



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



In the matter of:)	
)	
)	ISCR Case No. 22-00721
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Ryan Nerney, Esquire

March 29, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 17, 2018. On June 3, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline I (Psychological Conditions). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the DoD after June 8, 2017.

On July 28, 2022, Applicant answered the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 26, 2022. DOHA assigned the case to me on October 11, 2022, and issued a Notice of Hearing on December 13, 2022, scheduling the case to be heard via video teleconference on January 11, 2023. Prior to the hearing date, Applicant requested a continuance so that she could retain a new attorney. The attorney entered an appearance in this case on February 2, 2023. DOHA issued a new Notice of Hearing on February 8, 2023, scheduling the hearing for March 1, 2023.

I convened the hearing as rescheduled. Department Counsel offered six documents, identified as Government Exhibits (GE) 1 through 6, which I admitted without objection. Applicant testified on her own behalf and offered 17 exhibits, seven of which were attached to the Answer as Applicant Exhibits (AE) A through G, and ten of which were presented at the hearing and marked as AE H through Q. The record closed at the conclusion of the hearing. DOHA received the transcript of the hearing (Tr.) on March 9, 2023. (Tr. at 9-10.)

Findings of Fact

Applicant is 52 years old. She married in 1996 and separated in 2009. She has not divorced. She and her husband have an adult child. She earned a bachelor's degree in 1995 and technical certifications in 2001 and 2014. She is a first-time applicant for a security clearance. Since March 2021, Applicant has been employed as an information technology analyst by a major U.S Government contractor. She seeks national security eligibility in connection with her employment. (Tr. at 11-19; GE 1 at 7, 13-15, 24, 26-31, 46-47; AE B; AE E; AE F; AE J.)

Paragraph 1 - Guideline I, Psychological Conditions

The Government alleges in this paragraph that Applicant is ineligible for a security clearance because she has a psychological condition that raises security concerns. Specifically, the SOR alleged that Applicant has experienced multiple hospitalizations for psychiatric issues and has been diagnosed with a number of mental health conditions. The SOR allegations and the relevant record evidence are as follows:

1.a. Hospitalization for psychiatric issues. The SOR alleged that between 1997 and 2015, Applicant has been hospitalized several times due to her mental health condition. In her Answer, she admitted the allegation and explained that she sought treatment for trauma during her childhood consisting of physical and emotional abuse from her father. She also experienced additional stressors due to her failed marriage and raising a child with Asperger's Syndrome. (Answer at 1-2.)

Applicant testified that she experienced more than five voluntary and involuntary hospitalizations due to her mental health condition in the past. Her last hospitalization was in March 2016. The hospitalization started out voluntary but ended up as a 72-hour involuntary hold due to Applicant expressing suicidal thoughts. She explained that her mental health problems were due to her physical and emotional abuse from her father from age 4 to 14. She developed a fear that her decisions would result in punishment. Her last contact with her father was seven years ago, when she was 45. She believes that her mental-health condition has greatly improved since she cut ties with her father and became her own person. (Tr. at 17-27, 39-40.)

1.b. 2015 diagnosis of several mental health conditions. The SOR alleged that Applicant was diagnosed in 2015 with Major Depressive Disorder, recurrent, severe without psychosis; Post-Traumatic Stress Disorder (PTSD); Personal History of Attention Deficit Disorder and Hyperactivity Disorder; and Dependent Personality Disorder. In the Answer, she admitted the allegation but questioned whether she had ever been diagnosed with Dependent Personality Disorder. She testified that she first learned about these diagnoses by reading the Government's evidence. She explained that psychiatrists do not like to share their technical diagnosis with her as the patient, they just provide general terms about her condition. She is currently taking four medications and her primary care physician manages her prescriptions. She has been taking this particular combination of medications since 2015 or 2016, and she believes they are very effective in managing her health. (Answer at 2; Tr. at 29-30, 47.)

1.c Treatment at medical center from 2014 to 2020. The SOR alleged that Applicant was diagnosed with Insomnia, Depressive Disorder, Anxiety State, Attention Deficit Disorder and Hyper-Activity Disorder, and History of Borderline Personality Disorder. In the Answer, Applicant admitted that her primary care physician works at the medical center and provides refills of the prescriptions she has been given by a psychiatrist at the center. She explained further that she has not sought psychiatric treatment or psychological counseling since 2015 due to her psychiatrist's opinion that she has managed her mental health well since 2015 by complying with her medication treatment. She takes her medications "like clockwork." She does not currently receive any counseling, but she would not hesitate to seek counseling if she needed it. She has had no inpatient or outpatient hospitalizations since March 2016. Her last outpatient "talk" therapy was in 2016. (Answer at 2; Tr. at 30-34, 51.)

1.d Opinion of a DoD-selected psychologist. On January 26, 2022, Applicant submitted to a mental-health evaluation by a psychologist working for DoD (DoD Psychologist). In her evaluation of Applicant, the DoD Psychologist diagnosed her with Major Depressive Disorder, recurrent episode, in full remission; other specific trauma and stressor related disorder; and History of Attention Deficit Disorder, combined type. The psychologist concluded that despite Applicant's current status of being in remission, her diagnosis creates a risk of impaired judgment and reliability. She also concluded that Applicant's risk of "any future mental health problems is elevated due to these diagnoses and current presentation." (GE 2 at 9, 11.)

In the Answer, Applicant admitted this allegation in part but disagreed with the psychologist's conclusion. Applicant's primary care physician for the past ten years provided a different opinion in a letter, dated July 8, 2022. She wrote:

[Applicant's] mental health history was tumultuous for many years with the last bout of psychiatric treatment being in 2013. She relates much of these difficulties to an abusive relationship with her father and to a lesser extent, stressors of a failed marriage and raising a child with Asperger's.

* * *

In 2015, she cut ties with her abusive father. Since then, she has done exceptionally well to the point that I have managed her medications since 2015 and she no longer needs to see a psychiatrist. She has been completely stable with no exacerbations. She is medically compliant and comes in regularly for her prescriptions. [Applicant] has excelled in her employment with more responsibilities and promotions. Additionally, she is a single mother and has raised a son, [name deleted], who is now 19.

* * *

I have no reservations in recommending her for reconsideration of her security clearance.

(AE A.) Applicant has also had a recent mental-health evaluation by a psychologist, who is a Lieutenant Commander in the U.S. Navy Medical Services Corps and holds a Top Secret clearance (Evaluator). The Evaluator had reviewed the DoD Psychologist's Report when he interviewed Applicant. (Tr. at 38-43, 62.)

The Evaluator wrote in his report, dated February 22, 2023:

[Applicant] appears to have [made] significant efforts in remediating her psychological issues such as distancing herself from her parents, applying herself in her career, maintaining lawful behaviors, and staying compliant with her treatment recommendations and medication regimen. These behaviors and interventions have resulted in a remission of many of her previously identified issues that appear to have been sustained over several years. The diagnoses below attempt to capture the Subject's current level of functioning as well as acknowledging her history as it pertains to this evaluation.

The Evaluator provided the following diagnosis:

DIAGNOSIS:

ADHD, combined type (F90.2)

Persistent depressive disorder, with anxious distress, **in full remission** (F34.1)

Posttraumatic stress, **resolved** (F43.10)

Opioid use disorder, moderate, **in full remission** (F11.20)

Anxiolytic use disorder, severe, **in full remission** (F13.20)

In his conclusion, he wrote:

The chaotic presentation that occurred between the years of 1997 and 2016 would certainly have resulted in an adverse outcome, had she been evaluated then. However, since that time, it appears that she has made significant improvements across all major areas of her life; personal, professional, and relational. As a result of these actions, and her compliance with medical treatment, she appears to have mitigated the worst of her symptoms which would have prevented a favorable recommendation. **There does not appear to be any current evidence of disqualifying symptoms or behaviors and she has exhibited stability over the course of at least 6 years.** She has maintained compliance with her medical treatment team and does not appear to have any reservations about utilizing them when complications arise. Lastly, there does not appear to be any concerns from her professional references about her ability to perform in her required duties. **As such, this Evaluator believes that the Subject's judgement, reliability, and trustworthiness are currently intact.**

(AE O at 8 (emphasis added.))

Mitigation

Applicant has received multiple recognitions and new positions since starting to work for her current employer in 2021. She enjoys a good reputation and has earned a lot of credibility with her superiors and co-workers. She has never experienced any discipline or received any negative comments or concerns from her employer. Her performance reviews are highly favorable. (Tr. at 40-42; AE C.)

Applicant works remotely from her home. She manages her stress by exercise and walking her dog. She likes to ride horses and has earned a black belt in martial arts. (Tr.at 34-35; AEG; AE N.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline I, Psychological Conditions

The security concern under this guideline is set out in AG ¶ 27 as follows:

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 counselling.

AG ¶ 28 describes two conditions that could raise a security concern and may be disqualifying in this case:

(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 evidence establishes both of the above potentially disqualifying conditions. This evidence shifts the burden of proof to Applicant to mitigate the security concerns. AG ¶ 29 lists the following three conditions that could mitigate the security concerns arising from the opinion of the DoD Psychologist and Applicant's history of hospitalizations:

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

(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; and

(e) there is no indication of a current problem.

All of the above mitigating conditions fully apply. Applicant's condition has proven over the last six years to be readily controllable with treatment, and she has demonstrated ongoing and consistent compliance with her treatment plan. She has presented a recent

opinion by a duly qualified mental health professional employed by the U.S. Government that Applicant's previous condition is under control or in remission and has a low probability of recurrence or exacerbation. The record evidence establishes that there is no indication of a current problem. Applicant has satisfied her burden to establish mitigation of the security concerns raised by her past experiences with mental health issues.

Whole-Person Concept

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

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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 pertinent facts and circumstances surrounding this case, including the whole-person factors quoted above. Applicant's success in managing her past mental health issues is most clearly evidenced by her successful employment record in recent years, and in particular her success working since 2021 for one of the largest and most important U.S. Government contractors. She could not have achieved that success had she not taken control of her life in 2015 by cutting off ties with her abusive father and begun the journey to become her own person with the help of a competent medical team that has found the best medications for her condition. She appreciates the importance of her medication treatment and follows it "like clockwork." She has overcome her difficult mental health issues and is now living a successful and meaningful life. Overall, I have no questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

