



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



In the matter of:)	
)	
)	ISCR Case No. 21-02199
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline I, psychological conditions. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On November 29, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The DOD 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.

With an undated submission, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 21, 2022, and the

hearing was held as scheduled on April 12, 2022. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter was marked as HE II. Applicant testified, but did not offer any exhibits at the hearing, and he chose not to keep the record open for additional submissions. DOHA received the hearing transcript (Tr.) on April 20, 2022.

Procedural Issues

Two procedural issues came up at the hearing. During Applicant's testimony, he stated that he had voluntarily terminated his employment with the federal contractor who is sponsoring him for a security clearance. He also clarified that he was subject to reemployment with that contractor should his clearance be granted. Department Counsel proffered that he had his administrative office check Applicant's employment/jurisdictional status while we were in the hearing (presumably using the DISS/CATS database information), and he confirmed that Applicant was still being sponsored for a security clearance. Based upon the foregoing representation by Department Counsel, I find that DOHA has jurisdiction over this case. (Tr. 20-21, 46)

The second issue concerns the Government's concession and decision not to go forward with the allegations stated in SOR ¶¶ 1.a - 1.c. because they do not constitute disqualifying behavior under Guideline I. Based upon Department Counsel's position and my own analysis of the allegations, I find in favor of Applicant concerning SOR ¶¶ 1.a - 1.c as not establishing disqualifying conduct under Guideline I. (Tr. 9-10)

Findings of Fact

In Applicant's answer, he admitted all 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 29 years old. He is married and has four young children, all under age seven. He worked for a federal contractor as an information technology specialist starting in April 2019, but recently left their employment to pursue other job opportunities. As stated above, he is subject to rehire by this contractor if his clearance is granted. He served in the Army for eight years before receiving an honorable discharge at the end of his enlistment. He holds a bachelor's degree. (Tr. 5, 17-19; GE 1)

The SOR alleged Applicant: (1) voluntarily sought inpatient treatment in October 2018 and received a working diagnosis of major depressive disorder, severe, and was considered a high safety risk because he presented with suicide ideations; (2) was seen in a triage clinic after his inpatient hospitalization in October 2018 and reported having hallucinations by seeing apparitions; (3) was evaluated in July 2021 by a clinical psychologist who diagnosed him with persistent depressive disorder, with mood congruent psychotic features and schizoaffective disorder, depressive type; he further

gave a guarded prognosis to Applicant. (SOR ¶¶ 1.d - 1.f) (Note: as indicated above, SOR ¶¶ 1.a - 1.c are decided in favor of Applicant and will not be further addressed).

Applicant reported a history of psychological issues that started when he was approximately 8 to 10 years old. He testified that at that age, he first saw apparitions that he described as “spiritual beings” that were sometimes solid and sometimes floating. He also saw a self-described demon with horns who spoke to him. He stated that both his mother and grandmother experienced seeing such apparitions. He claims that last time he saw a spiritual being was in 2018, when his wife was in the hospital having their second child. While in the hospital, he claims that he saw a girl walk through a closed elevator. He also admitted that he had suicidal ideations starting when he was 10 or 11 years old. These were mostly thoughts about committing suicide, but on two occasions he acted out his thoughts by cutting his wrists and by jumping off a bridge. He claims not to have acted upon similar thoughts since he was a child. (Tr. 27-30, 33, 35, 38-39)

More recently, his psychological issues presented themselves in 2018, when Applicant was still in the Army. In February 2018, Applicant self-referred to the behavior health clinic (BHC) because he was having passive suicidal thoughts since October or November 2017. He continued seeing providers in the BHC in the following months. Medical records from March 21, 2018, show that he was diagnosed with major depressive disorder. During Applicant’s continuing BHC appointments, in August 2018, he was evaluated for an alcohol use disorder, which was confirmed by a diagnosis, in a mild state. However, Applicant had no duty restrictions. Applicant was seen in the BHC in September 2018 with no significant changes to his situation. On October 11, 2018, Applicant self-referred to the BHC triage clinic and described that he believed his unit was not taking care of him by forcing him to participate in training rather than allowing him to get surgery on his injured shoulder. He told the BHC staff that if he did not get admitted to the hospital, he would cut his wrists. Thereafter, he was escorted to the hospital emergency room. Upon evaluation, Applicant indicated that he had suicidal thoughts once a week and they extended back over the last month. He was admitted to the psychiatric ward of the hospital. During his October 16, 2018 safety check after his discharge from the psychiatric ward, Applicant told his provider that he sees apparitions in the form of a boy or a girl. He claimed to have seen one apparition that day. Applicant’s provider characterized him as having a high risk of self-harm. Applicant has not sought counseling, therapy, or treatment since he left the Army in 2018. When he was asked why he had not sought treatment or counseling when he could easily do so from the Department of Veterans Affairs (VA), he responded “I honestly can’t answer that, sir, I don’t know myself.” He claimed not to have had suicide ideations since 2018. (Tr. 31-32, 39; GE 3)

In July 2021, Applicant underwent a psychological assessment at the request of the DOD CAF. A licensed psychologist (Dr. X) performed the assessment and issued a written report. The assessment consisted of a records review, a one-hour clinical interview, and three hours of psychological testing and interpretation. Dr. X diagnosed Applicant with persistent depressive disorder, with intermittent major depressive

episodes; with mood congruent psychotic features (Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-5) 300.4) and with schizoaffective disorder, depressive type (DSM-5 250.1). Applicant's prognosis was characterized as "guarded." His psychological testing suggested that he is likely to be "highly treatment resistant." Applicant agreed with Dr. X's assessment. Dr. X concluded that "subject's mental health seems precarious enough to create a potential risk to national security." (Tr. 39-40; GE 2)

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. Three are potentially applicable in this case:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and
- (c) voluntary or involuntary inpatient hospitalization.

Applicant's behavior in expressing suicidal ideations in 2018 and his belief in seeing apparitions cast doubt on his judgment, reliability, and trustworthiness. He was voluntarily hospitalized in the psychiatric ward in 2018 for expressing his intent to do self-harm. Both AG ¶¶ 28(a) and 28(c) apply. A mental health professional (Dr. X) diagnosed Applicant with persistent depressive disorder and with schizoaffective disorder. He gave Applicant a “guarded” prognosis and determined that he was treatment resistant. Taking these factors together, it can be inferred to equate to an

opinion that Applicant has a condition that impairs his judgment, reliability, and trustworthiness. AG ¶ 28(b) applies.

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

- (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.

Applicant admitted that he has not received treatment since 2018, and he cannot explain why he has not done so. AG ¶¶ 29(a) and 29(b) do not apply. Applicant did not present evidence of a medical opinion contrary to Dr. X's, who gave him a guarded prognosis and indicated he was treatment resistant. AG ¶ 29(c) does not apply. Applicant has seen apparitions and attempted or thought of self-harm dating back to when he was a child, indicating his conditions are not temporary, nor have they been resolved. AG ¶ 29(d) does not apply. Based upon Dr. X's 2021 diagnoses and prognosis, Applicant still has current psychological problems. AG ¶ 29(e) does not apply.

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 honorable military service, and the treatment he received in 2018. However, I also considered that he has significant diagnosed medical conditions that, without treatment, could impair his judgment. Applicant failed to provide sufficient evidence to mitigate the psychological conditions security concerns. If Applicant were to receive proper medical treatment for his diagnosed conditions in the future, that action would certainly be positively viewed were he to submit a reapplication.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge