



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



In the matter of:)	
)	
)	ISCR Case No. 21-00106
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

03/14/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline I, psychological conditions. Eligibility for access to classified information is granted.

Statement of the Case

On October 11, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The action was taken under Executive Order (EO) 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) effective on June 8, 2017.

Applicant answered the SOR on November 4, 2021, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 6, 2023, scheduling the hearing for February 8, 2023. I convened the hearing as

scheduled. The Government offered exhibits (GE) 1 through 4. Applicant and one witness testified. He offered Applicant Exhibits (AE) A through J. There were no objections to any of the exhibits and all were admitted in evidence. DOHA received the hearing transcript (Tr.) on February 17, 2023.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c, with clarifications. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He earned a bachelor's degree and is working on a master's degree. He was married from 2004 to 2014. He has two children from the marriage, ages 24 and 15. He has shared custody of the younger child, who lives with him. He has worked for his current employer, a federal contractor, since 2017 and has held a security clearance during his employment. He has owned his own home since 2020. (Tr. 30-32, 49-50)

Applicant began his military service with the Army National Guard in 2004 and transferred to the regular Army where he served until he was honorably discharged in March 2012. He was involved in combat operations in Operation Iraqi Freedom from October 2009 to October 2010. He is authorized to wear the Army Commendation Medal, Army Achievement Medal, Meritorious Unit Commendation, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and the Overseas Service Ribbon. (Tr. 32-35, 55-56; GE 1; AE E)

In 2012, while still in the Army, Applicant was diagnosed with post traumatic stress disorder (PTSD). He was experiencing depression and suicidal ideations due to his combat experiences and a struggling marriage. He had been trained to seek help and guidance from his chain of command if he needed it or felt suicidal. He sought help and was referred to the mental health clinic at the military hospital. He self-admitted for inpatient mental health care. He was there a few days and was released with instructions on how to cope with his negative feelings from combat operations which resulted in PTSD. He was attending both group and individual therapy through Veterans Affairs (VA) through 2016. (SOR 1.a). (Tr. 35-37, 56, 75-77)

In 2016, Applicant was struggling again with depression and suicidal ideations after his divorce, toxic romantic relationships, and multiple periods of unemployment. He acknowledged that during this time he had an altercation with his former girlfriend who was unfaithful. He was arrested and charged with battery and destruction of property. His case was adjudicated in the state's veteran court. He completed all the terms and requirements imposed and the charges were dismissed. (Tr. 39-41, 57, 60, 78-82)

During that time, Applicant self-reported that he was struggling and voluntarily admitted himself for inpatient treatment. He participated in counseling and therapy. He

learned new coping techniques and skills for his PTSD, which he has continued to apply to the present. At the time of the incident with his girlfriend, the medication he was prescribed was not helping his PTSD. After inpatient treatment, he was prescribed a new medication, which is effective, and he continues to take it. (Tr. 36-39, 60-61)

In October 2020, Applicant was evaluated by a government-approved licensed psychologist (LP) during a virtual telemedicine appointment. Based on background information, clinical interview, observations, and a psychological test, Applicant was diagnosed with PTSD. LP reported in her evaluation and findings for his mental status and behavioral observations that he had good insight and appeared open and honest in his report. She also noted that his psychological test results suggested a degree of defensiveness in his responses. She said, "Given this positive impressive management, the information garnered upon interview and his test results may be an inaccurate representation of the applicant's current mental health status, likely underestimating concerns." (GE 2)

LP had Applicant complete a personality assessment inventory (PAI). She noted problem areas that could merit further inquiry, such as a high level of defensiveness, which could likely reflect significant distortion, and minimization of difficulties in certain areas. She opined that regardless of the cause, the PAI results are unlikely to be a valid reflection of his current experience and mental health status. She said that all clinical scales fell within the normal limits, with no elevations suggesting a psychological disorder. (GE 2)

LP noted that Applicant appeared to have a generally stable and positive self-evaluation, which are valuable characteristics because they allow him to be resilient and adaptive in the face of most stressors. Further she stated that Applicant's social environment, with respect to perceived stressor and the availability of social support with which to deal the stressors, and his responses indicated that both his recent level of stress and his perceived level of social support are about average in comparison to normal adults. She opined, "The reasonably low stress environment and the intact social support system are both favorable prognostic signs for future adjustment." (GE 2)

LP said that Applicant's reported mood swings that ranged from "fine" to "depressed" had significantly improved. He was compliant with his medication and did not have recent suicidal ideations. She said:

He does appear to have good insight into his symptoms and overall mental health status, seeking treatment when needed and advocating for his own mental health. In addition, the legal concerns. . . have been resolved and he is actually now volunteering with the veterans' treatment court. (GE 2)

LP's concerns were due to Applicant's psychological testing being rendered invalid due to indications of defensiveness/positive impression management. She said that Applicant's scores showed problems of greater intensity than those of typical defensive respondents. The problem areas were moodiness, poor control over anger, and

unsupportive family and friends. Because of this defensive psychological profile, she opined that “there were apparent limitations to [Applicant’s] reliability, stability and good judgment.” She concluded, “Therefore, although his mental health status is presently stable and he appeared to be forthright and honest in his interview, his prognosis is considered guarded.” (GE 2)

In September 2021, Applicant sought another opinion regarding his mental health status. He was seen by a psychiatrist. Applicant said he told the psychiatrist his whole history, his treatment, including medications he has taken. He testified the psychiatrist said his current treatment was effective. He provided an assessment report from the psychiatrist diagnosing him with PTSD, chronic; other long term (current) drug therapy; and other psychosocial and environmental problems. The psychiatrist opined: “We don’t see any reason today that the patient should not maintain his security clearance.” (Tr. 42, 66; AE A)

In January 2023, Applicant sought a more recent mental health evaluation, and it was conducted by a licensed psychologist, Dr. F. He used data from clinical and collateral interviews; general and behavioral observations; checklist of adaptive living skills; mental status examination; mini-mental state examination; Wechsler Abbreviated Scale of Intelligence; wide range achievement test; Bender Visual Motor Gestalt Test; SPECTRA Indices of Psychopathology; and Combat Exposure Scale. (Tr. 67-68; AE J)

Applicant provided Dr. F with a history of his background consistent with what was provided to LP and the psychiatrist. Applicant testified that he discussed with Dr. F his previous diagnoses. Numerous psychological tests were administered, and he was interviewed. Dr. F’s conclusions were that Applicant did not have any learning disorders which could impact the tests. There were no indications that Applicant experiences significant neuropsychological impairment. He did score “moderate-to-heavy” exposure to combat fire, consistent with notable PTSD symptoms. His responses on a comprehensive, standardized inventory of adult psychopathology “suggested significant high levels of PTSD symptoms, moderate anxiety, and notable grandiose ideation suggestive of high self-esteem and confidence.” There was no evidence of significant depression, alcohol or drug use, aggression, paranoia, psychosis, anti-social tendencies, obsessions or compulsions, mania, cognitive dysfunction, psychosocial impairment, or suicidal ideation. Dr. F opined: “Evaluative findings suggest [Applicant] can learn, execute and perform duties within his scope of comprehension without reservation or difficulty.” (Tr. 47-49; AE J)

Applicant disclosed both mental health incidents and his arrest on his July 2017 security clearance application (SCA). He credibly testified that he has been treated for PTSD since his military discharge. Through his treatment, he has learned valuable coping skills and is cognizant of emotional triggers that may affect his judgment or mental well-being. He remains on medication and is compliant. He sees his doctor annually to be evaluated for his medication regime and mental health status updates. He has learned coping skills and has hobbies that help him. He is aware of options if he feels the need to seek help, such as the Veterans’ Affairs hotline, members of his family, his ex-wife with

whom he remains close, and other veterans' services. He has not had any mental health issues since 2016. He has been open and honest with his employer about his mental health, and they are aware of his diagnoses. (Tr. 58-63)

Applicant is involved in mentoring others who suffer with PTSD at the Veterans' Treatment Center. He has a background in art, so he volunteers as a teacher in art therapy. He teaches different mediums that help with coping skills. (Tr. 61, 70-72)

Applicant testified that in his current position, he has served as the custodian for classified hard drives. His office is transitioning to digital. It is evolving technology and he had to obtain multiple certifications to be compliant. (Tr. 53-54)

Applicant's former supervisor, who is now retired, testified on his behalf. He is the person who hired Applicant in 2017. He observed him daily for five years. He stated that Applicant is conscientious, and when he sees a problem, he fixes it without being told to do so. He is service-oriented and can be trusted to get the job done without oversight from supervisors. He is excellent with dealing customers. He was responsible for managing 800-900 classified hard drives. He is responsible for knowing where each hard drive is located in their physical spaces at all times. His work is independently audited to ensure the classified hard drives are being properly managed and secured. It is a tedious and thankless responsibility, and he was hand-picked for it because he understood the seriousness of the responsibility. The witness personally selected Applicant for this responsibility as a replacement for himself. It is the most important job in the company because failure to comply with the rules could shut the site down. It is a high-risk responsibility, and Applicant has completed it flawlessly. (Tr. 16-29)

The witness stated that Applicant told him about his mental health issues and has been completely honest with him. He was confident that Applicant would report any issues that he was experiencing, which he thought would impact the job. The witness has no hesitation at all about Applicant continuing to hold a security clearance and have access to classified information. He exercises sound judgment and can handle any of the technical or rules pertaining to classified information. He has not been involved in any security violations, behavioral issues, or performance concerns. He is reliable, trustworthy, and exercises good judgment. Applicant took over the hard drive accountability job about four to five months before the witness retired in late 2021 and has had sole responsibility for it since then. (Tr. 16-29)

Applicant provided character letters from friends, coworkers, and family. They stated that Applicant is trustworthy, loyal, dedicated, professional, responsible, valuable, diligent, and a patriot. His ex-wife who has known him for 28 years stated he is a hard-worker, goal-oriented, and positive role model for their children. (Tr. 42-44; AE B)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline,

the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 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 interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 28, and the following are potentially applicable:

- (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; and
- (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.

Applicant experienced suicidal ideations in 2012 and 2016 and voluntarily admitted himself for in-patient treatment and was diagnosed with depression. In October 2020, LP, a qualified mental health professional, diagnosed Applicant with PTSD and opined there were apparent limitations to his reliability, stability, and good judgment. She concluded that, although his mental health status is presently stable and he appeared to be forthright and honest in his interview, his prognosis is considered guarded. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

- (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.

In 2012 and 2016, Applicant recognized he had mental health issues, sought treatment, and has remained compliant with all medical recommendations. He has incorporated into his life the coping mechanisms he learned and has been consistently compliant with all prescribed medications. When he needs emotional help, he obtains it. He went through treatment and counseling, and now serves as a mentor and volunteers his expertise in art to help others with PTSD. I have considered all three mental health evaluations. The opinion and guarded prognosis by LP, the government psychologist, was more than two years ago. I find the two more recent prognoses from 2021 and 2023, to be more relevant and probative. I find that Applicant's condition is controllable and is being treated. He is also compliant with all medical recommendations. AG ¶ 29(a) applies. The two most recent opinions were by qualified mental health professionals, but they were not employed by the government. AG ¶ 29(c) does not apply due to that fact, but I have given considerable weight to their reports.

Applicant voluntarily admitted himself into the hospital in 2012 and 2016. He has since participated in counseling and continues to see his doctor annually to be evaluated for his medication regime and mental health status updates. In 2021 and 2023, he received favorable prognoses by duly qualified mental health professionals. AG ¶ 29(b) applies. His PTSD is not temporary. AG ¶ 29(d) does not apply. Applicant has not experienced any mental health issues since 2016, and there is no indication of a current problem. AG ¶ 29(e) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline I in my whole-person analysis.

Applicant is committed to maintaining his mental health stability, as evidenced by his self-referral in the past and his current compliance with his doctor's prescribed medications and recommendations. He has met his burden of persuasion. The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under Guideline I, psychological conditions.

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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge