



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



In the matter of:)	
)	
)	ISCR Case No. 23-00706
)	
Applicant for Security Clearance)	

Appearances

For Government: John Hannink, Esq., Department Counsel
For Applicant: Sabreena El-Amin, Esq.

02/26/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant successfully mitigated the security concerns under Guideline I (Psychological Conditions). National security eligibility for access to classified information is granted.

Statement of the Case

On January 20, 2020, Applicant submitted a security clearance application (SCA). On July 27, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline I. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

On August 25, 2023, Applicant, who identifies with they/them pronouns, provided a response to the SOR, and they denied all of the SOR allegations, except SOR ¶ 1.b.

They requested a hearing before an administrative judge, and the case was assigned to me on November 28, 2023. After coordinating schedules with Department Counsel and Applicant's counsel, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing for a video teleconference scheduled for January 17, 2024. The hearing was convened as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-6, and Applicant offered Applicant Exhibits (AE) A and B. Applicant objected to GE 4, the September 2022 DOD psychological evaluation report, which I overruled as Applicant had voluntarily consented to undergo the DOD psychological evaluation as part of their security clearance investigation. All proffered exhibits were admitted into evidence. Department Counsel also proffered an October 2023 discovery letter, which I marked as Hearing Exhibit (HE) 1, and he requested that I take Administrative Notice of an excerpt from the DSM-5, which I marked as Administrative Notice (AN) 1 and admitted into the record. Applicant's counsel also requested that I take Administrative Notice of AE A and AE B, but I noted that AE A was a medical study and the study in the report was controverted by other medical studies. AE B defined the word "hospitalization", which came from the U.S. government website HealthCare.gov. I told Applicant's counsel that I would take Administrative Notice of their exhibits if they were factual and not subject to interpretation. Therefore, I cannot take Administrative Notice of AE A, the controverted medical study, but I am able to take Administrative Notice of AE B, which is a definition of a word. Per the request of Applicant, I held the record open until February 17, 2024, so that they could supplement the record with additional documentation. Applicant timely submitted medical records labeled as AE C, which I admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on January 24, 2024, and the record closed on February 18, 2024.

Findings of Fact

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 24 years old. Before their college graduation in the Spring of 2021, they started an internship in November 2019 with a government contractor. They were required to apply for a DOD security clearance. After they graduated with a bachelor's degree in computer science, the government contractor offered them full-time employment as a software engineer. Applicant identified as a trans man from their sophomore year in high school and during their first two years into college. They now consider themselves demisexual. Demisexuality is a sexual orientation in which a person feels sexually attracted to someone only after they have developed a close emotional bond with them. (<https://my.clevelandclinic.org/health/articles/22678-demisexuality>) They currently cohabit with their partner, and they do not have any children. (Tr. 22-25, 30, 35, 38-39; GE 1)

Applicant described their childhood as "rough." Their parents divorced when they were 11 years old. Their mother had a mental health condition, was a harsh critic, and was excessively fixated on her children's academics. Applicant was verbally and emotionally abused by their mother, and they were also neglected. Their mother used

alcohol to excess, and she was hospitalized on more than one occasion due to this problem. Applicant did not feel safe living with their mother, and they had to watch over their two younger siblings because they were neglected by their mother as well. (Tr. 26-29)

When Applicant was 12 years old, they suffered from a depressive episode which required inpatient treatment. When asked how this situation developed, Applicant stated that another student had looked at their artwork without permission, and due to the graphic nature of Applicant's artwork, the student reported it to school officials. Applicant testified, "I had some art of my ghost getting back at my bullies, and while, yes, the art was violent, no one was really listening or understanding that I was having issues at school. And I had no intentions of ever harming someone; it was just the only way for me to get my frustrations out." They had to meet with a social worker, who then told Applicant's father they needed to have a mental health evaluation. They were referred for inpatient treatment from approximately February 2012 through March 2012 for a condition diagnosed as depressive disorder with suicidal ideation. They were prescribed medication. (SOR ¶¶ 1.a and 1.b) (GE 1; Tr. 30-34)

Applicant continued to receive mental health counseling and medication throughout their high school years, but it was not consistent. When they were the age of 14, they half-heartedly attempted to hang themselves with the belt from their bathrobe after performing poorly on a test, and on another occasion, they put a plastic bag over their head but did not tie it closed. On both occasions, they stopped their actions because they did not like the way it made them feel. (SOR ¶¶ 1.c and 1.d) At some point during this time they were diagnosed with bipolar disorder, anxiety, and depression. In 2016, their mother died from complications related to excessive alcohol use when they were 16 years old. (GE 1; Tr. 30-35; GE 3)

From approximately November 2019 to December 2019, Applicant received partial outpatient treatment for a condition diagnosed as major depressive disorder – severe. (SOR ¶ 1.e) They were enrolled in college at the time and feeling extreme pressure from the college assignments and the notion that they had to excel in academics that was impressed upon them since childhood. They voluntarily referred themselves for treatment. After the partial outpatient treatment program was completed, they continued to see a therapist, a new psychiatrist, and they continued taking medication. The treatment records reflect there were times they did not take the medication as prescribed. (Tr. 35-38; GE 2; GE 3)

During the course of Applicant's security clearance investigation, the DCSA CAS requested Applicant to voluntarily undergo a psychological evaluation. They consented to the evaluation, and in September 2022 they met with the licensed clinical psychologist. The evaluation took three hours out of the four hours allotted. During the evaluation Applicant felt like the questions were based on preconceived notions about them, and the mental health professional seemed more concerned about their history rather than their current treatment and progress. After the evaluation, the psychologist found that Applicant met the criteria for bipolar II disorder, most recent episode

depressed (severe), other specified trauma and stressor related disorder, and autism spectrum disorder. The mental health professional noted there was a reasonable concern that Applicant's psychological conditions impaired their judgment, reliability, and trustworthiness. (SOR ¶ 1.f) (Tr. 38-41; GE 4)

Applicant disagreed with the psychologist's findings from the September 2022 evaluation. They have been feeling remarkably better since November 2022 when they started seeing a new therapist and after going through a complete "med wash" under the supervision of their psychiatrist. The medications they had been taking made them violently ill and also kept them in a state of mental fog. The new therapist has been more challenging by setting specific goals and has been more involved in helping them improve, rather than just listening to their thoughts and concerns like their former therapist. (Tr. 41-45)

Applicant and their psychiatrist worked together during their med wash, and the plan was to eliminate all medications, and then slowly add medications when necessary. No new medications have ever been added. They have been completely free from medications for over a year now. Applicant stated:

I believe that not having the medications has allowed me more opportunity to help my mental health conditions and confront the feelings that I feel in therapy a lot better, as some of the medications were merely helping me get by and masking the symptoms instead of allowing me to confront them. Now that I'm not taking medications, I'm more in tune with how I feel and how I can better cope with those in therapy. (Tr. 45-46)

Applicant provided a medical study showing that antidepressants are a potential cause of suicidal ideations or behavior. (AE A) They also submitted their current treatment records. In May 2021 neuropsychiatric testing results showed Applicant's diagnosis of autism spectrum disorder, without intellectual or language impairment, and major depressive disorder. The test results did not conclude a diagnosis of bipolar disorder. The psychiatrist, therapist, and the certified physician assistant have updated Applicant's diagnosis to major depressive disorder, in full remission. Applicant has been seeing their therapist on a weekly basis since November 2022. The therapist reported that since medications were discontinued in January 2023, there have not been any major depressive-type systems, and the patient appeared to be doing better than when they were treated with medications. The patient reported their mental health symptoms have not impaired their daily functioning, and they have built sufficient coping strategies to maintain stability. Based on patient reports and clinical observation, Applicant has demonstrated improvements in their overall insight and judgment/impulse control. Applicant continues to participate in weekly therapy sessions to the current time and is fully compliant with their treatment plan. (AE C)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. 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 as to obtaining 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 as to 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

AG ¶ 27 expresses the security concern for psychological conditions:

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 medical diagnoses and records in evidence raised the following Psychological Conditions 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 treatment; 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.

AG ¶¶ 28(a)-(c) have been established by the facts of this case. AG ¶ 28(d) has not been fully established by direct, clear evidence of a treatment plan that Applicant has failed to follow. Due to Applicant's dislike and ill side effects of the various medications that have been prescribed for them throughout the years, they have not consistently taken the medications as prescribed. Since January 2023, in accordance

with medical advice, Applicant is not presently taking any medication for their mental health condition. The treatment record reports the patient's positive progress since they were weaned from the medication by their psychiatrist.

I considered the following mitigating conditions 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 has indications of emotional instability; and

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

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows: [adjust margins]

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. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in Egan, supra. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

The SOR alleges psychological conditions security concerns based on Applicant's history of treatment for conditions diagnosed as depressive disorder with suicidal ideation, bipolar disorder, anxiety, and/or depressive disorder-severe. Additional psychological concerns were developed from the September 2020 DOD

psychological evaluation, by a clinical psychologist who diagnosed Applicant with bipolar II disorder, most recent episode depressed (severe), other specified trauma and stressor related disorder, and autism spectrum disorder. Based on her overall assessment, the psychologist found that Applicant had psychological conditions which could impair their judgment, reliability, and trustworthiness.

Applicant had a difficult childhood. As a 12-year-old, Applicant was evaluated and referred for inpatient treatment. It is clear from their testimony and medical records that they predominantly suffered from depressive symptoms throughout their high school and young adult years.

In November 2022, Applicant started treatment with a new mental health professional and currently continues treatment on a weekly basis. In conjunction with their psychiatrist, physician assistant, and therapist, Applicant was slowly weaned from all medications. The plan was to put them on medication when their symptoms required it, but since January 2023, Applicant has remained medication-free. The current treatment records reflect that Applicant has improved, and their current diagnosis is autism spectrum disorder, and major depressive disorder, in full remission. Applicant is currently participating in treatment, and they are compliant with their treatment plan. The current medical and mental health staff have provided a favorable prognosis as recently as February 2024. Applicant successfully mitigated the psychological conditions security concerns.

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.

Applicant is doing well in treatment, and they are compliant with their treatment plan. Overall, the record evidence leaves me without any doubt as to Applicant's eligibility and suitability for a security clearance. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. The psychological conditions security concerns are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge