



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



In the matter of:)) [Redacted])) Applicant for Security Clearance)	ISCR Case No. 22-00743
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Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on May 1, 2020. On June 6, 2020, the Department of Defense Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I. The CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 12, 2022, and the case was assigned to me on March 24, 2023. On May 2, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled to be conducted by video teleconference on May 10, 2023. Applicant waived the 15-day notice requirement in Directive ¶ E3.1.8 I. (Tr. 5) I convened the hearing as scheduled. Government Exhibits (GX) 1 through 9 were admitted in evidence without objection. At Department Counsel's request and without objection from Applicant, I took administrative notice of the information about intermittent explosive disorder set out in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The pertinent portions of DSM-5 are attached to the record as Hearing Exhibit I.

Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until May 26, 2023, to enable him to submit documentary evidence. He did not submit any evidence. DOHA received the transcript (Tr.) on May 22, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 54-year-old calibration technician employed by defense contractors since October 2010. He was employed as an electrician by another defense contractor from September 2009 until he was hired by his current employer.

Applicant served in the Army National Guard from June 1988 to January 1990 and received an honorable discharge. He served on active duty in the U.S. Navy from February 1990 to September 2009 and received an honorable discharge.

Applicant married in December 1992 and has four adult children. Three are biological children and one is adopted. (Tr. 20) He received a bachelor's degree in criminal justice in June 2013. He held a security clearance in the Navy, and he retained it as an employee of a defense contractor.

In 2008, while Applicant was on active duty in the Navy, he was involved in an argument and threatened to choke a coworker who blamed him for shoddy work on a project that was found to be deficient. (Tr. 23) In 2009, he had an altercation with another coworker, choked him, and hit him repeatedly. (Tr. 24) He was sent to a Navy hospital for assessment, assigned an anger-management counselor, and required to attend six anger-management sessions over a period of two months. (GX 3 at 2; Tr. 22)

Applicant was assessed in a Department of Veterans Affairs (VA) medical facility during his out-processing from the Navy. He was questioned about the incident in 2008, and was diagnosed with bipolar mood disorder and suicidal tendencies. (Tr. 25; GX 4) He was prescribed medication for depression, but discontinued it because it caused lethargy, agitation, anxiety, and irritability, and made him difficult to focus on his tasks at work. He informed the VA providers of these symptoms, and they advised him to monitor his depressive symptoms and restart the medications if needed. (GX 3 at 2.)

At the hearing, Applicant described the period from 2011 to 2013 as “probably the darkest times of [his] life.” His father’s health began to decline in 2012, and he passed away in 2013. After Applicant’s father passed away in 2013, he experienced increased depression, and he started having auditory hallucinations of his father’s voice, questioning his worth and telling him to kill himself. His VA health providers diagnosed him with paranoid personality disorder and recommended inpatient admission, but he declined. Eventually, His VA health providers prescribed a medication that reduced his depressive mood and auditory hallucinations. (GX 3 at 2; Tr. 29-30) When Applicant’s assigned VA physician was assigned to a different location, Applicant stopped taking his medication for a while, hoping to see his assigned physician again or receive the same treatment from another VA physician. (Tr. 32)

In February 2014, Applicant was at a gas station when another driver accused him of cutting him off at the gas pump. Applicant, who was still in his vehicle, rolled up his window, trying to avoid conflict. The other driver was infuriated and began hitting the hood of Applicant’s car. At this point, Applicant exited his car and had an altercation with the other driver, which was quickly broken up.

After the altercation, Applicant was upset and heard voices telling him to look out for himself. He went into a Navy Exchange store, attempted to shoplift some expensive headphones and two candy bars, and was arrested. While awaiting trial, he self-admitted himself into a VA mental health facility and was diagnosed with mood adjustment disorder, moderate to severe depression, and borderline bipolar disorder. In June 2014, he was convicted of stealing government property, a misdemeanor, fined \$250, placed on probation for six months, and required to continue mental health treatment as directed by his probation officer. (GX 5; GX 6; GX 7) The VA diagnosis is alleged in SOR ¶ 1.a. The court-ordered mental-health treatment is alleged twice in SOR ¶¶ 1.b and 1.c.

In March 2014, Applicant and his wife had an argument as he attempted to explain to her that his medications made him feel less social when he was in public. After his wife told him to “just man up,” he went for a drive in his truck and was beset with negative thoughts and hallucinations that told him to drive off the road. He drove into a ditch and suffered minor injuries. Highway Patrol officers saw the vehicle in the ditch and issued him a warning, but he was not charged. This incident is not alleged in the SOR.

Applicant notified his VA providers of the March 2014 incident, and they prescribed a medication that helped alleviate his auditory hallucinations. (GX 3 at 3) During an evaluation in June 2014, he told his providers that his angry outbursts began in his early 20s and were occurring two or three times a week and that he had homicidal thoughts about people who had wronged him. (Tr. 33-36)

In April 2016, Applicant stole baseball and football cards from a military exchange that then took them to the customer service office for a refund. At the hearing, he testified that he did not know why he took the cards. He denied that it was prompted by hallucinations. He was not on medications at the time. (Tr. 41) He was charged with

stealing government property of a value less than \$1,000. On motion of the government attorney, the charges were dismissed. (GX 6) This incident is not alleged in the SOR.

Applicant stopped taking medications or receiving treatment for almost three years. He went to a VA medical center in early 2019 and was diagnosed with adjustment disorder with mixed features of anxiety, depression, and insomnia. He attended monthly therapy sessions for about nine months, when the funding for the program was cut. (Tr. 43) He began seeing a VA provider every three to six months until February 2021, when he was unable to obtain appointments for further face-to-face treatment. He was offered virtual appointments but declined them. (Tr. 44). He continued to have short telephonic sessions in which the VA provider confirmed that he had the correct prescription and renewed it. His treatment in VA medical facilities from April 2011 to September 2019 is alleged in SOR ¶ 1.d.

At the request of the DOD CAF, Applicant was evaluated by a licensed psychologist in February 2022. The psychologist concluded that Applicant's temperament is more stable when he takes his medications, which reduce his depressive mood symptoms and tendency toward aggressive reactions. He noted that Applicant was mostly compliant with his medications but that he occasionally forgot to take them or procrastinated when a refill was needed. Applicant told the psychologist that he stopped taking his medications for long periods of time during 2015 and 2016. The psychologist found that Applicant has mild depressive episodes that may last for several hours up to three or four days, but they are manageable and do not cause functional impairment. He also found that Applicant's auditory hallucinations were remitted when he was placed on medication.

The psychologist considered whether Applicant suffers from a bipolar disorder, and he concluded that Applicant does not have the manic episodes that are an element of a bipolar disorder. He noted that Applicant shows insight and awareness of his psychological problems and has been able to clearly identify how they have caused impairments in his personal and occupational environments. He diagnosed Applicant with intermittent explosive disorder and persistent depressive disorder, mild to moderate. According to DSM-5, aggressive outbursts in intermittent explosive disorder have a rapid onset and typically last less than 30 minutes. The outbursts commonly occur in response to a minor provocation by a close intimate or associate.

The psychologist contacted two of Applicant's supervisors. One has known Applicant for 8-9 years and the other has known him for more than 10 years. Both supervisors spoke highly of Applicant's competence and dependability. Neither was aware of any interpersonal issues between Applicant and his coworkers. Both believed that Applicant's judgment, reliability, and trustworthiness were intact and recommended that Applicant be allowed to retain his security clearance. (GX 3 at 6)

The psychologist concluded that Applicant's judgment, reliability, and trustworthiness were currently intact, but that "his emotional stability was highly vulnerable to external pressures or circumstances." He also concluded that Applicant's

stability was “not likely to be highly resilient or capable of enduring through significant stressors and may result in him either experiencing deepening depression or aggressive behaviors in the future.” (GX 3 at 7) The evaluation by the psychologist is alleged in SOR ¶ 1.e.

In March 2023, Applicant visited a VA facility and announced that he wanted to restore his self-confidence, decrease angry thoughts, and have better motivation to stop his aggressive behavior that had been escalating over the past year. (GX 9 at 16) His “VA Problem List” reflected treatment for “adjustment disorder with depressed mood.” His treatment notes for April 2023 stated, “The patient reported some symptoms of depression; symptoms are not consistent with a major depressive episode.” (GX 9 at 9)

Applicant testified that the last time he thought about harming himself was in December 2018. He admitted that he had “at least three” angry episodes, over the past year. He described these episodes as “being angry for at least a minimum of 15 to 20 minutes.” His angry periods sometimes last three or four days, but they cycle on and off rather than run continuously. Many of his angry episodes are prompted by his inability to perform to the standards he has set for himself. He testified that during his angry episodes, he stops talking, becomes reclusive, and does not engage with others. He has learned to channel his anger in a different direction by talking out loud, writing, walking, and focusing on positive events. (Tr. 48-52)

Applicant testified that he has decided that “sitting and contemplating hurting yourself and hurting others is no way to live.” He now focuses on a good marriage, a “fairly decent” job, and his “beautiful granddaughter.” Regarding his granddaughter, he testified,

It’s pretty joyous to get to come home and see her. And you know, when I see my granddaughter, no matter what I’ve gone through today, [it] just melts away all that anger and angst for me. She is pretty amazing. And the stuff that I’ve gone through pales in comparison to seeing her grow and learn and just experience life. And I’d like to be there and experience a little more life with her.

(Tr. 54)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline I, Psychological Conditions

The concern under this guideline 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 allegations in SOR ¶¶ 1.a-1.d are supported by the medical records and Applicant's testimony. However, the SOR does not allege any of the underlying conduct that raised questions about Applicant's mental health. As such, the SOR falls short of the specificity required by Directive ¶ E3.1.3, and the unalleged conduct may not be the basis for denying his application. Therefore, I have considered the unalleged conduct for the limited purposes of determining which adjudicative guidelines are established and in my whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Furthermore, SOR ¶¶ 1.b and 1.c allege the same incident of court-ordered medical treatment. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). For these reasons, I have resolved SOR ¶¶ 1.a-1.d in Applicant's favor.

The following disqualifying conditions under this guideline are relevant:

AG ¶ 28(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;

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 or 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 trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions

AG ¶ 28(a) may not be a basis for revoking Applicant's clearance because no underlying conduct was alleged. Furthermore, Applicant's two assaults on coworkers, two instances of shoplifting, and one incident of reckless driving are covered by Guideline J (Criminal Conduct).

AG ¶ 20(b) is established by the psychologist's report requested by DOD CAF, which is specifically alleged in SOR ¶ 1.e.

AG ¶ 28(c) is not established. No hospitalization was alleged and there is no evidence of hospitalization in the record.

AG ¶ 20(d) is established by the psychologist's report and Applicant's failures to comply with his medication plan, which are specifically alleged in SOR ¶ 1.e.

The following mitigating conditions are potentially applicable:

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

AG ¶ 29(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;

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;

AG ¶ 29(d): the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

AG ¶ 29(e): there is no indication of a current problem.

AG ¶ 29(a) is not fully established. Applicant's psychological conditions are controllable with treatment. However, until recently, Applicant has not demonstrated ongoing and consistent compliance with his treatment plan.

AG ¶ 20(b) is not fully established. Applicant has voluntarily entered a treatment program and is receiving treatment, but the guarded prognosis from the psychologist in March 2022 falls short of a favorable prognosis. There is no evidence of a more recent prognosis.

AG ¶ 20(c) is not established. The DOD CAF evaluation is more than a year old. The psychologist concluded that Applicant's condition was under control, but he was reluctant to opine that there was a low probability of recurrence.

AG ¶¶ 20(d) and 20(e) are not established. Applicant's condition is not temporary and he admitted at the hearing that he still experiences depression and angry episodes.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline I in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's honorable military service and the favorable testimonials from his current supervisors. He was candid and sincere at the hearing. He demonstrated during his testimony that he is aware of his intermittent angry episodes and has devised methods of controlling them. His devotion to his family, especially his granddaughter, have motivated him to adhere to his treatment and medication regimen. However, not enough time has elapsed to determine if he will continue to adhere to his treatment plan and will be able to continue controlling his angry episodes.

This is a close case, and close cases must be resolved in favor of national security. "Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After weighing the disqualifying

and mitigating conditions under Guideline I, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his psychological conditions.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline I (Psychological Conditions): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d: **For Applicant**

Subparagraph 1.e: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge