



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



In the matter of:)	
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)	ISCR Case No. 22-00822
)	
Applicant for Security Clearance)	

Appearances

For Government:
Jeff Nagel, Esq., Department Counsel

For Applicant:
Alan Edmunds, Esq.
The Edmunds Law Firm

May 4, 2023

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted her most recent Electronic Questionnaire for Investigations Processing (e-QIP) on August 31, 2016. (Government Exhibit 1.) On May 20, 2022, the Department of Defense Consolidated Adjudications Facility (DoD 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the

Adjudicative Guidelines (AG) effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 25, 2022. She requested a hearing before an administrative judge in her Answer. Department Counsel was prepared to proceed on July 18, 2022. The case was assigned to me on July 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 9, 2022. The case was heard on September 13, 2022.

The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits A through J, which were also admitted without objection. She asked that the record remain open for the receipt of additional documentation. She timely submitted Applicant Exhibits K and L, which were admitted without objection. DOHA received the transcript (Tr.) of the hearing on September 21, 2022. The record closed on September 23, 2022.

Findings of Fact

Applicant is 63 years old and single. She has a bachelor's degree and a master's degree. She has been employed by a defense contractor since 2017 as a software engineer and is attempting to retain a security clearance in relation to her employment. She has worked in the defense industry since approximately 1987 and has held a security clearance since approximately 1999. (Government Exhibit 1 at Sections 12, 13A, 17, and 25; Applicant Exhibits E and I.)

Paragraph 1 (Guideline I: Psychological Conditions)

The DoD CAF alleged in this paragraph of the SOR that Applicant is not eligible for access because she has an emotional, mental or personality condition that can impair her judgment, reliability or trustworthiness. Applicant admitted both subparagraphs with explanations.

As a preliminary matter, Applicant admits being under mental health treatment for about 30 to 40 years, beginning when she was in college. This treatment consisted of both medication treatment and mental-health therapy. However, the record is sparse as to the extent of any treatment before 2020. Applicant was very vague during her testimony about her mental health condition and therapy. She admitted having a psychiatrist and psychologist treating her in State A before moving to State B, her current state of residence, in 2017. However, her testimony ended at that point. She also admitted that she was getting prescribed medication from a medical provider in State B before the 2020 incident described below, but was unable to tell me whether this person was a psychiatrist. Much of the information about her prior mental health history was obtained

by a DoD mental health consultant (MHC) and is contained in her report, Government Exhibit 2, further discussed under Paragraph 2, below. (Tr. 31-33, 43.)

1.a. Applicant was involuntarily hospitalized for mental-health treatment for two weeks starting January 22, 2020. She had been arrested by police on that day because she had been knocking on random peoples' doors attempting to gain entry. She was threatening to "stomp" the wife of an ex-boyfriend of hers from 40 years before and teach that person a lesson. During the course of the hospitalization she was diagnosed with Schizoaffective Disorder, Bipolar Type. After two weeks she was able to be discharged in fair condition. (Government Exhibit 2 at 5-6, Exhibit 3; Tr. 30-31, 33-37.)

The intake notes stated the following:

During the interview the patient [Applicant] was hypervocal, quite disorganized with labile mood, laughing inappropriately, continued to make threatening remarks to others and at this point is too unpredictable and confused to be safely managed at the lower level of care. (Government Exhibit 3 at 1.)

Applicant testified that she had little to no memory of the incidents that led to her involuntary hospitalization. She testified that before those incidents she had been feeling ill and believes she threw up her medications. She also did not describe in detail the course of hospitalization. (Tr. 26-27, 33, 38-42.)

1.b. Applicant received an evaluation from MHC in November 2021. The consultant interviewed Applicant, conducted a screening test, and reviewed her mental health records. She diagnosed Applicant as suffering from a Schizoaffective Disorder. (Government Exhibit 2.)

MHC's report stated the following under the heading BEHAVIORAL OBSERVATIONS:

Upon initiation of the interview, [Applicant] presented with an upbeat, chipper, and playful tone. Her demeanor was highly childlike, particularly apparent through her use of language. Her affect was incongruent with what would be expected given the circumstances for the assessment. She appeared disoriented and disconnected at various points throughout the interview, and her thoughts were highly disorganized. Her thoughts were often difficult to follow, and many of her narratives required clarification.

While [Applicant] expressed a history of engagement in therapy, self-reflection, and healing, she appears to present with limited insight surrounding her mental health functioning. Though she spoke openly about a trauma history, her awareness of her history of psychotic symptoms was

minimal. She has a history of impaired judgment, stemming from apparent distortions in perception, information gathered through the clinical interview was disorganized and periodically incoherent, contributing to difficulty establishing a clear understanding of [Applicant's] mental health history. (Government Exhibit 2 at 8.)

MHC stated the following under the heading DIAGNOSTIC IMPRESSIONS AND PROGNOSIS:

The assessment sought to clarify [Applicant's] current level of emotional functioning, given her recent inpatient hospitalization in 2020. While [Applicant's] mental health appeared to decompensate in response to increasing stressors surrounding the COVID-19 pandemic, the assessment revealed longstanding patterns of instability in mood, distortion in perception, and interpersonal issues for [Applicant]. She is currently actively engaged in psychiatric care with a nurse practitioner, and [Applicant] is taking her medications as prescribed in order to manage her mood and psychotic symptoms. It is noteworthy that she presents with incredibly limited insight around her history of psychosis, which is common for individuals with delusional ideation. At present, [Applicant] denied any current symptoms to suggest an active mood episode, such as a depressive, manic, or hypomanic state. As psychotic symptoms were evident in the absence of a mood episode, the current assessment supports her previous diagnosis of *Schizoaffective Disorder*. Though she does not appear to be at an acute risk for acting erratically or harming herself, she continues to present with disorganized thinking and distortions in perception that warrant concern regarding her current functioning. Her prognosis is fair, given the nature of her mental health issues. (Government Exhibit 2 at 10.) (Emphasis in original.)

MHC stated her CONSLUSIONS:

Based on information gathered through the assessment, [Applicant] presents with a significant mental health history with active indications of delusional ideation and disorganization in thinking. Due to her distortions in perception, there are considerable concerns about her judgment, reliability, and trustworthiness at this time, as well as her long-term prognosis. (Government Exhibit 2 at 10.)

Applicant began seeing an Adult Psychiatric Mental Health Nurse Practitioner (NP) after her discharge from the mental hospital in January 2020. NP's CV is Applicant Exhibit K. NP prescribes medication for Applicant to attempt to control her condition. NP sees Applicant every one to two months for medication control and therapy. (Tr. 37, 43-44.)

NP submitted a written statement dated September 1, 2022. (Applicant Exhibit J.) She stated, "In the time that I have been working with her [Applicant], she has maintained psychiatric stability on the current medication regimen." She concludes that her working diagnosis for Applicant is: "**Posttraumatic Stress Disorder.**" (Emphasis in original.)

NP's statement goes on:

Symptom history includes: unwanted persistent memories, emotional distress after exposure to traumatic reminders, avoidance of trauma related thoughts or feelings and external reminders, negative affect, exaggerated blame of self for causing the trauma, hypervigilance, heightened startle reaction, destructive behavior, and dissociation. These symptoms have persisted since childhood in varying capacities.

She has been treated for these symptoms with psychotropic medications and individual therapy and has developed great insight over time. She has learned to manage her symptoms, many of which have completely subsided, in a way that has allowed her to live a comfortable and successful life with no known deficits in her employment or personal life to date.

NP submitted a second statement after the hearing. (Applicant Exhibit L.) The document stated in pertinent part:

After review of document Guideline I, it is in my assessment that [Applicant] has maintained steady medication and treatment compliance voluntarily since her release from the hospital in January 2020. Her psychiatric symptoms have remained well controlled and in remission because of her commitment to this treatment. She meets with me monthly and prognosis is good.

Based on her presentation and treatment progress over the past 2½ years, I have no reason to believe that she would experience a relapse of symptoms similar to the episode experienced in January 2020 as long as she maintains compliance with medications and mental health treatment.

Applicant testified that the incident in January 2020 was a "Singular incident. One-time thing." She further testified that nothing like that had occurred before or after the incident. (Tr. 44.)

In conclusion Applicant stated, "I believe I deserve a Security Clearance. I've done nothing wrong, and I'm a credit to having a Security Clearance. And I'm safe with classified information. I'm trustworthy with classified information." (Tr. 45.)

Mitigation

Applicant submitted documentation showing that she is a respected and effective software engineer. Her evaluations show ratings of “Successful Performer.” She has received performance awards from her employer. (Applicant Exhibits A, B, C, D, F, and H.)

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

Paragraph 1 (Guideline I: Psychological Conditions)

The security concern relating to the guideline for Psychological Conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions may be 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;
- (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 shows that Applicant has been suffering from severe and chronic mental health issues, including depression, for decades. Applicant, MHC, and NP, all agree on that point. AG ¶ 28(a) applies to this case.

In 2021 MHC found that Applicant had a condition that may impair her judgment, stability, reliability, and trustworthiness. AG ¶ 28(b) applies.

Applicant was involuntarily committed for two weeks of inpatient mental health treatment after she engaged in violent and bizarre behavior. AG ¶ 28(c) applies.

The Government has met its burden under the Directive to establish the above disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate them.

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

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

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

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

As stated, Applicant has been suffering with severe mental health issues for many years. However, other than that bare statement there is little evidence in the record to show the extent of the problems and the care Applicant had been receiving prior to her involuntary hospitalization in 2020.

MHC expressed several serious concerns about Applicant's stability in her well-reasoned report. Of particular concern was Applicant's apparent inability to rationally discuss her situation and treatment in depth. I agree. The majority of her answers to questions by her counsel, Department Counsel, and me, were monosyllabic. When asked specific questions about providers before NP, Applicant was unable to provide information.

NP stated that Applicant's symptoms are well controlled with medication, but that is a conclusory statement and insufficient under the circumstances. The record is bereft of progress or interview notes that would show the extent of Applicant's alleged progress since her hospitalization.

MHC wrote an extensive report that discussed several issues concerning Applicant's mental health, in particular her history of disorganized thinking and distortions in perception. NP's statements did not sufficiently overcome the conclusions of MHC.

The strictures of the Guidelines as written require more from Applicant in terms of consistency of treatment and a current and favorable prognosis that rebuts the current report by the Government's MHC. Given the state of the record I cannot find that Applicant has sufficiently mitigated the security concerns raised by the evidence in this case. Guideline I is found against Applicant.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant 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. At the present time, the record evidence does create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge