



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



In the matter of:)
)
) ISCR Case No. 21-01121
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: Mark S. Zaid, Attorney At Law

September 28, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 30, 2015, Applicant submitted a security clearance application (e-QIP). On June 29, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline I, Psychological Conditions. The action was taken under Executive Order 10865 (EO), *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), effective within the DoD after June 8, 2017.

Applicant answered the SOR on November 11, 2021, and requested a hearing before an administrative judge. The case was assigned to me on January 20, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on April 18, 2022, and the hearing was convened as scheduled on July 20, 2022. The Government

offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered fifteen exhibits, referred to as Applicant's Exhibits A through O, which were admitted without objection. Applicant called five witnesses and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 1, 2022.

Findings of Fact

Applicant is 44 years old. He is unmarried and has no children. He has a bachelor's degree. He holds the position of Senior Systems Engineer II. He is seeking to retain his security clearance in connection with his employment.

Guideline I – Psychological Conditions

The Government alleged that Applicant is ineligible for a clearance because he has certain emotional, mental, and personality conditions that can impair his judgment, reliability and trustworthiness.

The SOR alleged that Applicant has been hospitalized on at least three separate occasions over the past ten years for symptoms related to Bi-Polar Disorder II and I. First, in August 2013; second, in May 2019; and third, sometime after his previous hospitalization, as the record contains no further detail. In March 2021, Applicant was evaluated by a licensed DoD-approved psychologist, at which time it was determined that Applicant's mental health prognosis was poor, and that his psychiatric disorder could contribute to impairment in judgment, reliability and trustworthiness. Applicant admitted the allegations set forth in the SOR under subparagraphs 1.a, 1.b., 1.c., and denied subparagraphs 1.d., and 1.e. with qualifications. Applicant began working for his current employer in July 2001. He was granted a security clearance in June 2004.

1.a. In August 2013, Applicant voluntarily admitted himself into the hospital for depression, anxiety and suicidal ideation. He reported being stressed at work, and had feelings of being stuck in his position, work, and personal life. Medical records disclose that he felt hopeless and worthless, and had frequent passing thoughts of doing harm to himself like using a knife, or lying in the middle of the street, or jumping off of a building, or driving off the side of the road, but he would push them out of his mind and suppress them. He also had problems sleeping. He was prescribed different medications, including Wellbutrin, Depakote, Klonopin, and Restoril to help him sleep. He spent seven days in the hospital. Following this hospitalization, he was referred to an Intensive Outpatient Program for his mental health conditions, and was diagnosed with Bi-polar Disorder II. Sometime in 2014, Applicant discontinued all of his outpatient care services, including therapy and medication, against medical advice. He perceived that he was no longer in need of treatment. (Government Exhibits 3 and 4.) He stated that the side effects of the medication caused him to gain 70 pounds of weight, and he saw little to no change in his mood or disposition. (Applicant's Answer to SOR.)

1.b. From May 19, 2019, through June 5, 2019, Applicant was hospitalized for episodes of paranoid ideation and confusion. Medical records reveal that Applicant was visiting New York when he experienced an episode of paranoid ideation and confusion. Applicant described being on a subway platform in Times Square when a young woman standing with her back to the tracks, turning in his direction, on her phone texting, was looking directly at him. She continued staring at him, and it made him uncomfortable. He moved away from her, but she followed him. This same situation happened again with a second girl. Applicant testified that he thought he could have been drugged, without knowing it, and he did not feel safe. He wanted to get to the Brooklyn Bridge but could not locate it. He wandered the streets of New York for some time before he came across a couple of police officers, who took him to the hospital. Applicant was hospitalized for three weeks and treated for Bi-Polar II Disorder. Applicant's treating psychiatrist reported that Applicant has a past diagnosis of Bipolar II disorder, and is recovering from an episode of paranoid ideations and some other psychotic symptoms after being stressed at work, not getting adequate amounts of sleep, and drinking excessive amount of caffeine. Upon his release, it was recommended that Applicant see his mental health provider and follow up with his treatment.

1.c. Not long after returning to his home state, Applicant was hospitalized again, due to earlier patterns of deterioration in functioning associated with his sleeplessness, stress and guilt. As a result of this incident, Applicant started receiving outpatient psychiatric and psychotherapy services. There is no further information about this hospital stay. (Government Exhibit 3.) Applicant stated that he needed this hospitalization because the doctor had changed his medication, which exacerbated his sleeplessness, stress, and guilt and anxiety. (Applicant's Answer to SOR.)

1.d. Medical records reveal that in or around 2019, Applicant's psychiatrist documented Applicant's psychotic experiences included paranoid ideation, including the feeling of being watched, and that Applicant felt he was on "some sort of mission", and was "hearing voices." (Government Exhibit 3.) Applicant testified that this did occur while he was visiting New York. He felt he was being watched, he heard voices from people speaking in a foreign language, he was scared, and on a mission to find safety. Applicant stated that there were no additional paranoid ideations or feelings of being watched apart from this experience. (Tr. pp.104-109.)

Applicant stated that since June 2019, he has complied with and followed through with all of his recommended treatment and appointments that were laid out for him by his providers. He has also followed the medication regime given to him by his physicians. Applicant believes that his mental health has stabilized and has been on an upward trend as of December 2020. Applicant believes that much of his past problems have been due to finding the right combination and dosage of medication to be effective. Applicant has also been working with his clinical psychotherapist to learn how to avoid stressors and other threats to his mental health and to proactively stabilize his life and relationships. (Tr. pp. 128-133.)

In November 2020, Applicant took vacation in response to stressors at work and difficulty coping. He then took an unpaid leave with permission of his department lead

who agreed that he should take time away from work. Applicant took a road trip and stated that he felt that it helped him to heal his mind and body.

1.e. In March 2021, Applicant was evaluated by a licensed DoD approved psychologist. Her written report details the psychological history and current mental health condition of the Applicant. She stated that during her evaluation of the Applicant, he reported that his prescribed psychotherapy is infrequent and inconsistent, and that his therapy services entail an estimation of seeing his therapist once every two or three months. She determined that given Applicant's recent period of overwhelmed and heightened anxiety, which necessitated an extended vacation to regulate, Applicant is likely in need more consistent psychotherapy services to ensure his stability. (Government Exhibit 3.)

The psychologist's evaluation of the Applicant further indicates that for psychotropic medication, Applicant is currently being prescribed Lithium and Lamictal, which he takes twice daily. He also takes Ativan for anxiety. Applicant is currently taking this medication to help regulate his mood. The evaluation also indicates that Applicant's psychotic symptoms are still present, but have been improving since he was hospitalized at the hospital in New York and started on Haldol. She concluded that the Applicant continued to meet the criteria for Bipolar II Disorder, with anxious distress, and with mood-congruent psychotic features. Due to irregular engagement in psychotherapy, propensity to be overwhelmed in response to minor stressors, and recent decompensation in functioning, Applicant's mental health prognosis is considered to be poor. She believed his psychiatric disorder could contribute to impairment in judgment, reliability, or trustworthiness. (Government Exhibit 3.)

Five witnesses testified on behalf of the Applicant. Four of the witnesses were friends, professional associates, or colleagues, of the Applicant. Each of these individuals find the Applicant to be a man of integrity who is extremely reliable and trustworthy. They all recommend him for a security clearance. (Tr. pp. 26-98.)

Medical records of the Applicant reveal that in 2020, he was diagnosed with a number of mental health issues. (Applicant's Exhibit C.) Applicant's psychiatrist testified and explained Applicant's Bi-Polar mental disorder as being one of the major disorders in mental health. (Tr. pp. 50-76.) He testified from Applicant's medical records that on January 2, 2020, Applicant was diagnosed with Bi-Polar Disorder II, in partial remission. On March 3, 2020, Applicant was diagnosed with Bi-Polar Disorder I, depressed episodes, in partial remission. The psychiatrist remembers a discussion with the Applicant about his concerns with the side effects and dosages of the medication and Applicant's gastro-intestinal symptoms he suffered from taking the medication. (Tr. p. 59.) Two days before the hearing, he diagnosed Applicant with Bi-polar Disorder I, depressed episode, in full remission. (Tr. p. 60.) He further testified that he does believe that Applicant has a condition that could impair his judgment, reliability, or trustworthiness. (Tr. pp. 62 and 63.) If not controlled, his Bi-Polar Condition could cause problems. (Tr. P. 63.) He also stated that Applicant has had no symptoms for several months. (Tr. p. 65.) In his opinion, if Applicant continues his treatment and compliance with prescribed medications, as well as support through family, friends, and professionals, his diagnosis should remain stable. (Tr. p. 66.)

A letter from Applicant's most recent treating psychotherapist, who is a psychologist, (not his psychiatrist) dated July 13, 2022, indicates that Applicant contacted him for psychotherapy services in March 2022, about six months ago. The psychotherapist has seen the Applicant for more than three months in one-hour weekly psychotherapy sessions since March 2022. In his opinion, Applicant has for decades has been trying to find adequate ways for coping with a severely dysfunctional family system, which he only recently started to manage properly. Based upon his clinical observation, the medication that Applicant is currently taking for his Bipolar II mood disorder is totally managing his condition. However, Applicant must regularly and consistently take this medication. In his opinion, Applicant's prognosis was excellent, and he has no concerns regarding any perceived concern that could impair Applicant's judgment, reliability, or trustworthiness. The therapist states that Applicant is a highly functional, holistically healthy, fully capable individual who can confidently carry on his usual job demands, the way he faithfully has done for so many years. He recommends that Applicant's eligibility for access to classified information be continued. (Applicant's Exhibit E.)

Letters of recommendation from colleagues, friends, and family of the Applicant attest to his reliability and trustworthiness. (Applicant's Exhibits F, G, H, I, J, K, L, M, N, and O.)

Performance Development Summaries of the Applicant for the periods from 2012 through 2021 reflect that he is meeting job expectations. (Applicant's Exhibit A.)

Applicant has received a number of awards and commendations for his performance on the job. (Applicant's Exhibit B.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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 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. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 adverse 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 relating to the guideline 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 mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions are established 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 or trustworthiness; and

(c) voluntary or involuntary inpatient hospitalization.

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns:

(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's diagnosis of Bi-Polar Disorder, whether I or II, spans over a ten-year history, and includes a number of episodes as early as 2013, and as recently as 2021. His symptoms ranged from major depressive episodes, psychotic and paranoid ideation, confusion, anxiety, sleeplessness, guilt, among others. Applicant's mental health condition has been unstable and unregulated for some time, and has only recently, within the last six months, at most, shown some stability. His irregular engagement in psychotherapy has not been helpful. His condition may impair his judgment, stability or trustworthiness. An assessment of the Applicant conducted by a

duly qualified mental health professional, taken in March 2021, indicates that Applicant is in need of more consistent psychotherapy services to ensure his stability, as well as a long-term positive prognosis. There is no evidence of long-term stability at this time. None of the mitigating conditions are applicable.

There is conflicting evidence in the record from the physicians about Applicant's mental health prognosis. At this time, there is insufficient evidence to show that Applicant's mental health condition is under control and in sustained remission, with a positive prognosis. Overall, there is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline I.

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.

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 the event that Applicant's mental health condition can continue to improve and show a long-term positive prognosis, without incident, he may at some point be found to be sufficiently reliable to properly protect and access classified information, but not at this time.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Psychological Conditions security concern.

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 I:	AGAINST APPLICANT
Subparagraphs 1.a., through 1.e.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge