DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-01640
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicole Smith, Esq.; Karen Moreno-Sales, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

05/13/2025

Decision

PRICE, Eric C., Administrative Judge:

Applicant has mitigated 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 on September 16, 2020. On September 9, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I and Guideline H (Drug Involvement and Substance Misuse). The DoD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on January 3, 2023, and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2024. After coordination with counsel, on May 9, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant the hearing was scheduled to be conducted by video teleconference on June 3, 2024. I convened the hearing as scheduled.

Department Counsel withdrew the Guideline H SOR allegation at hearing. (Transcript (Tr.) at 7) Government Exhibits (GE) 1 through 7 were admitted in evidence without objection and the Government called one witness. Department Counsel requested I take administrative notice of extracts of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), pertaining to Bipolar II Disorder, at pages 132-139, and Panic Disorder, at pages 208-214, and without objection I have done so and marked it as GE 8. (Tr. 15-16) Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through W, which were admitted without objection. AE A through S were part of Applicant's SOR Response. I kept the record open until July 17, 2024, to enable Applicant to submit documentary evidence. He timely submitted AE Y and Z which were admitted without objection. The record does not include an AE X. DOHA received the transcript on June 14, 2024, and the record closed on July 17, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.e with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 29-year-old cyber engineer employed by a defense contractor since January 2021. He worked as a cyber engineer for another defense contractor from July 2018 to December 2020, and as a software engineer for a different company from February 2015 to July 2018. He honorably served in the Army Reserve as a postal specialist from February 2013 to March 2021, including two years in the individual ready reserve. He has had a security clearance since 2013. (GE 1; AE I-J; Tr. 95-97, 175-178)

Applicant is married and has no children. He has earned multiple certifications and has extensive technical experience. He anticipates earning a bachelor's degree in computer network engineering in 2025. (GE 1; AE J; Tr. 131-132, 175-178)

Applicant developed symptoms of depression and anxiety in 2007 when he was 12 years old, around the time his parents divorced. He was evaluated by a psychiatrist, prescribed Prozac and experienced immediate relief. (GE 2 at 3; Tr. 121-136)

SOR ¶ 1.a alleges that in 2009, Applicant was voluntarily hospitalized for inpatient treatment due to suicidal ideations. He was voluntarily hospitalized for three days in October 2010 after experiencing suicidal thoughts, panic attacks and sarcastically saying words to the effect of "just shoot me" during an argument with his high school guidance counselor. He returned to school the day after he was discharged. (SOR Response at 3; Tr. 113-136)

In 2011 or 2012, Applicant was diagnosed with attention-deficit/hyperactivity disorder (ADHD) by a psychiatrist and prescribed Concerta, which helped control his symptoms. He stopped taking Concerta in about 2012 because he was concerned it might inhibit his ability to get into the Army Reserve based upon advice received from a recruiter. In about 2014 or 2015, he experienced anxiety attacks after being told he was going to be deployed. The anxiety attacks ranged from daily to weekly resulting in his disqualification from deployment. He continued to have anxiety attacks once or twice a month but reported no medications or treatment. (Tr. 112-117, 136-138; GE 2 at 3-4)

In May 2017, Applicant saw Dr. G, a Doctor of Osteopathic medicine, primary care provider and family friend. He told Dr G. he had anxiety that started a few years earlier, and felt dread and a loss of motivation several times a month, particularly when he had weekend military drill. He said things had improved and that propranolol had "worked great for him." (GE 3 at 2) Dr. G prescribed propranolol (anxiety) in May 2017. (GE 3 at 4) In April 2020, Applicant reported excess anxiety and fatigue and Dr. G prescribed propranolol for 90 days. During the COVID-19 pandemic, Applicant started experiencing passive and mild suicidal thoughts and unsuccessfully sought mental health services for several months. His suicidal thoughts gradually worsened, and he was unable to stop them. At some point he stopped taking the propranolol because people close to him noticed fundamental changes in him. (GE 3 at 9; Tr. 101-107, 138-148, 178-179)

On August 5, 2020, Applicant was under pressure to complete a significant project at work. After several panic attacks, hyperventilating and experiencing intrusive thoughts of suicide, he notified his technical lead. After various techniques to control his feelings were unsuccessful, he contacted his supervisor who drove him to a mental health facility. He was voluntarily admitted for two days of psychiatric services. (AE D; GE 4; Tr. 103-107) He was diagnosed with Major Depressive Disorder (recurrent episode, severe), (SOR ¶ 1.b). He reported last taking propranolol two days prior to being admitted. (AE D at 1) He was started on Zoloft (depression/anxiety), Abilify (mood) and Trazadone (depression/insomnia), and participated in one-on-one counseling. (AE D at 7) He was discharged less than 48 hours after admission after all goals were met, and was instructed to continue prescribed medications and to attend outpatient counseling. About a week after being discharged he experienced significant side effects. He spoke to Dr. G who advised that he should stop taking Zoloft and Abilify, and that he should consult with a psychiatrist to find medication that worked better. On September 8, 2020, about a week after he stopped taking Zoloft and Abilify, he was prescribed Latuda and Trazadone by Ms. L, a mental health care provider. (SOR Response; AE D; GE 4, GE 5; Tr. 103-122, 148-161, 179-181)

On September 12, 2020, Applicant first met with Dr. A, a psychiatrist. (GE 6 at 3-4; Tr. 123-124, 180-181) Dr. A noted Applicant, then 24 years old, had a history of bipolar disorder mixed and ADHD. (SOR ¶ 1.c) Dr. A ordered he continue taking Latuda and Trazadone (for depression) and start taking Adderall 10mg (ADHD). (GE 6 at 3) On September 29, 2020, Ms. L increased his dosage of Latuda. (GE 5 at 7-8; Tr. 155-166)

The DSM-5 notes:

> Individuals with bipolar II disorder typically present to a clinician during a major depressive episode and are unlikely to complain initially of hypomania. Typically, the hypomanic episodes themselves do not cause impairment. Instead, the impairment results from the major depressive episodes or from a persistent pattern of unpredictable mood changes ….Although bipolar II disorder can begin in late adolescence and throughout adulthood, average onset is the mid-20s….The illness most often begins with a depressive episode and is not recognized as bipolar II disorder until a hypomanic episode occurs[.]

(GE 8 at 135-136; Tr. 39-41)

On November 8, 2020, Ms. M, Licensed Mental Health Counselor (LMHC) and Master's Level Certified Addiction Professional, completed a biopsychosocial assessment of Applicant. She noted he met DSM-5 criteria for Major Depressive Disorder, recurrent, moderate (SOR ¶ 1.d), and that he attended bi-weekly individual therapy sessions. (GE 7) Ms. M's December 2022 discharge summary stated he participated in 19 individual cognitive behavioral therapy (CBT) sessions from November 2020 to October 2021. She reported he experienced "marked improvement" with daily depressive/anxious thoughts, that the CBT was "combined with psychotropic medication management," and that she deferred to his psychiatrist regarding prescribed medication. The CBT was terminated because he stopped making appointments. (AE F; GE 7; Tr. 124-127, 163, 181-185)

In June 2022, Applicant participated in a psychological evaluation requested by DoD CAF. (GE 2; Tr. 16-84) Dr. B, a DoD-affiliated licensed clinical psychologist and board-certified neuropsychologist evaluated Applicant. She interviewed him, reviewed records including a DoD background investigation, his standardized psychological inventory, the Personality Assessment Inventory (PAI), and medical records. Her report dated June 28, 2022 noted he vapes nicotine daily ("like 15 mg and much lower than a cigarette"), drinks 3-6 cups of coffee per day, consumes alcohol about two times per month, denied intentional illicit drug use but disclosed he had vaped CBD that tested positive for THC and once unknowingly ate a brownie that contained marijuana at a party in Las Vegas, Nevada. Her Diagnostic Impressions included:

> [T]he following diagnoses is appropriate at this time:
>
> Bipolar II disorder, current episode hypomanic
> Panic disorder without agoraphobia
> R/O Stimulus use disorder
>
> I have some concerns of potential use of alcohol and other drugs (cannabis, nicotine, caffeine, or possibly even others not disclosed) . . . based both on his psychological profile on the PAI, as well as his somewhat unlikely

> description of unintentionally eating food with marijuana on one occasion, and testing positive for marijuana (reportedly due to vaping oils that do not require a prescription) on another.
>
> As recently as a year ago, this applicant's panic disorder and bipolar disorder were clearly uncontrolled. He has a history of rather erratic behavior since his last hospitalization, including briefly halting his engagement to date a family member's ex-wife. Moreover, his mood disorder has clearly not been fully managed by his current treatment regime, given his observed (and acknowledged) mood of slight hypomania.
>
> [Applicant's] condition is expected to be chronic, based on his diagnoses and history of symptoms. He did not report that as recently as a year or two ago he stopped taking his medication as prescribed. Therefore, I have concerns his condition could impact his judgment, trustworthiness and reliability. The prognosis in this case is guarded, given the diagnoses and lack of effective and consistent treatment for this individual. If unmedicated, and particularly if using alcohol or other substances, he is a risk of security breach.

(GE 2; Tr. 20-31)

Dr. B. testified as follows. A diagnosis of bipolar II disorder was used because he does not have full manic episodes and is not full type one bipolar. Bipolar II disorder is typically treated with mood stabilizers, adjusted as needed by the care provider, and supplemented by therapy to help develop healthier coping mechanisms to deal with symptoms of hypomania or depression. Without medication, bipolar disorder will be present throughout a person's life and will include recurrences of both depression and hypomania at different times. She was concerned that he had a history of not always being compliant with his medications and believed he just stopped taking medications in 2013 and in September 2020 without direction from a mental health provider. Panic disorder can be effectively treated if the individual learns healthy coping mechanisms but if not properly treated, it can become chronic. (Tr. 22-31)

At the time of Dr. B's report, Applicant was taking Latuda (mood stabilizer), benztropine, Adderall (stimulant), and buspirone (anxiety). Dr. B acknowledged that medication questions were best directed to a psychiatrist but noted treating people with bipolar disorder with a stimulant is tricky because it makes it more likely they will experience hypomania. She expressed similar concerns about caffeine. She was not sure why he was on medication for ADHD because he reported that, after he went off Concerta (stimulant) he did not have continuing symptoms of ADHD. She stated "The prognosis could change ... If he's consistently on his medications as prescribed by an appropriate psychiatric provider and he's consistently in therapy[.]" (Tr. 46) She noted bipolar II disorder is "a chemical imbalance in the brain that causes them to have much greater fluctuations in mood than is typical of most people." (Tr. 49) She emphasized that regular

counseling, regular visits with a psychiatrist and consistent medication management were key to effective management of bipolar II disorder. (Tr. 31-49)

In a letter dated September 11, 2022, Dr. A wrote that he had seen Applicant monthly since September 2020; had prescribed various medications for anxiety, depression and inattention; over the course of treatment only minor dose adjustments were necessary to control his symptoms; and that Applicant had not complained of adverse effects from medications. Dr. A's mental health examination was favorable and noted Applicant denied any suicidal thoughts or intentions. Dr. A opined Applicant was "psychiatrically stable and his prognosis is fair as long as he maintains regular follow-up care. His insight and judgment [were] intact and he [was] compliant with his treatment." (AE G)

After the hearing, Applicant submitted a letter from Dr. A dated June 8, 2024, that updated his September 2022 evaluation. Dr. A has continued to see Applicant monthly, noted that he was stable on his current medications and showed no signs of anxiety/depression or of a focus problem. Dr A's mental health examination was favorable and noted Applicant denied any suicidal thoughts or intentions; that his insight and judgment were intact and goal oriented, and that his attention span was intact. Dr. A opined Applicant was "stable and at base line psychiatrically and his prognosis is good on current medications." (AE Y)

Applicant has received psychotherapy services from Ms. C, Master of Science in Counseling, LMHC, since September 2022. (AE T; Tr. 43-47, 127-130) By letter dated May 22, 2024, Ms. C reported:

> [He] originally self-referred for treatment to resolve symptoms of anxiety, mood fluctuations, and to assist with management of ADHD symptoms [and] sought out psychotherapy as an adjunct to psychotropic medications management.
>
> [He] has consistently attended therapy sessions which [include] treatment plan development and revision, learning, practicing and implementing coping techniques, completing all recommended homework assignments and following therapeutic recommendations.
>
> [He] has made significant progress towards his treatment goals of symptom reduction/resolution as evidenced by; self-reported symptom decrease, therapist observations of symptom reduction/resolution, Likert Scaling and as indicated by evidence-based screening assessments[.]

(AE T)

Applicant called three witnesses and submitted eight character letters from his supervisor of four years, former Army squad leader, peers, colleagues, friends and his brother. They commented favorably on his intelligence, mission focus, work performance,

commitment and contributions to cybersecurity, reliability, loyalty, trustworthiness, judgement, commitment to information security, and suitability for a security clearance. (Tr. 197-230; AE M-R, W, Z)

Applicant's three witnesses, including two former supervisors, were aware of his mental health conditions. The witnesses testified that his mental health conditions have not impacted his reliability, trustworthiness or performance, and that he has greatly benefitted from having a positively engaged spouse, and from mental health treatment including counseling. (Tr. 197-230) A long-time friend noted that since seeking help in 2020, Applicant has been dedicated to his mental and physical health, CBT therapist, and psychiatrist. He noted Applicant's difficulties finding psychiatric help during the pandemic, and favorably commented on his stability and adherence to his treatment plan. (AE P) His former supervisor and current peer said that during the COVID-19 pandemic Applicant:

> got real low, had dark thoughts, did the right thing and reached out for help. He got that help and recovered very fast…..What he went through was a redefining moment in his life, and he owned it and got past it…[he] did the right thing and self-reported. This is admirable behavior that needs to be rewarded. (AE Z)

Applicant submitted favorable performance reviews from 2021 through 2022. The performance reviews listed his many contributions to his employer, co-workers, mission accomplishment, and rated him as "outstanding" and as "constantly exceeds expectations by far." (AE K)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline I, Psychological Conditions

The concern under this guideline is set out in AG ¶ 27:

> Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No

negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under AG ¶ 28:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions

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

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

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

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

AG ¶¶ 29(a) and 29(b) are established. Applicant voluntarily sought treatment for suicidal thoughts and anxiety in about 2010 and in August 2020. Experts for both sides diagnosed him with bipolar II disorder and agreed that it is controllable with medication and consistent treatment. Dr. A, a psychiatrist, who has seen Applicant monthly since September 2020 provided three favorable mental health evaluations and a favorable prognosis. He noted that only minor dose adjustments to prescribed medications were necessary to control symptoms, and said Applicant has denied any suicidal thoughts or intentions since September 2020. In September 2022, Dr. A opined Applicant was "psychiatrically stable and his prognosis is fair as long as he maintains regular follow-up care. His insight and judgment [were] intact and he [was] compliant with his treatment." (AE G) In June 2024, Dr. A confirmed Applicant had been stable on his current medications, showed no signs of anxiety or depression or of a focus problem. He noted Applicant's insight and judgment were intact and goal oriented and that his attention span was intact. He opined Applicant was "stable and at base line psychiatrically and his prognosis is good on current medications." (AE Y)

Applicant has voluntarily received psychotherapy services since September 2022. He has consistently attended therapy sessions and made significant progress towards his treatment goals as evidenced by his self-reported symptom decrease, therapist observations of symptom reduction and resolution, and as indicated by evidence-based screening assessments. He also voluntarily participated in 19 CBT sessions from November 2020 to October 2021 that resulted in marked improvement. There is no evidence of any drug involvement since 2017 or of suicidal thoughts since at least September 2020.

AG ¶ 20(c) is not established. While Dr. A is a highly qualified mental health professional, but he is not "employed by . . . and approved by, the U.S. Government." In June 2022, based upon the evidence then known to her, Dr. A, a DoD-approved mental health professional, provided a guarded prognosis. She cited Applicant's diagnoses of bipolar II disorder, lack of effective and consistent treatment, and concerns that if unmedicated Applicant was a risk for security breach.

AG ¶ 20(d) is not established. Bipolar II disorder is not a temporary condition.

AG ¶ 20(e) is established.

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 since receiving effective treatment and counseling. I have considered Applicant's age, education, work history, military service, witness testimony, character evidence, and medical history including Dr. B's June 2022 psychological report. I have also considered more recent reports from his treating psychiatrist, Dr A, and therapist, Ms. C, that show Applicant has received and responded to effective and consistent psychiatric treatment since September 2020 and counseling since at least June 2022.

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 psychological conditions.

Formal Findings

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

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraphs 1.a-1.e:	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.

Eric C. Price
Administrative Judge