



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-07749
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Thomas Albin, Esq.

September 17, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted her security clearance application on November 12, 2002, and she received a clearance about five years ago. The exact date of her clearance is not reflected in the record. On May 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to revoke her clearance, citing security concerns under Guideline I. 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 21, 2008; answered it on May 27, 2008, and requested a hearing before an administrative judge. DOHA received the request on May 29, 2008. Department Counsel was ready to proceed on June 12, 2008, and the case was assigned to me on June 13, 2008. DOHA issued a notice of hearing on July 2, 2008, scheduling the hearing for July 24, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified on her own behalf, and submitted Applicant's Exhibit (AX), which was admitted without objection. The record closed upon adjournment of the hearing. DOHA received the transcript (Tr.) on August 7, 2008.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.d. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 29-year-old electrician employed by a defense contractor (Tr. 26). She has worked for her current employer and held a clearance for more than five years.

Applicant has a history of mental health problems. Her parents were divorced when she was about four years old, as a result of her father's brutal assault on her mother. Her father moved away and she saw him again only once, when she was seven or eight years old. Her mother remarried when she was about five or six years old (GX 2 at 2). When Applicant was a young teenager she was partially responsible for disciplining her younger sister, who retaliated by harassing Applicant, putting needles in her bed or chemicals in her face soap (GX 2-3).

When Applicant was about 16 years old, she tried to control her anxiety and panic by burning herself. She did so on two or three occasions. (GX 3 at 2-3). Her medical records reflect a suicide attempt by a drug overdose in high school (GX 3 at 135).

Applicant now has a "good and bad" relationship with her mother. On the one hand, her mother is very critical and hurtful, and she discloses inappropriately intimate financial and marital information to Applicant. On the other hand, Applicant finds that talking with her mother is one of her best ways of controlling her emotions. Applicant talks to her mother about once a week and more frequently when under stress. She told a clinical psychologist that when she is with her family she reverts to being "that sad, 16-year-old teenager" (GX 2-3).

Applicant grew up on the west coast. She moved to the east coast and her present workplace when her husband was transferred. Shortly after she moved to the east coast, her insurance stopped paying for her medications and she stopped taking them (Tr. 23, 41).

Applicant and her husband separated after about 18 months of marriage. In June 2003, she reacted to the stress of her pending divorce by shaving her head and attempting suicide by taking an overdose of sleeping pills. The attempt did not work, and she awakened in the morning suffering from nausea and dizziness. She went to work, where her co-workers noticed her condition and notified her supervisor. She was hospitalized in a mental health ward for three days. Upon discharge, she was diagnosed with major depressive disorder, recurrent, severe, without psychotic features. She was given prescriptions for medication and advised to obtain counseling (GX 2 at 5; GX 3 at 6, 128, and 138).

In 2004, Applicant, not yet divorced, became pregnant by a man married to another woman. She miscarried after about four and a half months. In May 2004, she weighted down her clothing, walked to a pier, and started running toward the water. As she approached the end of the pier; she decided she did not want to die and stopped. She then went to the hospital for help. She was hospitalized for five days and diagnosed with major depressive disorder, recurrent, severe without psychotic features (GX 2 at 4; GX 3 at 75, 99).

In May 2006, Applicant was temporarily assigned to a shipyard on the west coast, near her family. She had difficulty at work and believed her boss was critical of her. She lived with her family, which revived her family-related stresses (Tr. 33-34). She stopped taking her medications because she lost contact with her doctor. She had misplaced his telephone number and could not remember his name (GX 3 at 9). In late May 2006, when she started having suicidal thoughts and began burning herself to relieve the stress, she voluntarily sought psychiatric help at a local hospital. She was treated and released, but she did not go to work for two days (GX 3 at 9)

When Applicant returned to work, she learned she was about to be disciplined for missing work. She returned to the hospital, upset because she thought she was about to be fired. She was hospitalized in the mental ward for four or five days and diagnosed with post-traumatic stress disorder, chronic; and bipolar disorder, depressed, without psychotic features (GX 3 at 88). She was given prescriptions for medications and released. She reacted badly to her medications, suffering numbness and loss of balance. The dosages were reduced and the adverse reactions ceased (GX 2 at 4; GX 3 at 7-8).

Applicant started seeing her current psychologist and psychiatrist in July 2006. Their initial diagnosis was bipolar disorder I (GX 3 at 79, 82).

Applicant stopped taking her medications for about a month in November 2006. She starting hitting herself and trying to burn herself. She was taken to her psychologist by a co-worker after she acted like a "zombie" at work and was crying (GX 3 at 155).

Between early February 2007 and mid-March 2008, the observations of Applicant's psychologist after every session included a comment that her insight was compromised (GX 3 at 13-47). In late October 2007, Applicant's psychologist noted she

had stopped taking one of her medications, and he was concerned about the risk of bipolar symptoms (GX 3 at 26). In December 2007, her psychologist again noted she was not taking her medications unless absolutely necessary, and he wanted her to resume taking them regularly to minimize the risk of bipolar symptoms (GX 3 at 21). In early January 2008, her psychologist again noted that she was “not fully compliant” with her medications (GX 3 at 19-20). In late January 2008, her psychologist noted that she was ‘compliant with her meds” and feeling much better (GX 3 at 18).

In November 2007, Applicant's drug prescriptions were destroyed when her truck caught fire. She attempted to obtain new prescriptions but her doctor did not return her telephone calls. Since she had an appointment in two weeks, she decided to “tough it out” until her appointment. She described this decision as a “big mistake,” because not taking her medications made her physically sick. She testified she had no thoughts of injuring herself during this period because she was too sick (Tr. 72).

In January 2008, the Department of Defense referred Applicant to a clinical psychologist for evaluation. This evaluation apparently was triggered when her hospitalization on the west coast was reported to her supervisors and the facility security officer (Tr. 57-58). The government psychologist diagnosed her with bipolar I disorder, most recent episode depressed, severe without psychotic symptoms; and post-traumatic stress disorder (GX 2 at 5). His evaluation included the following comments:

[A]pplicant's presentation at this interview suggests no currently significant defects in judgment or reliability. When symptomatic, the picture is less clear. In reviewing her history, when symptomatic [Applicant's] patterns of suicidality and self-harm signify defects in judgment; however these tend to focus on and may even be confined to behaviors that are self-directed. No evidence reviewed by this interviewer suggests that she has directed any unhealthy behaviors at elements in the workplace. Therefore, though such lapses in judgment may be present when symptomatic, these may be confined to self-care (GX 2 at 8).

The government psychologist also noted that the cyclical nature of Applicant's disorder is likely to cause some impairment in occupational functioning that could range anywhere from a distracted day to inability to function. He concluded that “it is difficult to predict what levels of severity might occur in light of Applicant's current levels of therapeutic support,” and that Applicant “could be viewed a struggling with a chronic illness whose severity will depend on such factors as adherence to recommended treatment and environmental stressors.”

In mid-June 2008, one of Applicant's co-workers asked her about her apparent increased weight, causing Applicant to “stress out,” She called her psychologist, talked to him, and resolved her distress without thoughts of harming herself (Tr. 82-83).

As of the date of the hearing, Applicant had been in a serious relationship with a security guard for a government facility for about a year. They have known each other for about four years (Tr. 89). They see each other every four days on his day off (Tr. 24-25).

On July 1, 2008, about three weeks before the hearing, Applicant and her boyfriend had an argument that made her want to escape from the situation. She responded by consuming all the ten remaining pills from one of her medications and she tried to consume all the pills of a second medication. Her boyfriend knocked the second medication out of her hand and took her to a hospital, where she was administered a charcoal solution that filtered out the medications. She was held overnight and then released (Tr. 46-50). She stayed with her boyfriend for three days and then returned to work (Tr. 52). Her boyfriend testified and corroborated her account of the incident (Tr. 90-97).

On July 15, 2008, Applicant's clinical psychologist and her psychiatrist reported that she was being treated for bipolar I disorder and that she had responded well to psychotropic medication during the past two years (AX A). They were aware of her drug overdose two weeks earlier (Tr. 67). Nevertheless, they stated, "Her prognosis is good at this time as noticed by the way she has made good use of the supports provided to her."

Addressing a concern alleged in the SOR about adhering to her treatment program, Applicant's psychologist and psychiatrist also stated that she kept all her appointments except on rare occasions when she had car problems, concerns about demonstrating a good work record, or major family events (AX A at 1). Applicant testified she is "too afraid" to stop taking her medications (Tr. 79).

Applicant sees her psychologist once a week, and she sees her psychiatrist every one or two months (Tr. 34-36). Her medications are constantly being adjusted in an effort to find the correct balance (Tr. 37, 43-44). According to her psychologist, her medications were reviewed 23 times during a two-year period (AX A).

Applicant also has started seeing a counselor to whom she was referred through the employee assistance program, in addition to her regular psychologist and psychiatrist (Tr. 58-61). She testified she started seeing this counselor to have a second opinion and because the counselor "seems to be more on the feeling side of the spectrum," compared to her regular psychologist, who is more clinical (Tr. 81).

Applicant testified she does not "fit in quite well" at her workplace. She filed a complaint against a boss who molested her in 2003, and she believes her co-workers treated her unkindly because they thought she might file complaints against them as well (Tr. 79). She has been transferred to a job where she has less contact with her co-workers (Tr. 62-63).

Applicant's support system consists of her psychologist, psychiatrist, her newest counselor, her mother, her boyfriend, and a co-worker who has experience in counseling. She called the co-worker when she had bad side effects from her medications while on the west coast, and he advised her to return to the hospital, which she did (Tr. 84). Her boyfriend testified they "talk a lot" about her mood swings and her stress at work and with her family (Tr. 101).

Applicant testified her employer is aware of her mental health issues. She provided the employer's medical facility with her list of medications, notified her union, and sought help through the company's employee assistance program (Tr. 58-59).

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline I, Psychological Conditions**

The SOR alleges Applicant was diagnosed in January 2008 with bipolar I disorder (most recent episode depressed, severe without psychotic symptoms) and post-traumatic stress disorder (SOR ¶ 1.a); that she has received treatment and medications since July 2006 for post-traumatic stress disorder I and bipolar disorder II (SOR ¶ 1.b); that she has periodically stopped taking medications and attending therapy sessions against medical advice (SOR ¶ 1.c); and that, as a result of her mental health disorders, she was treated or hospitalized for self-mutilation and suicidal thoughts, gestures, or attempts in November 2006, June 2006, May 2006, May 2004, and June 2004 (SOR ¶ 1.d).

With respect to SOR ¶ 1.b, alleging a diagnosis of “Post Traumatic Stress Disorder I and Bipolar Disorder II,” the DSM IV does not list post-traumatic stress disorder with a Roman numeral suffix, and all the evidence of record shows Applicant was diagnosed with bipolar disorder I, not bipolar disorder II. With respect to SOR ¶ 1.c, there is evidence that she stopped taking her medications, and there is evidence she sometimes rescheduled therapy sessions for good cause, but there is no evidence she simply failed to attend her therapy sessions. In all other respects, the allegations in the SOR have been established by substantial evidence.

The security concern under Guideline I 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 the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

A potentially disqualifying condition under this guideline may be raised by “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.” AG ¶ 28(a). A potentially disqualifying condition also may be raised by “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.” (AG ¶ 28(b)). Applicant’s mental health history raises these two disqualifying conditions.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 28(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated if “the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan.” AG ¶ 29(a). Although Applicant is undergoing therapy, receiving medications, and has established a support structure, she has not established that her condition is “readily controllable.” Her medication is still being adjusted, and her suicide attempt on July 1, 2008, demonstrates that her condition is not yet under control. She has generally complied with her therapy schedule, but there have been periods where she has not taken her prescribed medications. Some of those periods were beyond her control, such as the time when she could not afford the medications, the time on the west coast when she could not contact her prescriber, and the time when her prescriptions were destroyed by the truck fire; but there is no apparent good reason for her failure to take her medications during the periods from late October 2007 through early January 2008. I conclude AG ¶ 29(a) is not established.

Security concerns also can be mitigated if “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.” AG ¶ 29(b). Applicant is voluntarily receiving treatment. Her condition appears to be “amenable to treatment,” but not fully controllable. She is receiving counseling and has received a favorable prognosis from her psychologist and psychiatrist, but it is conditioned on her continued use of “the supports provided to her.” The government psychologist’s prognosis is much more guarded. Nevertheless, I conclude this mitigating condition is applicable.



## Whole Person Concept

Under the whole person concept, an 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. 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 eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a relatively young woman who has spent about half her life dealing with her mental health issues. She has cooperated with and responded to treatment and medication, but she remains very fragile. The two episodes occurring in mid-June and early July demonstrate how easily a drastic mood swing can be triggered. When she is symptomatic or stops taking her medications, her insight and judgment are impaired.

Applicant has reacted to her mood swings in self-destructive ways. As noted by the government psychologist, her actions are not directed at other persons or her workplace. She responds to stress with sadness, crying, and self-destructive behavior. Nevertheless, her fragility makes her very vulnerable to pressure, coercion, exploitation, or duress. Her condition is chronic and can be expected to persist, albeit in a somewhat controlled manner, for the foreseeable future. There is a significant likelihood of recurring unhealthy behavior triggered by unexpected stressors.

After weighing the disqualifying and mitigating conditions under Guideline I, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on psychological conditions. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

## **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline I (Psychological Conditions): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d: **Against Applicant**

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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LeRoy F. Foreman  
Administrative Judge