Answer to the SOR)

Applicant found that lithium was the most effective medication for his bipolar symptoms, and he took it regularly, as prescribed, beginning in about 2008. From 2010 to 2014, he was voluntarily under the care of Dr. K for mental health treatment (SOR ¶ 1.c). Around June 2013, Dr. K became concerned about Applicant's kidney function due to long-term use of lithium and discontinued it and another prescription he was on. After discontinuing lithium and trying other prescribed medications, Applicant experienced mood destabilization and was hospitalized several times for medicine management. (Tr. 35-36; Answer to the SOR)

Applicant was voluntarily admitted to the hospital in about June 2013, for mental health medication stabilization (SOR ¶ 1.b). The SOR alleges that it was because he discontinued use of his medication two months before and was experiencing paranoia and delusions. The discontinuation of his medicine, lithium, was pursuant to his doctor's

orders. The discharge diagnosis from the hospital was Bipolar Disorder and Attention Deficit Disorder by History. (Tr. 35-36; Answer to SOR)

Applicant voluntarily admitted himself to the hospital in about May 2014. He was traveling at the time and was in a different state. He began to experience adverse effects from the recent changes to his medication and went to the emergency room. He advised the medical professionals that he was having problems with his medication and was concerned for his well-being. He contacted his family, his emergency contact, and told them his concerns. Changes were made to his medication, but he indicated it was only temporarily successful at that time. His discharge diagnosis was Bipolar I Disorder, Manic, Severe with Psychotic Behavior, and Attention Deficit Disorder (SOR ¶ 1.d). (Answer to SOR)

Later in 2014, Applicant moved to a new state and received treatment for his bipolar disorder from Dr. S, a psychiatrist, from about August 2014 to January 2015 (SOR ¶ 1.e). Dr. S tried different medications with limited success. Applicant stated in his SOR answer that this was the first time he had a relatively short period of treatment with a doctor because he had moved to a new city. (Answer to SOR)

Applicant voluntarily admitted himself to a hospital in January 2015 under the care of Dr. S. He felt his move to a new state had exacerbated his bipolar disorder (SOR ¶ 1.g). The discharged diagnosis was Bipolar I Disorder, most recent episode manic, severe, without psychotic features, and Cannabis Abuse. Applicant stated in his SOR answer that he did not feel like it was an acute diagnosis or that Dr. S's course of treatment was sufficiently managing his disorder. (SOR ¶ 1.g). He then decided to move back to his home state where there were more medical options, and he had a stronger support system. (Answer to SOR)

From August 2014 to February 2015, while Applicant was being treated by Dr. S, he was also seeing a non-psychiatric mental health professional, Ms. H. He found she presented a different approach to treating his condition and made him consider the non-medical and psychological aspects of his disorder, which he found beneficial (SOR ¶ 1.f). (Answer to SOR)

Applicant moved back to his home state and in approximately April 2015, he voluntarily admitted himself to the hospital for mental health medication management. (SOR ¶ 1.h). He had completed the dosages of the medication prescribed by Dr. S. He was provided by the hospital medical professionals with three months of medication and was referred to a directory of local psychiatrists who took his health insurance. He found the hospital stay productive and beneficial. (Answer to SOR)

From the directory of local psychiatrists, Applicant sought mental health treatment from Dr. F and saw her from July 2015 to November 2015 (SOR ¶ 1.i). He selected this provider because the practice accepted his health insurance, and he wanted to go to a general medical practice. He stated in his SOR answer that it was a horrible experience. He was prescribed a high dose of a strong medication that had potential adverse side

effects. He had a strong physical reaction to the medicine, which led him to believe he had been misdiagnosed and mistreated. Because of his experience, he changed doctors. Dr. F diagnosed him with Other Stimulant Abuse, Schizoaffective Disorder Bipolar Type, Cannabis Dependence, and Alcohol Abuse. Applicant stated in his SOR answer that he does not know what “other stimulant abuse” means and that he does not believe he has a schizoaffective disorder, bipolar type. He said he would not be able to function at his job with that condition. He stated that he did not misuse medications or take ones not prescribed. He does not abuse alcohol. He testified that Dr. F misdiagnosed him and put him on so much medication that he felt like a zombie. Shortly after his treatment with her, he saw Dr. C. He admitted he was using cannabis before he began treatment with Dr. F, but had not used it since before he applied for a security clearance. He admits he uses alcohol, but it has never been a problem, in terms of his mental or physical health, his career, or his personal life. (Tr. 29-31; Answer to SOR)

Applicant began seeing Dr. C in December 2015 and has continued to see him (SOR ¶ 1.j). He stated in his SOR answer that the treatment under Dr. C’s care has been a “game changer” for him and successful. He has had no major issues and his bipolar disorder and ADHD are under control. He takes his medication as prescribed and maintains regular appointments with Dr. C. He has developed a strong relationship with Dr. C, who is responsive to his medical issues. Applicant is confident that he will continue to have success with Dr. C. (Answer to SOR)

Applicant stated in his SOR answer and his testimony that he takes treatment for his bipolar disorder seriously. He takes responsibility for all of his conduct. He stated his bipolar disorder has not and will not cause a significant defect in his psychological, social, and occupational functioning. He has been under Dr. C’s continuous care since 2015, and his condition has been under control and stable. Dr. C has not diagnosed him with Schizoaffective Bipolar Disorder during his course of care since 2015. (Tr. 32-34; AE A; Answer to SOR)

A letter from Dr. C confirms Applicant is his patient. He stated Applicant has been attending his monthly appointments and taking his medications as prescribed. He stated that Applicant’s condition has been stable in recent years. (AE A; Answer to SOR)

Applicant admitted he began using marijuana when he was 15 years old and was using it daily for a significant period of time. He used it regularly throughout college. From 2007 to 2015, marijuana was a significant part of his life, and he used it to self-medicate. His medical records note that marijuana use was a treatment concern. Applicant reduced his use in 2015 because it was no longer part of his lifestyle and he had concerns about its use and his mental health. Eventually, he stopped using it. He credibly testified that he has not used marijuana since 2017. Some of the states where Applicant used marijuana had legalized it’s use under their state laws. (Tr. 25-26; GE 8)

Applicant was not honest during his background interview about his marijuana use. When confronted by the investigator, he disclosed he started using it in 2013, which was untrue. At some point, he was told by doctors to stop using marijuana as it could increase

his bipolar symptoms. During his testimony, Applicant initially attempted to minimize the severity of his prior use, but he admitted he used it throughout high school, but not regularly. He used it frequently in college. He reduced his use in 2006, and continued to use it on a regular basis until 2015. He used it a couple of times in 2016 and 2017. (Tr. 49-62; GE 8)

A psychological evaluation was conducted in April 2020 by a government approved licensed clinical psychologist, Dr. B. She based her opinion on Applicant's medical records showing he had been in and out of treatment for bipolar disorder and schizoaffective disorder, and he had a history of psychiatric hospitalizations. She noted that Dr. F, one of Applicant's previous treating physicians, provided this diagnosis in 2015, after seeing him for five months in 2015. None of his other treating physicians diagnosed him with schizoaffective disorder. In addition, Dr. B noted that "although his current psychiatrist gave a favorable medical opinion, three previous doctors/therapist did not recommend that he be adjudicated favorably, and they noted that [Applicant] has a condition that could impair his judgment, reliability, and/or ability to safeguard classified information." (Tr. 29; GE 7)

Dr. B did not identify the providers who made those recommendations or when they were made. Applicant does not know which providers are being referred to by Dr. B. According to his record, Dr. S, a previous mental health provider, opined that Applicant's prognosis was good, if he complied with his treatment plan. Ms. H. opined that Applicant's condition could interfere with his judgment, if he did not follow his treatment plan. The third referenced provider is unknown, but may be the doctor Applicant saw in January 2015, during a hospital stay, who included in his notes "judgment remains impaired due to current mental state." (Tr. 29-32; GE 7, 8)

The medical records and evidence noted in GE 2, 3, 4, 5, 6, and 8, do not contain any statements by mental health providers corroborating Dr. B's assertion that other providers did not recommend Applicant's security clearance be adjudicated favorably because he has a condition that impaired his judgment, reliability, and/or ability to safeguard classified information.

Applicant reported in his response to government interrogatories and during his testimony that Dr. B said she would contact Dr. C, his treating physician for the past seven years for information about his medical history. He said that he had spoken to Dr. C in July 2020, and Dr. B had not contacted him before she issued her report. (Tr. 28; GE 8)

Applicant testified that Dr. B's report reflects inaccuracies from information he provided to her. He clarified that his current diagnosis is bipolar disorder and ADHD. He disputes that he misused medications. Dr. B noted that her opinion was also based on Applicant's financial problems, adverse opinions from three previous providers, and insubordination and personality conflicts with colleagues and supervisors at work, among other things. (Tr. 20)

Applicant explained that he told Dr. B that he was prescribed one to two tablets of a medication to take in the morning and one tablet at night. Sometimes he took a half tablet in the morning and one tablet at night. If he felt he was under acute stress, he would take a whole tablet in the morning, as prescribed. Dr. B indicated in her report that he slipped up and sometimes took more medicine than prescribed. Applicant disagrees with her statement. (Tr. 26-27; GE 7)

During Applicant's February 2018 interview with a government investigator, it was brought to his attention that in 2016 he had two delinquent debts in collection. One credit card debt for \$500 and another medical bill for \$107. He was unaware of the debts and when the credit card company contacted him, he paid the debt. He also was unaware of the medical debt because it was sent to the wrong address. He paid it. He has no other financial issues. It is unknown what financial problems Dr. B is referring to. (GE 8)

Dr. B reported in her opinion that Applicant had issues at work with colleagues and a former supervisor. During Applicant's 2018 background interview, he disclosed he had a personality conflict with a supervisor where he was employed in 2016. He did not receive a bad performance evaluation, but he believes his request for a raise had something to do with him leaving. He testified that his supervisor embarrassed him in front of colleagues, which caused him to act emotionally. He walked into her office one day, and she commented that he smelled and made her want to vomit. Applicant explained that at the time he was a smoker. He was never disciplined for his conduct and he never disclosed confidential information. He left this employment by mutual agreement. He concurred that he had some challenges at this company. Dr. B noted that Applicant has been employed with his current company since May 2017, almost three years at the time of his evaluation. (Tr. 21-25, 67)

Applicant also disputed Dr. B's references that Applicant reported a family history of involvement with the KKK and other racist organizations in June 2013. The medical record reflects the following entry for past history: "He has a family history of suicide-both mom and dad (racism, KKK, attempts)." The entry was made by a doctor during a hospital stay. No additional information is provided about this entry. (GE 7, 8). Applicant testified that he has no involvement with hate groups and that his family is Jewish and this reference is untrue. (Tr. 66)

Dr. B had Applicant complete a Personality Assessment Inventory test and a Positive Impression Management test. Applicant testified that he is not Dr. B's patient and he had a short interview with Dr. B one time by videoconference. His treating physician continues to be Dr. C. (GE 7)

Based on the above psychological testing, interview, and review of Applicant's medical records, Dr. B opined in her April 2020 evaluation that Applicant had diagnosable mental health conditions: Bipolar I Disorder (severe, with psychotic features), ADHD (combined presentation), and Cannabis Use Disorder (by history, moderate, in sustained remission. She concluded:

Taken together, the risk of future hospitalizations seems moderate. Although [Applicant's] current treatment provider gave a favorable prognosis, his current presentation, as well as his personal and behavioral health history must be taken into account (e.g. numerous psychiatric hospitalizations, adverse medical opinions from three former providers, abuse of prescription medications, deny history of illegal drug use, financial problems, insubordination/personality conflicts with colleagues and supervisors at work, etc.). (GE 7)

Dr. B acknowledged that in recent years Applicant seems to have gained some insight and is balanced of late, but his previous pattern of behavior must not be overlooked. She concluded that Applicant presents with conditions that could pose a significant risk to national security. (GE 7)

In December 2021, Applicant's attorneys requested Dr. NS, a forensic and board certified general psychiatrist, conduct an evaluation of Applicant with the purpose of answering the following questions: Does Applicant present with any condition that could pose a significant risk to national security?; Does Applicant have any medical, psychological, psychiatric, emotional, or substance use conditions which could impair his judgment, reliability, or trustworthiness; and Whether Applicant has a propensity for behavior that could pose a risk to national security, such as disclosing confidential information to unauthorized persons due to his mental health conditions.

Dr. NS advised Applicant that she was conducting a psychiatric evaluation and no doctor-patient relationship would be established. She also said that information Applicant conveyed could be either beneficial or detrimental and could be included in her report which would be forwarded to his attorneys. She told him she was providing an independent evaluation. (Tr. 42; AE H)

In formulating her evaluation and report, Dr. NS noted her sources of information as follows:

- In person clinical interview of Applicant (December 11, 2021) of 1.5 hours' duration.
- Clinical interview via videoconference of Applicant (December 28, 2021) of 35 minutes' duration.
- Phone interview with Mr. K, Applicant's current supervisor (December 28, 2021).
- Phone interview with Dr. C, Applicant's treating physician (December 20, 2021).
- Phone interview with both parents of Applicant (December 17, 2021).
- Outpatient mental health progress notes from Dr. C from December 2015 to August 2021.

- Letter from DOHA Department Counsel (April 21, 2021).
- Summary of Psychological Evaluation by Dr. B (April 9, 2020).
- Records of DOD CAF subject interview investigation (May 11, 2018 until June 6, 2018).
- Current employer performance appraisals from May 2020-April 2021; May 2019 to May 2020; May 2018-May 2019; May 2017 to June 2018.
- Outpatient mental health progress notes from Dr. S from August 2014 to January 2015.
- Medical records from Applicant's psychiatric hospitalizations from 2007 to 2015.

Dr. NS noted that during her interview with Applicant, he acknowledged his past marijuana use starting when he was 15 and at one point using it daily. He has not used marijuana since 2017. One hospital record notes his misuse of Adderall during periods of bipolar disorder. Applicant reported he has complied with his prescribed medicine regiment and Dr. C verified this. He reported he drank alcohol heavily in college, and his current rate of consumption is two drinks per week. (AE H)

Applicant disclosed his past psychiatric history, which is consistent with his prior medical records. The records report as follow: He was diagnosed with ADHD when he was 16 and treated with Adderall; diagnosed with a bipolar disorder when he was 21 and prescribed several medications, including lithium, which was effective in treating his symptoms; treated by Dr. K from 2010 to 2014, and taken off lithium due to renal complications; destabilization and several hospitalizations; under the care of various physicians in three different states; began seeing Dr. C in December 2015; stable on medications and has not required further hospitalizations. He sees Dr. C 11-13 times a year. (AE H)

Dr. NS reviewed treatment notes from doctors and medical records from each of Applicant's past hospitalizations, which included the diagnoses made at the time of admission; the drugs he was prescribed; his state of being; observations of Applicant's behavior at the time; and opinions of the providers. Dr. NS noted that both Dr. S and Ms. H treatment notes reflected that Applicant's prognosis was good if he remained on his treatment plan. (AE H)

Dr. NS reviewed Dr. C's treatment notes from December 2015, which reflected Applicant was being prescribed different medicines to stabilize his condition. In February 2016, he noted Applicant was stable. Dr. C considered a diagnosis of major depression as a primary concern, along with ADHD, and cannabis use disorder. In May 2016, he noted Applicant reduced his marijuana use and his medications were adjusted. In June 2016, Applicant had mild depression. In July 2016, Dr. C noted euthymic and stable mood, and diagnosed him with Bipolar Disorder, type 2. Notes from 2019 report that Applicant's

mood was stable, but his alcohol intake had increased. He was advised to reduce it. He was not diagnosed with an alcohol use disorder. In 2020, Applicant had seven appointments with Dr. C from February through October. The records reflect stable moods, no evidence of safety concerns, no evidence of psychosis, and no evidence of substance abuse. The last available note from Dr. C was from August 2021, which noted that Applicant's mood was stable and no medication change was recommended. (AE H)

Dr. NS's December 2021 report includes a section titled - History of Present Illness. It states that Applicant does not present with any symptoms of depression, bipolar disorder, psychosis, anxiety or panic attacks. His previous symptoms are well managed with his current medication program. There was no evidence of interpersonal difficulties, work-related concerns, self-injurious behavior, or safety concerns. His ADHD is under control with medication. There is no evidence of a personality disorder that can be manifested as maladaptive and rigid patterns of thinking, impulsive actions, self-harming behaviors, chaotic inter-personal relationships. Applicant has not demonstrated behavior consistent with these. (AE H)

Dr. NS noted that a diagnosis of Schizoaffective Disorder was considered early in Applicant's illness, but was ruled out. Also ruled out were other psychiatric disorders and phobias. Applicant's current state of being is positive, and he derives satisfaction from his work accomplishments despite having bipolar disorder-related challenges earlier in his life. He believes having to overcome these challenges has taught him valuable lessons. He is on the board of directors of a family foundation. He acknowledges he is a bit cocky and can brag about himself. (AE H)

Dr. NS conducted a mental status examination of Applicant. She observed his thought processes were logical, rational and cohesive. The examination did not reveal any expansive ideations, grandiosity, impulsivity or delusional thinking. He did not display deficits in his cognitive processes. Applicant's insight was excellent. He understood his illness and his need for treatment. His judgment was excellent as evidenced by his continued adherence with medications, sobriety from substances and interpersonal and occupational performance. (AE H)

Dr. NS spoke with Mr. K, Applicant's current supervisor, who described Applicant as an exemplary employee and his work performance has been stellar. He has never known Applicant to have oppositional behaviors or having an inability to work in a team setting or for being disruptive at work. He never felt Applicant had problems with authority or been distracted or late with assignments. He had no concerns about Applicant's ability to maintain confidentiality. Applicant's performant appraisals since May 2017 indicated excellence and initiative at work. (AE H)

Dr. NS's opinion and recommendation regarding Applicant's current mental health conditions based on the security clearance requirements are as follows:

Applicant meets the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for Bipolar Disorder, type 1, most recent episode depressed

without psychotic features in full remission. Dr. NS reported this diagnosis is based on historical symptoms, noting Applicant's past episodes and hospitalizations for medicine management. Applicant achieved stability in late 2015, had some depressive symptoms in 2016, and has had no mood episodes since. Applicant has a history of recognizing early sign of issues and reaching out to providers when needed. He has maintained medication adherence and stability since 2015. He has excelled in his career, demonstrated excellent work performance without any derogatory behavior and maintains healthy relationships. His diagnosis of Bipolar Disorder has had no negative impact on his occupational or interpersonal relationships in over five years. "As long as [Applicant] maintains medication adherence and good communication with his treating providers, his prognosis is good." (AE H)

Applicant meets the DSM-5 criteria for ADHD, predominantly inattention presentation. Dr. NS noted that Applicant has been on two medications for it and his condition is stable. The only misuse of Adderall was during adolescence. Since then he has been compliant with good effect and good adherence. Dr. NS noted that this diagnosis is based on historical symptomatology, as Applicant is clinically stable on medications. She noted that, when Applicant was diagnosed with ADHD as an adolescent, he did not manifest behavior disinhibition, impulsivity, or novelty seeking behaviors. Instead, he demonstrated good behavior, attendance, peer acceptance, and good academic attainment in school. (AE H)

Applicant meets the DSM-5 criteria for Cannabis Use Disorder, mild, in full sustained remission. Dr. NS noted that Applicant has not used marijuana for years. He used it to cope with symptoms of his bipolar disorder after lithium was discontinued in 2013. Applicant does not endorse heavy alcohol use or any other drugs. Based on all available information, Applicant does not meet the criteria for Alcohol Use Disorder. (AE H)

Applicant meets the DSM-5 criteria for Tobacco Use Disorder, moderate. Dr. NS noted that this has no bearing on Applicant's mental health conditions based on all available records. (AE H)

Dr. NS found that Applicant has demonstrated emotional and psychiatric stability for over five years, medication adherence, abstinence from cannabis, consistency of treatment with Dr. C, excellent work performance since 2017, and stable interpersonal relationships. She concluded:

Thus, he does not pose any risks to national security based on his mental health conditions at this time. However, it is recommended that he continue to follow up with his psychiatrist regularly and continue to adhere with medications and abstain from Cannabis and Alcohol to maintain remission of his conditions. (AE H)

Applicant included copies of performance evaluations from 2017 through 2021. His 2017 through 2020 overall rating was "exceeds expectations," the second highest rating.

His 2021 rating was “exceptional,” the highest rating. In 2019, Applicant received his company’s “major sustained performance award” for his superlative efforts in establishing a corporate program management office. In 2020, he was recognized as an outstanding team member for achievement and contributions to his team. (AE B, C, D, E, F, G)

Applicant’s current supervisor testified on his behalf. Applicant has worked for him since 2018 and has daily interaction with him. He describes him as an outstanding employee and is one of his top employees. He is professional and has exhibited good demeanor. He holds himself accountable and is able to handle all of the issues that arise. He believes Applicant is trustworthy and can protect classified and sensitive information. Applicant testified that he has an excellent relationship with his supervisor and considers him a mentor. (Tr. 41, 74-79)

The corporate support manager, who serves as the facility security officer and is the human resource manager, testified. She worked with hiring Applicant five years ago and they are on the same team. She interacts with Applicant at least weekly and sometimes daily. She described him as a dedicated employee focused on improving the company. He is enthusiastic in his work. He is passionate, driven, accountable and responsible. She believes he is trustworthy and capable of protecting information. (Tr. 80-85)

Applicant’s mother testified on Applicant’s behalf. She has noticed a significant change in Applicant’s demeanor since 2015. He is happier, responsible, and has found a career he is excited about. In the past years he has become stronger. He is committed to his own well-being. She believes the changes are due to finding the right doctor and maintaining compliance with his medication requirements. She noticed that he is proud of the work he is doing and is motivated to do well. He feels appreciated and valued. (Tr. 86-92)

Applicant’s brother testified on behalf of Applicant. He is a retired military member with 29 years of service and holds a Top Secret security clearance. He works as a program manager for a military component. In the past few years, since his retirement from the military, he and Applicant have had more interaction. He has seen a positive change in his brother in the last several years. Based on his background and experience dealing with classified information, he believes Applicant can maintain the requirements to hold a security clearance. (Tr. 92-97)

Applicant credibly testified that he has been consistently treated by Dr. C since 2015, and he is following the prescribed treatment plan. He stated: “It’s very important to me, I take it very seriously. The success that I’ve achieved, the impact of following the treatment has been monumental in positive outcomes for my life that I take very seriously and maintain.” (Tr. 32) He intends to follow his doctor’s treatment plans. He does not intend to use illegal drugs in the future. He believes he is capable of protecting classified and sensitive information. (Tr. 32, 41; 43-44; AE A)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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 interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG § 28, and the following are potentially applicable:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other individual 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 behavior;
- (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.

Applicant has a history of voluntary psychiatric hospitalizations beginning in 2007, which were related to medication issues. In April 2020 Dr. B, a duly qualified mental health professional, opined that Applicant has a condition that may impair his judgment, stability, reliability, or trustworthiness and is a risk to national security. I find the disqualifying conditions AG §§ 28 (b) and 28(c) apply. The records note some of the behavior described under AG § 28(a). Although none of that behavior has been observed since before 2015, I find that this disqualifying condition marginally applies.

The evidence documents that Applicant has consistently been compliant with seeking medical treatment for managing his mental health. There is insufficient evidence to conclude he failed to follow prescribed treatment plans related to his diagnosed psychological or psychiatric condition. I find AG ¶ 28(d) does not apply.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

- (a) the identified condition is readily controllable 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.

There are competing opinions between Dr. B and Dr. NS regarding Applicant's mental fitness to hold a security clearance. Those differences are noted below:

Dr. NS is not employed by the government, and she was hired by Applicant in December 2021. In reaching her final opinion, she did the following: a clinical interview of Applicant both in person and through a videoconference; interviewed Dr. C and reviewed his notes; reviewed all of Applicant's medical records, contained in this record; interviewed Applicant's current supervisor; interviewed his parents; reviewed Dr. B's evaluation; reviewed Applicant's background interview with government investigators; reviewed outpatient records from Dr. S; reviewed medical records of Applicant's hospitalizations; and reviewed Applicant's most recent performance evaluations.

In reaching her opinion in April 2020, Dr. B reviewed most of the same documents that Dr. NS did, but she did not conduct an in person interview with Applicant and did not interview those people who have had the closest contact with Applicant in the last five years. Most probative, is the fact that she did not contact Dr. C, Applicant's treating

physician for the past seven years, despite telling Applicant that she would do so, and would also contact Applicant's supervisor with whom he has daily contact.

Based on those critical omissions and the fact that Dr. B evaluated Applicant more than a year prior to Dr. NS's evaluation, I find that Dr. NS's opinion to be more recent, more thorough, and more persuasive. Hence, I am relying on it for purposes of reaching conclusions in this case. I acknowledge that Dr. NS was not hired by the government, but that fact does not significantly diminish my assessment of her report.

Applicant's conditions, Bipolar Disorder and ADHD are readily controllable with treatment. Applicant has demonstrated ongoing and consistent compliance with a treatment plan since 2015. AG ¶ 29(a) applies.

Applicant has consistently shown, since he was diagnosed with mental health conditions, that he voluntarily seeks treatment to manage his illness. For a significant period of time, after going off lithium, the doctors had difficulty finding the right medications to manage his problems. As a consequence, he voluntarily sought medical help through the hospital. He has never denied his mental health conditions, nor indicated that he does not take his condition seriously. In 2015, Dr. C was able to find the right balance of medications, and Applicant has been compliant with the recommended treatment plan and given a favorable prognosis by Dr. C and Dr. NS. AG ¶ 20(b) applies.

Based on all of the evidence presented, I find that Dr. NS's recent opinion that Applicant's mental health conditions are under control or in remission, and there is a low probability of recurrence, provided he complies with his treatment plan, as most probative. I have considered that Dr. NS is not employed by the Government. Dr. NS's evaluation was unbiased, independent, thorough and more recent than Dr. B's. The evidence is sufficient to conclude AG ¶ 20(c) applies, despite Dr. NS not being employed by the Government.

AG ¶ 29(d) does not apply because although Applicant's condition is under control and being treated, it is not temporary, and it is still a condition that has to be managed. There is sufficient evidence to conclude that because Applicant has been compliant with his treatment plan, has shown no recent indications of a problem, and has been under a doctor's care for seven years that there is no evidence of a current problem. I find AG ¶ 29(e) applies.

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 have incorporated my comments under Guideline I in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 38 years old. I have considered his extensive history of mental health issues since adolescence. I have weighed the seriousness of his conditions with the actions he has taken to control them. He self-reports when he has concerns about his mental health and medications. He has been consistently under doctors' care since he was diagnosed with mental health conditions. Most importantly, he has been compliant with recommended treatment plans for the past seven years, and there is no evidence that his conditions have caused him physical, mental, or legal problems. In fact, his employer compliments his performance, and his family attests to his change in behavior and attitude over the past seven years. After listening to his testimony and observing his demeanor, I am confident that Applicant will promptly seek treatment if he encounters medical issues. Applicant has met his burden of persuasion. The record evidence leaves me with no 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 under Guideline I, psychological conditions.

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.k: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge