



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



In the matter of:)
)
) ISCR Case No. 14-02423
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2016

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant failed to present sufficient information to mitigate psychological conditions security concerns.

Statement of the Case

On May 12, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance to qualify for a security guard position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD adjudicators could not make the preliminary affirmative findings required to issue a security clearance. On March 19, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for psychological conditions under Guideline I. These actions were taken under Executive Order 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) effective in DOD on September 1, 2006.

Applicant answered the SOR on April 24, 2015. She admitted the two allegations under Guideline I. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 21, 2015, and the case was assigned to me on August 31, 2015. DOHA issued a Notice of Hearing on October 2, 2015, for a hearing on October 14, 2015. I convened the hearing as scheduled. The Government offered five exhibits which I marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 through 5. Applicant and one witness testified. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents that I marked and admitted into the record without objection as Applicant Exhibits (AX) A and B. (GX 6, e-mail, dated December 16, 2015) DOD received the transcript of the hearing (Tr.) on October 22, 2015. The record closed on December 16, 2015, on receipt of Applicant's post-hearing documents.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant's admissions are included in my findings of fact.

Applicant is a 25-year-old 2011 college graduate with a Bachelor of Science degree. She completed all of her course work on time in four years. She is taking on-line courses working towards her master's degree while working as a public service counselor in a library. She requires a security clearance for a new position she has accepted as a security guard for a defense contractor at a sensitive compartmented information facility (SCIF). She is single and living at home with her parents. (Tr. 11, 15-16; 39-40; GX 1, e-QIP, dated May 12, 2014)

The SOR alleges that on January 29, 2015, a government-retained duly qualified mental health professional diagnosed Applicant with an unspecified depressive disorder, which may have an impact on Applicant's judgment and reliability. The mental health professional opined that Applicant's prognosis was guarded because of Applicant's history of prematurely terminating therapy and medication management (SOR 1.a). It was further alleged that the government-retained mental health professional diagnosed Applicant with mood disorder, bipolar disorder, and a history of post-traumatic stress disorder (PTSD). The mental health professional noted that these conditions appear to have adversely affected Applicant's judgment in the past. (SOR 1.b)

Applicant started to see a mental health therapist in November 2008 while in her second year of college. Applicant had adjusted to being a college student in her first year of college. In her second year, Applicant was feeling left out and floundering in her student responsibilities as well as in her relationships with her parents and friends. She sought counseling at the school's mental health facility to try to balance the actions in

her life. Her assigned therapist was another student studying to be a licensed therapist. On the evening she returned to campus from the winter break in January 2009, Applicant sent a letter to the therapist indicating she was having suicidal and homicidal thoughts towards a friend. In addition, her grandmother passed which adversely affected her. She had no outlet for her feelings, so she e-mailed the therapist telling her about her feelings and thoughts. She wanted to get help for what she considered abnormal feelings. (Tr. 17-19)

Applicant's therapist referred her to an inpatient mental health treatment facility. Applicant was admitted to the facility as a voluntary admission for depression and suicidal thoughts on January 30, 2009. Applicant stated she had become depressed and was sad and angry without reason. She felt like she may harm herself. Applicant also reported that she was abusing alcohol. At the mental health facility, she was initially diagnosed with depression and bi-polar. (GX 2, Personal Subject Interview, dated February 7, 2014, at 4-5; GX, 2, Response to Interrogatories, dated August 13, 2014; GX 4, Psychiatric Admission Notes, date January 30, 2009, at 1-9)

Applicant spent ten days at the facility. She was prescribed Prozac and Lithium. She participated in group and individual therapy with varying degrees of participation. At times, she was somewhat difficult to engage in treatment. She slowly progressed. After a few days at the facility, she was feeling better and ready to return to her college studies. She also denied any thoughts to harm herself or others. She was willing to work with her therapist and see a psychiatrist on a regular basis. Applicant was discharged on February 10, 2009, with a good diagnosis as long as she remained in treatment and followed her medications. (Tr. 19-20; GX 4, Treatment Records, at 25-28)

Applicant was followed by a therapist at her school after leaving the mental health facility. Her priorities were to go to counseling and to class. She discontinued taking her medications in March 2009 because she was not focusing in class. She talked to her therapist before stopping her medications. The therapist encouraged her to continue the medications. (Tr. 20-22)

Applicant returned to the same mental health facility on April 30, 2009, and she was seen by a psychiatrist. At the time, she was having a panic attack and had ideations of harming herself and others. She was started back on medications that were different from her previous medications. She later told her doctor that she was still having trouble focusing in class, so he changed her medications. Clinical notes indicated that her prognosis was good, if she remained in treatment and on medications. She continued to see the psychiatrist weekly until May when the semester ended, and she returned home. (Tr. 22-26)

During the summer, she continued to take her medications until shortly before returning to school in August 2009. She does not know why she discontinued the medications except she now considers that it was probably a bad decision by her. During that year in school, her third year, she was stable, and she took on additional responsibilities in the school as well as in extracurricular activities. She felt that she had

returned to the same mental status she had as a first-year student. She occasionally saw a school therapist. She continued to use the coping mechanisms that she learned during her in-patient stay. (Tr. 26-31)

Applicant returned to the mental health facility in April 2010. She was evaluated by one of the facility's psychiatrists because she felt stressed and she was experiencing grief within her family. She knew that grief and stress are large causes of her mental health instability. The psychiatrist put her on Prozac, Lamictal, and Abilify. Her mood and mental stability improved. She did not have any therapy sessions with the psychiatrist since, shortly after, he left the facility. She did not seek out any other therapist or psychiatrist.

Applicant stopped taking the medications during the summer of 2010. While a student, she went off her medications mostly during the summer breaks from school. She had free time during the summers and felt she was not under stress requiring medication. Applicant is not concerned about stopping the medication and regressing back into depression and hallucinations. She knows what triggers the adverse mental health reactions, and she knows how to avoid the triggers. She has been able to alter her lifestyle to avoid the issue and circumstances that cause her stress. She feels that using her coping skills is better than taking the medication. (Tr. 31-37, 40-41)

Applicant was evaluated by a licensed clinical psychologist at the request of the Government in January 2015. The psychologist administered some personality and depression tests. The results were unremarkable. The psychologist interviewed Applicant for over an hour. The psychologist opined that Applicant lacks self-awareness and has difficulty with self-examination. Her emotional maturity is childlike, and she lacks a consistent, well-defined coping style. She is self-centered, infantile in her expectations of others, and her approach to life. She appears withdrawn and describes herself as "clingy" and "needy" in relationships. She is easily frustrated particularly when she is unable to complete a task or unable to fix issues. She indicated that she becomes nervous when talking to strangers. She reported a history of panic attacks, particularly around large numbers of people.

The psychologist concluded that Applicant has limited psychological resources to cope with stressful events. She is vulnerable to becoming depressed, which may have an impact on her judgment and reliability. Her previous attempts at therapy and medication management were prematurely terminated. The psychologist opined that Applicant's overall prognosis is guarded, and the probability of a recurrent emotional crisis is high. The psychologist also noted that Applicant meets the criteria for an unspecified depressive disorder. There is little evidence to suggest that her diagnosis would have an impact on her future judgment, reliability, or trustworthiness. However, her previous diagnosis of bipolar disorder, PTSD, and mood disorder appears to have adversely affected her judgment, but it is unclear if the circumstances had an impact on her reliability and trustworthiness. (GX 3, Confidential Psychological Evaluation, dated January 29, 2015)

Applicant disagreed with some of the conclusions of the psychologist, but she also recognized that the psychologist is a professional. She felt the evaluation was not fair, impartial, or a good evaluation of her abilities, mood, and condition. Applicant believed she can recognize the symptoms of a decline in her mental health so as to trigger her to seek professional help. She stated that her mental health now is fine, she did not feel depressed, and she had no suicidal or homicidal thoughts. Applicant also stated that she has not been on medication for over five years and had not seen a therapist or psychologist, except for the government-ordered evaluation, since 2010, a period of over five years. She did not feel that she required treatment to overcome her anxieties, bipolar, and mood issues. (Tr. 37-46)

One of Applicant's four college classmates for the entire time she was in college, testified that she has known Applicant since they met during their first year of college at an honors dinner. They had classes and socialized together with other students. They both had a difficult time in their second year of school and confided in each other. When Applicant went to the mental health facility in 2009, she and the other roommates visited Applicant. The witness also accompanied Applicant to see the psychiatrist in April 2010. She had seen Applicant deal with all of the stress that caused her mental health issues. Applicant had a difficult time sleeping, focusing, and was upset often. During their third year of college, Applicant had a heavy course load and held more responsibilities in class and in the school. She appeared to manage the situations appropriately. Applicant started taking her medications at the suggestion of the psychiatrist in April 2010. The witness noted that their final year of college was easier. Applicant seemed to be back to her normal self.

After graduation, Applicant and the witness went their separate ways for a while. They gradually renewed their friendship when they started to live closer together. The witness noted that she knew Applicant before, during, and after she experienced her mental health issues. Applicant is significantly more mature now than as a first-year college student, and she has grown significantly in her outlook. She accomplished this without medication. (Tr. 47-55)

After the hearing, Applicant consulted a licensed clinical social worker mental health professional. The mental health professional recommended that Applicant receive additional therapy with a goal of enhanced ability to effectively cope with the full variety of life's anxieties. After therapy, Applicant should be able to verbalize an understanding of the role fearful thinking plays in creating fears, excessive worry, and persistent anxiety symptoms. She must be able to identify, challenge, and replace fearful self-talk with positive, realistic, and empowering self-talk. To accomplish these goals, Applicant should receive counseling and treatment every two weeks for at least six months. (AX A, Report, dated November 15, 2015) In her e-mail forwarding the report, Applicant stated that she would see the mental health professional for the next six months for an adjustment disorder with mixed anxiety and depressed moods. Also on the recommendation of the mental health professional, Applicant met with a psychiatrist and was prescribed medications for depression and anxiety. (AX B, e-mail, date December 16, 2015)

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 and mitigating conditions, which must be considered 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, the guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 for 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Psychological Conditions

A security concern is raised because 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 or mitigating information under this guideline. (AG ¶ 27)

The Government presented Applicant's medical records from the mental health facility. The medical records included reports and evaluations by two psychologists and a psychiatrist. The medical records and reports showed that Applicant was treated and diagnosed with major depression and mood disorder. She was prescribed various medications for her condition. An evaluation by a Government psychologist indicated that Applicant's mental health condition had a negative impact on her judgment, but it is not clear if it had an impact on her reliability or trustworthiness. The medical information and reports raised the following Psychological Conditions Disqualifying Conditions under AG ¶ 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, 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 but 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.

I considered the following mitigating conditions 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 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 has indications of emotional instability; and

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

None of these mitigating conditions apply. While Applicant's mental health issues may have been caused by stress and grief, the condition is not temporary since Applicant has had mental health conditions on and off for over eight years. She continues to experience the same or similar mental health issues. Applicant's condition has been controllable in the past with treatment and medications, but Applicant has not shown a consistent compliance with prescribed treatment plans, including taking her medications. The latest mental health report submitted by Applicant shows that she requires further therapy and counseling, and a psychiatrist has prescribed additional medications for Applicant. The opinion of the psychologist that evaluated Applicant's at her request after the hearing does not clearly indicate that Applicant's condition is under control or in remission and that she has a low probability of recurrence or exacerbation of her condition, It is gratifying to see that Applicant is complying with the recommendations for additional treatment and therapy. This indicates that there is still a current problem.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and the relevant circumstances. An 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 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 the facts and circumstances surrounding this case. Applicant is still experiencing mental health issues that could affect her judgment, reliability and good judgment. It is good that Applicant is willingly complying with a treatment plan and medications that could ameliorate her mental health issues. She has received treatment and medication in the past, but she has not always continued to comply with the prescribed treatment and medication. The protection of the national security is the paramount consideration so

