



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



In the matter of: )  
)  
) ISCR Case No. 20-00004  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: [Name Redacted], Personal Representative

08/16/2022

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**Decision**

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MURPHY, Braden M., Administrative Judge:

The 2019 psychological evaluation which led to the Statement of Reasons establishes that Applicant has a current psychological condition that may impact her judgment, reliability or trustworthiness. Applicant did not provide sufficient information to mitigate resulting security concerns under Guideline I (psychological conditions). Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 23, 2017. On March 9, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The DOD took the action under Executive Order (Exec. Or.) 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* (AG) effective within the DOD as of June 8, 2017.

Applicant answered the SOR on May 7, 2020. She elected a decision on the administrative (written) record, without a hearing before an administrative judge. The case was assigned to the Department Counsel's office of the Defense Office of Hearings and Appeals (DOHA) for review on July 14, 2020. On July 20, 2020, Department Counsel exercised their right to request a hearing in the case, under Paragraph E3.1.7 of Enclosure 3 (Additional Procedural Guidance) of DOD Directive 5220.6, and informed Applicant by letter. (Hearing Exhibits (HE) I and II) Department Counsel mailed the proposed Government exhibits to Applicant two days later. (HE III)

The case was initially assigned to another DOHA administrative judge. On April 20, 2022, DOHA issued a notice scheduling Applicant's hearing for May 17, 2022, to occur in person at a geographic location near where she lived and worked. On April 22, 2022, Department Counsel provided Applicant copies of proposed Government exhibits, by mail, care of her employer's facility security officer (FSO) (also serving as Applicant's personal representative). (HE IV)

On May 4, 2022, Applicant's personal representative requested a continuance so that Applicant could schedule an assessment and provide supporting documentation as part of her case. On May 5, 2022, the initial administrative judge denied the request, largely due to the age of the case ("Since the SOR was issued over two years ago..."). He noted that he would consider granting an extension of time after the hearing "to await the documents." (HE V)

On May 10, 2022, the case was assigned to me, after the initial administrative judge became unavailable due to a family matter, and I informed the parties of my involvement. When the in-person hearing convened on May 17, 2022, as initially scheduled, Applicant's personal representative appeared and indicated that Applicant was not able to attend because she was feeling ill. I therefore continued the hearing until two days later, in the hopes that Applicant would be feeling better by that time. (May 17 Tr. at 1-7) (Since the hearing took place in a location away from DOHA headquarters, issuance of an amended written hearing notice was not practical).

The hearing then re-convened on May 19, 2022, with all parties present, including Department Counsel, Applicant's personal representative, and Applicant, who was feeling better. (Tr. 10-12) The hearing then proceeded as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant and her personal representative both testified. Applicant did not provide any exhibits as part of her case. I left the record open for about six weeks, until July 6, 2022, to allow her the opportunity to submit additional evidence, specifically, an updated psychological assessment. (Tr. 9-10) DOHA received the hearing transcript for the May 19 hearing (Tr.) on June 1, 2022.

## **Post-Hearing correspondence and jurisdiction**

After the hearing, on July 11, 2022, Applicant's personal representative advised that Applicant was not able to provide any additional documents, and she was not sure how long it would take to schedule an appointment for an updated assessment. As a result, she wrote:

We have withdrawn our request for investigation in DISS. [Applicant] has now been placed in a location where she is not required to have a security clearance. Thank you very much for your consideration in this matter. (HE VI)

Since Applicant's hearing has already taken place, DOHA retains jurisdiction over this case even though Applicant no longer has a need for access to classified information. (See ¶¶ 4.4 and 4.41 of Directive 5220.6, and as cited in HE VI). Issuance of this decision is therefore appropriate even though it appears that Applicant no longer requires a security clearance.

## **Findings of Fact**

Applicant admitted the two SOR allegations (SOR ¶¶ 1.a-1.b) with brief comments. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings, Applicant's testimony and the exhibits, I make the following findings of fact.

Applicant is 36 years old. She has a high school diploma and some technical training. (Tr. 26) She has never married. She has two 22-year-old twin sons, born when she was 14 years old. One son lives with her, and one son lives in another state. (Tr. 40-41) Since May 2016, Applicant has worked as a custodian for a defense contractor. Her job involves cleaning offices on a U.S. military facility. She needs a security clearance so she can access certain secure areas on the facility in order to do her job. (GE 1; Tr. 25-29) Applicant also works a night shift job, with her son, as a custodian with another employer. (Tr. 41-42)

In February 2017, Applicant received a psychosocial assessment at behavioral institute W. She was assessed by a licensed master social worker (LMSW). Records indicated that she had received "OP" (Outpatient) treatment at the same facility in 2014-2015. The 2017 assessment noted that Applicant returned to W after she reported "hearing voices and seeing things." Her symptoms grew more severe in the previous three months. (SOR ¶ 1.a) She noted depression and said she could not read due to dyslexia. She reported that she had been physically abused by a boyfriend as a teen, and reported nightmares about prior abuse. (GE 5)

In the February 2017 assessment, Applicant noted significant trauma in her history. She was molested at age 5 by a family friend; her mother went to jail for murder when

Applicant was 12. She was then raised by her aunt, but lived largely in group homes and foster homes. She became sexually active at 12 and pregnant with twins at 14. At the time of the assessment, her children lived elsewhere, and she lived with her father. Applicant was referred to outpatient psychotherapy. She did not appear for her appointment in March 2017, despite a call from the provider the day before. (GE 5) The February 2017 assessment did not include a specific diagnosis.

On her May 2017 SCA, Applicant disclosed unspecified, lifelong mental health treatment, noting that she had been “Admitted as inpatient.” (GE 1 at 24)

In September 2019, during the course of Applicant’s background investigation, the DOD Consolidated Adjudications Facility (DOD CAF) requested that she participate in a psychological evaluation. After a brief delay, Applicant scheduled an appointment for October 2019 and participated as requested. (GE 2, GE 3).

The psychological assessment was conducted by Dr. L, a Ph.D. licensed clinical psychologist and board-certified neuropsychologist. (GE 3, GE 4) The assessment included an interview of Applicant, as well as review of available records and analysis of current psychological results. Only an oral clinical interview was conducted because Applicant said she could not read or write. (GE 3)

Dr. L diagnosed Applicant with “schizophrenia, multiple episodes.” She noted Applicant has a documented history of hallucinations and displays the negative symptoms of schizophrenia, including lack of facial expression, apathy, and dysphoria. Further, “although not observed to be psychotic during this evaluation, [Applicant] has a clear history of psychotic disorder, for which she is not being treated.” (GE 3) (SOR ¶ 1.b)

Dr. L concluded her report as follows:

As such, [Applicant] does have a condition that could impede her trustworthiness, reliability, and judgment. Her prognosis is guarded, as she indicated she is unwilling to undergo mental health treatment. Therefore, there is a significant likelihood of recurrence/exacerbation of psychotic symptoms. (GE 3) (SOR ¶ 1.b)

In answering the SOR in May 2020, Applicant admitted both allegations. As to SOR ¶ 1.a (the 2017 assessment), she wrote, “I agree. I sometimes see shadows of things.” As to SOR ¶ 1.b, she wrote, “I agree. I have scheduled appointments with a psychologist to help with my condition will resume after shutdown.” (Answer to SOR)

Applicant testified that she went for the first assessment in 2017 because she told her family doctor that she was depressed and her doctor referred her for the assessment. (Tr. 32-33) She acknowledged that she did not go to the follow-up appointment; she said they wanted her to take pills and she did not want to do that because pills make her drowsy. They offered counseling instead but Applicant could not afford it since she did

not have health insurance. (Tr. 33) Applicant did not receive mental health treatment between 2011 and 2017. (Tr. 35)

As to the 2017 evaluation, Applicant acknowledged that in 2017 she was hearing voices and seeing shadows, but said she did not experience those sensations before 2017. (Tr. 36) Applicant recalled meeting Dr. L one time, for about 30 minutes.; “She was just asking me a lot of questions.” Applicant had not read the report prior to the hearing, because she cannot read. (Tr. 37) (The hearing was recessed for about 25 minutes so that Applicant’s personal representative could review the report with her) (Tr. 38-39)

Applicant confirmed her answer to SOR ¶ 1.b, that she had scheduled an appointment with a counselor and would pursue scheduling after the COVID-19 shutdown ended. She was continuing to pursue that counseling or assessment with W at the time of the hearing, and said she had an appointment for June 25, 2022. (Tr. 44-45) That appointment did not occur, as her personal representative later advised (as noted above).

Applicant said she has been dyslexic since she as a child. She acknowledged “comprehension problems.” (Tr. 39) She said she prepared her written SOR response with help from her personal representative. (Tr. 43) She also testified that she has a driver’s license and drives onto the facility where she works. (Tr. 28, 49-51) She recognizes street signs and stop signs. She also said she can read at a third-grade level at most, and can recognize words like “Secret,” “Classified,” and “Unclassified.” (Tr. 48) She said she has to see words “over and over again” to comprehend them. (Tr. 49)

At her hearing, Applicant said she is still working at the military facility, but is not allowed to enter secure areas. (Tr. 47-48, 53-55) She said she has been told by her supervisor that if she has contact with classified information, “I [am not] supposed to touch it, look at it, none of that.” (Tr. 47) “If it’s classified, we usually don’t even go in those areas. . . I really don’t have a problem with that because we [are] not allowed . . . as custodians are not allowed in those areas.” (Tr. 47) “If I had a clearance, it’s different.” (Tr. 48) She has gotten in trouble for attendance issues but not for security issues. (Tr. 29-31) Applicant described the process by which she checks in on the base and in her assigned office, before proceeding to her duties. She said, “I love my job because I love to clean.” (Tr. 52)

Applicant testified that she understood what her case was about. (Tr. 55-56) She said she has meetings with counselors every two or three months, and that it was hard to keep regular sessions because of her work schedule. (Tr. 57)

Applicant is not on any medication for her condition currently. She does not like the way the medication makes her feel, since it makes her drowsy, which impacts her work. Her doctor offered her counseling as an alternative. The last time she saw a counselor, however was in 2019. (Tr. 58) Applicant acknowledged that her condition was something she has to deal with, either through counseling or medication. (Tr. 59) Contrary

to Dr. L's conclusion, Applicant indicated that she is willing to pursue mental health treatment to show that her condition is under control. (Tr. 59-60)

Applicant also wanted to convey that she is a nice person, and is outgoing and personable. She enjoys being around the people she works with because they "sharpen" (i.e. stimulate) her. (Tr. 62) She wanted to join the Army but was not able to do so because of her disability. (Tr. 62)

Applicant's personal representative also testified, both about her interactions with Applicant and as the employer's FSO. She has been the FSO for 15-20 years. She assisted Applicant with answering the SOR, and believes the assistant FSO aided Applicant in completing the SCA. Applicant does not need a clearance to get on the base, but needs a clearance to access certain buildings without an escort. (Tr. 63-68) Applicant has not had any reportable security incidents. (Tr. 71)

Applicant was referred to her employer through a state employment program for people with disabilities. (Tr. 69) Applicant's personal representative and FSO testified that Applicant is "very nice, very positive, and very easy-going. So she is the nice person that she says she is." (Tr. 70)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." (*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988))

The adjudicative 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(a), 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, 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.

## **Analysis**

### **Guideline I: Psychological Conditions**

The security concern for psychological conditions is set forth 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. The following potentially applicable 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 2019, Dr. L diagnosed Applicant with “schizophrenia, multiple episodes.” She noted Applicant has a documented history of hallucinations. Dr. L noted that Applicant has a “clear history of psychotic disorder, for which she is not being treated.” She concluded that Applicant has a condition that could impede her trustworthiness, reliability, and judgment. Her prognosis is guarded, as she indicated she is unwilling to undergo mental health treatment. Therefore, there is a significant likelihood of recurrence/exacerbation of psychotic symptoms. AG ¶ 28(b) applies to the 2019 evaluation. (SOR ¶ 1.b)

AG ¶ 28(b) does not apply to SOR ¶ 1.a, the February 2017 assessment, in which Applicant reported hearing voices and seeing things. No diagnosis was provided, though Applicant was recommended to pursue counseling, and did not do so.

Under AG ¶ 29, conditions that could mitigate security concerns include:

- (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 was diagnosed with schizophrenia in 2019. She has a condition that may impact her judgment, trustworthiness, and reliability, and thus, her eligibility for a security clearance. While she has considered counseling, she has not actively followed up. Admittedly, her ability to do so may be made more difficult by her work schedule, and by the impact of the COVID-19 pandemic on scheduling of counseling sessions. But she has not shown that she has undertaken either counseling or appropriate medication which might help her condition. She has not shown that there is no indication of a current problem or that her condition is in the past, was temporary, has been resolved, is in remission, or is currently under control. It is her burden to do this. No mitigating conditions apply to balance against Applicant's 2019 diagnosis of schizophrenia.

### **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(a), 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.

Applicant has been employed as a custodian on a military facility. During her hearing, she displayed a good understanding of the restrictions placed on her at work since she does not hold a clearance. She enjoys her job, and the people she meets there. She likes cleaning. She presented at the hearing as a pleasant, cooperative, nice person. She has also had a difficult life – pregnant with twins as a young teenager, abused, and with a difficult upbringing. In 2019, she was diagnosed with schizophrenia, a psychological condition that could impact her judgment, trustworthiness, and reliability, and thus, her eligibility for a security clearance. She did not provide sufficient evidence to show that her condition is either in the past, or that she is addressing it in an appropriate way, such as through medication or counseling. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance.

### **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 |
| Subparagraph 1.a:         | For Applicant     |
| Subparagraph 1.b:         | Against Applicant |

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge