



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-01464
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Eric Leckie, Esq.

08/30/2022

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 24, 2018. On October 2, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I. The DOD CAF acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on September 16, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 17, 2021. Scheduling of the hearing was delayed by the COVID-19 health precautions. The

case was assigned to me on May 18, 2022. On June 3, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 21, 2022. On June 14, 2022, Applicant's attorney entered an appearance and requested that the hearing be postponed to enable him to prepare. The request for a postponement was granted, and the hearing was rescheduled for June 27, 2020. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. At Department Counsel's request, and without objection from Applicant, I took administrative notice of the section of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), pertaining to Delusional Disorder. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on July 12, 2022.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b and denied the allegation in SOR ¶ 1.c. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old security guard employed by a federal contractor since February 2018. He served on active duty in the U.S. Army from October 1993 to February 2006 and received an honorable discharge. There is no evidence that he had any disciplinary problems in the Army. He was a federal counter-terrorism agent from September 2006 to September 2007. He worked for various non-federal employers in various capacities involving law enforcement and physical security from July 2010 until he was hired by his current employer. There is no evidence of unusual behavior since July 2010. He currently is a site supervisor for three security agents. He testified that he held a security clearance in 2006 while employed by another government agency. At present, he does not have an active clearance. (Tr. 22.)

Applicant married in 2004 and divorced in 2006 due to cultural differences. His ex-wife wanted to live with her parents in a foreign country, and he wanted to return to the United States after his discharge from the Army. He has no children.

In Applicant's answer to the SOR, he stated that his employment as a federal counter-terrorism agent was terminated under the pretense that he suffered from a mental disorder. He claimed that he was a victim of organized gang stalking by subversive agents using space-based satellite weapons systems. His answer included 100 case studies of individuals claiming that they were victims of organized stalking, torture and abuse using directed energy and neurological weapons that resulted in disruption of senses and bodily functions, and relentless thought control, all controlled remotely by radio frequency.¹ The

¹ Applicant refers to the Space Preservation Act of 2001 in his answer and attached a copy of the Act to his answer. The Act was introduced in the House of Representatives in 2001, 2002, and 2005. In each case it was referred to committee and no further action ensued. The legislative history can be found at sourcewatch.org/index.php.space__Space_Preservation_Act.

case studies were compiled by an organization engaged in efforts to protect individuals from covert harassment and surveillance. (Tr. 58.)

Applicant testified that after a work trip in 2007, he told a fellow agent that he noticed “hard surveillance,” consisting of an unusual number of agents at the airport where they landed. After returning from the work trip, he was questioned about what he had observed, and he filed a report about his observations. He also reported that other agents were spreading false rumors about him. He was taken to a medical facility but he refused to voluntarily admit himself. (Tr. 34-40)

In 2007, Applicant telephonically contacted the local field office of a federal law-enforcement agency several times and reported that there were subversive activities going on in his agency. He then went to the headquarters of the law-enforcement agency, hoping to talk personally with an agent, but he was turned away by the security guard at the entrance. At the hearing, he testified that, as he was leaving the headquarters office in his vehicle, he was stopped by several law-enforcement agents, briefly detained, and then allowed to leave. (Tr. 25-28)

Applicant was living with his father and stepmother when he was terminated from his counter-terrorism position. He testified that when he tried to explain to his father and stepmother why he was terminated, his stepmother became concerned about his mental health. After his stepmother called his employer and inquired about the reason for his termination, she notified local law-enforcement authorities, and Applicant was involuntarily hospitalized for four or five days. The record does not contain any documentary evidence of his diagnosis or treatment. He testified that hospital personnel told him that he was hospitalized because he was delusional. He testified that he was given a medication to help him sleep while he was hospitalized and was advised to continue using the medication after discharge. He did not continue taking the medication. He did not receive any other treatment recommendations. (Tr. 28-32.)

Applicant testified that some of his coworkers are “home-grown terrorists” who engage in organized stalking. (Tr. 45-46.) He believes that these coworkers were surveilling him and using electronic technology to transmit sounds and thoughts into his head. (Tr. 52.) He testified that he continues to be targeted daily. He has experienced muscular weakness and has been targeted with misinformation. He testified that “you basically live almost like a slave inside the United States . . . for the duration of the time that you’re sitting under the satellite.” (Tr. 64.)

In his answer to the SOR, Applicant admitted that he continued to tell federal agencies and members of the intelligence community that he was still a federal agent because he was falsely terminated from his position. He stated that he had never “brandished” his title after he was terminated. He testified that “technically” he was still a federal agent because his termination was accomplished by a criminal act against him. (Tr. 61-62.)

In March 2020, DOD CAF referred Applicant to a licensed psychologist for evaluation. The psychologist diagnosed Applicant with a “delusional disorder, persecutory type.” She concluded that Applicant’s termination of employment, inpatient hospitalization, encounter with a law-enforcement agency, and lack of mental-health treatment make it likely that additional lapses of judgment due to delusional thinking may continue to occur. She also concluded that, because Applicant does not believe he has a psychiatric problem, it is unlikely that he will voluntarily seek professional help in the future. His current prognosis is “poor,” and she believes that his condition poses a significant risk to his judgment regarding classified information, and the risk of future mental health concerns is high without adequate psychiatric care. (GX 2 at 5-6.)

The psychologist’s clinical observations noted that Applicant arrived early for his evaluation, was alert, and fully oriented. His attention was focused and normal. His comprehension was normal. He appeared neat and clean. He displayed no unusual mannerisms. His affect was appropriate for the setting. He smiled regularly and was cooperative. (GX 2 at 4.)

The diagnostic criteria for a delusional disorder are described in DSM-5 as follows:

- A. The presence of one (or more) delusions with a duration of 1 month or longer.
- B. Criteria A for schizophrenia has never been met. Note: Hallucinations, if present, are not prominent and are related to the delusional theme (e.g., the sensation of being infested with insects associated with delusions of infestation.)
- C. Apart from the impact of the delusion(s) or its ramifications, functioning is not markedly impaired, and behavior is not obviously bizarre or odd.
- D. If manic or major depressive episodes have occurred, these have been brief relative to the duration of the delusional periods.
- E. The disturbance is not attributable to the physiological effects of a substance or another medical condition and is not better explained by another mental disorder, such as body dysmorphic disorder or obsessive-compulsive disorder.

The DSM-5 notes that the functional impairment of delusional disorder “is usually more circumscribed than that seen with other psychotic disorders. It also notes that, “A common characteristic of individuals with delusional disorder is the apparent normality of their behavior and appearance when their delusional ideas are not being discussed or acted on.”

Applicant’s behavior fits the diagnostic criteria for a persecutory delusional disorder. It is consistent with his apparently normal behavior most of the time, his lack of

disciplinary action during his military service and his civilian employment, and his demeanor during the psychological evaluation and during the hearing.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline I, Psychological Conditions

The SOR alleges that Applicant was involuntarily hospitalized in 2007 (SOR ¶ 1.a), that he continues to claim that he is a federal agent despite his termination in 2007 (SOR ¶ 1.b), and that in or around March 2020, he was diagnosed by a licensed psychologist approved by the Department of Defense with a delusional disorder, persecutory type, that the risk of future mental health issues is high, that his prognosis is poor, and that his condition poses a significant risk to his judgment concerning classified information (SOR ¶ 1.c). The concern under this guideline is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

Applicant’s admissions and the evidence submitted at the hearing establish the allegations in SOR ¶¶ 1.a-1.c and are sufficient to raise the following disqualifying conditions under this guideline:

AG ¶ 28(a): behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

AG ¶ 28(b): an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

AG ¶ 28(c): voluntary or involuntary inpatient hospitalization.

The following mitigating conditions are potentially applicable:

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

AG ¶ 29(b): the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

AG ¶ 29(c): recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

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

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

None of the above mitigating conditions are established. Applicant does not believe that he has a psychological condition. He has not sought or received counseling or treatment. He has not received a favorable prognosis. There is no evidence that his condition was temporary or is under control or in remission.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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 sincerely believes that he does not have a psychological condition and that he is a victim of space-based neurological weapons systems. He has not overcome the opinion of the psychologist that his present condition poses a risk significant to his judgment regarding classified information. After weighing the disqualifying and mitigating conditions under Guideline I, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his psychological condition.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline I (Psychological Conditions): AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge