



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



In the matter of:)
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SSN:) ISCR Case No. 02-30733
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Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Henry M. DeWoskin, Esquire

January 28, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 15, 1999. On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline I, Psychological Conditions, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued on or after September 1, 2006.

On April 27, 2007, Applicant answered the SOR in writing. He formally requested a hearing. Department Counsel was prepared to proceed on June 15, 2007, and I received the case assignment on June 21, 2007. On July 6, 2007, Applicant retained counsel. On August 2, 2007, Applicant's counsel requested a delay until October 22, 2007, the basis of which was to retain and prepare expert witnesses. On August 6, 2007, I granted the Applicant's request for a delay. That same date, DOHA issued a notice of hearing, scheduling the hearing on October 23, 2007.

The evening prior to the hearing, the government expert noticed that another person's Minnesota Multiphasic Personality Inventory (MMPI) was used when making Applicant's initial mental health evaluation due to a mix up. As a result, an updated evaluation using the proper MMPI was completed on October 22, 2007.

I convened the hearing as scheduled on October 23, 2007. Applicant's counsel requested a continuance due to the last minute change in the government expert's evaluation which was not served on Applicant's counsel until the morning of the hearing. A continuance was granted for the expert testimony and Applicant's testimony. The parties agreed to hear the testimony of Applicant's six character witnesses on October 23, 2007. Applicant also offered Applicant Exhibits (AE) A and B, which were admitted without objection.

The case was continued until December 12, 2007. The government submitted Government Exhibits (Gov Ex) 1 - 11, which were admitted and called two expert witnesses. Applicant submitted AE C through G, which were admitted. Applicant called two expert witnesses, and Applicant testified on his own behalf. The record was held open until December 14, 2007, to allow Applicant to submit an additional document. On December 13, 2007, he submitted a three page document that was marked as AE H, and admitted without objection. The record closed on December 14, 2007. DOHA received the transcripts of the hearing (Tr.) on November 2, 2007, and January 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

On October 27, 2008, Applicant's counsel submitted a request for production of documents. To summarize, he requested the records, interview note, raw data, answer sheets, computer scored output/interpretations, hand scored output/interpretations, graphs, lists of the critical items generated from the MMPI-2, the Beck Anxiety Inventory, the Beck Depression Inventory and other tests that were given to Applicant during his evaluations of February 8, 2007, May 2, 2000, September 1999, and 1993. A telephone conference was held on November 16, 2007. The Government noted that paragraph E3.1.13 of the Directive requires Department Counsel and the Applicant to serve each other a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge. The Government's position was they did not have to provide copies of documents that they were not offering in evidence. Applicant's counsel was informed that Department Counsel is correct with regard to paragraph E3.1.13. Regardless, he is allowed to comment on the Government's inability to provide the above documents during the hearing. Applicant requested a complete copy of his Report of Investigation from the Office of Personnel Management and was informed that no such document existed. It was discovered the Report of Investigation was prepared by the Defense Security Service. Applicant was advised to file a request for his investigative file to the Defense Security Service, and Department Counsel was told to assist the Applicant with this request by contacting the Defense Security Service and requesting that Applicant's request be expedited.

Applicant's counsel objected to Gov Ex 3, 4, and 7 based on hearsay, noting there are conclusions with no facts to back up the basis. With respect to Gov Ex 3 and Gov Ex 4, he objected because he was unable to cross examine the mental health practitioners who prepared each memorandum. He objected to Gov Ex 5 based on hearsay, no proper foundation. All objections were overruled. He also objected to Capt C.'s qualifications as an expert because she was not a licensed clinical psychologist. She is a doctoral candidate who has completed all requirements with the exception of her dissertation. I allowed her to testify as an expert based on her clinical experience but informed the parties that her qualifications will be considered when considering the weight to give her testimony.

The Government objected to AE A. Specifically on page one of the exhibit, she objected to a hearsay reference within a character letter. The Government also objected to AE F, Dr. W.'s report because parts of the document summarizes information that is already in the record and is cumulative. Both objections were overruled.

Findings of Fact

On March 30, 2007, an SOR was issued under Guideline I, Psychological Conditions. The basis of which were four mental health evaluations conducted by the Air Force in 1993, September 1999, May 2000 and February 2007. The most recent evaluation was in conjunction with a periodic update of Applicant's security clearance. In his Answer to the SOR, dated April 27, 2007, Applicant admits to the factual allegations but denies that he has a psychological condition that affects his ability to handle classified information. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 34 year-old security information analyst with a Department of Defense contractor who seeks to maintain his security clearance. He has been with his current employer since April 2006. (Tr at 206, 208) He served on active duty in the United States Air Force from November 12, 1991, to June 29, 2000, achieving the rank of Staff Sergeant. (Gov 2) He first applied for and received a security clearance on February 11, 1993. He has held a security clearance continuously since that date. (Tr at 217, 232) He is single and has no children.

History

During the first quarter of 1992, while Applicant was in Technical School, a high school friend loaned Applicant a phone card to use to call home. Applicant was to reimburse his friend for any charges made on the phone card. The Air Force Office of Special Investigations contacted Applicant and informed him that the phone card was reported stolen by a company. Applicant was not aware that it was stolen. He contacted the company and agreed to pay the company back for the charges he made on the phone card. He paid the company back in full. He was counseled for using poor judgment. (Tr at 215-216; Gov 6)

In 1993, Applicant was transposing numbers on computer code at work. His supervisor thought that he had dyslexia. He referred Applicant to the mental health clinic on base to be tested for dyslexia. Applicant met with Lt Col H., a psychologist in the mental health clinic. Lt Col H. diagnosed him with having a Personality Disorder – Not Otherwise Specified. (Note : Lt Col H.'s actual report is not in the record. His diagnosis was referred to in the history summaries in Gov Ex 3, 4, and 7.) During this time, Applicant was dealing with his parents' divorce and the death of a close friend. No formal treatment was recommended. He was advised to slow down at work. (Tr at 218; Gov 6)

The DSM – IV defines Personality Disorder – Not Otherwise Specified as follows:

This category is for disorders of personality functioning that do not meet the criteria for any specific Personality Disorder. An example is the presence of features of more than one specific Personality Disorder that do not meet the full criteria for any one Personality Disorder ("mixed personality"), but that together cause clinically significant distress or impairment in one or more important areas of functioning (e.g., social or occupational). This category can also be used when the clinician judges that a specific Personality Disorder that is not included in the Classification is appropriate. Examples include depressive personality disorder and passive-aggressive personality disorder. (Gov 8)

When Applicant arrived at his first duty assignment in the 1992/1993 timeframe, he spent a lot of his off duty hours at the Base Youth Center. He was under the drinking age and was encouraged by his supervisor to attend the Youth Center in his spare time. He befriended several teenage dependents who also spent their time at the youth center. A concern was raised due to Applicant socializing with teenage dependents. (Tr at 21; Gov 6) There is nothing in the record indicating who raised the concern. There is also nothing in the record indicating that Applicant's conduct was improper.

In 1994, Applicant invited a fellow airman, who was recently kicked out of the dorms, to move in with him. He had rented a house with two other airmen. His two roommates recently moved out the house because they got married. The airmen would help him with the rent. Unbeknownst to Applicant, the airman was under investigation by AFOSI for marijuana use. During the investigation, the airman claimed that Applicant was his supplier. Applicant was not aware his friend used marijuana. One day, AFOSI, his first sergeant, and commander arrived unannounced at his residence. He gave consent for AFOSI to search his house. No illegal substances or drug paraphernalia were found. (Tr at 210; Gov 6)

Applicant also consented to be interviewed by AFOSI. During the interview, Applicant admitted to using marijuana one time while in high school. On this occasion, he got violently ill and has not used marijuana since. Prior to his enlistment, he told the Air Force recruiter about the marijuana use, and was advised by the recruiter to leave it off his application. No charges were brought against Applicant for using and selling marijuana while on active duty. His commander decided to issue a Letter of Reprimand

for fraudulent enlistment due to Applicant's failure to disclose his pre-service marijuana use. On the date of the appointment, Applicant overslept and missed the appointment. As a result, he received nonjudicial punishment under Article 15, UCMJ, for failure to go. (Tr at 211; Gov 6)

On December 12, 1997, Applicant got married. The marriage did not last long, in part, due to his wife's infidelity. On May 7, 1999, they filed for divorce. This caused Applicant a lot of stress. (Tr at 228; AE H)

In early 1999, Applicant received orders for an overseas assignment. The assignment required access to Sensitive Compartmented Information. Applicant underwent a security clearance background update related to the request for SCI access. He was referred to the Mental Health Clinic based on the previous 1993 diagnosis of Personality Disorder – Not Otherwise Specified. On September 29, 1999, he met with Capt. G., a staff psychologist, who confirmed the prior diagnosis of Personality Disorder – Not Otherwise Specified. The psychologist conducted a clinical interview, medical records review, personnel records review, telephonic interviews with his chain of command and consultation with the Psychological Services Division, National Security Agency. The staff psychologist's evaluation indicated that Applicant had a tendency to avoid self-disclosure to avoid personal faults and emotional problems; schizoid traits (socially distant, preference for solitary activities), avoidance of social situations where he might risk rejection (e.g. preference for a younger peer group), and reluctance to take responsibility for his own actions. Capt G. noted that Applicant was angry when he arrived for his evaluation because he could not understand why any question was raised about his security status. (Gov 3)

Capt. G. stated in his report, "Allegations of criminal behavior five years ago raise concerns about continued criminality and/or incidents of poor judgment and reliability. His defensiveness during the current evaluation raises concern that [Applicant] may be concealing untoward behaviors." He recommended that a background investigation be conducted to ascertain whether additional behavior relative to Applicant's personality disorder have occurred. He indicated that it did not preclude Applicant's PCS overseas, but recommended that Applicant not assume responsibilities involving SCI access until his security status has been resolved. He did think that Applicant's diagnosis of Personality Disorder – Not Otherwise Specified, was sufficient to take away his Top Secret clearance. He states that a current background check into his social behavior and personal conduct is required before a judgment about SCI access could be determined. (Gov 3) Applicant's commander and supervisor recommended him for a security clearance. His supervisor described Applicant as "brash and confrontational, but not disrespectful." His supervisor felt that he was suited for a position of trust. His commander indicated that Applicant had matured considerably in recent years and that he was not a security risk. (Gov 3 at 5) After reviewing Capt G.'s report, he continued to recommend that Applicant be granted SCI access. (AE G)

At some point later, Applicant's overseas assignment was cancelled and he received orders to another stateside base. (Tr at 225) Applicant was upset because he believed that the staff psychologist had recommended that his security clearance be

revoked. He also thought that the evaluation results raised questions about his integrity. In particular, he believed that that staff psychologist's comments about allegations of criminal behavior five years ago raised concerns regarding continued criminality were unjustified. He filed an Inspector General (IG) complaint as a result. (Tr at 222-223; Gov 6). He was unsuccessful in getting the comments removed from the report.

After, Applicant's overseas assignment was cancelled, he believed that the Air Force deemed him a criminal, and that he did not have a fair shot with the Air Force. He approached his commander and requested he be discharged under the provision involving personality disorder. He did the research and realized that he could be discharged with an honorable discharge. His commander reluctantly ordered a commander-directed mental health evaluation. (Tr at 229-231)

On May 2, 2000, he was evaluated by Major K., the Chief of the Mental Health Clinic, whose credentials are unknown. Major K. diagnosed Applicant with a Personality Disorder – Not Otherwise Specified. Major K. noted that Applicant expressed strong distress about his 1999 mental health evaluation. Applicant thinks the Air Force treated him unfairly and has given him no route to correct the misperception that he is a criminal. He felt that the positive points about his military career were not considered. The Major found the Applicant was so distressed over this problem that he wanted out of the military. Major K. found that the current stress aggravated symptoms about his personality disorder, resulting in behaviors of "suspiciousness, obsessing over issues, and social withdrawal." (Gov 4)

Major K. concluded the statement about continued criminality in Capt G.'s 1999 report was improper. He noted no criminal behavior was ever proven so they should not have implied that there was probability of future criminality. He notes that the concern about poor judgment was appropriate. He recommended Applicant's discharge from the Air Force. (Gov 4)

On June 6, 2000, Applicant's commander recommended that he be discharged from the United States Air Force for a personality disorder in accordance with AFD 36-32 and AFI 36-3208, paragraph 5.11.1. It was alleged that Applicant's personality disorder was so severe that his ability to function in a military environment was impaired. It was noted that his mental disorder was not severe enough to warrant a medical board review. On June 6, 2000, Applicant responded to the discharge. He waived his rights to an administrative discharge board on the condition that he receive no less than an Honorable discharge. (Gov 5) On June 29, 2000, Applicant was discharged from the United States Air Force with a discharge characterized as Honorable. (Gov 2)

In early summer 1999, Applicant learned that his grandmother had terminal cancer. She was the only stable element in his life. In May 2000, she passed away. He was enroute to visit her when she died. This caused him a great amount of grief and distress. (Tr at 109, 158-159, 226-228)

After his discharge from active duty, Applicant worked for several defense contractors. (Tr at 233 – 236) He maintained his Top Secret clearance and worked with classified information during this time. He has never had a security violation. (Tr at 234-235) He has been involved in a committed relationship over the past eight years. (Tr at 238)

Current Issues

In early 2007, Applicant received a package from the Defense Office of Hearings and Appeals (DOHA) requesting permission to schedule an appointment for him with a mental health provider to obtain an evaluation related to his security clearance background investigation. He agreed to the request. DOHA sent him a letter directing him to contact the base mental health facility to schedule an appointment. (Tr at 239)

On February 8, 2007, Applicant met with Capt C, a staff psychologist at the base mental health facility, for the evaluation. Capt C. has a Master's in Clinical Psychology. She is working on her doctorate in Psychology. She has three years of practicum experience and a one year internship. She will attain her doctorate when she completes her dissertation. She is not a licensed clinical psychologist. If all goes as planned, she will obtain her license in the Spring 2009. (Tr at 87-90; Gov 10)

Capt C. initially interviewed Applicant for one hour. During the interview, she felt that she was being misled but could not provide any specifics as to why other than her feeling that Applicant was not entirely forthcoming as to why he was there for an evaluation. Specifically, because he never told her that he needed an updated security clearance evaluation. Capt C. arranged for Applicant to take the MMPI. While he was taking this test, she obtained documents from her mail box which explained the basis for the evaluation. She had not reviewed these reports prior to the interview. After reviewing the documents, Capt C. concluded that Applicant's explanation of past incidents were not consistent with the way the incidents were described in prior reports. (Tr at 97-104) She testified "Again, he would just protest that some of these situations really did not occur the way they were stated in the written reports." (Tr at 104)

In her written report, Capt C. states that although Applicant was cooperative in the evaluation process, he did, at times, provide misleading answers which suggest his continued tendency to avoid self-disclosure of personal faults, and emotional problems and impaired or questionable judgment as well. She claims during the initial phases of the interview, he appeared reluctant to accept responsibilities for his past behaviors and difficulties. She states during the end of the assessment process, he accepted more responsibility for his behaviors. (Gov 7)

Tests administered were the MMPI-2, the Beck Anxiety Inventory (BAI), and the Beck Depression Inventory -2 (BDI-2). He reported no significant psychological distress. His test results were in the normal range. Capt C. concludes that the clinical interview revealed a positive history of poor decision making skills and social judgment. Capt C.'s diagnosis under the DSM IV was Personality Disorder, Not Otherwise Specified. She concludes that past behavior has shown to be the most reliable predictor of future

behavior and that Applicant has a history of showing a defect in judgment and reliability. She concludes that his current condition could cause a significant defect in functioning, which indicates a defect in judgment, reliability, and/or stability. (Gov 7).

After her evaluation, Capt C. consulted with Maj L., her supervisor. Maj L. is a staff psychologist. He is licensed. (Tr at 20-22; Gov 9). They went over the tests conducted and Capt C's evaluation of Applicant. He did not interview the Applicant and was not present during Applicant's evaluation. When he signed off on Applicant's evaluation, he was acting as Capt C.'s supervisor. (Tr at 52)

At hearing, Capt C. admitted that Applicant had no marked impairment. (Tr at 115) She relied heavily on her clinical interview when making the diagnosis. She admitted under cross examination that the clinical interview is subjective as opposed to the other tests given which were more objective. (Tr at 122) She believes there is a different standard when evaluating individuals who are seeking to obtain or seeking to maintain a security clearance. (Tr at 126) If not for the national security issue, she would make a conclusion similar to Applicant's expert. (Tr at 115) She is not aware of any events, other than the events that occurred ten years ago that indicates impairment in his social functioning. She is not aware of any impairment in his occupational functioning. (Tr at 129)

She believes that Applicant's interview raised questions about his judgment. (Tr at 138) However, she describes Applicant's personality disorder as being "mild." She has no collateral information over the last ten years of any security problems, problems at work, or significant problems with peers. (Tr at 140)

Major L. also testified during the hearing that there were no recent events which contributed to Applicant's diagnosis of Personality Disorder – Not Otherwise Specified. He describes Applicant's condition as "mild". (Tr at 83) He testified that there is a concern about Applicant's judgment and reliability based on past events and his behavior during the interview. (Tr at 85)

In preparation for his security clearance hearing, Applicant consulted Mr. T., a clinical mental health counselor. Mr. T. has over 20 years experience assessing and treating mental illness. (Tr at 154; AE C) Mr. T. met with Applicant on September 8, 2007. He interviewed Applicant for approximately two and a half to three hours. He took down Applicant's history in order to establish any problems that Applicant may have experienced in the past or present to determine if treatment is necessary. Mr. T could not find anything wrong with Applicant. He scored "normal" on both the Beck Depression Inventory and the Beck Anxiety Inventory. He reviewed documentation pertaining to past issues Applicant encountered while in the military, including the diagnosis of Personality Disorder, Not Otherwise Specified. He could not find anything wrong with the Applicant. He is not a licensed clinical psychologist so he referred Applicant to Dr. W., a licensed clinical psychologist, for further evaluation in order to ensure that he was not missing anything. (Tr at 157-166)

On September 14, 2007, Applicant met with Dr. W., a clinical psychologist and clinical neuropsychologist. He is a Professor of Psychiatry, Professor of Neurology, and Professor of Neurological Surgery at local university. He obtained his license in August 1978, and has extensive experience in his field. (Tr at 171-174; AE E) In the past, he has been retained by the federal government as an expert witness. He is currently funded on a grant from the Department of Defense Polygraph Institute and the Federal Bureau of Investigation on research pertaining to detection of deception by people. (Tr at 204)

Applicant's evaluation took several hours. Initially, one of Dr. W.'s technicians administered the following tests: the MMPI, the Milan Clinical Inventory, and the Validity Indicator Profile. (Tr at 175) Afterwards, Dr. W. interviewed Applicant for several hours. Applicant gave him his history which included his divorce in 1999 and the death of his grandmother in 2000. He notes that Applicant got the timing wrong on these two events. (Tr at 175-180) He reviewed several documents, including the mental evaluations that were conducted on Applicant in 1993, 1999, and 2000. (Tr at 177; Gov 3; Gov 4; AE F) He also reviewed the most recent mental evaluation of Capt C. dated October 22, 2007, and February 28, 2007. (Gov 7; Gov 11)

Dr. W. reviewed the test results. All of Applicant's test scores were within the normal range. (AE F at 29-37) He notes that there was no indication of an Axis I clinical personality disorder or Axis II personality disorder. Axis I refers to psychiatric disorders that brings someone to the attention of a psychologist such as psychosis, depression, or bi-polar illness. Axis II refers to chronic life-long problems which include mental retardation or personality disorders. Dr. W.'s diagnosis is that under Axis I, Applicant had an adjustment disorder by history, in remission. Under Axis II, he found no diagnosis. He also concludes the diagnosis of personality disorder was not justified in the past. (AE F at 38) He states:

It is my opinion to a reasonable degree of professional, psychological or medical certainty that he has no psychiatric diagnosis on Axis I or Axis II, now or in the past, that reasonably would affect his ability to deal appropriately with classified or secret information. (AE F at 38)

Dr W.'s disagrees with the prior diagnosis of Personality Disorder – Not Otherwise Specified because people with personality disorders have a chronic condition. They have typical and repetitive habitual problems. He did not find such behaviors in Applicant. He notes that clinicians make the diagnosis of Personality Disorder – Not Otherwise Specified when they have not made up their mind as to an accurate diagnosis. (Tr at 192-193) Dr. W. explained:

Well, you need to remind somebody if there is a possibility that you have a personality disorder, but they do not have enough information to make the diagnosis or you clearly meet the criteria for several personality disorders.Personality Disorder – Not Otherwise Specified means you do not know anything. (Tr at 193)

It is Dr. W.s' opinion that Applicant presently does not have any psychiatric disorder of any kind. He has no condition that would impair his reasoning, behavior, or self control. (Tr at 195).

Character Witnesses

Applicant's supervisor and the chief of the division where Applicant works, testified on his behalf. Applicant works directly for him. He has worked with Applicant on a daily basis since April 2006. He states that Applicant is smart technically. He likes to do things right and does not like taking short cuts. He has never received any complaints about him from their customers. In fact, he has received specific requests for Applicant because they like his work product. In November 2006, he wrote Applicant's performance appraisal. He rated Applicant overall as outstanding. (AE B) When Applicant first arrived, he was not used to working on a team and underwent an adjustment period. At times, he would get frustrated. After a few months, he adapted. Applicant is very good and what he does and can be trusted. Applicant was the first employee to pass the extremely difficult Certified Information System Security Professional Exam. After he passed the test, he put together a training program to assist other team members when preparing for the exam. He indicates that Applicant's workplace conduct has never raised any concerns about his ability to protect classified information. (Tr at 15-46; AE A at 3)

The regional director of Applicant's company testified about Applicant's technical skills. He states that Applicant is highly respected in the work place and well liked on his team. He is aware of the Applicant's diagnosis but does not believe he is a security risk, noting that Applicant has been trustworthy and loyal. He does not believe Applicant is a security risk. (Tr at 47-75 AE A at 2)

The Vice President of Strategy and Marketing (VP) testified on Applicant's behalf. He is the senior person at the location where Applicant works. He met Applicant when Applicant first came to work. His office was across the hall from the office where Applicant worked. The VP makes an effort to get to know his employees. He saw Applicant on a daily basis until the VP's office moved approximately six months ago. He describes Applicant's reputation in the work place as "a high – tech guy, type A personality" He indicates that they have several Type A personalities in the work place. He states Applicant has a good reputation and does not believe that he is a security risk. (Tr at 75-91; AE A at 1)

Three of Applicant's co-workers wrote letters on his behalf attesting to his excellent work ethic, his mentoring skills, and his adherence to security guidelines and policies. (AE A at 6-8)

A friend and former co-worker of Applicant's testified. He has known Applicant since 1993 when Applicant was on active duty and he was a civilian employee. He had daily interaction with Applicant from 1994 to 1995. After that time, he saw him on a social basis. He recommended Applicant for Applicant's current job. He sees him once or twice a month and communicates with him via e-mail or a phone call once a week.

He is aware of the security issues raised in Applicant's case. He recalls two incidents that were significant in Applicant's life during 1999. They include the Applicant's divorce and the death of his grandmother. After his divorce, he felt betrayed, angry, and a little depressed. Based on the friend's observations, the death of his grandmother had a more devastating impact on Applicant because his grandmother was special to him. It took Applicant some time to recover from these events, but he is back to normal. He does not believe Applicant is a security risk. (Tr at 93-124; AE A at 4)

Another of Applicant's friends testified. He and Applicant met each other in 1997 when they were students at Airmen Leadership School. They never worked with each other but lived close to each other and would socialize often. He trusts Applicant and would trust him with his children. He has never observed Applicant behave irrationally. He recalls that Applicant got out of the Air Force because he was not happy with the way the Air Force characterized him, and did not believe he had the ability to change that characterization. He thought it had to do with the cancellation of his overseas assignment. He considers Applicant a close and reliable friend. (Tr at 126-146)

Applicant's girlfriend testified. She met Applicant in 1999 at a friend's house. She and Applicant have lived together since the fall 2000. She recalls that Applicant left the Air Force in 2000 because he was frustrated with his job. She recalled that his overseas assignment was canceled due to issues with a psychological exam, and he thought he was not able to go anywhere in the military. Applicant was also very upset in 2000 when his grandmother passed away. He has never threatened her or anyone else in her presence. He has never been in trouble with the law as long as she has known him. She has never seen him frustrated with his post Air Force employment, aside from the usual minor irritations. (Tr at 148 -167)

During his active duty service, Applicant received several awards and letters of appreciation. (AE A at 9 - 24) His awards and decorations include the Joint Service Achievement Medal (AE at 15 -16), the Air Force Achievement Medal (Third Oak Leaf Cluster) (AE A at 17, 19 - 21). On October 1, 1999, he was appointed a noncommissioned officer. (AE A at 24).

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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.

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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.” 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

The security concern relating to the guideline I: Psychological Conditions 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. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

The guideline notes several conditions that could raise security concerns and may be disqualifying. There are two Psychological Conditions Disqualifying Conditions (PC DC) that have the potential to apply in this case.

PC DC ¶ 28(a) “behavior that casts doubt on an individual’s judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior” is not applicable. Granted Applicant encountered some personal conduct and alleged criminal conduct issues early in his Air Force career that raised questions about his judgment, reliability, or trustworthiness. They include the unknowing use of a stolen phone card, omitting his one time marijuana use on his enlistment application, investigation for possible drug involvement, and punishment under Article 15, UCMJ, for a violation of Article 86, failure to go. All of these allegations are more appropriately alleged under Guideline E, Personal Conduct, or Guideline J, Criminal Conduct. Applicant mitigated the concerns raised under each of these guidelines due to the passage of time. It is also noted that Applicant cooperated with AFOSI when he was investigated for alleged drug use/distribution and that no charges were ever brought, most likely due to a lack of evidence implicating Applicant. The operative language in AG ¶ 28(a) relative to Applicant’s case is behavior that “...is not covered under any other guideline.” Aside from being somewhat defensive during his mental health evaluations, Applicant’s behavior after 1994 did not raise issues about his individual judgment, reliability, or trustworthiness, a fact that is supported by his commander and supervisor during the 1999 mental health evaluation.

The Government established a prima facie case under PC DC ¶ 28(b) “an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness” applies with respect to Applicant’s diagnosis of Personality Disorder – Not Otherwise Specified during the 1993, 1999 and 2000 mental health evaluations. This disqualifying condition is not raised in the 2007 evaluation conducted by Capt C. because she is not a licensed clinical psychologist. Granted, Maj L., her supervisor is a licensed clinical psychologist and he endorsed her evaluation. However, he did not

participate in the evaluation. He never met or interviewed the Applicant. He endorsed the mental health evaluation only in his role as Capt C.'s supervisor.

The guideline also includes examples of conditions that could mitigate security concerns. The following Psychological Conditions Mitigating Conditions (PC MC) apply to Applicant's case:

PC MC ¶ 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" applies. Dr. W., a duly qualified mental health professional, conducted an evaluation on Applicant on September 14, 2007. After thorough testing and interviewing Applicant, his diagnosis was that Applicant currently has no mental disorder. Dr. W. has acted as an expert witness for the US government in the past, and currently has a grant funded by the DOD Polygraph Institute and the FBI. As such, I conclude that Dr. W. is an expert who is acceptable to and approved by the U.S. Government.

PC MC ¶ 29(d) "the past emotional instability was a temporary condition (e.g. one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability." Dr. W.'s diagnosis was that he was suffering from an adjustment disorder at the time of his divorce and his grandmother's death. He notes that the disorder is in remission. Based on the record evidence, it appears that there were no specific indicators of emotional instability since Applicant separated from the Air Force. In fact, one could argue there were no instances of questionable conduct raised since 1994. Applicant's current superiors and co-workers have testified that Applicant is good employee whose conduct does not raise security concerns. Two of his friends and his girlfriend testified that Applicant is emotionally stable and that their observations of his conduct raise no issues that would raise a concern.

One might conclude that Applicant's desire to separate from the Air Force after having his overseas assignment cancelled was a bit rash. However, when one considers the fact that the 1999 mental health evaluation implied that Applicant is likely to conduct criminal behavior in the future due to his past history, a reasonable person might interpret this to mean that they do not have a future in the Air Force. During this same time period, Applicant divorced his wife and discovered his grandmother's terminal illness. In other words, he was under a significant amount of personal stress during the time period that he separated from the Air Force.

PC MC ¶ 29(e) "there is no indication of a current problem" applies. There is nothing in the record evidence that raises issues pertaining to Applicant's psychological condition and his ability to protect classified information. Capt C. claims she felt Applicant was not forthcoming during his initial interview, but never really provided a specific incident which indicates Applicant was misleading other than he did not fully disclose the reason for his visit. The results of the objective tests taken by Applicant indicate that he was within the normal range of functioning. Capt C.'s conclusions were

based on the clinical interview, a subjective part of the test. She notes that Applicant protested the accuracy of some of the written reports. This would not be unusual based on the fact that most of the reports were more than seven years old. Furthermore, Applicant was not the author of these reports and disagreed with the author's conclusions.

In addition to the mental health evaluation conducted by the government, Applicant underwent evaluations with two mental health providers. He was initially evaluated by a licensed professional counselor, and then by a licensed clinical psychologist and licensed clinical neuropsychologist. Neither found anything wrong with Applicant during their evaluations. Even if one were to concur with the government expert's diagnosis of Personality Disorder – Not Otherwise Specified, both government experts described the Applicant's personality disorder as "mild." Capt C. testified at hearing that Applicant had "no marked impairment" in his social or occupational functioning.

Whole Person Factors

The testimony of Applicant's superiors and the letters of his co-workers indicate that he is successful in his current job. After his discharge from the Air Force, he continued to hold a security clearance while employed with numerous Department of Defense contractors. He has held a security clearance for approximately 15 years with no security violations. Personal conduct issues that arose earlier in his Air Force career are no longer apparent. Based on these the facts and the expert testimony, in particular, the testimony of Dr. W., the current state of Applicant's mental health does not raise a concern about his ability to protect and handle classified information.

For all these reasons, I conclude Applicant mitigated the security concerns arising under psychological conditions.

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, Guideline I:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge