



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



In the matter of:)	
)	
)	ISCR Case No. 22-00172
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Dan M. Winder, Esq.

06/13/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline I, psychological conditions. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On February 18, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The DOD acted 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) implemented by the DOD on June 8, 2017.

On February 22, 2022, Applicant answered the SOR and requested a hearing. The case was reassigned to me from the originally assigned administrative judge on November 8, 2022. After several scheduling delays reflected in the first hearing

transcript received on December 29, 2022 (Tr.1). The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 15, 2022, and the hearing was held as scheduled on January 13, 2023. The Government offered exhibits (GE) 1-7, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter was marked as HE II. Applicant testified, offered the testimony of an expert witness, Dr. T, and offered Applicant exhibits (AE) A-C, which were admitted without objection. DOHA received the hearing transcript (Tr.2) on January 26, 2023.

Findings of Fact

In Applicant's answer, he denied the sole SOR allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 63 years old. He is single, has never married and he has no children. He has worked for a federal contractor since 2015 as an electronics technician. He was granted a security clearance in 2016. He served in the U.S. Marine Corps (active and reserve) from 1978-1983. He also served in the U.S. Army reserve from 1990 to 1996. He received honorable discharges for all this service. He holds two associate's degrees in computer science and networking. (Tr.2 at 5, 17-19, 59, 62; GE 1)

The SOR alleged that in December 2021, Applicant was evaluated by a licensed psychologist who opined that Applicant's history of delusional beliefs, persecutory ideas, and limited insight may impair his judgment, reliability, and trustworthiness. (SOR ¶ 1.a)

In March 2020, Applicant reported to his employer that while he was at a casino, he believed his truck was broken into and his backpack containing his security credentials was ransacked. Nothing was taken, but he was concerned that his credentials had been compromised, which is why he reported it. No evidence of a break-in was discovered by the law enforcement agency investigating this incident. Because Applicant had reported other break-ins to both his residence and his truck previously, which were unsubstantiated, his employer sent him for a fitness for duty examination In May 2020. (GE 5)

Applicant's fitness for duty examination was conducted by Dr. K, a doctor of osteopath (DO). Ten days before the fitness for duty physical examination, a psychological evaluation was conducted that apparently did not detect evidence of a psychotic disorder. There is no information about who conducted this examination. Applicant described for Dr. K an incident that occurred in 2016 where he had an IRS-issued refund check stolen from him that was later cashed. The check was replaced and he cashed it. He claimed that the IRS told him they would continue to investigate this incident. Since then, he believed that his truck and home have been broken into several times, although he found nothing taken each time. (GE 5)

Dr. K listed the following clinical impressions he made about Applicant regarding his mental health: Applicant suffered from minor post-traumatic stress disorder (PTSD), which Dr. K found to be stable with no effect on Applicant's work environment. He also thought Applicant suffered from mild paranoid/compulsive thought process without psychiatric illness. He concluded that Applicant was fit for duty. (GE 5)

Applicant also sent a letter to his employer after the alleged March 2020 truck break-in wherein he specifically alleged that employees of a local security company were the ones that broke into his truck. He went on to allege that this security company had been harassing him for the past two years. He wrote that the company has "continued harassing, bullying, tormenting, threatening and terrorizing me on a daily bases [sic]." He also accused this company of sending someone to scare his elderly mother who lives in another state. He further claimed that the local police would not investigate his allegation without some proof of wrongdoing by the company. Applicant provided no proof of the security company's involvement in any of these allegations. (Tr.2 at 72; GE 3, 5 (Note: in Applicant's letter to his employer, he described that the March 2020, truck break-in occurred at a grocery store, but during his interview with Dr. K, he described the same event as happening at a casino))

After receiving the letter from Applicant, his employer asked local enforcement to conduct a health and welfare check of him at his residence. The check was conducted and Applicant informed the officers that he believed his neighbors upstairs, who he alleged worked for the security company, were conducting surveillance on him and breaking into his truck and apartment. The officers questioned the neighbors but found nothing to connect them with Applicant's allegations. (Tr.2 at 73-75; GE 2)

Applicant testified that his truck was broken into every day for two years, or approximately 700 times. He knew this because he noticed small differences when he got into his truck like the mirrors' different positions, the visor's position, and the position of his handicap placard. He did not file police reports about these break-ins. He also believes his apartment was broken into in 2018, while he visited his mother. He testified that he believes his mother was surveilled and harassed in 2018. He believes the security company is behind all these incidents, but admitted he had no proof supporting his beliefs. He admitted placing "posters" over all of his light switches in his apartment in order to block any cameras that might be imbedded in them. (Tr.2 at 80, 83, 123-124, 158-159)

In the processing of this security clearance adjudication, the DOD requested that Applicant participate in a psychological examination. In December 2021, Dr. S, a licensed psychologist with a doctor of psychology degree (PsyD), and who is board certified in behavior and cognitive psychology, conducted a semi-structured clinical interview with Applicant, reviewed self-report questionnaires, reviewed medical records, and conducted clinical testing (including the Minnesota Multiphasic Personality Inventory-28 (MMPI)). Dr. S prepared a report of the evaluation dated December 20, 2021. (GE 7)

Applicant disclosed to Dr. S the triggering incident leading to his suspicions, which was the allegedly stolen IRS check in 2016, and which led to his belief that he and his family was being investigated and harassed by the IRS or their agents through 2020. He related his concern about his truck break-in, his apartment break-in, concerns about his upstairs neighbors who he believed placed sensors in his carpet, controlled his television set (although Applicant testified that he did not own a television), and that his water faucets were turned on randomly at night to disrupt his sleep. He also claimed his mother was being harassed. In his hearing testimony, he denied that he told Dr. S any of these things. He also claimed that his interview only lasted about 15 minutes. He admitted during cross-examination that he did not file a complaint against Dr. S for lying in her report about what comprised his clinical interview. (Tr.2 at 100-105, 143; GE 7)

Based upon Applicant's clinical interview, his test results, and his medical history, Dr. S opined the following:

1. Review of Applicant's MMPI results revealed a pattern of underreporting suggesting he answered the questions in such a way to put a positive light by denying common faults or shortcomings;

2. Based upon his MMPI results and other self-report measures, Applicant appears to exhibit a pattern of avoidance and denial of symptoms or limited insight into the presence of symptoms; and

3. Based upon Applicant's history of delusional beliefs, persecutory ideas, and limited insight, his judgment, reliability, and trustworthiness are impaired.

Dr. S formally diagnosed Applicant, under the Diagnostic and Statical Manual-fifth edition (DSM-5) with Delusional Disorder, persecutory type (DSM-5 297.1). She recommended that Applicant engage in a thorough personality assessment and/or neuropsychological evaluation to determine the specific mental health condition likely contributing to his paranoid thinking and ongoing fixed belief structure. Since the evaluations by Dr. K, Dr. S, and Dr. T (see below), Applicant has not participated in any counseling. (Tr.2 at 157; GE 7)

On December 12, 2022, Applicant's attorney referred him to Dr. T for their own psychological assessment. Dr. T has a Ph.D. in counseling and is a licensed marriage and family therapist (LMFT), and a certified employee assistance professional. Dr. T conducted a two-hour interview with Applicant and reviewed Dr. K's and Dr. S's reports. Dr. T did not review any of Applicant's medical records, background investigation records, or conduct any psychological testing. Dr. T prepared a report reflecting her findings and opinions. (Tr.2 at 23-24, 28, 40-48; GE 5, 7; AE A)

During Applicant's interview with Dr. T, he reported several events to her that he denied telling Dr. S about during her clinical interview. These events included his assertion that he was the victim of a home break-in by the IRS or a security company working for the IRS, that the security company people moved into an apartment above

his apartment, and that he had his truck broken into multiple times. (Tr.2 at 100-101, 104; GE 7; GE 7; AE A)

Based upon Applicant's clinical interview, and a review of both Dr. K's, fitness for duty evaluation, Dr. S's report, and her training and experience, Dr. T opined the following:

1. Applicant does not appear to present with psychological symptoms that would impair his judgment at this time or working within his scope of practice and knowledge;

2. Applicant denied a history of delusional or psychotic process, and none is currently evident;

3. Applicant demonstrated no "fixed beliefs" regarding whether the IRS had surveilled him, rather, he posited that as the only possibility that came to him, which could explain the events that transpired.

Dr. T opined that Applicant's mental state was healthy, although he appeared naïve concerning his beliefs about his view of the IRS surveilling him. She also did not believe Applicant fit the diagnosis for paranoia because he only expressed his paranoia regarding his concern about the IRS and not everything else in his life. (Tr.2 at 27-28, 30-32, 34)

Character Evidence.

Applicant presented a letter from his supervisor for the last five years, who stated that Applicant "has never given him a reason to believe he is a threat to national security." He does not state whether he was aware of the reasons why Applicant's clearance was being reviewed. (AE B)

Applicant presented a letter from a coworker who has worked with him for four years and opines that he is a "most trustworthy individual, worthy of the highest security clearances." He also views Applicant as a dependable and stable man. He does not state whether he was aware of the reasons why Applicant's clearance was being reviewed. (AE C)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain 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 about 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 inference concerning the standards in this guideline may be raised solely on the basis of seeking mental health counseling.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. Three are potentially applicable 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.

In December 2021, a mental health professional (Dr. S) diagnosed Applicant, under the Diagnostic and Statistical Manual-fifth edition (DSM-5) with Delusional Disorder, persecutory type (DSM-5 297.1). Based upon this diagnosis and Applicant's history of delusional beliefs, persecutory ideas, and limited insight, Dr. S opined that Applicant's judgment, reliability, and trustworthiness are impaired. AG ¶ 28(b) applies.

The adjudicative guidelines also include examples of conditions that could mitigate security concerns, as set forth in AG ¶ 29:

(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.

In May 2020, Dr. K, an osteopath, not a psychologist or psychiatrist, therefore not a duly qualified mental health professional, performed a fitness for duty examination on Applicant. His services were provided for this testing through Applicant's employer and there is no evidence that he was acceptable to or approved by the U.S. Government. I will consider this in assessing the weight I give to Dr. K's report. He diagnosed Applicant with PTSD, which he found to be stable with no effect on his work environment. He also thought Applicant suffered from mild paranoid/compulsive thought process without psychiatric illness. He concluded that Applicant was fit for duty. I gave this report and Dr. K's opinion the least weight of the three opinions.

Applicant presented the opinion of Dr. T, who performed a psychosocial assessment in December 2022. While Dr. T is a duly qualified mental-health professional (she is a licensed marriage and family therapist with a Ph.D. in counseling, with years of counseling experience), there is no evidence that she is acceptable to and approved by the U.S. Government. I will take this qualifier into consideration as to the weight I give to Dr. T's testimony and report. Dr. T concluded that Applicant did not appear to present psychological symptoms that would impair his judgment.

I am presented with three medical assessments that vary in their conclusions. I have considered them all. I give the greatest weight to Dr. S's findings, diagnosis, and opinions based upon her qualifications, and because she conducted psychological testing of Applicant, in addition to conducting a clinical interview. That testing revealed that Applicant underreported common faults or shortcomings. This underreporting came to light during Applicant's testimony when he denied that he told Dr. S certain information that he later would tell Dr. T. This tendency to put himself in the best light would affect what Applicant ultimately revealed in any clinical interview. Neither Dr. T nor Dr. K performed similar testing, thus calling into question the information Applicant provided them during his clinical interview with each. AG ¶ 29(c) has some application but is not controlling in this case. AG ¶ 29(e) does not 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 considered Applicant's honorable military service, his contractor service, and the recommendations of his supervisor and coworker. However, I also considered that he was diagnosed with a medical condition that could impair his judgment. Applicant failed to provide sufficient evidence to mitigate the resulting psychological conditions security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline I.

Formal Findings

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

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraph 1.a:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge