



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



In the matter of:)	
)	
)	ISCR Case No. 13-01191
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: Cheryl Van Ackeren, Esquire

01/29/2015

Decision

WHITE, David M., Administrative Judge:

Applicant was diagnosed by a duly qualified mental health professional with a condition that may impair her judgment, reliability, or trustworthiness, after exhibiting irresponsible and violent behavior. She offered insufficient evidence to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on October 27, 2011. On May 28, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline I (Psychological Conditions). 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on July 1, 2014 (AR), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 24, 2014. The case was assigned to me on October 1, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on November 21, 2014, and I convened the hearing, as scheduled, on December 5, 2014. Applicant, her counsel, and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection; and Hearing Exhibit (HE) I, a Government exhibit list. Applicant testified on her own behalf, and presented testimony from three other witnesses. DOHA received the transcript of the hearing (Tr.) on December 16, 2014.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. She has a six-year-old daughter, of whom she has partial custody, and for whom she pays her ex-husband monthly child support. She is a high school graduate, who served on active duty in the Army for more than two years before being honorably discharged in October 2007 due to pregnancy. This is her first application for a security clearance. (GE 1; Tr. 38, 53, 57.)

In her response to the SOR, Applicant denied the allegations in the SOR, with explanations. Applicant's admissions, including her statements in response to DOHA interrogatories (GE 2), are incorporated in the following findings.

Applicant and her husband were stationed in Germany when she became pregnant with their daughter and decided to leave active duty. Her husband was an inactive member of the National Guard at the time, but entered active duty upon their return to the United States in October 2007. Their daughter was born in late March 2008. Shortly thereafter, she began an online relationship with a man in another state. Her marriage deteriorated and she suffered from postpartum depression. In September 2008 she left her husband and daughter, and went to stay with her mother in a third state for several weeks. In mid-October 2008, she moved to Alaska to live with her online boyfriend. (GE 1; GE 2; GE 4; Tr. 28-31, 46, 51-52.)

On the night of October 31, 2008, Applicant's boyfriend called 911 to request assistance after she assaulted him. She had consumed some amount of alcohol, but the details surrounding this incident vary in different versions of events provided by Applicant since then. She was arrested, charged with domestic violence assault, and held in jail for several days before posting bail. After several days in a homeless shelter, she moved back in with her boyfriend. Applicant agreed to undergo a court-ordered treatment program at a VA facility, after successful completion of which the assault charge would be dismissed. (GE 1; GE 2; GE 4; Tr. 34-35.)

The licensed clinical social worker who performed Applicant's January 2009 initial assessment consult noted several inconsistencies in her report of the circumstances

surrounding her relationships and the assault incident, and said that her judgment was “impaired.” She further reported:

The veteran seems to be a poor historian and reporter of her current state of being. She minimizes her assault on Halloween and does not seem to connect her drinking, blackout, and subsequent arrest and restraining order to be related to her drinking. The veteran seemed to have little awareness of her current situation. The impact of abandoning her child, the danger of moving to Alaska without knowing anyone except an internet “friend”, etc. She seems to minimize the assault and a blackout from drinking. Not concerned about whether she drinks again. Unaware of why she would have a blackout, doesn’t think there’s a medical reason, but not concerned that something like that could happen.

The social worker diagnosed Applicant with Alcohol Abuse, and recommended that she undergo an outpatient alcohol treatment program, as well as mental health counseling and psychiatric treatment for depression. (GE 3 at 81-83.)

Applicant completed the VA counseling and treatment programs in late September 2009. She was diagnosed with several different psychiatric/psychological conditions throughout the course of her treatment, but her last mental health diagnosis at that facility was PTSD; Alcohol Abuse in early full remission; and Dysthymia.¹ The PTSD diagnosis related to her early childhood sexual abuse by an uncle. (GE 3.) Her criminal charge was dismissed, and she and her boyfriend moved to the state where she now lives, and where her daughter was living with her husband’s parents while he was deployed. She obtained employment at an automobile maintenance retailer, and was promoted to the position of assistant manager of the facility after about a year. She obtained her current employment in September 2011. (GE 1; GE 2.)

In February 2014, in connection with evaluating her eligibility for a clearance, DOHA requested a mental health evaluation of Applicant by a clinical psychologist who is a recognized expert in traumatic stress disorders. He met with Applicant for evaluation four times in March and April 2014, and issued his report of the assessment on April 23, 2014. He analyzed the results of his testing, and ruled out a number of previous potential diagnoses in Applicant’s VA records. In the “RELEVANT HISTORY” section of the report, he noted, “a pattern of documented inconsistencies or discrepancies in [Applicant’s] divergent descriptions of events, calling into question the veracity of her self-report.” He went on to say:

As commented by others in the narrative record, it is unclear whether the pattern of inconsistencies in [Applicant’s] recall reflect intentional deception, signs of severe psychopathology, notable learning and memory deficits, a proclivity toward unintentional careless mistakes, a general

¹Dysthymia is a mild but long term (chronic) form of depression formerly also called, “neurotic depression,” and most recently renamed “Persistent Depressive Disorder” in the DSM 5.

disposition viewing factual accuracy as less important, or possible dissociative response to early childhood trauma.

(GE 4 at 2.) Applicant told the clinical psychologist that her mother took her to a local hospital during September 2008 due to worsening depression, where she was prescribed antidepressant medication.² (GE 4 at 3.)

The clinical psychologist's diagnostic summary and impressions began:

In sum, the overall assessment findings reveal that [Applicant] is likely to continue to be experiencing the chronic effects of a post-traumatic stress injury sustained after years of early childhood sexual abuse, often referred to as "complex PTSD" that does not neatly fit into current DSM diagnostic criteria of PTSD. For instance, individuals with a history of severe early trauma tend to exhibit patterns of interpersonal instability, troubles with self-regulation, dissociation, and attachment difficulties.

(GE 4 at 7.) He provided a DSM-5/ICD-10 Diagnosis of, "309.9 (F43) Unspecified Trauma- and Stressor-Related Disorder." (GE 4 at 8.)

In response to the specific DOHA security clearance-related questions, he concluded that Applicant has an emotional, mental, or personality condition that may impair her judgment, reliability, or trustworthiness. He said:

[T]he most likely explanation . . . is an atypical or unspecified trauma-related disorder, resulting from childhood trauma . . . that may impair her judgment, reliability or trustworthiness during times of severe life stressors. During most other times, [Applicant] has demonstrated the capacity to function in an adaptive manner and is currently content with work and her personal life. However, during times of extreme or chronic stress, she can be prone to transient states of confusion and self-dysregulation, which alcohol can help solicit by lowering cognitive inhibition/control.

(GE 4 at 8.) He further identified her condition, the degree to which it adversely affects her judgment, reliability, or trustworthiness, and prognosis as follows:

Although she presently self-reports a non-clinical level of PTSD and dissociative symptoms, [Applicant] continues to demonstrate memory lapses that appear to be indicative of possible traumatic-stress/dissociative reactions best characterized as *309.9 (F43) Unspecified Trauma-and Stressor-Related Disorder*. For example, she commented that her current boyfriend and co-workers often get annoyed with her repeating the same questions, and she had no recall of

²In Nov. 2011, she said that she was prescribed and started taking this medicine in June 2008. (GE 2 at 5)

discussing her auditory hallucinations and suicidal ideation with her VA counselors. . . . The degree of documented inconsistencies in [Applicant's] self-report from a variety of sources is highly unusual, and not explained by her previous mental health diagnoses including PTSD, or prescription of antidepressants. Of particular concern, is that [Applicant] has resumed drinking alcohol moderately since completing the VA treatment program as she had prior to her 1 November 2008 arrest, with the reassurance (possibly false) that she can do so safely because she is no longer taking antidepressant medications. She also terminated all counseling. . . . [Applicant] presented in a credible, sincere, and candid manner. Her written and verbal inconsistencies are not believed to be conscious, intentional deception or malingering, but instead reflect a life-long difficulty with memory integration and coping caused by early extreme exposure to traumatic stress. During most times, she is able to function in an adaptive manner and is currently quite content with work and her personal life. However, during times of extreme or chronic stress, she can be prone to transient states of confusion and self-dysregulation, which alcohol can help solicit by lowering cognitive inhibition/control.

(GE 4 at 8-9.) He concluded, "Overall, the record indicates that [Applicant] has been compliant with treatment recommendations at the VA." He "strongly advised [her] that the safest measure avoid future repeat of events, is to remain sober and attend counseling to better understand possible association with early childhood trauma, as well as learn effective ways to cope with life stressors." (GE 4 at 9.) Applicant has not followed this advice, because she does not feel that any of the issues he outlined affect her daily life or how she functions. (Tr. 50.)

Applicant broke off her relationship with the man she was arrested for assaulting, and is now engaged to marry the man who was her manager at the automobile maintenance retail company where she worked before obtaining her current employment. He testified that she is reliable, that she functioned well in both routine and high-stress situations, and that she is trustworthy and responsible. (Tr. 70-85.) Her current supervisor testified that he finds her to be competent, reliable, and careful about following security procedures to protect sensitive information. (Tr. 59-69.) Applicant's mother also testified. She confirmed that Applicant was exhibiting abnormal symptoms of depression when she came to her home after leaving her husband and daughter in 2008, but also testified that Applicant refused her efforts to get Applicant to see a doctor for help during that visit, contrary to Applicant's testimony concerning those events. (Tr. 89-96.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline I, Psychological Conditions

AG ¶ 27 expresses the security concern pertaining to psychological conditions:

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.

AG ¶ 28 describes conditions that could raise a security concern and may be disqualifying:

(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;

(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; and

(c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Applicant exhibited behavior that casts doubt on her judgment and reliability, involving emotionally unstable and violent conduct. She abandoned her husband and newborn daughter to live in another state with a man she met over the internet; and who she shortly thereafter assaulted leading to her arrest for domestic violence. A duly qualified clinical psychologist employed by the U.S. Government found that she has a condition that may impair her judgment, reliability, or trustworthiness. She failed to follow his recommendations concerning abstention from alcohol and counseling. This evidence establishes all three disqualifying conditions, and shifts the burden to Applicant to prove mitigation.

AG ¶ 29 provides conditions that could mitigate the security concerns raised by the evidence in this case:

(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 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; and,

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

Applicant did not provide evidence that would establish mitigation under any of these conditions. She has recently worked satisfactorily in positions not involving high levels of responsibility or discretion, but failed to follow recommended treatment programs, and submit any evidence that her diagnosed condition is under control or in remission. The clinical psychologist who evaluated her did not consider her condition to be temporary or resolved. The record evidence is insufficient to dispute this conclusion.

Whole-Person Concept

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 relevant 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) 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Most recently, Applicant's conduct supported ongoing psychological concerns after evaluation by a qualified mental health professional in 2014. She offered insufficient evidence to overcome those conclusions or support findings of permanent behavioral change. Recurrence of questionable judgment on her part was not shown to be unlikely. She did not demonstrate a reduced susceptibility to coercion or duress. Overall, the record evidence

creates valid questions and doubts as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge