



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 23-01011
)
 Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2024

Decision

HOGAN, Erin C., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions). Applicant failed to mitigate the security concerns, because he failed to take the medications prescribed by his doctor. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on November 23, 2021. On June 8, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline I, Psychological Conditions. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on June 23, 2023, and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2024. A Notice of Hearing was issued on February 16, 2024, scheduling the hearing for March 20, 2024. The hearing was held as scheduled. Department Counsel offered Government Exhibits (GE) 1 - 4, which were admitted without objection. Applicant testified. The record was held open to allow Applicant to submit documents. He timely submitted one document which was marked as Applicant Exhibit (AE) A and admitted without objection. DOHA received the transcript (Tr.) on March 29, 2024.

Procedural Issue

At the beginning of the hearing, the Government withdrew the allegations under paragraph 2, Guideline B.

Several facts in the decision are referred to in generic terms in the interests of protecting the Applicant's privacy. The more detailed facts can be located in the case file.

Findings of Fact

In Applicant's answer to the SOR, he denied the allegations in SOR ¶¶ 1.a and 1.b. His denials are incorporated into my findings of fact.

Applicant is a 30-year-old employee of a DOD contractor. He started his employment in March 2020. This is his first time applying for a security clearance. He previously was granted a position of public trust when he worked as a contractor with another government agency from March 2019 to October 2019. He was unemployed between October 2019 to March 2020. He has a college degree. He is single and has no children. (Tr. 15-18, 30, GE 1)

The SOR alleged Applicant was evaluated by a U.S. Government-approved licensed psychologist on February 24, 2023, who determined he met the criteria for Schizophrenia; Insomnia Disorder; and Social Anxiety Disorder. The psychologist determined Applicant has a condition that poses a risk to his judgment, reliability, and trustworthiness pertaining to handling classified information. (SOR ¶ 1.a: GE 2) The SOR also alleged that Applicant failed to follow treatment recommendations because he refused to take anti-psychotic medications prescribed by his treating psychiatrist. (SOR ¶ 1.b: GE 2; GE 3 at 4; GE 4 at 2)

In his response to the SOR, Applicant denies that he has schizophrenia because he does not experience psychotic episodes, hallucinations, or any sort of breakdown that would cause him to disclose classified information. He began to see a psychiatrist for paranoid thinking due to concerns about the role the internet plays in transmitting information. He believes his concerns about the internet heightened his own security perceptions and made him more vigilant about what he should and should not say on the internet. The last time he had an episode was in 2019. He does not see himself having another episode. (Answer to SOR)

Regarding the allegation in SOR ¶ 2.a, Applicant states that he has taken several different types of psychotic medications meant for schizophrenia prescribed by his psychiatrist. Each medication has left him barely able to function, especially when the dosage was increased. He claims he does not experience most of the symptoms these drugs are meant to treat. He is willing to start a new medication plan, if the government believes it is in his best interest, but the ones he has tried do not work well. He believes he knows himself best and feels the best with no medication at all. (Response to SOR)

Background

Towards the end of his contracting job with another government agency in the fall 2018, Applicant became concerned about his private information being disclosed to people with whom he had not communicated with over the Internet. He began to understand how networks work and the extent of network security, resulting in daily thoughts about this issue. He testified that he left his employment with this contractor in October 2018 because he wanted to pursue other jobs. The government-approved psychologist [Dr. B] mentions in her evaluation that he left the job in October 2019 for personal health reasons, specifically, his paranoia about computer security was getting “out of hand.” (Tr. 15 – 18; GE 2 at 3)

Applicant began to see Dr. A in early 2019 because he began to experience extreme paranoia. He felt he was being watched and talked about by other people and having anxiety. He felt that people were able to access the sites he was using on the Internet. He began to see Dr. A at the recommendation of one of his brothers. Dr. A diagnosed Applicant with paranoid schizophrenia and prescribed him the drug Latuda due to paranoid thoughts he was having regarding the use of computers and the concern that other users were eavesdropping on information he provided without his consent. In October 2018, he quit his job because of the invasive thoughts he was having about the lack of privacy on the Internet. He is careful about how he uses technology. (Tr. 15 – 21; GE 3 at 4; GE 4 at 2)

Applicant meets with Dr. A between once a month or every two months. When he began taking Latuda it gave him a carefree feeling, but it also had inhibiting side effects. It drained his energy, and he decided it was not doing much for him. Dr. A then prescribed him Abilify. He took it for several months and stopped taking it because of the side effects. He then tried Seroquel and the same pattern occurred. The drug eventually sapped his energy. He stopped taking medication in early 2020. His paranoid thoughts did not increase once he stopped taking medication. He has not taken medication for over four years. He feels much better and has his energy back. Dr. A is concerned because he does not take his prescribed medications. She meets with him regularly to monitor his status. (Tr. 20-22)

Applicant does not believe he has paranoid schizophrenia. He admits to being occasionally paranoid, but not at a high level. He testified that he is able to rationalize his thoughts. He does not hear voices. He believes Dr. A thinks his symptoms are much

worse than they are. He has not attempted to consult another doctor to get a second opinion. (Tr. 35 - 45)

There is no evaluation or statement from Dr. A. in the case file. At the end of the hearing Applicant was given the opportunity to obtain a statement from Dr. A after the hearing. He chose not to submit a statement. He stated:

I kind of wrote, you know, this on the – it said she thinks my symptoms are much worse than they are. So I don't think a letter from her would do any good in this case, to be honest. (Tr. 45)

Evaluation of Government-Approved Psychologist

The information in this section comes from GE 2.

Dr. B, a licensed psychologist, was hired by DCSA CAS to evaluate Applicant in connection with his application for a security clearance. Dr. B met with him on February 24, 2023. The examination was conducted via secure video teleconference. Applicant consented to the evaluation being conducted via video-teleconference instead of an in-person evaluation.

The DCSA CAS referred Applicant due to a diagnosis of Paranoid Schizophrenia and unknown impact on functioning. The purpose of the evaluation was to answer the following question:

Does the subject have any medical, psychological, psychiatric, emotional, or substance use conditions which could impair his judgment, reliability, or trustworthiness?

Dr. B based her opinion on mental health treatment records provided by DCSA CAS, and Applicant's November 2021 e-QIP application. Dr. B also conducted clinical interviews, observations, and administration of objective personality measures, Personality Assessment Inventory (PAI); subjective report of symptoms via the Patient Health Questionnaire (PHQ-9); Generalized Anxiety Disorder-y (GAD-7), PTSD Checklist for DSM-5 (PCL-5), Drug Abuse Screening Test (DAST-10), Mood Disorder Questionnaire (MDQ), and Alcohol Use Disorder Identification Test.

Applicant told Dr. B he first sought mental treatment in January 2019 due to developing paranoia about technology. He reported increased thoughts that others were observing the messages he was sending others and realizing these thoughts were "getting out of hand." Applicant's father or brother referred him to his current and only treating psychiatrist, Dr. A. He has met monthly with Dr. A since January or February 2019. Review of his treatment records indicated Dr. A diagnosed him with "Paranoid Schizophrenia" (DSM-IV-TR terminology) and described his paranoia as "severe." Dr. A did not recommend Applicant for a security clearance due to the severity of his disorder.

Applicant told Dr. B that he was initially prescribed Latuda, then another antipsychotic that he could not recall (likely Abilify), and was finally prescribed Seroquel. He did not like the side effects of these medications and has not been compliant with the dosage recommendations beyond “two to three months.” He described the antipsychotic medications caused “extreme tiredness” and he does not feel like himself when he takes them. Dr. A is aware that he does not take his medication. Dr. A continues to prescribe the medications in case he needs them. Applicant told Dr. B that he has not taken antipsychotic medication for several years. He meets with Dr. A monthly. They discuss how he is doing, his overall mood and whether he is having any paranoia. They also discuss his ongoing difficulties with social anxiety and insomnia. Dr. A prescribed him Xanax for his social anxiety.

Applicant discussed his ongoing difficulties with insomnia. He has difficulties falling and staying asleep. He achieves five hours of sleep each night. He frequently takes over-the-counter Melatonin, 20 mg, and will drink alcohol before bed at least two nights a week to induce sleep. He can be tired during the day but relies on energy drinks and coffee to offset symptoms of poor sleep. His current consumption of alcohol is at least one five-ounce glass of wine approximately two nights per week.

Applicant noted he continues to experience paranoid thoughts but does not believe they rise to the level of a psychiatric condition. He told Dr. B, “I don’t think I have a psychiatric condition. I think this is different. I’m too analytical to have paranoid schizophrenia. It’s not like those things [the connections he’s making] aren’t there. I have a basis for it.” He manages his paranoid beliefs via challenging his thinking. He stated that he will brush them off, tell himself that this is absurd or something like that. He chooses to not communicate via Short Message Service (SMS) or via chat apps at work or home as an attempt to mitigate his paranoid beliefs. He believes this helps reduce his distorted thinking.

Dr. B noted Applicant arrived on time for his scheduled evaluation. He was alert and oriented to all spheres. His attention and concentration appeared within normal limits. His comprehension was normal and no unusual mannerisms were observed. During the evaluation, he denied and did not appear to respond to hallucinations, perceptual disturbances, or psychotic features. His thought content was normal and appropriate to the situation. He did not appear to be making attempts at deception during the evaluation.

During the clinical interview Applicant denied he is currently experiencing any severe symptoms consistent with those that precipitated his psychiatric treatment. He believes his paranoia is under control. He denied a history of planning or attempting suicide. He denies current or past homicidal ideation, plan, means, or intent. He denied current or past difficulties with impulsivity, distractibility, or inattention. He denied a history of derealization and depersonalization, and auditory, visual, or tactile hallucinations. He denied episodes of violent behavior, uncontrollable anger, or unprovoked outbursts. He denied a history of maltreatment or abuse. There is no evidence presented during the clinical interview, or indicated in available records, that Applicant ever abused alcohol, illicit substances, or engaged in the misuse of prescription medications.

In the Diagnostic Impressions & Prognosis section of her evaluation report, Dr. B states:

[Applicant's] perspective of his delusions are that they do not rise to the level of a psychiatric condition and therefore he is noncompliant with his provider's medical recommendations. Beyond this he continues to experience difficulties with social anxiety and sleep disturbance that could have an appreciable impact on the frequency and intensity of his schizophrenia, particularly because he continues to use alcohol as a means to manage his sleep. At this time, even though he reports functioning fairly well, the degree to which psychosocial stressors or his uncontrolled insomnia will have on his psychiatric presentation in the future (GE 2 at 5-6)

Based on his background information, clinical interview and observations, psychological screeners, and objective personality assessment, Dr. B concluded his diagnostic profile is F20.9 Schizophrenia; F51.01 Insomnia Disorder; and F40.10 Social Anxiety Disorder. Dr. B concludes Applicant does currently present with a condition that could pose a risk to his judgment, reliability, or trustworthiness concerning classified information. She notes that, although Applicant believes he is currently managing his psychosis via cognitive challenging and avoiding some versions of technology, there is no guarantee that he will be able to continue avoiding these technological applications with his positions for the government or that his work would not force him to utilize technology more robustly in a manner that would ultimately increase the frequency and severity of his paranoid beliefs in the future. (GE 2 at 6)

Considering his uncontrolled sleep functioning and the co-relation between poorly managed sleep and paranoia in the general population, let alone in those with existing psychosis by virtue of their psychiatric condition, the degree to which Applicant's paranoid thought processes will be exacerbated over time are unclear at this time in the context of treatment non-compliance and a strong belief on his part that he does not meet diagnostic criteria for a psychiatric condition and therefore does not need any psychotropic medication at this time. Dr. B concludes that based on these reasons, the risk to judgment and reliability of any future mental health problem is deemed to be high at this time. (GE 2 at 6)

Whole-Person Factors

Mr. V, the principal at Applicant's place of employment, has worked with Applicant for over four years. Applicant has held multiple roles during this time. He is described as a strong learner of technology and self-taught. His ability to self-learn and be proactive has helped his project team. He has received positive reviews from the project leads and the technical leads on the two projects he has worked on. He accepts critical feedback and applies the feedback to his duties. He has been requested by other project leads because of his work ethic and technical ability. He is described as "very professional,

quietly focused, and collaborative.” He has made a tremendous contribution to the company over the four plus years he was worked there. Mr. V would recommend him for any position he chooses to pursue but hopes that he stays with the company. (AE A)

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* 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* 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 following disqualifying conditions under this guideline may be applicable:

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; 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.

I find AG ¶¶ 28(b) and 28(d) apply to Applicant’s case. AG ¶ 28(b) applies because Dr. A, a psychiatrist whom he has met with since January 2019 on a monthly or bimonthly basis diagnosed him with paranoid schizophrenia. Although Dr. A’s diagnosis and credentials were not offered into evidence, Dr. B, the licensed psychologist who evaluated Applicant at the request of the CAS, mentions in her evaluation that she reviewed his mental health treatment records provided by Dr. A. In her evaluation, Dr. B mentioned that Dr. A does not recommend him for a security clearance due to the severity of his

disorder, even if he took his medication. While it would be preferable to have had access to Applicant's mental health records, Dr. B's review of the records establishes a prima facie case. In fact, Dr. B's diagnosis after her evaluation was that Applicant suffered from Schizophrenia; Insomnia; and Social Anxiety Disorder. Dr. B concluded that he has a condition that poses a risk to his judgment, reliability, or trustworthiness concerning classified information.

AG ¶ 28(d) applies because Applicant admits he no longer takes his prescribed medications against the professional advice of Dr. A. He stopped taking his medications over four years ago.

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.

The mitigating conditions in AG ¶¶ 29(a), 29(b), and ¶¶ 29(c) do not apply. While Applicant regularly meets with Dr. A, he refuses to take his medication. In other words, he is not consistent with his treatment plan. He has not provided a favorable prognosis from his treating psychiatrist, Dr. A, or from the Government-approved psychologist, Dr. B. He did not seek an evaluation from another duly-qualified mental health professional to determine whether the original and affirmed diagnosis is correct.

The mitigating conditions in AG ¶¶ 29(d) and 29(e) apply. Applicant sought treatment for his paranoid thoughts. While a security concern remains because he refuses to take his medication, he has remained stable since Mar 2020 and there appear to be no indications of a current problem.

Despite the mitigating factors in AG ¶¶ 29(d) and 29(e), I cannot conclude Applicant mitigated the concerns under Guideline I, because the record evidence does not include a favorable medical prognosis from a duly-qualified mental health professional or a favorable prognosis from a Government – approved psychologist. The concern is not Applicant’s current condition, which is stable, but the probability that his mental health issues will recur or be exacerbated in the future. In particular, the concern is heightened because he refuses to take his medication. Based on the above considerations, I conclude that the security concerns under Guideline I are not mitigated.

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 considered Applicant’s cooperation throughout his background investigation. I considered his employment history as a contractor for the U.S. government. I considered the highly favorable comments of Mr. V, his superior at his current place of employment. I considered his willingness to seek help for his mental health issues. I considered that he has not had a significant mental health episode in over four years. Considering the seriousness of his diagnosis, security concerns remain because the record evidence does not include a favorable prognosis from a duly qualified mental health professional and/or a duly-qualified mental health professional approved by the U.S. Government. While Applicant is currently mentally stable and sees Dr. A on a regular basis, his refusal to take his prescribed medications raises a concern regarding future mental health episodes.

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 under the Psychological Conditions.

Formal Findings

Formal findings for or against on the allegations in the SOR:

Paragraph 1, Guideline I: Against Applicant

Subparagraphs 1.a and 1.b: Against Applicant

Paragraph 2, Guideline B: Withdrawn by the Government

Subparagraphs 2.a and 2.b: Withdrawn by the Government

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.

Erin C. Hogan
Administrative Judge