

KEYWORD: Mental

DIGEST: The Applicant suffers from a Bipolar Disorder, manic depression, for which he was last hospitalized in 1994. He has been compliant with his medication since this last hospitalization. His Psychiatrist avers that the Applicant is stable and does not pose a security risk. His Treating Psychologist echos this view; and as a result, is ceasing his treatment of the Applicant. The Government Psychologist, who last saw the Applicant in April of 2004, avers the Applicant was stable and complying with his medication. Those who know the Applicant, to include two retired Air Force Colonels, recommend him for a security clearance. Mitigation is shown. Clearance is granted.

CASENO: 02-00659.h1

DATE: 02/20/2007

DATE: February 20, 2007

In Re:)	
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-----)	ISCR Case No. 02-00659
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jennifer Goldstein, Esquire, Department Counsel

FOR APPLICANT

Lynn Swenson, Personal Representative

SYNOPSIS

The Applicant suffers from a Bipolar Disorder, manic depression, for which he was last hospitalized in 1994. He has been compliant with his medication since this last hospitalization. His Psychiatrist avers that the Applicant is stable and does not pose a security risk. His Treating Psychologist echos this view; and as a result, is ceasing his treatment of the Applicant. The Government Psychologist, who last saw the Applicant in April of 2004, avers the Applicant was stable and complying with his medication. Those who know the Applicant, to include two retired Air Force Colonels, recommend him for a security clearance. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On May 1, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on May 26, 2006.

The case was received by the undersigned on December 15, 2006. A notice of hearing was issued on January 5, 2007, and the case was heard on January 22, 2007. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant, who also called a witness to testify on his behalf. The transcript (TR) was received on January 30, 2007. The record was left open to receive closing written arguments, which were received in a timely fashion, the Government's on February 6, 2007, and the Applicant's on February 13, 2007 (Appellant Exhibits 1 and 2). The issue raised here is whether the Applicant's admitted mental disorder militates against the granting of a security clearance. [The Applicant admits the underlying facts of both allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 43 years of age, and is employed by a defense contractor, who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline I - Emotional, Mental and Personality Disorders

The Applicant was first diagnosed as suffering from a Bipolar Mental Disorder, manic depression, in 1989 (TR at page 65 lines 15~23, at page 157 line 21 to page 158 line 14, and at page 164 line 16 to page 166 line 6). At that time he was a 25 year old Petty Officer Second Class in the

U.S. Navy, was hospitalized for “two to three month;” and as a result, was subsequently discharged from the Navy (TR at page 164 line 16 to page 166 line 6).

In 1994, the Applicant went off of his prescribed medication; and as a result, he was hospitalized “for three days” (TR at page 158 lines 15~25). Since 1994, the Applicant has complied with his medication prescriptions (TR at page 167 line 19 to page 168 line 11, and at page 175 line 21 to page 176 line 1).

1.a. Since January of 2000, the Applicant has been under the care of his current Psychiatrist (Government Exhibit (GX) 3, *but see* Applicant's Exhibits (AppXs) D~F). Most recently, on January 11, 2007, his Psychiatrist averred, in part, the following:

. . . as stated in my subsequent letter [subsequent to GX 3], May 19, 2006, . . . [the Applicant] has remained medication-compliant and responsible throughout the six (now seven) years I have known him, with only brief and minor mood fluctuations throughout that time. Furthermore, I anticipate that he will maintain this mood stability, and should therefore pose no risk to national security (AppX F).

1.b. In April of 2004, the Applicant was evaluated by a Government Psychologist (GX 2). That Psychologist testified at length at the Applicant's hearing (TR at page 33 line 23 to page 11 line 25). When the witness evaluated the Applicant, he exhibited "no manic symptoms," and the medication seemed to be working (TR at page 66 lines 2~6, and at lines 21~25). The Government Psychologist, in part, reiterated his report in the following terms: ". . . [the Applicant] is currently functioning very well on his given medication and I don't see a compromise in judgment or reliability" (TR at page 67 lines 3~6). In answer to the undersigned's questions, he also averred the following:

JUDGE CEFOLA: In April 2004, when you saw him, he was being medicated. Was there a high or low probability of recurrence or exacerbation of his manic depressive condition?

THE WITNESS: At that time I would say that . . . if it was based off of what I observed . . . [t]hen I think that that(*sic*) - - it was low at the time; otherwise I wouldn't have written what I did (TR at page 80 lines 15~25).

The Applicant's Treating Psychologist also testified (TR at page 113 line 12 to page 142 line 5). The frequency of this Psychologist's sessions with the Applicant have been decreasing as the Applicant is more and more stable (TR at page 116 lines 7~14). The Applicant's mental condition has stabilized to the extent that the Psychologist has ceased treating the Applicant (TR at page 124 lines 2~7). The witness also offered the following observation of the Applicant, "I have no reason to question his reliability or honesty or integrity" (TR at page 126 lines 10~11).

POLICIES

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, and which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2,

including as appropriate:

- a. Nature, extent and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline I (Emotional, Mental, and Personality Disorders) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who suffers from a mental disorder may have a defect in judgement, reliability or stability. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant is suffering a Bipolar Mental Disorder, which, arguably, in 1989 and again in 1994 caused "significant defects or likely defects in judgment and reliability." The first disqualifying condition is therefore applicable as there was an "opinion by a credentialed mental health professional that the individual has a condition that may indicate a defect in judgement, reliability, and stability." As a result, the Applicant was discharged from the Navy. This is clearly

countered, however, by the testimony not only of his treating Psychiatrist and Psychologist, but also by the testimony of the Government Psychologist.

Furthermore, I am not limited to the mitigating conditions, delineated in the Regulation, in deciding if an Applicant has demonstrated extenuation or mitigation. Here, those who know the Applicant best, to include two retired Air Force Colonels, speak most highly of his character, credibility and trustworthiness (AppX G~N). The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the "whole person concept." Mitigation is shown. Guideline I is thus found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his mental condition. The Applicant has thus met the mitigating conditions of Guideline I, and of Section E2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline I.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: **FOR THE APPLICANT**

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge