



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



In the matter of:)	
)	
)	ISCR Case No. 23-00527
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Samuel C. Baldwin, Esq.

08/26/2024

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has demonstrated a long history of compliance with her treatment for her medical conditions. She has not engaged in any behavior that raises concerns about her current judgment, reliability, or trustworthiness. Clearance is granted.

Statement of the Case

On March 22, 2023, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the psychological conditions guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to deny her security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on August 3, 2023, I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A through L, without objection. I also appended to the record as Hearing Exhibits (HE) I through IV, respectively: (I) the disclosure letter sent to Applicant on September 23, 2021, by Department Counsel; (II) curriculum vitae for [DOD Psychological Evaluator]; (III) excerpt from DSM-V regarding the relevant psychological conditions; and (IV) an article published by the Defense Counterintelligence and Security Agency, dated October 15, 2020, entitled "Mental Health and Security Clearances." DOHA received the transcript (Tr) on August 14, 2023.

Findings of Fact

Applicant, 39, has worked for a federal contractor since August 2020 as a chemist. She completed a security clearance application, her first, on August 24, 2020, disclosing that she had been diagnosed with a mental health condition and experienced two voluntary hospitalizations in March and May 2018. At the request of the Department of Defense, Applicant agreed to undergo a psychological evaluation in August 2022. Based on the Applicant's admissions, the information in the investigative file, and the conclusions of the DOD psychological assessment, the SOR alleges disqualifying conduct under the psychological condition guideline. (Tr. at 22; GE 1-5)

Applicant has struggled with depression since high school, during which she received inconsistent treatment. She continued to experience depressive symptoms while in college between 2005 and 2009. Her academic advisor, with whom she has kept in contact, praised her as one of his best students. Her academic tenure was marked by achieving the third highest grade in Organic Chemistry I and the highest grade in Organic Chemistry II, two notoriously difficult classes. Based on her academic performance, she became a research assistant for her academic advisor. She served as president of the Chemistry Club for two years, worked as a lab assistant, and tutored fellow students. In a character letter written on her behalf, her academic advisor stated (Tr. at 40, 44, 52-53; AE K):

[Applicant] was a remarkable student by any measure, but the fact that she accomplished all she did while fighting depression was truly amazing, I was well aware of her depression, but never lifted the high standards I had for student performance. [She] managed herself responsibly, seeking professional attention to help her move past this difficult time in her life. She never let her troubles interfere with her work, and through her determination and strong character she got through that part of her life. (AE K)

Applicant graduated with honors and was the unanimous recipient of the departmental academic award.

She began her professional career in 2009 as a chemist at a nuclear facility. Applicant described the environment as stressful. The nuclear field required knowledge

of and adherence to a strict safety and regulatory scheme. The lab manager of the facility, who worked with Applicant from 2009 to 2018, also wrote a letter on Applicant's behalf (Tr. at 32-36; GE 1; AE G):

During my time with Chemistry [,] I had oversight of several projects, some of which involved [Applicant]. I have been aware of [Applicant's] struggles with certain mental health issues over the years. She sought help when it was needed and continued to put her work at the forefront of her priorities. . . In all my time working with [Applicant] . . ., I never knew [her] to release any unauthorized information either willingly, or by virtue of her mental state. She was trustworthy enough to maintain the position for her tenure at [company]. I recall no instances in which ability to perform sensitive duties or make sound judgments were ever questioned. I worked alongside [Applicant] in what is regarded as a highly stressful and extremely demanding environment. While she may have missed worked to address her mental health concerns at times, I know when she was at work, she was committed to the task at hand and was able to work through any issues while on site and fulfilled her assignments as requested. (AE G)

Applicant left the position in October 2017, seeking a position with a better work-life balance to accommodate the needs of her family, which contained two small children. (Tr. at 82)

Applicant began receiving regular treatment for her depression in October 2012 after she experienced post-partum depression after the birth of her first child. She has received treatment from the same certified registered nurse practitioner in psychiatric mental health (CRNP-PMH) since 2012 for prescription management. She was diagnosed with major depressive disorder, generalized anxiety disorder, and borderline personality disorder. In 2014, after experiencing a miscarriage, the CRN-PMH recommended Applicant complete a 45-day out-patient treatment program. She participated in a second out-patient program in 2015 after the death of her father. Each time she took time away from work to address her mental health, she had to report her hospitalization to the nuclear facility's medical department. She also had to obtain clearance from the medical department to return to work. As part of the medical clearance process, the facility would contact Applicant's medical providers. (Tr. at 23-25,42-43,53-55,63-66, 84; AE A-B)

In October 2017, she started a position as a lab analyst. Although her depressive symptoms remained, she was stable until March 2018, when she required intervention through voluntary hospitalization. In February 2018, Applicant's husband suffered an accident that resulted in hospitalization and required major surgery. He was out of work for approximately four months. As he recovered, Applicant took on all the childcare and household responsibilities while she continued to work fulltime. The family also started to experience financial problems as their household income was reduced while Applicant's husband was unable to work. (Tr. at 55, 55-70)

Although she had help from family members, her employer did not offer her any flexibility in light of her changed family circumstances. Applicant became overwhelmed and her depressive and anxiety symptoms became acute. She reported to her CRNP-PMH that she was experiencing suicidal ideation with a plan. Although she completed the required treatment program, and weekly appointments with her care team. Her symptoms persisted, and she began to engage in non-suicidal self-harm. She reported her symptoms to her NP, who again recommended a second hospitalization, which Applicant entered in May 2018. (Tr. 37-38, 49-50, 56, 60, 41-76, 85)

She left her job in May 2018, and remained unemployed until September 2019 to focus on her family and her mental health. Applicant began seeing a certified licensed clinical social worker (LCSW-C) for individual counseling. She continued to go to counseling every other week. During her sabbatical, Applicant participated in another intensive outpatient program from January 2019 to March 2019. Applicant returned to work at her alma mater in September 2019 as an adjunct professor. She left the position after a year for a better paying position. In August 2020, she began working in her current position. According to her current supervisor: (GE 1, AE D, I)

In the 2 years and 7 plus months that [Applicant] has worked for me she has been an exemplary employee. She has never given me reason to doubt her judgment, reliability, stability, or trustworthiness... [Applicant] consistently received merit compensation at or above average for my team based on her performance. (AE F)

In January 2023, Applicant underwent a psychological evaluation by a DOD-appointed evaluator. The DOD evaluator, a licensed psychologist, based their findings on reviewed investigative records provided to them by DOD, including Applicant's August 2020 security clearance application. The evaluator also conducted a 90-minute clinical interview with Applicant and administered the Personality Assessment Inventory (PAI). The evaluator also talked with Applicant's treating CRNP-MPH. (GE 2)

When she appeared for the interview, Applicant reported a depressed mood. The evaluator also observed that Applicant was able to concentrate and that her thought pattern was clear and logical. The evaluator observed that Applicant did not make any apparent attempts to be deceptive with the evaluator or attempt to minimize her difficulty with depression, anxiety and suicidality. Applicant also demonstrated that she understood and appreciated the severity of her mental health history and her dedication to seeking ongoing psychological and psychiatric services. Applicant's CRNP-PMH told the evaluator that Applicant is compliant with her treatment plan, and that she has no reservations about Applicant's judgment and reliability. (GE 2)

The evaluator concluded that Applicant's depressive symptoms were not under control and described her as 'minimally stable' under the medical protocol she was following at the time. The evaluator determined that Applicant's degree of functioning was inadequate. Applicant, the evaluator explained, continued to struggle with stress, employment worries, financial issues, and parenting, and that she did not have the coping skills to prevent future decompensation. Based on this assessment, the

evaluator described Applicant's prognosis as poor. Ultimately, the evaluator determined that Applicant has a psychological or psychiatric condition which could represent an increased risk for her ability/willingness to properly follow orders or perform sensitive duties. The evaluator ultimately concluded that Applicant's judgment, reliability, stability, and trustworthiness in safeguarding classified information were poor. (GE 2)

Applicant's CRNP-PMH wrote a rebuttal to the DOD evaluation. Applicant's practitioner has been treating her since 2012. The CRNP-PMH explained that her primary role is the pharmacological treatment and management of Applicant's major depressive disorder and generalized anxiety disorder. Applicant takes oral medications to treat the symptoms associated with these conditions. Because there is no FDA approved medication for borderline personality disorder, the symptoms are treated with psychotherapy, which Applicant has been doing consistently since at least 2018. (AE L)

The CRNP-PMH explained that Applicant's depression is treatment resistant, which is defined as "experiencing incomplete remission of symptoms with at least two antidepressants with trials of greater than four weeks of adequate treatment dose." The goal of treatment is not complete remission of symptoms but symptom reduction and management to prevent worsening of symptom presentation. Approximately 30% of adults diagnosed with major depressive disorder are treatment resistant. The diagnosis is not uncommon. Applicant, who is compliant with her treatment plan has not required hospitalization since May 2018. (GE I)

The CRNP-PMH also took exception with DOD evaluator's classification of Applicant's symptoms, which seem to give significant weight to one particular symptom - suicidal ideation, with a plan. The CRNP-PMH explains that suicidal ideation is one of the nine diagnostic criteria of Major Depressive Disorder – none of which are weighted. In other words, none of the nine diagnostic symptoms are more serious than any other. Suicidal ideation, even with a plan, is a common symptom experienced by individuals diagnosed with major depressive order. (GE L)

The NP offered the following assessment of Applicant:

As her treatment provider for over 11 years. I fundamentally disagree with the assessment of the evaluator that [Applicant] has a poor ability to safeguard classified information, as evidenced by [Applicant's] demonstrating honesty, candor, and thoroughness in the process of obtaining a security clearance. (GE L)

The CRNP-PMH gave Applicant a favorable prognosis because of her voluntary adherence to her treatment plan. The CRNP-PMH acknowledges that, while Applicant's symptoms are currently under control, they may be subject to recurrence or exacerbation, but that Applicant has sufficient insight to her illness, protective factors, and therapeutic alliances to minimize symptom reoccurrence and had demonstrated the ability to voluntarily seek a higher level of care should her symptoms worsen or become unmanageable. Ultimately, Applicant's treating medical provider concludes (GE L):

[Applicant] has not demonstrated any unwillingness or inability to properly follow treatment recommendations or adhere to treatment recommendations. The [DOD] evaluator acknowledges this "diligent adherence" and has not provided any relevant or pertinent examples of [Applicant's] inability to follow orders or perform sensitive duties. As the long-standing treatment provider for [Applicant] for over 11 years with intimate knowledge of her character, trustworthiness, judgement, and reliability I am unable to report any examples of [Applicant's] inability to follow orders or perform sensitive duties.

In conclusion, it is my professional opinion that despite a chronic mental health condition which requires on-going treatment, [Applicant] is stable, demonstrates the judgement, reliability, stability, and trustworthiness to safeguard classified information and perform sensitive duties. (GE L)

Applicant understands the seriousness of her conditions and the importance of maintaining her treatment plan. At hearing, she articulated that without her medical treatment her mental state would be much worse. As a result, she has put safeguards in her personal life. Her mother, whom she relies on for emotional support, lives with Applicant and her family. During periods of difficulty, Applicant and her husband have a system in place, whereby he handles medication as an extra level of safety. (Tr. at 87-90; GE 2; AE L)

The record contains other letters from individuals who have known Applicant in her academic, professional, and private lives. Each letter describes a person who is open and honest about her medical issues. None have observed any behavior that raises questions about her judgment, reliability, or trustworthiness. (AE C-E, H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

An applicant’s mental health becomes a concern when “[c]ertain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. A formal diagnosis is not required for there to be a concern under this guideline.” (AG ¶ 27) The SOR alleges that Applicant has been receiving treatment for major depressive disorder, general anxiety disorder, and borderline personality disorder since at least 2012. As a result of these conditions, she has participated in at least two intensive outpatient treatment programs and has had two voluntary hospitalizations. A psychologist retained by DOD to perform an evaluation concluded that Applicant has a condition that could negatively impact her judgment and ability to protect classified information. The following psychological conditions disqualifying conditions apply:

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(c) voluntary or involuntary inpatient hospitalizations.

Based on the record, the following mitigating conditions apply:

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

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.

Applicant has demonstrated a 12-year history of compliance with her treatment plans, which includes daily medication as well as regular individual counseling. Her treatment plan also includes more intensive treatment to include outpatient treatment programs, voluntary hospitalization, and more frequent counseling as needed.

The DOD evaluator's conclusion that Applicant's degree of functioning is 'inadequate' and that she is 'minimally stable' under her current medical protocol is inconsistent with the record. Since high school, Applicant has managed her depressive symptoms. She graduated college with honors, while balancing the demands of a challenging academic course of study with work and extracurricular activities. She became a professional who has managed stressful work environments in serious safety and regulatory environments with the demands of a young family. She has no history of incidents at work related to her inability to manage her medical conditions. Conversely, the record establishes that Applicant has complied with the requirements of her employers when she is having acute medical issues.

Based on the information in the record, I have no doubts about Applicant's security worthiness. Applicant has a medical condition that is treatment resistant. Her symptoms will not go into remission but can be largely managed. Her diagnoses will require lifetime attention to which she is committed. She is well aware of the role consistent and vigilant medical care plays in maintaining her stability. She has also shown good judgment by taking time as needed to address her medical concerns voluntarily, even if that means stepping away from her employment or submitting herself to hospitalization. I am confident that she will continue to follow her prescribed treatment plan and seek addition help during periods of acute illness. She has not engaged in any behavior that suggests she would be able to perform the duties required of a clearance holder.

Applicant has spoken honestly and openly about her medical conditions and their effect on her daily life. She has not attempted to minimize the seriousness of her illness or her need for consistent treatment. I find that she is more likely than not to report adverse information about her health as required.

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, Psychological Conditions FOR APPLICANT

Subparagraphs 1.a - 1.e: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge