



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



In the matter of:)
)
) ISCR Case No. 21-00614
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: Matthew Thomas, Esq.

12/07/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant received inpatient psychiatric treatment on one occasion. He had suicidal ideations and audio and visual hallucinations (AVH). He was discharged from the Army because of mental-health issues. He has not received mental-health counseling or treatment since 2017. Guideline I (psychological conditions) security concerns are not mitigated at this time. Access to classified information is denied.

Statement of the Case

On February 12, 2019, Applicant completed and signed a Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On July 5, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline I.

On July 29, 2021, Applicant responded to the SOR, and he requested a hearing. (HE 3) On August 24, 2021, Department Counsel was ready to proceed. On June 28, 2022, the case was assigned to me. On July 14, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 8, 2022. (HE 1A) On August 30, 2022, the hearing was delayed to September 9, 2022, to enable Applicant's witness to be available for the hearing. (AE 1B) The first session was held on September 9, 2022. (Transcript 1 (Tr1.)) The hearing was continued to September 12, 2022, to enable a witness to complete his statement. (Transcript 1 (Tr1. 49-52; Tr2.)) Applicant's hearing was held in the vicinity of Arlington, Virginia using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered six exhibits; Applicant offered eight exhibits; there were no objections to the Government's Exhibits and Applicant's Exhibits A, B, F, G, and H; and those proffered exhibits were admitted into evidence. (Tr1. 18-19, 23-25; GE 1-6; Applicant Exhibit (AE) A, AE B, AE F, AE G, and AE H) Department Counsel initially objected to AE C, AE D, and AE E pertaining to serotonin syndrome because of a lack of a foundation showing relevance. (Tr1. 25) Dr. D, a clinical psychologist, reviewed the articles in the context of his evaluation of Applicant. (Tr1. 47) Department Counsel withdrew his objections to AE C and AE D. (Tr1. 48) At the hearing, I initially sustained Department Counsel's objection to AE E, an article on the Mayo Clinic website, because the author of the information was not displayed. (Tr1. 48-49) On further consideration, I overruled the objection and admitted AE E. (Tr2. 49-50) The absence of author information goes to the weight and not the admissibility of the website information.

Department Counsel requested administrative notice of the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (*DSM-5*) pages 160-168, 202-208, 222-226, 233, 655-659, and 672-675, and the Medication Guide for Paxil; there was no objection; and I granted the administrative notice requests regarding *DSM-5*. (Tr1. 20-22; HE 4) The Medication Guide for Paxil was admitted as GE 7 without objection. (Tr1. 22-23; GE 7) On September 19, 2022, DOHA received a transcript of the hearing.

I excluded some details to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d. (HE 3) He admitted in part and denied in part the SOR allegations in ¶¶ 1.e, and 1.f. He also provided mitigating information. His admissions are accepted as findings of fact.

SOR ¶ 1.a alleges and Applicant admitted that from August 2014 to at least June 2019, he had suicidal ideations. SOR ¶ 1.b alleges and Applicant admitted that from May 2015 to at least December 2015, Applicant mutilated himself by cutting his body. SOR ¶

1.c alleges and Applicant admitted that from December 2015 to at least January 2017, he experienced audio or visual hallucinations.

SOR ¶ 1.d alleges and Applicant admitted from April 2015 to March 2016, Applicant received treatment at a military medical center, including hospitalization in December 2015. SOR ¶ 1.e alleges and Applicant admitted from May 2016 to January 2017, he received treatment at a civilian medical care provider. (Tr1. 124; HE 2, HE 3) He said he was unaware that he was diagnosed with major depressive disorder, social anxiety disorder, schizotypal personal disorder, and avoidant personality disorder. (HE 2, HE 3)

SOR ¶ 1.f alleges and Applicant admitted in December 2020, a licensed psychologist evaluated him. (HE 2; HE 3) He said he was unaware of the psychologist's diagnosis of major depressive disorder, unspecified anxiety disorder, and schizotypal personality disorder. (HE 3) The psychologist concluded his condition may impair his judgment, stability, reliability, and trustworthiness. (HE 2)

Applicant is a 38-year-old software engineer who worked for a DOD contractor initially in 2019 as an intern. (Tr1. 54, 74) He worked full time for the DOD contractor since August 2020. (Tr1. 86) He has never married, and he does not have children. (Tr1. 138) Applicant described his own personality as "highly introverted." (Tr1. 137)

When Applicant was a teenager, he participated in 4H. He achieved a second-degree black belt in Tae Kwon Do (Korean karate). (Tr1. 56) In 2008, he was awarded a bachelor's degree in business administration. (Tr1. 56, 79) While he was in college, he put cigarettes out on his hand three or four times to show how tough he was. (Tr1. 90-91) After graduating from college with a 4.0 grade point average, he was unemployed from May of 2008 to September 2010. (Tr1. 79) From 2010 to 2012, a store employed him as a security guard for about 30 months. (Tr1. 57, 70, 79-80; GE 1) Applicant described two physical altercations he had with a female employee. In the first one, he was injured; however, he did not report her for shoving him. In the second altercation, she pushed him first, and he pushed her back. (Tr1. 58) His employer fired him for engaging in a physical altercation with her. (Tr1. 57-59) On his February 12, 2019 SCA, he said he was fired for a "verbal dispute" with a coworker. (GE 1 at 17) The woman in the altercation was taller and heavier than Applicant. (Tr1. 59-60) He was unemployed from May 2012 to July 2014. (Tr1. 83)

Applicant has numerous relatives who were veterans of the U.S. military. (Tr1. 61) In 2014, he joined the Army when he was 30 years old. (Tr1. 60-61) In basic training, he had suicidal thoughts, felt depressed, and had panic attacks. (Tr1. 93-94) In basic training, he was awarded the expert marksman badge, and he was promoted to specialist (E-4) because he had a bachelor's degree. (Tr1. 62, 92) At his personal appearance, he denied that he cut himself or did anything to hurt himself while he was in basic training. (Tr1. 94, 96) However, his medical records reflect that he began cutting himself while he was in basic training. (GE 5 at 114) Applicant said the person who made the comment in his medical records about him cutting himself may have misinterpreted something he said. (Tr1. 96)

After basic training, Applicant went to Officers Candidate School (OCS). (Tr1. 62) OCS was stressful for him, and he had suicidal ideations, panic attacks, and probably depression. (Tr1. 63, 97) He disclosed the suicidal ideations to student leadership; they took him to the duty officer; and then he went to the hospital. (Tr1. 64, 97-98) He was under observation at the hospital for an hour or two, and then he was sent back to OCS. (Tr1. 64) The next morning, he was terminated from OCS. (Tr1. 64) He remained in a holding company after being discharged from the OCS course. (Tr1. 65) He initially refused antidepressants because he was worried that they would increase his suicidal ideations. (Tr1. 64) Later he tried several medications to treat anxiety. (Tr1. 98) One medication was changed because he had nightmares. (Tr1. 65)

Applicant was transferred from his OCS installation to an installation in the United States for advanced individual training (AIT), where he was trained to be a chaplain's assistant. (Tr1. 99) While in AIT, he finished his anxiety medication, and he did not seek a refill of his anxiety medication. (Tr1. 101) In AIT, he had suicidal ideations, anxiety, and depression. (Tr1. 99) As for his method of committing suicide, he considered using a Gerber knife to cut his femoral or brachial arteries. (Tr1. 142)

In January or February 2015, Applicant went to his first non-training assignment, which was at an installation in the United States. (Tr1. 102) Early in 2015, he sought mental-health treatment for suicidal ideations, anxiety, and depression. (Tr1. 102) He had difficulties with stress caused by being on an Army installation. (Tr1. 102) He felt anxiety when he was responsible for making arrangements for events such as meetings and prayer luncheons. (Tr1. 107) He felt anxiety most days, and sometimes he experienced spikes of anxiety throughout the day. (Tr1. 107) The anxiety spikes would last from a few minutes to more than an hour, and he felt squeezing in his chest and brain, an increased heart rate, jitteriness, and occasionally he bit the inside of his cheek. (Tr1. 108) He was prescribed Paxil, Buspar, Abilify, and propranolol. (Tr1. 102-103, 109) He took all of these medications every day. (Tr1. 109)

In 2015, Applicant was superficially cutting his chest and his back with his Gerber knife, and he had audio and visual hallucinations (AVH). (Tr1. 103-106, 143) In September 2015, a noncommissioned officer observed the cuts on his back, and he took Applicant to the emergency room. (Tr1. 111, 113) The emergency room examined the cuts and released him. (Tr1. 113) He did not receive stitches. (Tr1. 113) He was unsure why he cut himself; however, he suggested the cuttings could be a side effect from medications or possibly situational. (Tr1. 104-105) It could also have been because cutting himself was something he could control, or perhaps he was replacing emotional pain with physical pain. (Tr1. 105)

Applicant's visual hallucinations were of the pony character from a cartoon called My Little Pony, and the pony's name was Rainbow Dash. (Tr1. 109) He told his providers that the Rainbow Dash image was soothing. (Tr1. 110) Sometimes Rainbow Dash would talk to him. (Tr1. 110) In July 2015, he had a "distressing" vision of the face of the Joker from Batman coming at him. (Tr1. 110) Applicant's medical records indicate on September 11, 2015, Applicant forgot to take his Paxil and Buspar, and he had "paranoid delusions about bombs being planted in trailers." (Tr1. 114-115; GE 5 at 14) At his

hearing, Applicant denied having a memory about bombs in a trailer. (Tr1. 115) He remembered a vision of a lion biting his head, and he heard a voice from the Spiderman 2 movie, which said “they hate you, you should die, they will be better off without you.” (Tr1. 116) Applicant found this voice to be “disconcerting,” and he felt an urge to kill himself. (Tr1. 116-117) He took his Buspar, and he was able to calm down and sleep that night despite the AVH. (Tr1. 117)

On December 22, 2015, Applicant saw a man with a woman he liked. (Tr1 117) He felt suicidal, and he had a friend take him to the emergency room. (Tr1. 117) In his Department of Veterans Affairs (VA) medical records, he said, “I was seeing rainbow dash and heard voice at that time, had plan to use a knife to cut wrist or brachial arteries.” The records note a “[diagnosis including] schizotypal personality disorder and social anxiety.” (GE 6 at 23) Applicant was an inpatient for a week in a military mental health facility following his visit to the emergency room. (Tr1. 119)

On December 29, 2015, the Army’s primary diagnoses were Anxiety Disorder unspecified, Schizoid Personality Disorder, Avoidant Personality Disorder. (GE 5 at 115) The December 29, 2015 note states:

SM endorses AVH 2-3 times a week. SM elaborates that he often sees a character from a popular children’s animated TV show, and says the character is benign and gives him encouragement and positive feedback. SM acknowledges this character is not real, and adds that it sometimes worries him that he is seeing and hearing it. SM denies command encouraging him to self-harm, but recounts an instance when he did not take his medication and experienced AVH which were “scary, and told me to do bad stuff”. . . SM endorses self-harm behavior, and elaborates he cuts himself superficially on the chest back about once a week using a Gerber tool. SM says his cutting gives him a sense of release and that he began cutting during basic training. (GE 5 at 114)

On January 26, 2016, Applicant completed a checklist and indicated he had special powers. (GE 5 at 69-70) At his hearing, he said he could not remember anything about the special powers. (Tr1. 122-123) In April 2016, he was administratively discharged from the Army. (Tr1. 66, 84) He could not remember the specific reason for the administrative discharge; however, it could have been for a personality disorder. (Tr1. 141) When he left the Army, he was taking Paxil, Buspar, Abilify, and propranolol. (Tr1. 123) He continued to take these four medication for several months after being discharged from the Army. (Tr1. 124) He did not receive a medical discharge or medical retirement from the Army, and he is not receiving VA disability pay. (Tr1. 123) After he left the Army, the AVH ended. (Tr1. 123)

After leaving the Army, Applicant earned a bachelor’s degree in computer science with a 3.9 grade point average, which he received in May 2020. (Tr1. 69-70, 84-85) He received mental-health counseling from the VA. (Tr1. 67) The VA gradually reduced his medications, and he said the hallucinations decreased. (Tr1. 67) In 2017, the AVH stopped. (Tr1. 68, 134)

At his hearing, Applicant denied that he ever cut his wrist. (Tr1. 111-112) On May 9, 2016, Applicant told a VA psychiatrist that he showed a suicidal ideation and cut his wrist in July 2015. (GE 6 at 23) The VA psychiatrist's note quotes Applicant as stating "Because of too much stress from training and loneliness, I cried, was feeling kind of helpless, did a superficial wrist cut, then received a mental health assessment. The doctor thought I was making it up. He didn't give me medication." (Tr1. 112; GE 6 at 22)

On May 9, 2016, Applicant had a VA appointment, and he said he was taking Paxil, Buspar, Abilify, and propranolol. (GE 6 at 22) Applicant said he was stable and did not have AVH. (*Id.*) At that time, his VA diagnosis was: Major Depressive Disorder, Recurrent, unspecified; Anxiety Disorder, unspecified; rule out personality disorder. (*Id.* at 25)

Applicant's last visit with a VA psychiatrist was on January 31, 2017, and at that time, he had **NOT** taken his medications for more than two months. (Tr1. 125-126; GE 6 at 4, 7) He told the VA doctor that he had not had problems in the last two months; however, he said he was having visual hallucinations of Rainbow Dash a few times each week. (Tr1. 126-127, 142; GE 6 at 4) The VA treatment plan was for him to return to the clinic in the event that his symptoms worsen. (GE 6 at 7) A January 31, 2017 VA treatment note indicates, "coping with symptoms, risk of relapse off medications." (GE 6 at 4) The diagnosis was "Social anxiety disorder." (GE 6 at 6)

In June of 2018, Applicant did not get a good grade on an examination while he was in college. He waited for about month, and he slashed two tires on a neighbor's vehicle. Applicant described the incident as follows:

Well, there was a neighbor across the street, they had an SUV with an overly sensitive alarm. Sometimes they go off for no reason. And well, during that class, I had an exam, and it went off three times in one hour the night before the exam, and in that exam, I got a D. The first time I've ever got a grade even close to that low in higher education. So that night, you know, it was going off again, I was upset, drunk, and I made the horribly regrettable decision to go across the street and slash two of their tires. (Tr. 72)

Applicant said he felt guilty about what he had done, and he paid for the repairs for the vehicle plus a couple hundred dollars. (Tr. 73) His neighbor did not report the incident to the police. (Tr1. 128-129) During his June 18, 2019 Office of Personnel Management (OPM) interview, he said he was still having brief suicidal thoughts. (Tr1. 129)

On January 11, 2021, Dr. B, who is a licensed clinical psychologist, issued a report relating to Applicant's mental health at the request of the DOD CAF. (GE 3 at 1) Applicant told Dr. B that he was discharged from the Army for "requiring a prescription for a non-deployable medication." (*Id.* at 2) He was not currently prescribed mental-health medications. (*Id.*) He had not had mental-health treatment or counseling since leaving VA treatment, and he did not believe he needed treatment. (*Id.* at 3) He most recently had thoughts of suicide after receiving a B in a course in 2018. (*Id.*) As for the AVH, Applicant told Dr. B:

During 2015, [Applicant] had some psychotic symptoms. He would see a My Little Pony character, Rainbow Dash, most of the time. He reported that he enjoyed watching My Little Ponies because he found it calming. When stressed, he would see this pony out of the corner of his eye, and the pony would tell him calming/reassuring things and then disappear. There were, however, a couple [of] incidents where he heard voices telling him to hurt himself and once he saw something biting his head. (GE 3 at 3)

Dr. B's diagnoses were as follows: "Major depressive disorder, recurrent, severe with psychotic features in full remission; Unspecified anxiety disorder; and Schizotypal personality disorder." (GE 3 at 5) She explained the schizotypal personality disorder as follows:

This included unusual thinking, perceptions, and beliefs; lack of close friends outside of his family of origin; unusual emotional responses; and excessive social discomfort. While some of his personality traits are unusual, they would not preclude his ability to maintain security of sensitive information appropriately. He does appear quite anxious, and could be persuaded to share information through manipulation. His depression is in remission, and might remain so, given that it occurred only during his military experience; however, it is plausible that it would recur during other times of stress.

[Applicant's] prognosis is guarded overall. He is doing well compared to prior times of great emotional distress. Still, he does have conditions of anxiety and depression that have been quite severe at times and might recur. Therefore, if not in treatment, I would have concerns regarding his judgment, stability, and trustworthiness. . . . [Applicant] would benefit from regular treatment for his emotional distress and personality disorder. This would mitigate my concerns that his conditions could impede his functioning with regard to possessing protected information. (GE 3 at 5)

Dr. D was a witness on Applicant's behalf at his hearing. Dr. D is a clinical and forensic psychologist who is board certified in clinical psychology. (Tr1. 27-28) He served on active duty in the Navy for five years, and he has been in private practice since 2008. (Tr1. 28) He has done thousands of security-related evaluations for federal entities, including DOD and the Navy, states, municipalities, and private companies. (Tr1. 29-30) He spent at least three hours interviewing Applicant, and he examined medical records, Dr. B's report, and the results of psychological tests. (Tr1. 32-33, Tr2. 27)

Dr. D informed Applicant before the interview that there was no confidentiality, and if Applicant said anything negative, he would have to report the information. (Tr2. 27) Dr. D noted that Applicant had, "A distinct tendency toward avoiding self disclosure [which] is evident in this patient's response style." (AE A at 7) Nevertheless, Dr. D believed that Applicant's self-report to him of the current absence of hallucinations was accurate because usually hallucinations are accompanied by body language such as scanning the room with eyes due to paranoia, and Applicant did not show behavior consistent with

paranoia. (Tr2. 26) A person with hallucinations usually believes hallucinations are real; however, when Applicant previously had hallucinations, he was aware they were not real. (Tr2. 26) Dr. D did not explain why Applicant would be paranoid if he believed the hallucinations about Rainbow Dash were not real and were soothing.

Dr. D said the psychological tests showed Applicant was minimally depressed and he had low anxiety. (Tr1. 34) There was no evidence of alcohol use or abuse of illegal drugs. (Tr1. 34) The Millon Clinical Multiaxial Inventory-IV (MCMI-IV) test showed "somewhat of a defensive profile;" however, the test was still valid. (Tr1. 35) The MCMI-IV test did not indicate a personality disorder. (Tr1. 35) He had some peaks during the test; however, he considered Applicant to be in the normal, healthy range. (Tr1. 36) His Personality Assessment Inventory (PAI) showed a "very defensive" profile; however, this profile was not significant enough to invalidate the test. (Tr1. 38; Tr2. 10-11, 17) He was "two standard deviations above the mean for defensiveness." (Tr2. 17) Dr. D concluded Applicant's high level of compulsiveness enabled Dr. D to validate Applicant's PAI. (Tr2. 18) The PAI showed no psychopathology and the results were within normal limits. (Tr1. 38) However, the defensiveness indicated a reluctance to disclose information, and the PAI administered for Dr. B's evaluation did not report this defensiveness. (Tr2. 14-15, 18) He readily disclosed information to the Army about his dreams and hallucinations that most people would not freely disclose. (Tr2. 15)

Dr. D reviewed Dr. B's report, and he disagreed with her findings and conclusions. (Tr1. 40) Dr. D believed Dr. B was influenced by "diagnostic momentum phenomenon" in which she "basically rubber stamped" the diagnosis in Applicant's medical records. (Tr1. 39-40; AE A at 6-7) Dr. D concluded that there was a "strong possibility" that Applicant experienced "serotonin syndrome," which was caused by the interaction of three psychotropic medications, and serotonin syndrome contributed to or caused Applicant's mood changes and hallucinations. (Tr1. 41, 46; AE A at 7) The other causes could be due to his medications or suicidal thoughts. (Tr1. 46) Serotonin could accentuate the negative effects of other medications such as Paxil and Buspar. (Tr1. 41-42) He believed Applicant's perceptual disturbances started due to taking serotonin. (Tr1. 43) Dr. D did not diagnose Applicant with serotonin syndrome because he is not Applicant's prescribing psychologist or psychiatrist. (Tr2. 7)

Applicant told Dr. D that "since leaving the Army, he has not seen Rainbow Dash again. Applicant said once he left the Army things rapidly improved for him." (GE A at 3) However, the VA medical records indicate Applicant continued to see Rainbow Dash throughout his VA treatment. In a subsequent visit with Dr. D, Applicant said that he had the visual hallucinations for a couple of weeks after he stopped taking the medications; however, later in the interview, he told Dr. D "that all hallucinations he had were isolated to his military experience." (GE A at 13)

After Applicant stopped taking serotonin the disturbances decreased, and a month or so later, the disturbances ended. (Tr1. 43) His hallucinations were brief and episodic and "only occurred while he was on the medication." (Tr1. 44) Applicant told Dr. D in October 2021 that he was still having brief suicidal thoughts when he was feeling stress. (Tr1. 130, 131) Dr. D said that serotonin continues to affect a person for one or two weeks

after the person stops taking it. (Tr2. 5) Serotonin syndrome can also occur from taking a combination of other medications. (Tr2. 5)

Dr. D did not observe that Applicant's hallucinations were worse when he forgot to take his medications. (Tr2. 8) Dr. D did not indicate in his report that Applicant slashed his neighbor's tires. (Tr2. 11) Dr. D decided the tire-slashing incident was an outlier because there were no other alcohol-related incidents. (Tr2. 12, 19) He does not believe Applicant needs mental-health treatment. (Tr2. 24)

Dr. D described Applicant as having "a rigid, compulsive, socially-anxious personality." (Tr2. 19; GE A at 8) He had a significant adjustment disorder and an unspecified anxiety disorder when he was in the Army. (Tr2. 20, 23) Dr. D did not believe Applicant had a schizotypal diagnosis because he did not have magical thinking. (Tr2. 22) Dr. D did not agree with the diagnosis of depression because Applicant did not exhibit depression in a recurring fashion, that is, it did not occur pre-Army service or after his discharge. (Tr2. 22) Dr. D was unable to diagnose Applicant with a mental-health or personality disorder. (Tr2. 5-6, 20-21) He found Applicant to be psychologically fit to have access to classified information. (Tr2. 7) Dr. D concluded:

Moreover, I found no evidence of him having a major depressive disorder, a psychotic disorder, or a schizotypal personality disorder, and to in fact present very similarly to those in the computer science field working as software engineers. These individuals are often introverted and less interpersonally skilled. To be clear, I found no evidence to suggest any concerns about his reliability, judgment, stability, or trustworthiness. I find him psychologically suitable to handle, manage, and maintain classified information. (AE A at 15)

Applicant lives alone. (Tr1. 86) He does not have family living in the state where he lives. (Tr1. 86) He plans to move to the state where his family lives. (Tr1. 87-88) He does not have a significant other in his life, and he has not had an intimate relationship with a significant other for about 10 years. (Tr1. 137)

Applicant said in about 2019, the suicidal ideations stopped. (Tr1. 68-69; AE A at 13) He said he had zero suicidal thoughts in 2022. (Tr1. 130) He has not had serious anxiety since May of 2020. (Tr1. 135) He does not experience problems sleeping. (Tr1. 135) He has not cut himself for several years. (Tr1. 106) He has not had any homicidal ideations. (Tr1. 120) He has not received mental-health treatment since January 31, 2017. (Tr1. 127) He does not believe his current employment is stressful. (Tr1. 76) He has good relationships with his coworkers. (Tr1. 76)

Character Evidence

Applicant's performance evaluation working for his current employer is excellent. (AE F) His first and second level supervisors, four coworkers, his mother, and his brother provided statements supporting Applicant's access to classified information. (AE H) The general sense of their statements is that Applicant is reliable, responsible, diligent, and

professional. (*Id.*) His second level supervisor said Applicant is a “reliable and trustworthy employee that is accountable,” and he said:

[Applicant] is dedicated to the team’s mission and can be counted on to get the job done no matter the task. Over the past few months, I have been able to observe [him] grow professionally and work through the learning curve of transitioning from being a software developer to a software quality assurance engineer. I have no doubt that [he] will continue to grow and progress as he further develops and hones his skillset moving forward. (AE H)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Psychological Conditions

AG ¶ 27 articulates the security concern for 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 provides conditions that could raise a security concern and may be disqualifying 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.

The record establishes AG ¶¶ 28(a), 28(b), and 28(c). Further details will be discussed in the mitigation analysis, *infra*.

Five mitigating conditions under AG ¶ 29 are potentially applicable:

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

On December 22, 2015, Applicant saw someone with a woman he liked. He felt suicidal, and he had a friend take him to the emergency room. He was an inpatient for mental-health treatment for about one week.

On December 29, 2015, the Army primary diagnosis was Anxiety Disorder unspecified, Schizoid Personality Disorder, Avoidant Personality Disorder. (GE 5 at 115) A December 29, 2015 Army medical note states:

SM endorses AVH 2-3 times a week. SM elaborates that he often sees a character from a popular children's animated TV show, and says the character is benign and gives him encouragement and positive feedback. SM acknowledges this character is not real, and adds that it sometimes worries him that he is seeing and hearing it. SM denies command encouraging him to self-harm, but recounts an instance when he did not take his medication and experienced AVH which were "scary, and told me to do bad stuff". . . SM endorses self-harm behavior, and elaborates he cuts himself superficially on the chest back about once a week using a Gerber tool. SM says his cutting gives him a sense of release and that he began cutting during basic training. (GE 5 at 114)

Applicant's VA medical records indicate that he said, "I was seeing rainbow dash and heard voice at that time, had plan to use a knife to cut wrist or brachial arteries' . . . He had [a diagnosis] with schizotypal personality disorder and social anxiety." (GE 6 at 23)

This case involves conflicting expert opinions from Dr. B and Dr. D about Applicant's mental health diagnosis, need for treatment or therapy, prognosis, and Applicant's qualification for access to classified information. In ISCR Case No. 19-00151 at 8 (App. Bd. Dec. 10, 2019) the Appeal Board denied a government appeal and addressed the administrative judge's weighing of conflicting expert psychological opinions as follows:

A Judge is required to weigh conflicting evidence and to resolve such conflicts based upon a careful evaluation of factors such as the comparative reliability, plausibility, and ultimate truthfulness of conflicting pieces of evidence. See, e.g., ISCR Case No.05-06723 at 4 (App. Bd. Nov. 4, 2007). A Judge is neither compelled to accept a DoD-required psychologist's diagnosis of an applicant nor bound by any expert's testimony or report. Rather, the Judge has to consider the record evidence as a whole in deciding what weight to give conflicting expert opinions. See, e.g., ISCR Case No. 98-0265 at 4 (App. Bd. Mar. 17, 1999) and ISCR Case No. 99-0288 at 3 (App. Bd. Sep. 18, 2000). In this case, the Judge's conclusion that the magnitude and recency of Dr. Y's contacts with Applicant in combination with other corroborating evidence merited more weight than the uncorroborated opinions of Dr. K and Dr. B is sustainable.

Dr. D placed significant weight on the theories that Applicant's mental health issues were caused by his medications or situational (due to being in the Army) or both. He theorized that Applicant's medications because of serotonin could cause AVH. However, one of Applicant's worst episodes was on September 11, 2015, when he forgot to take his Paxil and Buspar. Moreover, before Applicant was prescribed medication, he cut

himself when he was in basic training and AIT, and he had suicidal ideations, panic attacks, and probably depression. In January 2017, Applicant had frequent VH more than two months after he stopped taking his medications. Dr. D conceded the serotonin effect would not occur more than two weeks after he stopped taking his medications. The evidence does not establish that his medications caused his symptoms.

Dr. D had only three hours of interviews with Applicant, and he noted that Applicant was defensive and reluctant to describe his symptoms. The Army and VA diagnoses are more reliable than Dr. D's diagnosis and prognosis as they are based on more contacts with Applicant. A December 29, 2015 Army medical primary diagnosis was Anxiety Disorder unspecified, Schizoid Personality Disorder, Avoidant Personality Disorder. Dr. B's diagnosis was not exactly the same as the previous Army and VA diagnoses, and her diagnosis was not improperly influenced by the previous Army and VA diagnoses. Dr. B diagnosed Applicant with "Major depressive disorder, recurrent, severe with psychotic features in full remission; Unspecified anxiety disorder; and Schizotypal personality disorder." (GE 3 at 5) It is important to note that Dr. B's diagnosis indicated the major depressive disorder was in remission. Dr. B and Dr. D observed that Applicant's mental health improved after he left the Army, and this observation supports a conclusion that there was a situational component, which was probably stress. One of Applicant's worst episodes occurred after he observed someone he was romantically interested in with another man. This situation or something similar could recur in the future and could result in Applicant having a relapse.

Dr. B opined:

[Applicant's] prognosis is guarded overall. He is doing well compared to prior times of great emotional distress. Still, he does have conditions of anxiety and depression that have been quite severe at times and might recur. Therefore, if not in treatment, I would have concerns regarding his judgment, stability, and trustworthiness. . . . [Applicant] would benefit from regular treatment for his emotional distress and personality disorder. This would mitigate my concerns that his conditions could impede his functioning with regard to possessing protected information. (GE 3 at 5)

There is evidence of six events not alleged in the SOR which are relevant: (1) On his February 12, 2019 SCA, Applicant said he was fired for a "verbal dispute" with a coworker. (GE 1 at 17) This was not true because he was fired for shoving a female coworker during an argument; (2) At his hearing, he denied that he cut himself or did anything to hurt himself while he was in basic training. (Tr1. 94, 96) However, his medical records reflect that he began cutting himself while he was in basic training. (GE 5 at 114); (3) At his hearing, he said after he left the Army, the AVH ended. (Tr1. 123) However, his VA medical records indicate his VH continued through the end of the VA treatments in January 2017; (4) At his hearing, Applicant denied that he ever cut his wrist. (Tr1. 111-112) On May 9, 2016, Applicant told a VA psychiatrist that he showed a suicidal ideation and cut his wrist in July 2015. (GE 6 at 23) The psychiatrist's note states "Because too much stress from training and loneliness, I cried, was feeling kind of helpless, did a superficial wrist cut, then received a mental health assessment." (Tr1. 112; GE 6 at 22);

(5) In June of 2018, Applicant did not get a good grade on an examination while he was in college, and a month later, he slashed the tires on his neighbor's vehicle because his car alarm woke him up at night; and (6) Applicant told Dr. B that he was discharged from the Army for "requiring a prescription for a non-deployable medication." (GE 3 at 2) However, he was discharged from the Army because of a mental-health issue and not because of his medications. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility;
- (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances;
- (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These non-SOR allegations will not be considered except for the six purposes listed above.

Applicant states he has not had symptoms of security concern for at least two years. He said he has no AVH, and denies suicidal ideations. The problem here is a persistent concern that Applicant is minimizing his symptoms to obtain a security clearance. Without a candid and forthright statement from Applicant describing his mental-health history and current mental status, I share Dr. B's concerns about whether Applicant would be able to protect classified information. Under a totality of the circumstances, there is insufficient evidence to support mitigation of psychological conditions security concerns at this time.

Whole-Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the whole-person concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline I in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 38-year-old software engineer who worked for a DOD contractor initially in 2019 as an intern. He has worked full time for the DOD contractor since August 2020. When he was a teenager, he participated in 4H. He achieved a second-degree black belt in Tae Kwon Do (Korean karate). In 2008, he was awarded a bachelor's degree in business administration, and he had a 4.0 grade point average. He honorably served in the Army from 2014 to 2016. In May 2020, he earned a bachelor's degree in computer science with a 3.9 grade point average.

Applicant's performance evaluation working for his current employer is excellent. Two supervisors, four coworkers, his mother, and his brother provided statements supporting Applicant's access to classified information. The general sense of their statements is that Applicant is honest, reliable, responsible, diligent, professional, and trustworthy. Their statements support approval of Applicant's access to classified information.

The DOD encourages employees to seek needed mental-health therapy and treatment. As set forth in AG ¶ 27, no negative inference is drawn on the basis of mental-health counseling. In that regard, no one chooses to have a mental illness, and individuals are to be encouraged to seek appropriate treatment. Applicant sought and received inpatient and outpatient mental-health treatment, and his participation in mental-health counseling and treatments are mitigating.

The reasons for denial of his access to classified information are more persuasive at this time. As indicated in the psychological conditions section, Applicant has a lengthy history of mental-health issues beginning in 2014. His suicidal ideation, incidents of self harm, and AVH are concerning. Dr. B reasonably recommended ongoing counseling and therapy in the event he has a reaction to a stressful situation or other symptoms resume. In January 2017, he stopped seeking mental-health counseling and treatment. He is unlikely to have a stress free life. The lack of regularly scheduled ongoing therapy or counseling sessions to assess his mental status results in lingering security concerns. The record established that Applicant is an intelligent, caring, dedicated, professional, and diligent employee who will be an important asset to DOD upon full mitigation of security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*,

Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Psychological conditions security concerns are not mitigated at this time.

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 through 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 interests of national security to grant Applicant’s eligibility for a security clearance at this time. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge