



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-00571
)
 Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Matthew J. Thomas, Esq.

06/10/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 24, 2020. On March 29, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I. 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 10, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 5,

2023, and the case was assigned to me on February 29, 2024. On March 18, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on April 30, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection.¹ Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. DOHA received the transcript (Tr.) on May 13, 2024.

Findings of Fact

Applicant is a 64-year-old senior system specialist employed by a federal contractor since July 2019. He served on active duty in the U.S. Air Force from June 1981 to July 1991 and received an honorable discharge. He received a security clearance in January 1982. He married in July 1984, divorced in March 1999, married in April 2001, divorced in December 2012, and married in July 2015. He has two adult children and an infant son.

Applicant obtained two associate degrees in March 1990 and August 1991. He is taking college courses for a bachelor's degree in computer networks and cyber security, but he has not yet received his degree.

In 1986, while Applicant was on active duty overseas in the Air Force, he became concerned about his excessive alcohol consumption. He told his commander about his concerns, and his commander recommended that he participate in one of the command's out-patient programs. He completed the program, attended Alcoholics Anonymous meetings, and stopped drinking. (Tr. 92-95, 103)

Applicant abstained from alcohol until October 1998. He became depressed because his first marriage was failing, and he attempted suicide by drinking a large amount of alcohol and ingesting a large quantity of salicylates (aspirin). He was hospitalized for about a month for mental health treatment and evaluation. (Tr. 104) He did not resume drinking after this incident. (Tr. 106)

Applicant's second divorce was amicable. He and his wife grew apart due to his extensive service overseas, including active combat zones in Iraq and Afghanistan from 2005 until 2013. He testified that they remain "the best of friends." (Tr. 112)

Applicant met his third and current wife while they were both employed by contractors overseas. They both wanted to have children, but they were not immediately successful. (Tr. 122-23) Their multiple failed attempts to have children through in vitro fertilization caused frequent and intense arguments. Their marital stress increased when three of his wife's immediate family members passed away. (Tr. 126-27)

¹ GX 4 is an extract of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), pertaining to bipolar I disorder at pages 123-32. Without objection by either party, I have taken administrative notice of the discussion of bipolar II disorder at pages 132-41.

In April 2019, Applicant attempted suicide by drinking antifreeze. He was hospitalized for five days to overcome the effects of the antifreeze, and then voluntarily admitted to a psychological ward for one week. He was diagnosed with bipolar I mood disorder. (GX 5) He testified that he regularly attended counseling sessions in person until the COVID pandemic began. The hospital where he attended counseling attempted to transition to telemedicine, but with limited success. At the same time Applicant was working two jobs, attending college classes, and dealing with increased COVID-related workload. He found that the coping methods he had learned during counseling were helpful. He ran out of his medications and could not refill them because of the COVID lockdown. (GX 5 at 1; Tr.167-68)

Applicant testified that, on the advice of his attorney, he resumed counseling around April 2023. (Tr. 171) He insisted on face-to-face counseling, and he told his therapist that he would like to start without medication so that nothing would be masked. He testified that he is willing to resume medication if his current therapist considers it advisable. He believes he will need treatment for the rest of his life. (Tr. 132-46, 48)

Medical records submitted by Applicant reflect that he underwent a diagnostic evaluation on April 20, 2023, and had in-person counseling on five occasions in May through August 2022. He underwent a reassessment on August 23, 2023, had in-person counseling twice in September and October 2023, and received telehealth counseling on nine occasions at two-to-three-week intervals from October 26, 2023, through March 28, 2024. The clinical notes indicate that Applicant was eager to talk and expand his thoughts. The efforts by Applicant and his wife to have a child have succeeded, and Applicant has repeatedly told his therapists about the joy of his recent fatherhood, but his marital problems are ongoing. (AX G) He testified that his counseling sessions have helped him to understand and deal with his marital stress. (Tr. 132-48)

On January 9, 2023, Applicant was evaluated by a licensed psychologist (Dr. L) at the request of the DCSA CAS. Dr. L reviewed Applicant's history of excessive alcohol consumption, suicide attempts, personal and social history, and record of medical and psychiatric treatment. She administered the Personality Assessment Inventory (PAI) and noted that he appeared to be "exceptionally engaged in positive impression management and seems unable or unwilling to admit to personal shortcomings." She concluded that his personality profile "likely reflects considerable distortion of his current psychological state."

Dr. L noted that Applicant was diagnosed with bipolar I disorder in April 2019, and that he began outpatient treatment, including individual psychotherapy and medication management, for about one year beginning in May 2019. Dr. L noted that his treating licensed clinical professional counselor (LCPC) opined that he did not have a condition that could impair his judgment, reliability, or ability to safeguard classified national security information, but that the LCPC's favorable prognosis was conditional, with "lifelong maintenance needed." Applicant told Dr. L he does not believe that he has bipolar I disorder, but he admitted that he may have a bipolar II disorder. He told Dr. L that he "got caught up in a busy life" and stopped treatment in about September 2020. Dr. L concluded

that Applicant's reliability, stability, and trustworthiness in safeguarding classified information "are considered questionable." (GX 2)

On April 9, 2024, Applicant was evaluated by a board-certified clinical psychologist (Dr. K) at his request (AX A). As part of her evaluation, she considered Applicant's medical treatment records and the evaluation by Dr. L. As part of Dr. K's evaluation, she administered a screening test for alcohol-use disorders, which reflected that Applicant's risk for alcohol-related problems was low. (Tr. 31) Based on her psychological testing, she testified that she would have agreed with Dr. L's evaluation in 2020, shortly after Applicant's suicide attempt, but she does not believe that the 2020 evaluation is valid at the present time, because of the passage of time and the significant treatment received by Applicant since 2020. (Tr. 32-33) Although Dr. L diagnosed Applicant with bipolar I disorder, Dr. K diagnosed him with bipolar II disorder. She explained that bipolar I disorder is characterized by manic episodes, where an individual engages in reckless and impulsive behavior such as promiscuity or gambling and has delusions or hallucinations and grandiose thinking. Bipolar II disorder is less severe and is characterized by hypomanic episodes that are characterized by tunnel vision, pressured speech, and circumstantial talking that jumps from subject to subject, but there is less reckless behavior and fewer problems with relationships and employment. (Tr. 34-36)

Dr. K testified that the "gold standard" for treating bipolar disorder is a combination of psychotherapy and medication management. Some individuals need only psychotherapy. Dr. K noted that Applicant was previously diagnosed with an adjustment disorder, but she has seen no evidence that Applicant currently has anxiety or depressive symptoms. (Tr. 38) She testified that there appear to be no concerns regarding his trustworthiness, reliability, or judgment at this time. (Tr. 39) She believes that the concerns raised by Dr. L, based on Applicant's termination of treatment, have been mitigated by the insight Applicant has developed since resuming treatment. (Tr. 41-42) She testified that she is aware that individuals with bipolar II disorder have a higher suicide risk than those with Bipolar I disorder, because those with bipolar II disorder are often not aware of the diagnosis and are less likely to be monitored or seek treatment. (Tr. 59-60)

Dr. K believes that there are no concerns regarding Applicant's judgment, reliability, or trustworthiness, so long as he continues his therapy and continues to use the coping skills that he has developed and to retain and potentially improve the insights that he has developed through counseling. (Tr. 52, 55-56)

Applicant's project manager since November 2021, a retired Army colonel, has observed him in a critical engineer position where his attention to detail and performance under stress has continuously been assessed. He rates Applicant as among the top three of the twenty engineers assigned to his directorate. He states that Applicant has a flawless record and has repeatedly demonstrated sound and mature judgment. He has no reservations about Applicant remaining in his current position and keeping his security clearance. (AX E at 1-2)

Applicant's lead engineer, a retired Army lieutenant colonel, has worked with Applicant for about two years. He states that Applicant's performance of duty has been flawless, and that he has continued to take on more responsibility. Other employees have recognized Applicant's expertise and seek his expertise. He considers Applicant to be "absolutely trustworthy." (AX E at 3-4)

One of Applicant's coworkers believes that his technical competence is "nothing short of exceptional" and his reliability and trustworthiness are "exemplary." This coworker states that Applicant is notable for his sound and mature judgment. He states that Applicant is able to remain calm and collected, even under pressure, to ensure that his decisions are well-reasoned and in the best interests of his team and the project at hand. He states that Applicant is respected and well-liked by his colleagues, and he fosters a culture of collaboration and mutual support. He considers Applicant "an ideal candidate for a position requiring a security clearance." (AX E at 5)

A coworker who has known Applicant for two years considers him "very competent" in providing complex acquisition requirement packages, technical evaluation, and missile technology control reports. He admires Applicant's attention to detail and constant practice of operational security. He considers Applicant trustworthy and reliable. (AX E at 6)

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 SOR alleges the following conduct:²

SOR ¶ 1.a: Applicant sought treatment in 1986 for excessive alcohol consumption;

SOR ¶ 1.b: Applicant attempted suicide in or around October 1998 by drinking an excessive amount of alcohol and taking a large quantity of salicylates (over the counter pain medications);

SOR ¶ 1.c: Applicant was voluntarily hospitalized in October 1998 for mental health treatment and evaluation;

SOR ¶ 1.d: Applicant attempted to commit suicide in or around April 2019 by consuming antifreeze;

SOR ¶ 1.e: Applicant was voluntarily hospitalized in April 2019 and diagnosed with bipolar I mood disorder;

SOR ¶ 1.f: In or around 2019, a licensed clinical professional consultant opined that a positive prognosis for Applicant required “lifelong maintenance”;

SOR ¶ 1.g: In or around September 2020, Applicant decided to stop psychiatric treatment against medical advice, and has received no mental health treatment since September 2020;

SOR ¶ 1.h: During an evaluation by a licensed psychologist in January 2023, Applicant stated that he experienced passive suicidal ideations in late 2020; and

SOR ¶ 1.i: Applicant was evaluated by a licensed psychologist in January 2023, who determined that he could experience a resurgence of depression or manic symptoms; that he was at a greater risk of decompensation because he discontinued his psychiatric medication regimen; and that he had a psychological condition that could affect his ability or willingness to properly follow orders or perform sensitive duties; and that his reliability, stability, and trustworthiness in safeguarding classified information was questionable.

In his answer to the SOR, Applicant admitted all the allegations except SOR ¶ 1.i, which he denied because he had not received a copy of the medical evaluation on which SOR ¶ 1.i was based. His admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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,

² The SOR allegations have been paraphrased to eliminate specific names and unnecessary verbiage.

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.

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 established. Applicant voluntarily sought treatment for excessive alcohol consumption in 1998 and has not consumed alcohol since October 1998. Expert witnesses for both sides agreed that Applicant's bipolar disorder is controllable with treatment. Although Applicant stopped receiving counseling in September 2020, he continued to take medications until he ran out during the COVID lockdown. He resumed counseling in April 2023, albeit in part due to the encouragement of his attorney. He now attends counseling regularly. He is not taking medication, but expressed willingness to do so if his therapist deems it advisable. There is no evidence of any violent or suicidal behavior since April 2019.

The fact that Applicant's return to counseling was motivated, at least in part, by his attorney's advice raises the question whether Applicant will stop seeking treatment if his security clearance is reinstated. However, Applicant's testimony and the testimony of Dr. K established that Applicant's return to counseling was an eye opener, and he realized that it was the only path to a normal, productive life. He was genuinely enthusiastic at the hearing when he described how much he has benefited from his counseling.

AG ¶ 29(b) is established. Applicant is receiving counseling. He received a qualified favorable prognosis in May 2019, conditioned on "lifelong maintenance." He is complying with that condition. Dr. L had doubts about Applicant's reliability, stability, and trustworthiness because he had not resumed treatment. Dr. K believes that there are no concerns about his judgment, reliability, or trustworthiness because he has been regularly receiving counseling since April 2023 and appears highly motivated to continue doing so.

AG ¶ 20(c) is not established. While Dr. K is a highly qualified medical professional, she is not "employed by, or acceptable to and approved by, the U.S. Government."

AG ¶ 29(d) is established for Applicant's excessive alcohol consumption. It is not established for his bipolar disorder, which is not a temporary condition.

AG ¶ 20(e) is established. Applicant has not consumed alcohol since October 1998. He has not exhibited aberrant behavior since his suicide attempt in April 2019.

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). Applicant was candid, sincere, and credible at the hearing. He was enthusiastic about the changes in his life after resuming his psychological counseling. 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 mitigated the security concerns raised by his bipolar disorder.

Formal Findings

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

Paragraph 1, Guideline I (Psychological Conditions): FOR APPLICANT

Subparagraphs 1.a-1.i:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge