



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



In the matter of:)	
)	
)	ISCR Case No: 21-02556
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany White, Esquire, Department Counsel
For Applicant: *Pro se*
08/12/2022

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Psychological Conditions guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline I (Psychological Conditions). Applicant answered the SOR on December 29, 2021, and February 5, 2022 (Answer). In his Answer, he requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2)

On March 2, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on March 3, 2022, and received by him on April 4, 2022. The FORM notified Applicant that he had an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit additional documents or file a response to the FORM.

On June 16, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. I received the case file on June 22, 2022. Items 1 through 8 are admitted into evidence.

Findings of Fact

In his December 2021 and February 2022 Answers, Applicant admitted the allegations contained in the SOR ¶¶ 1.a, 1.b, and 1.c. His admissions are incorporated into these findings of fact.

Applicant is 29 years old and unmarried. He earned a bachelor's degree May 2015. He has worked for his current employer, a defense contractor, since April 2019. Prior to this position, he worked for non-government employers and experienced periods of unemployment. (Item 3)

On May 13, 2019, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). In it, he disclosed that between August 2018 and April 2019, he was diagnosed with schizophrenia and was prescribed medication for it. (Item 3)

Applicant has been receiving psychiatric treatment for mental health issues since 2015, when he was 23 years old and experienced psychotic symptoms. A psychiatrist diagnosed him with schizophrenia and prescribed an atypical antipsychotic. He subsequently began treatment with another psychiatrist, who diagnosed him with Psychotic Disorder, Not Otherwise Specified, and continued his antipsychotic medication. (Item 7)

After moving to a different state, Applicant began treatment with a new psychiatrist, Dr. S. He saw her from October 2019 until March 2020. She diagnosed him with Anxiety Disorder, Unspecified, Brief Psychotic Disorder, and Brief Reactive Psychosis. (Item 4) In her note of March 2020, she mentioned that he is not interested in psychotherapy. She found that he appeared pleasant and acted appropriately. The only medication he was on at that time was a non-addictive sleep agent. (Item 4)

Pursuant to the disclosure of his mental health diagnosis and treatment in his May 2019 e-QIP, the CAF referred Applicant for a psychological evaluation. In June 2021, he participated in a psychological evaluation with Dr. E., a clinical psychologist. Dr. E. performed a clinical interview, a review of Applicant's medical records, and administered psychological testing. Dr. E. noted that Applicant continued to treat with Dr. S., but was no longer taking medications. During the interview, Applicant stated that he had recently been feeling "dark and depressed." (Item 7) He experienced a major depressive episode about once a year. Although his depression is an ongoing problem, he thought his anxiety

is a larger problem. The psychological testing indicated that Applicant is bothered by “prominent unhappiness and dysphoria.” (*Id.*)

Based on the data available to him, Dr. E. diagnosed Applicant with “Major Depressive Disorder, moderate; Generalized anxiety Disorder; and Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.” (Item 7) Dr. E. opined that Applicant’s “difficulties with mood, anxiety, and Schizophrenia spectrum symptoms collectively appear to negatively impact his concentration, decision making and stress tolerance.” (*Id.*) He stated that Applicant’s “active mental health symptoms, interpersonal style, and greatly heightened vulnerability to stress suggest his conditions could negatively impact his reliability, trustworthiness and judgment in safeguarding national security information or working in classified settings.” (*Id.*)

Policies

The national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline I: Psychological Conditions

AG ¶ 27 expresses the security concerns pertaining to psychological conditions:

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 describes a condition that could raise a security concern and may be disqualifying in this case:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

In June 2021, Dr. E., a clinical psychologist, diagnosed Applicant with conditions that may impair his judgment, stability, reliability and trustworthiness. He based his opinion on a psychological evaluation, which included a clinical interview, psychological testing, and review of Applicant's medical records from treating psychiatrists who found psychiatric disorders. The evidence establishes the above disqualifying condition.

AG ¶ 29 sets out conditions that could mitigate security concerns raised under this guideline:

- (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 is insufficient evidence to establish mitigation under any of the above conditions. Although Applicant's mental health disorders may be controlled with treatment, he did not submit documentation from his treating psychiatrist or another qualified mental health professional that he was in compliance with a treatment plan at the time of the June 2021 evaluation. He did not present evidence that he is participating in counseling, is amenable to treatment, and has received a favorable prognosis by a duly qualified mental health professional. He did not submit an opinion from a qualified mental health professional that since June 2021 his psychiatric conditions are resolved or under control.

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.

According to 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 applicable guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is young man who has experienced psychological issues since 2015. Despite years of treatment, he continues to suffer from mental health conditions that may interfere with his judgment, trustworthiness, and ability to reliably hold a security clearance according to a June 2021 clinical evaluation. At this time, Applicant failed to meet his burden to mitigate the concerns arising under the guidelines governing U.S. national security eligibility.

Formal Findings

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

Paragraph 1, Guideline 1:

AGAINST APPLICANT

Subparagraphs 1.a through 1.c:

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 or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

SHARI DAM
Administrative Judge