



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



In the matter of:)
)
) ISCR Case No. 22-00464
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2024

Decision

PRICE, Eric C, 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 January 4, 2019. On May 24, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline I. The DoD 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).

On May 31, 2022, Applicant answered the SOR and requested a decision based on the administrative record. On July 6, 2022, Department Counsel received the case and requested a hearing before an administrative judge in accordance with Directive ¶ E3.1.7. The case was assigned to me on May 8, 2023. On May 18, 2023, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 5, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection.

Applicant testified and presented the testimony of one witness but did not submit any documentary evidence. I kept the record open until June 30, 2023, to enable her to submit documentary evidence. She did not submit any evidence. DOHA received the transcript (Tr.) on June 14, 2023.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a through 1.c. She denied the allegation in SOR ¶ 1.d with explanation. Her admissions are incorporated in my findings of fact.

Applicant is a 33-year-old lead custodian employed by a defense contractor since August 2018. She previously worked as a custodian for the same company from May 2010 to May 2015. She has also been employed as a caregiver, solution provider for a telecommunications company, and worked in a chicken plant. She was unemployed from June 2008 to April 2010, May 2015 to October 2017, and February 2018 to May 2018. She held a security clearance from 2011 to 2015. (Tr. 18, 69-72; GE 1 at 7, 12-19)

Applicant married in November 2006, separated in September 2008, and filed for divorce in May 2023. She has cohabitated with a boyfriend since February 2018. She has three children ages, 16, 15 and 7. She completed the 10th grade and has taken some GED classes but has not completed her GED. (Tr. 29-33, 69; GE 1, GE 2)

The SOR alleges that: (1) in about October 2015, Applicant was involuntarily hospitalized, received treatment for psychosis, and was diagnosed with Personality Disorder NOS and Stimulant Disorder (SOR ¶ 1.a); (2) in about December 2015, she was referred for outpatient mental health counselling, diagnosed with Personality Disorder NOS and Stimulant Disorder, and that she discontinued mental health treatment in about October 2017 (SOR ¶ 1.b); (3) in about May 2016 she was voluntarily hospitalized and diagnosed with Bipolar Disorder I (SOR ¶ 1.c), and (4) that in January 2022, a psychologist doing an evaluation for the DoD CAF diagnosed her with Bipolar Disorder I and a history of Stimulus disorder, the psychologist found evidence of deceit during the evaluation, and had concerns about her trustworthiness and reliability, and said her prognosis was poor (SOR ¶ 1.d).

Applicant was diagnosed with depression during her teen years and was prescribed medication to treat depression. On October 24, 2015, she was arrested and charged with Obstructing Police, Resisting Arrest and Harassment. The police were called because she "was on some type of narcotic and was combative and fighting [and] hitting her head on the stop sign." (GE 7 at 1-2) Her mother-in-law reported that Applicant said she had taken an "Amphetamine Pill, [some over the counter medications], and had

smoked spice.” (GE 7 at 2) The arresting officer wrote that she “was irate and belligerent and [said that] she was high and possessed because she had read [sic] pigs in a parlor and continued to talk out of her head.” *Id.* She spit on a police officer when he tried to calm her down and repeatedly banged her head against a window inside a police car. She was placed in jail for five days and the charges were later dismissed. (GE 1 at 37-38, GE 2 at 3-4, GE 4 at 8-9, GE 7; Tr. 28, 34-36)

In about November 2015, a judge ordered Applicant into inpatient mental health care and she was hospitalized for about one month. She said she was treated for psychosis and was diagnosed with “schizoaffective disorder.” (GE 2 at 4, GE 4 at 9) She said she experienced an episode of “acute psychosis” and a “mental breakdown,” that she experienced “auditory, and visual hallucinations,” and was very aggressive until she received inpatient treatment. (Tr. at 36; GE 2 at 4) She reported suffering from undiagnosed post-partum depression at the time, and said she was impacted by the loss of her job in April 2015, her grandfather’s death in August 2015, and was sleeping less than two hours a night. She said she ingested a lot of caffeine and took over the counter medications and supplements but had not taken illegal drugs or consumed alcohol. (GE 4 at 8; Tr. 30-34)

In December 2015, Applicant was referred for outpatient care; her intake form stated she was diagnosed with “Psychotic disorder NOS” and “Stimulant use disorder.” (GE 5 at 5-6) From October 2015 until May 2016, she was prescribed various medications including antipsychotics, antidepressants, and sleep medication. (GE 5) She said she was too heavily medicated and described feeling like a zombie, drooling, being unable to walk well or interact with others, and being unable to perform normal daily functions. (GE 1 at 35-36, GE 2 at 2, GE 4 at 9, GE 5; Tr. 35-38)

In about May 2016, she went to the emergency room because she was experiencing stroke-like symptoms. She was subsequently hospitalized for about five days and diagnosed with Bipolar I Disorder. Her medications were changed and she said the change “was wonderful, I became myself again, I could do things again. . . . I could play with my kids, I could get a job again.” (Tr. 40-41) Her outpatient treatment plan included taking prescribed medications, monthly appointments with a counselor and a psychiatrist, and implementing stress management skills. She complied with her treatment plan until October 30, 2017, when outpatient treatment was terminated because she “missed several scheduled appointments[.]” (GE 5 at 47) Applicant attributed her decision to stop going to her appointments to disliking her psychiatrist, difficulty making appointments due to her work schedule, and her medical doctor’s agreement to continue prescribing the medications if she discontinued outpatient mental health treatment. (GE 1 at 35, GE 2 at 4, GE 5; Tr. 38-54)

Applicant said that she saw a counselor at a different mental health facility about four times from late 2017 through early 2018. Medical records from February 7, 2018 to May 14, 2018 and signed by Doctor (Dr.) I, Applicant’s primary care physician, show that she was diagnosed with bipolar disorder, anxiety, and insomnia and was prescribed the same mental health medications that had previously proven effective. (GE 2 at 5; GE 5

at 2-34) She said she told Dr. I that she wanted to discontinue her mental health medications and that he developed a plan to “wean” her off the medications. (Tr. 61) She said she stopped taking her previously prescribed mental health medications in about November 2020, January 2021, and December 2022, respectively. She reports no negative effects or any significant mental health issues since she stopped taking the medications and says she has used appropriate coping mechanisms to maintain her mental health. (GE 2 at GE 5; Tr. 51-62) She has occasionally spoken to a professional counselor provided by her employer when she has felt like she needed “a little bit of one on one.” (Tr. 58-59)

In September 2021, Applicant agreed to participate in a psychological evaluation requested by DoD CAF. (GE 3) In January 2022, a DoD-affiliated licensed clinical psychologist and board-certified neuropsychologist evaluated Applicant. She interviewed Applicant, reviewed records including a DoD background investigation, and medical records. Her Diagnostic Impressions included:

[T]he following diagnoses is appropriate at this time:

Bipolar I disorder
R/O Schizoaffective disorder
H/O Stimulus use disorder

The applicant is not a reliable historian, and therefore the diagnosis indicated above is based on review of all available medical records and my clinical judgement. The initial emergence of mania within the records may have been prompted by stimulant use, but it appears that there have been other occurrences of mania and psychosis at times that she was not noted to be using stimulants (although I am not certain that drug tests would successfully identify use if it was via over the counter medications). There are also indications of psychosis, which could be due to schizophrenia (particularly given the family history); however, this could also be a symptom of mania. Because the applicant lacked candor during this interview, I am not able to fully determine if she has schizoaffective disorder vice bipolar disorder. I am also unable to determine if there are ongoing issues with stimulant abuse, as she would not admit to any history of stimulant use whatsoever.

At the conclusion of the interview, I asked [Applicant] if there was anything else she wanted to address. She replied, “in my [inpatient care medical records] they said I had a stimulant abuse history, but I don’t.” [Applicant] elaborated that while in [inpatient care in about November 2015] she had to submit a urinalysis and hair test and that neither result demonstrated stimulant use. There is clear evidence of deceit in this case. Therefore, I have significant concerns about [Applicant’s] trustworthiness.

There are indications within the medical records that [Applicant] has not been consistent in her pharmacotherapy. Her judgement and insight are poor. Given her psychiatric history, apparent noncompliance with treatment at times, and frank deceitfulness during this interview, her reliability is questionable. She may not follow rules and regulations in the workplace. Overall, her prognosis is poor. (GE 2 at 6-7)

In August 2019, a lab test detected the unexpected presence of benzodiazepine drugs in Applicant's specimen. (GE 5 at 35) She repeatedly denied improperly using controlled stimulants at any time and said she did not previously know that she had tested positive for benzodiazepine. She testified that she now understood why the psychologist who conducted the psychological evaluation believed she was being dishonest about her use of certain stimulants. She acknowledged that at the time of the positive sample she "h[ad] some [medication containing benzodiazepine] in [her] medicine cabinet" from an old prescription, and that "the only thing I can think of is that I took some of that by mistake[.]" (Tr. 28-35, 63-66, 98-99)

Applicant's current supervisor observed the entire hearing at her request and testified. He has known her for two years and has been her immediate supervisor for about a year. The company has many employees with disabilities and has "counselors on board that are available [to employees] at any time." (Tr. 92) He first learned of many of her past life experiences and mental health challenges during the hearing and said that he would never have known about them otherwise. She is one of the company's top employees, always on time, reliable, and has a great work ethic. She has earned his and other supervisors trust and was very aware of responsibilities associated with a security clearance. She has successfully dealt with many stressful situations and additional responsibilities. He recommended she be granted eligibility for access to classified information without hesitation or reservation. (Tr. 7-9, 17, 91-97)

At hearing, Applicant was informed of the importance of submitting documentary evidence to corroborate her testimony including examples of potentially relevant information. She did not submit any documentary evidence after the hearing. (Tr. 13, 80-91, 97-100)

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.

Applicant's admissions and the record evidence establish the following disqualifying conditions under 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;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
- (c) voluntary or involuntary inpatient hospitalization; and
- (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

The following mitigating conditions are potentially applicable under AG ¶ 29:

- (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.

AG ¶ 29(a) is not fully established. Applicant's psychological conditions may be controllable with treatment. She successfully complied with a treatment plan from December 2015 until October 2017, but then she stopped going to scheduled appointments. There is evidence she received some counselling and continued medications prescribed under her previous treatment plan until mid-2018, but there is no documentary evidence of ongoing or consistent compliance with a treatment plan since.

AG ¶¶ 20(b) and 20(c) are not established, because the DoD-approved mental health professional provided an unfavorable prognosis and there is no evidence of a recent favorable prognosis by a qualified mental health professional.

AG ¶¶ 20(d) and 20(e) are not fully established. Applicant has learned and implemented some coping methods to mitigate the impact of her psychological conditions and has not shown indications of emotional instability in her workplace. However, her psychological conditions are not temporary, and a qualified mental health professional concluded that her prognosis is poor.

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 age, education, work history, testimony of her supervisor, and medical history including the psychological report.

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 her psychological conditions.

Formal Findings

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

Paragraph 1, Guideline I: AGAINST APPLICANT

Subparagraphs 1.a-1.d: 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.

Eric C. Price
Administrative Judge