



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 21-01189 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

\_\_\_\_\_  
06/01/2022

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is currently in remission and his psychiatric symptoms are stable. His treatment plan and mental health are routinely monitored by his therapist and his psychiatric nurse practitioner, both of whom believe Applicant is stable and able to work without restriction. Clearance is granted.

**Statement of the Case**

On August 6, 2021, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the psychological conditions guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be

submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke his security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on April 28, 2022, I admitted Government's Exhibits (GE) 1 through 3, without objection. I also appended to the record as Hearing Exhibit (HE) I, the disclosure letter sent to Applicant on September 23, 2021, by Department Counsel. Applicant did not offer any documentary evidence. After the hearing commenced, Applicant made statements about his employment that raised the question of jurisdiction. Before the hearing, he changed employers. His former employer had withdrawn their sponsorship of Applicant's security clearance application, but his new employer had not yet entered its sponsorship in the Defense Information System for Security (DISS). I continued the case to allow for the resolution of the jurisdiction issue. DOHA received the transcript (Tr.1) on May 9, 2022. (Tr.1 at 13-16)

Department Counsel received confirmation of jurisdiction on May 27, 2022. Accordingly, I scheduled the case for hearing on September 28, 2022. At the hearing, I admitted to the record, as HE II, the sponsorship confirmation e-mail. Department Counsel did not offer any additional documentation. I admitted Applicant's Exhibits (AE) A and B, without objection. DOHA received the second transcript (Tr. 2) on October 6, 2022.

### **Findings of Fact**

Applicant, 44, immigrated to the United States through the Diversity Visa Program in 2009. He served on active duty in the U.S. Army from 2011 to 2014, as a combat engineer. Through his service in the Army, he was able to become a naturalized U.S. citizen in July 2011. His wife of 13 years immigrated to the United States with their oldest child in 2012. They are both naturalized U.S. citizens. His youngest child is a U.S. citizen by birth. (Tr.2 at 14-15; GE 1-2)

Applicant has worked for his current employer, a federal contractor, since April 2022 as an engineer. He earned a bachelor's and master's degree before immigrating to the United States and earned a second master's degree at a prestigious U.S. university in 2015. He has been employed by federal contracting companies since at least September 2015. He was granted access to classified information during his military service. He has no history of security violations.

Applicant completed his most recent security clearance application in September 2019. He disclosed two involuntary hospitalizations for mental health emergencies in October 2018 and February 2019. He also disclosed a diagnosis for schizoaffective disorder. The investigation discovered two additional hospitalizations in August 2019 and December 2020. The SOR alleges the four hospitalizations (SOR ¶ 1.a, 1.b, .c, 1.d) as well as his failure to follow his treatment plan in February 2019 (SOR ¶ 1.b) and July 2019 (SOR ¶ 1.c). The SOR also alleged that a psychological evaluation ordered by the DOD CAF indicated that Applicant has a condition that could negatively impact his

judgment and ability to protect classified information and described his prognosis as “fair at best.” (SOR ¶ 1.e) (Tr.2 at 15-16; GE 1-2)

Applicant first began experiencing mental health issues in October 2018. Concerned about his behavior after days of sleeplessness and erratic behavior, Applicant’s wife called the police, who transported him to the emergency department of a local hospital. He was involuntarily admitted to the hospital’s psychiatric unit. He was diagnosed with schizoaffective disorder, bipolar mood disorder, and sleep deprivation. After he was stabilized with medication, Applicant was released to outpatient care. In November 2018, he began seeing a psychiatric nurse practitioner (PNP). In response to Applicant’s complaints about the side effects of the treatment regimen established during his hospitalization, the PNP started Applicant on a new treatment plan with different medications. Over the next year, the PNP changed and adjusted Applicant’s medications to address the negative side effects of the medications. In February 2019, Applicant decided that he felt better and stopped taking the medications which continued to have negative side effects. (Tr.2 at 16-18; GE 2-3)

Later that month, Applicant’s symptoms returned. He could not sleep. He was agitated. He was responding to internal stimuli and hearing noises. Applicant’s behavior caused his wife to call the police, who again transported him to a local emergency department. He was involuntarily admitted to the psychiatric ward for six days. After his discharge, he resumed treatment with his PNP. (GE 2-3)

Applicant followed his treatment plan for five months. He stopped taking his medications again in July 2019, while on a trip to his home country. His symptoms returned. After he returned to the United States, his symptoms became acute, and he was involuntarily hospitalized again in August 2019. He was diagnosed with schizoaffective disorder, bipolar disorder, and catatonia. He was again released to the outpatient care of the PNP until 2020, when Applicant transferred his care to a different provider, a certified registered nurse practitioner in psychiatric mental health (CRNP/PMH). (Tr.2 at 18-20; GE 2-3)

From September 2019 to November 2020, Applicant remained compliant with his treatment plan with the CRNP/PMH. However, in November 2020, while on the medications, Applicant began experiencing symptoms. His wife took him to the hospital for immediate treatment but was turned away because of Covid-19 protocols in place at the hospital and because his symptoms were not acute. Upon returning home, Applicant’s wife contacted the CRNP/PMH, who adjusted Applicant’s medication. Despite the adjustments, Applicant continued to experience symptoms, becoming more disoriented and erratic. In December 2020, a disoriented Applicant wandered out of his home. His wife filed a missing person report with the police, who found Applicant and transported him to the hospital where he was involuntarily admitted for psychiatric care. The CRNP/PMH adjusted Applicant’s medication in response to the hospitalization. (Tr.2 at 33-34; GE 2)

Applicant reported each hospitalization to his facility security officer. After each hospitalization, he was able to return to work without incident. He has never

experienced a mental health emergency at work, nor has he committed any security violation because of his mental health diagnosis. There is nothing in the record to suggest that Applicant has engaged in any behavior in the workplace that raised questions with his employers about his judgement or reliability. (Tr. 2 at 23)

In June 2020, the DOD CAF referred Applicant for a psychological evaluation from a licensed psychologist. The psychologist conducted the evaluation in March 2021, which consisted of a clinical interview and a personality assessment inventory. The psychologist also reviewed the September 2019 security clearance application, interviews Applicant gave to background investigators in 2019 and 2020, as well as medical records from the October 2018, August 2019, and February 2019 hospitalizations. The hospitalization records are not in the record. (GE 3)

The psychologist concluded:

Like many people when first diagnosed with a serious mental health condition, [Applicant] has been given a number of psychiatric labels and been tried on a range of medications in an effort to find the right balance between symptom reduction and side effects. Also, like those coming to terms with and learning about a chronic mental health condition, [Applicant] stopped medications completely two times resulting in a [sic] return of symptoms and additional hospitalization. This is common for people in the early years of a serious mental health diagnosis as they learn the diagnoses are real and treatment is needed. He has now developed the opinion that he needs the medications and has resolved to adhere to his provider's recommendation. However, he complains about many immediate, and potentially long term, side effects of his multiple medications. These side effects are not inconsequential. The medications seem to have muted his affect, slowed his processing speed, and negatively impacted his frontal lobe functioning (i.e., attention control and problem solving.) All these are cognitive skills needed to successfully safeguard information (and to perform his other job duties.). His medication also places him in a state of general interpersonal blankness and contextual stupor so he will certainly appear odd to other people. This could impact his ability to communicate with others, his judgments when he makes an error or need help, and his vulnerability to those who might try to exploit him. (GE 3)

The evaluating psychologist diagnosed Applicant with unspecified schizophrenia spectrum disorder, multiple episodes, in partial remission and unspecified anxiety disorder. The psychologist noted that Applicant's condition will require ongoing, consistent lifelong treatment to maintain his stability. He acknowledges that the Applicant is stable on his current pharmaceutical regimen, but that this could change based on changes in Applicant's physiology, if he stops taking his medication, or experiences a significant increase in stress. These changes, the psychologist explained, could lead to the return of Applicant's symptoms, including perceptual disturbances or

disordered thinking. The psychologist described Applicant's prognosis as "fair at best." (GE 3)

Ultimately the psychologist concluded that "there is a considerable risk [Applicant's] symptoms will resurface at some point in the future. Thus, his condition could negatively impact his judgment and reliability thereby diminishing his capacity to safeguard national security information." (GE 3)

At the hearing, Applicant's affect was flat. He spoke slowly and quietly but was able to clearly communicate his personal history. He also discussed the issues he has experienced with his mental health since 2018. When he stopped taking his medication in February 2019 and July 2019, he really did not understand that his condition was something that would require lifelong treatment and that he could not stop taking the medication when he felt better. He stated he began to understand the nature of his illness and lifetime treatment needs after his third hospitalization. He also explained that finding the right balance of medication was a process, requiring frequent medical visits and adjustment of medications. The medical notes in the record show that Applicant routinely saw his treating CRNP/PMH between February 2020 and June 2021, when he responded to DOHA interrogatories. The notes show him reporting to his medical provider when he felt his medications were not working properly or causing him intolerable side effects. (Tr. 2 at 18; GE 2)

Applicant has complied with his treatment plans, without interruption since September 2019. He believes his current treatment plan is working well. Since his last major medication adjustment after his December 2020 hospitalization, he has not experienced any negative side effects or the return of his symptoms. Since November 2021, he has paired his pharmaceutical treatment with therapy with a licensed certified social worker – clinical (LCSW-C) through the Department of Veterans Affairs. Applicant has quarterly visits with each of his providers. Both his current CRNP/PMH and therapist consider him stable and able to work without limitation or restriction. (Tr.2 at 21, 25-27; AE A-B)

Applicant's wife also testified at the hearing. She explained her learning curve associated with Applicant's illness. Between 2018 and 2020, she explained that the medicines left Applicant unable to function. On his current treatment plan, Applicant has not complained of any side effects. She is the one who is first to notice when he is deteriorating, which usually begins with sleep deprivation, and seeks medical intervention on his behalf. She no longer waits until the circumstances require emergency intervention, contacting his medical providers directly when he complains of side effects. She also discussed her observations of Applicant's adjustments to his diagnosis and treatment. Initially, she had to dispense Applicant's medications to him to ensure that he took them. While she still portions the medication into a pill box, he takes his medication on his own without prompting or supervision from her. He often reminds her to refill the pill box. Applicant has also progressed to the point where she no longer must attend his medical appointments with him. For the last three years, he has been able to go to his medical appointments on his own. The couple has also developed a

plan to handle any future emergencies, in which she calls Applicant's employer to inform them of his inability to work. (Tr.2 at 22, 30-39)

## **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 to be 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, administrative judges apply the guidelines 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 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.

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

An applicant's mental health becomes a concern when "[c]ertain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. A formal diagnosis is not required for there to be a concern under this guideline." (AG ¶ 27) The SOR alleges that Applicant was involuntarily hospitalized four times between October 2018 and December 2020 for episodes of erratic behavior resulting in a diagnosis of schizoaffective disorder, and that Applicant stopped taking his prescribed medicines on two occasions in February and July 2019. The SOR also alleged that a psychologist retained to perform an evaluation indicated that Applicant has a condition that could negatively impact his judgment and ability to protect classified information. Applicant admits the allegations.

The following psychological conditions disqualifying conditions apply:

AG ¶ 28(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

AG ¶ 28(c) voluntary and involuntary inpatient hospitalization; and,

AG ¶ 28(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or untrustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Applicant's medical condition will require lifelong monitoring and treatment. When he was first diagnosed, he did not fully understand or appreciate the nature of his illness or how compliance with his treatment plan is necessary to remain stable. According to the evaluating psychologist, Applicant's response and learning curve associated with his diagnosis is common, but he now understands his condition and the ongoing nature of its treatment. He has taken ownership of managing his appointments with his providers and takes his medication without prompting or supervision from his wife. He has been compliant with his treatment plans since September 2019.

Also common, according to the psychologist's report, is the trial-and-error nature of finding the right balance of medications to control Applicant's symptoms without intolerable side effects. Working consistently with his CRNP/PMH, Applicant has found that balance. His symptoms have been in remission since at least January 2021, and he is not currently experiencing any negative side effects. It is important to note, as the psychologist warned, that this balance is not permanent. Physiological and environmental changes could decrease the effectiveness of the treatment protocol, resulting in the recurrence of symptoms and the possibility of future hospitalizations. However, Applicant demonstrated that he and his wife are diligent in monitoring his behavior for the return of symptoms and that they will seek medical intervention when it is needed.

The psychologist described Applicant's condition as being in remission and his prognosis as "fair at best." The prognosis is conservative and reasonable given the nature of Applicant's illness and the potential for the recurrence of symptoms even when he is compliant with this treatment plan. The following psychological conditions mitigating conditions apply:

AG ¶ 29(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; and

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.

### **Whole Person Assessment**

Based on the information in the record, I have no doubts about Applicant's ongoing security worthiness. Applicant's diagnosis will require lifetime attention. He is doing all he can to remain stable and symptom free. While there is no guarantee he will remain so, he and his wife are vigilant in monitoring Applicant's health, and they take action to address his needs as they arise. His treatment plan and symptoms are also routinely monitored by therapist and his CRNP/MHP, both of whom believe Applicant is stable and able to work without restriction.

Furthermore, during his past periods of acute illness, Applicant has not displayed violent tendencies. He does not appear to be a danger to his family or others. He has not engaged in any criminal conduct or conduct that raises concern about his inability to control his impulses in a manner that reflects negatively on his current security worthiness. He has not had any work-related incidents because of his condition and has properly managed his responsibilities as a clearance holder when he unable to perform his duties.

### **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, Psychological Conditions | FOR APPLICANT |
| Subparagraphs 1.a - 1.e:              | For Applicant |



## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge