



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



In the matter of:)	
)	
)	ISCR Case No. 21-02939
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

03/21/2023

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 February 9, 2022, 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 February 18, 2022, and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 2, 2022, scheduling the hearing for December 20, 2022. I convened the hearing as

scheduled. The Government offered exhibits (GE) 1 through 6. Applicant and six witnesses testified. He offered Applicant Exhibits (AE) A through O. There were no objections to any exhibits and all were admitted in evidence. The record was held open until January 17, 2023, to allow Applicant an opportunity to provide additional documents. At the request of Applicant, the deadline was extended to January 27, 2023. There was no objection to the extension. Applicant submitted AE P through AE R, and they were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on January 3, 2023.

Findings of Fact

Applicant admitted and denied parts of the allegations in SOR ¶ 1.a. He denied the allegations in SOR ¶ 1.b and 1.c. 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 25 years old. He is not married and has no children. In 2015, he received two high school graduation diplomas. One was from his mainstream high school and another from a high school that specialized in math and science. He graduated from college in 2019 and then began work for his present employer, a federal contractor. (Tr. 18-19, 21-22; AE E, F)

Applicant testified that looking back on 2015, he now believes he was having mental health issues, but did not know it at the time. He believed he was on the spectrum for autism and also had attention deficient hyperactivity disorder (ADHD), but no one believed him because it was thought that these two mental health issues contradicted each other. He testified that after he graduated from high school and began his first year of college, he continued to have issues with autism, ADHD, and he began experiencing depression. He chose the specific college he attended because it had the major he wanted, which was a specialized and highly challenging curriculum. He did well his freshman and sophomore year. (Tr. 19-21)

In late 2017, Applicant's junior year of college, the curriculum became very demanding, and he began having mental health issues due to stress and lack of sleep. He reached out for help. He went to his college's health services and was told because he had medical insurance through his parents, he needed to seek private health services. He spent months trying to find medical care from a provider that accepted his parents' out-of-state insurance. He was on waiting lists for different psychiatric providers. (Tr. 24-25, 30, 32-34)

Applicant's medical records reflect that sometime in 2018, his friends at school took him to a hospital emergency room because they were concerned about his mental health. They convinced his parents that he needed treatment and should receive it close to his home. In May 2018, due to the stresses from school, Applicant self-referred and was hospitalized for ten days. He said he was told by the doctor that they could only

diagnose surface-level issues and not the underlying problems or causes. (Tr. 24-25, 30, 32-34)

Applicant admitted that on three occasions he had attempted suicide and a fourth time he had a suicide ideation. His first attempt was while in high school and then in 2017 and 2018. He explained that on the outside he appeared to be fine, but what was going on inside of him was not always apparent. These issues became more pronounced when external symptoms began to manifest. (Tr. 24-25, 30, 32-34)

Hospital records reflect Applicant was not having current homicidal ideations at that time. He testified that he never had homicidal ideations, but he admits that he has difficulty recalling this period of his hospitalization as that time remains foggy to him. He credibly testified that he does not deny that he reported homicidal ideations at the time, but he just could not recall it. He did not believe his ideation was homicidal but did believe his ideation was violent. His hospital records reflect he did have an episode of homicidal ideation, which involved holding someone against their will so they could watch him commit suicide. (Tr. 27-29, 35, 63-69; GE 4).

Applicant was prescribed medication, released from the hospital, and transitioned to an outpatient psychiatric clinic. His discharge diagnosis was major depressive disorder recurrent severe with psychotic symptoms. During his outpatient follow-up treatment, he went through a full-scale psychiatric evaluation with a behavioral therapist and follow-up appointments. He began seeing a psychiatrist at a psychiatric clinic who then left the practice, and his new practice did not take Applicant's insurance. He was diagnosed with depression, social anxiety, panic attacks, autism and ADHD. At this point, he began being treated for ADHD and depression. He then transitioned as a patient to Dr. Z in 2021. Dr. Z prescribed medication to help Applicant's mental health issues. Applicant has been compliant. He provided medical records that show since he has been seeing Dr. Z, his symptoms have stabilized. The medical records also show a progression of improvement and compliance with medication management. (Tr.25-28, 31, 35-39, 81-83; AE P, Q, R)

Dr. Z's assessment in April 2021 was major depressive disorder recurrent without psychotic features, social anxiety disorder, panic attacks, ADHD combined type, history of mild autism. Medical records show that Applicant consistently followed up with regular appointments with Dr. Z throughout 2021 and 2022. Dr. Z's March 2022 report shows the same diagnostic assessment as the initial one. It also noted that Applicant's depression was improving, and they discussed coping skills and acknowledging limitations. His notes stated that he educates Applicant about the nature of his illness, symptoms, course of illness and ways to treat and also deal with unwanted consequences of the illness on his relationships, at work and other functional abilities. Dr. Z's supportive therapy focused on improving self-esteem, ameliorating symptoms, and maximizing Applicant's adaptive capabilities by encouragement, education, guidance, and reassurance. They also examined the nature of relationships and emotional responses or behaviors to make Applicant more aware. Applicant's progress towards his goals were good. Dr. Z's last report from September 2022 provides the same assessment and that Applicant has been compliant with his medication management. Medical records show that Applicant has

consistently followed up with regular appointments throughout 2022 and his prescribed medication is reviewed each time. Applicant credibly testified that he has been and continues to be compliant with his prescribed medication. How often Applicant sees Dr. Z is dependent on his medical opinion and indications from Applicant about his mental health. (Tr. 38-41, 81-83; AE P, Q, R)

Applicant testified that Mr. K is his therapist. Mr. K testified he has been a licensed professional counselor since 2003. Applicant began seeing Mr. K in late 2017, and he had weekly appointments. He continued into 2018 and towards the end he saw him every other week until late 2019 when he saw him monthly. In 2020, due to the pandemic the appointments were virtual, and he saw him five times. In 2021 he saw him four times. He saw him twice in 2022, the last time in March. Their sessions are usually an hour long. They would discuss any problems Applicant was experiencing and potential solutions. Mr. K diagnosed Applicant with major depression, moderate, anxiety disorder, and panic disorder. He is not aware of a present psychotic diagnosis but was aware of a diagnosis in 2018. (Tr. 30-34, 41-43, 71-73, 106-123)

During their last meeting in March 2022, Mr. K and Applicant jointly decided they would meet on an as needed basis. Applicant had no major stressor at that time and Mr. K told him that he is welcome to reach out if he needed anything. This was left up to Applicant. At their last appointment, Applicant was managing fine and there were no depression symptoms. Mr. K does not prescribe medication. He remains Applicant's current therapist. (Tr. 41-43, 106-123)

Applicant testified that he believes his original diagnosis that included "with psychosis" was because his ADHD was manifesting him being fixated on something, which is also a symptom of ADHD. (Tr. 58-59)

In November 2021, Applicant was evaluated by Dr. B, a licensed psychologist approved by DOD. She diagnosed him with major depressive disorder (recurrent, severe), panic disorder without agoraphobia, generalized anxiety disorder, and schizoid personality traits. She indicated his prognosis was guarded and concluded his reliability, judgment, stability, and trustworthiness are in question. She reported that he had only undergone sporadic counseling since his 2018 hospitalization. He required numerous alterations in medications due to poor management of symptoms. He had limited social support and his treatment history was far from appropriate to manage his conditions. She opined that his psychological tests suggest that he is not willing to make a commitment to therapy and that he either lacked insight into his past or was unwilling to acknowledge it, which led her to her poor prognosis. (GE 2)

Dr. B reported she contacted Mr. K. She reported that Applicant saw Mr. K monthly in 2018 and 2019, but only twice in 2020 and 2021. This is inconsistent with both Mr. K's testimony and Applicant's as noted above. Mr. K opined that he had no concerns regarding Applicant from a security perspective, so long as he remained in treatment. (Tr. 71-72; GE 2)

Dr. B reported she contacted Dr. Z's office to confirm Applicant's medication and treatment compliance. His office returned her call a week later and she reported that she waited for a follow up from Dr. Z, which never materialized. (GE 2)

Applicant testified that he was evaluated through a Zoom meeting with Dr. B. They talked for less than an hour and then there was an hour of questions, which he said were focused on him being schizophrenic. He credibly testified that she was aggressive towards him, so he kept his distance because he does not like being yelled at. He contacted both Dr. Z and Mr. K. to advise them Dr. B would be contacting them. Applicant testified that Dr. Z told him that Dr. B never provided the appropriate documentation required by Health Insurance Portability and Accountability Act (HIPPA) to release information. Applicant stated he did not oppose Dr. B having access to his psychiatric records from Dr. Z. He personally contacted Dr. B after his evaluation because he wanted to make sure she contacted Dr. Z. She told him she was working on it. Applicant testified Dr. B was hostile towards him for contacting her about ensuring she contacted Dr. Z. He stated when he received Dr. B's report, he analyzed it and concluded her facts "were so far distant from everything." (Tr. 45-48)

Applicant credibly testified that he would continue to be compliant with Dr. Z's recommendations and medicine management. He does not want to go back to his previous mental health issues. He likes being a proper functioning member of society. He continues to see Dr. Z every one to three months as needed. He sees Dr. Z for medication management and any side effects. He sees Mr. K for therapy and counseling as needed. He has learned to manage stress through different practices and coping skills. He has also learned to channel his stress into being more productive at work. He has discussed this with Mr. K. He does not have any stressor related to his mental health at work or with his supervisors or coworkers or outside of work. He lives alone but got a rescue dog about a year ago. He feels he is in a stable environment. He has a strong support system, which includes his parents, friends, and former and present coworkers. He stated, "I'm just trying to live my life with this mental health issue and go on existing and do the best I can." (Tr. 48-49, 51-52, 83-87)

Applicant's mother testified on his behalf. She stated that she always believed that he was on the autism spectrum, but he did not necessarily fit the criterion. She also believed before he was diagnosed that he had ADHD, but he was able to mask it because he was a good student and also was an Eagle Scout. She described 2018 as a difficult year because it was his junior year, which is a demanding curriculum for engineering majors. Another factor was that his grandfather passed away. She was concerned Applicant was depressed. She went to his school to check on him and observed a major panic attack. She said it was very difficult to get him mental health treatment because their insurance was out-of-state, and they did not have a diagnosis at the time. They could not get an appointment for weeks. She is much more aware of what signs to look for now. (Tr. 88-105)

Applicant's mother noted he is now more communicative and is very protective of his mental health. He is cognizant of the importance of sleep and structure. She believes

in 2018 he was not getting sufficient sleep. He has learned good coping mechanisms and will contact people for support. She noticed that after his medications stabilized for his ADHD, he is more resilient to normal stressors. He has progressively gotten better. He has a lot of trust in the doctor and therapist who are treating him. (Tr. 88-105)

Mr. F is Applicant's supervisor and testified on his behalf. He has known Applicant for about five or six years and in the past three years has been his direct supervisor. He is aware of the security concerns that were raised, including the suicide attempts and homicide ideation. He is aware of some of Applicant's nervous habits associated with his autism and has helped him to develop better social skills. Applicant is adaptable and flexible to various tasks and is always available. He has had no issues with Applicant as far as an employee or handling critical information. He is very good at his job and has had access to controlled protected information without incident. He is aware Applicant is under treatment. He believes Applicant would act responsibly in handling classified information. (Tr. 124-132)

Mr. L has had a security clearance for 40 years. He works with Applicant and has daily interaction. He believes that most engineers have a certain personality type and that some of their social skills are impacted by their analytical and technical skills. He has reviewed the SOR and has not seen any conduct by Applicant that would cause him to be concerned about protecting classified information. (Tr. 133-138)

Mr. T testified on Applicant's behalf. He is responsible for DOD contracts for his company. He has held a security clearance since 1986. He has frequent contact with Applicant and described him as a great employee. He assesses him as extremely intelligent, bright, diligent and a positive impact on their program. Applicant has been open and honest with him about his past suicide attempts and managing his current condition. He is receptive to being mentored by Mr. T both professionally and socially. Mr. T has no concerns about Applicant's ability to responsibly handle classified information. He described Applicant as a rule follower. (Tr. 139-144)

Mr. A testified on Applicant's behalf. He has held a security clearance since 2006. He and Applicant previously worked together, do not anymore, but remain friends. He is aware of the government's security concerns. He described Applicant as brilliant. He said Applicant self-reported that he was receiving mental health treatment. He stated that Applicant has a solid group of friends who he can talk to and if he has any concerns, they will help him address them. (Tr. 145-151)

Applicant provided performance evaluations from 2020 and 2021 reflecting marks of outstanding and exceeds expectations. He graduated cum laude with an honors diploma from college in 2019. He also provided certificates of achievement for his expertise in math and science and in an internship program. In 2016, he was awarded his Eagle Scout badge. He also provided certificates of merit for different achievements and awards. (AE A-O)

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;
- (c) voluntary or involuntary inpatient hospitalization; and
- (d) failure to follow prescribed treatment plans related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including but not limited to, failure to take prescribed medication, or failure to attend required counseling sessions.

Sometime in 2018, Applicant was brought to the emergency room by his college roommates who were concerned about his mental health. In May 2018, he self-referred and was voluntarily admitted for inpatient hospitalization and treatment. From sometime in high school until approximately May 2018, he had four suicide attempts or ideations. A government-approved psychologist opined that Applicant has a condition that may impair his judgment, reliability, or trustworthiness. AG ¶¶ 28(a), 20(b) and 20(c) apply.

There is insufficient evidence that Applicant had a prescribed treatment plan that he failed to follow. AG ¶ 20(d) does not 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; and
- (e) there is no indication of a current problem.

Applicant recognized he had mental health issues and initially had difficulty getting treatment. He self-referred for inpatient hospitalization in 2018. He has been actively involved in therapy with Mr. K since late 2017. He saw him regularly but is now at the point where they agree to meet on an as needed basis. After his hospitalization, he began treatment with a psychiatrist and then transitioned to Dr. Z who is also a psychiatrist. Dr. Z has prescribed medication for Applicant, and he also sees him regularly for medicine management and support. All indications are that Applicant is compliant. Since April 2021 Dr. Z has consistently diagnosed Applicant with major depressive disorder recurrent without psychotic features, social anxiety disorder, panic attacks, ADHD combined type, history of mild autism.

I have considered Dr. B's diagnosis. Mr. K has been Applicant's therapist since early 2018. Dr. Z has been treating Applicant since April 2021. I also considered some of the inconsistencies in Dr. B's report. I have concerns that she is the only professional that diagnosed Applicant with schizoid personality traits, a serious diagnosis that is based on a Zoom evaluation without consultation with his treating psychiatrist. I find Applicant's treating therapist and psychiatrist's diagnoses and opinions are more probative based upon their more frequent and detailed interactions with him.

The evidence supports that Applicant's conditions are being controlled with treatment and he has demonstrated ongoing and consistent compliance with the recommendations by his therapist and psychiatrist. AG ¶ 29(a) applies.

The evidence supports that Applicant voluntarily sought mental health treatment and counseling. Mr. K and Dr. Z are part of his ongoing treatment. Mr. K opined that he had no concerns regarding Applicant from a security perspective, so long as he remained in treatment. AG ¶ 20(b) applies.

Applicant recognized he had mental health issues, sought treatment, and is compliant with the treatment plan. He has learned coping mechanisms and complied with

medication management. He has progressed in therapy where he now only needs to see Mr. K on an as needed basis. He continues to have his medication monitored regularly by Dr. Z and is aware if he needs to see him before his regular appointment, he will do so.

Witnesses who testified and observe Applicant daily and who are aware of his mental health challenges attest that he has no issues that cause concern. He is managing his anxiety through different strategies and medication. He has been fully compliant with taking his prescribed medication as well as maintaining regular follow-up appointments.

The evidence supports that although Applicant does have mental health conditions, they are being controlled with treatment, and Applicant has been consistently compliant with his treatment plan. He sees his mental health professionals regularly and on an as needed basis. He excels at work and is highly regarded as a professional. I find AG ¶ 20(e) apply.

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's commitment to ensuring his mental health is a priority is evident in his consistent awareness and compliance with his medicine management and therapy. 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