



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-02960
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

June 8, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant suffered from emotional, mental, and personality conditions. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on January 25, 2013. (Item 2.) On January 3, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR, dated January 24, 2015 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) Department Counsel submitted the Government's written case on December 2, 2015, containing eight Items. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on December 17, 2015. She failed to submit any additional material in response to the FORM. I received the case assignment on March 28, 2016.

Findings of Fact

Applicant is 43 years old, and has worked for a defense contractor since January 2013. She has never married and has no children. (Item 2.)

The Government alleged that Applicant is ineligible for a clearance because she has been diagnosed as bipolar, a condition that could impair her judgment, reliability or ability to properly safeguard classified national security information. Her mental health status has been a contributing factor in her 1992 "other than honorable" discharge from the Marine Corps; her 2010 arrest for vandalism; and her manic state in 2011. Applicant admitted all of the allegations, and included an explanation in her Answer. (Item 1.)

Applicant served in the Marine Corps from June 1991 to December 1992. She indicated on her e-QIP that she was discharged in December 1992 "under other than honorable conditions" for "misconduct-minor disciplinary infractions." (Item 2.) During her subject interview conducted April 19, 2013, she indicated that she has difficulties serving in the military due to onset of bipolar disorder. She was "seen in the Marine psych ward after an emotional breakdown," and reportedly was diagnosed as bipolar at that time. She was subsequently discharged, after denying she had bipolar disorder and refusing medication. (Item 6.)

Federal Bureau of Investigations Records indicate that Applicant was arrested on August 10, 2010, and charged with vandalism. On this occasion, Applicant reported she was "in a manic state" and was not thinking clearly. She intentionally scratched a garage door with a key, during a domestic disturbance. She was given a suspended sentence, fined and placed on probation for three years. (Item 3; Item 6.)

In 2011 Applicant continued to experience manic states and pressured thoughts. She was diagnosed as bipolar, and provided medications to manage her condition. The record contains medical records from July 2011 through December 2013. Those records reflect racing thoughts, paranoia, distractability, and anger issues. (Item 7; Item 8.) She was medicine compliant and stable between August 2013 and May 2014, but her medical provider from August 2013 through at least May 2014 opined that she had a condition that could impair her judgment, reliability or ability to properly safeguard

classified national security information. (Item 5.) Applicant failed to produce more recent records showing her current level of medicine compliance.

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

The security concern for the Psychological Conditions guideline is set out in AG ¶ 27 as follows:

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 standards in the 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. The following disqualifying conditions are potentially applicable:

- (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.

Appellant has been suffering with bipolar disorder since at least 1992. It caused her other than honorable discharge from the Marine Corps in 1992 after she refused medical treatment with prescription medication, and caused her arrest in 2010. She was diagnosed with bipolar disorder and she has been receiving psychological treatment since at least 2011. She has been utilizing prescribed medications to control this condition, and was documented as medicine compliant from August 2013 to May 2014. However, the treating doctor, a duly qualified mental health professional, opined that Appellant has a condition that may impair judgment, reliability, or trustworthiness. Further, no recent assessment of her compliance with her treatment regime had been provided. Her long history of psychological treatment, as documented in her records of medical care by duly qualified mental health professionals, casts doubt on her judgment, reliability, and trustworthiness. AG ¶¶ 28(a), 28(b), and 28(c) apply.

The conditions that could mitigate Psychological Conditions security concerns, as set out in AG ¶ 29, include:

- (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.

The evidence does not sufficiently establish any of above mitigating conditions. Applicant has not demonstrated ongoing and consistent compliance. The current status of her medicine compliance is unknown. Further, she has not been given a favorable prognosis by her treating physician or provided evidence that her condition is under control or in remission, and/or has a low probability of recurrence or exacerbation. Her condition is not temporary and has caused her difficulties for over 20 years.

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.

