



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00065
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

December 10, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on August 22, 2006. (Government Exhibit 1). On June 10, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on June 23, 2009, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 31, 2009. A notice of hearing was issued on August 12, 2009, scheduling the hearing for September 23, 2009. At the hearing the Government called one witness and presented seven exhibits, referred to Government Exhibits 1 through 7. The Applicant presented no exhibits, but did testify on her own behalf. The official transcript (Tr.) was received on October 5, 2009. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 34 years old and has a Bachelors Degree in Business Management. She is employed by a defense contractor as a Blueprint Clerk, and is applying for a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph1 (Guideline I - Psychological Conditions). The Government alleges in this paragraph that the Applicant is ineligible for clearance because her emotional, mental and personality conditions can impair her judgment, reliability or trustworthiness and her ability to properly protect classified information.

The Applicant admits allegations 1(a) and 1(c) and denies allegations 1(b) and 1(d) set forth in the SOR under this guideline. With respect to the allegations she denied, she provided no explanation. Applicant began working for a major defense contractor in September 2006. She has been on medical disability for her mental condition since August 2008.

Medical records of the Applicant from 2005 to 2006, indicate that she received a mental health evaluation by a family practice physician in the Behavior Health/Addictive Behavior Department of a hospital. At that time, the Applicant was diagnosed with Depression. The physician noted that the condition could be a possible Bipolar Disorder. (Government Exhibit 4).

Applicant received a second mental health evaluation during the period from June 2006 to February 2008, by a psychiatrist at the same hospital in the Behavior Health Department. Applicant was diagnosed with Bipolar Disorder. The psychiatrist noted that the Applicant's psychological problems could cause significant defect in functioning, which includes a defect in judgment, reliability and stability. (Government Exhibit 4).

A third mental health evaluation was conducted during the period from January 2007 to November 2007, by a third physician in the Behavioral Health/Addiction Medicine department of the hospital. At that time, the Applicant was diagnosed with Bipolar Disorder in partial remission. (Government Exhibit 5).

On March 24, 2009, the Applicant underwent a mental health evaluation by a psychologist hired by the Government. The evaluation disclosed that the Applicant was suffering from a Bipolar I Disorder, Severe, Most Recent Episode Depressed, with Rapid Cycling; Panic Disorder without Agoraphobia; and Obsessive-Compulsive

Disorder. The psychologist also noted that the Applicant's psychological problems could cause a significant defect in functioning, which indicates a defect in judgment, reliability, and stability. He performed a clinical analysis of the Applicant and prepared a report of the evaluation. (Government Exhibit 6 and Tr. p. 43).

The clinical psychologist also testified at the hearing concerning his findings. (Tr. p. 42). He stated that he based his diagnosis on his interview of the Applicant as well as a corroborated assessment of her earlier medical records. He determined that the Applicant's level of functioning was very low at that time, even though she was taking medication for her condition. Reading from his report, referring to the Applicant he stated, "Unable to get out of the house most days. Needing extra care from a live-in relative to do basic household functions and child care taking functions. She lacked the confidence to drive, and it was a struggle for her to get out of the bedroom most days. Some days, she did not—was not able to do that—was not able to get out of the bedroom." (Tr. pp. 30-31). He explained that Bipolar Disorder cannot be cured by medication, but can be stabilized. (Tr. p. 34). The Applicant's disorder was not stabilized.

During his testimony, the clinical psychologist explained each of the Applicant's diagnoses and its related symptoms. The risks associated with being a person diagnosed with Bipolar Disorder include the manic risk that would involve reckless spending, reckless behavior, impulsive thoughtless. It could be life endangering acts, selling things, buying things, without thought. That's at the extreme end of the mania. Sometimes there is psychotic behavior in a manic episode. At the other end, a very low mood. He stated that the hyper stage of Bipolar Disorder would show a person's impaired judgment and reliability. It is less likely to occur during the depressive stage. (Tr. pp. 34-35).

The psychologist also stated that the Applicant had also been experiencing Rapid Cycling of Bipolar Disorder, which presents a rapid swing from hypomanic or manic to depressive over a short period of time. (Tr. p. 33). Applicant was under medication for her condition which included Seroquel, an anti-psychotic drug, used as a substitute for a mood stabilizer or anti-convulsant. In his opinion, the medication did not have her mental condition under control. (Tr. p. 34 and Government Exhibit 3).

The Applicant's Panic Disorder exhibits sharp bursts of anxiety that typically have rapid heart beat. He explained a variety of physical symptoms that are possible, and just an overall intense feeling of dread and overwhelmed and incapacity. (Tr. 36).

Although he did not observe this behavior during his interview, the medical records revealed that the Applicant has Obsessive Compulsive Disorder. The psychologist explained that this is an uncontrollable rumination about anything and everything or about some focused insight, worry, and the compulsive part is an uncontrollable urge to perform a behavior in a repetitive way that is not normal function. For example, at times, the Applicant reported that she brushed her teeth 10 to 12 times a day, and washed her hands eleven times a day. (Tr. pp. 38-39)

In 2008, the Applicant underwent Electro-Convulsive Therapy, (Shock Therapy). She was hospitalized for almost two months and received approximately 12 shock treatment sessions. She testified that as a result of the treatment, she has experienced both short term memory loss and migraines. (Tr. pp. 65-66).

Medical records provided to the Government from the Applicant dated July 13, 2009, reflect the report of another physician who indicates some additional disorders. His diagnoses include Bipolar 1 Disorder, Depressed, Severe with Psychosis; Delusional Disorder, Persecutory; Insomnia due to Mental Disorder, Hyposomnia related to Axis 1 or 2 Disorder; Nightmare Disorder; Obsessive Compulsive Disorder; Panic Disorder with Agoraphobia; Organic Anxiety Syndrome; Organic Mood Disorder; Insomnia Related to Medical Condition; and Pain Disorder Associated with both General Medical Condition and Psychological Factors. (Government Exhibit 7).

The Applicant testified that she has been suffering from her mental illnesses since she was a teenager. (Tr. p. 58). She first received treatment for her condition at the age of 22. She states that her condition worsened after having her child in 2004.

Presently, the Applicant sees her psychiatrist every six to eight weeks and he is still in the process of adjusting her medication to improve results. (Tr. p. 67). At this point, the Applicant is afraid to drive. She has her mother help her with her child and daily household chores. Her daily regime also includes taking five different medications. She believes that most of her conditions are controlled by medication.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guidelines. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline I - (Psychological Conditions)

27. *The Concern.* 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 raise solely on the basis of seeking mental health counseling.

Conditions that could raise a security concern:

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.

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;

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an unacceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . 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."

The Government must make out a case under Guideline I (Psychological Conditions) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's questionable psychological conditions has a direct and negative impact on her suitability for access to classified information.

Over the past twelve years, competent mental health professionals have evaluated and treated the Applicant's mental condition, and have diagnosed several mental disorders. The question to be addressed now is whether the Applicant has emotional, mental or personality disorders, which can cause a significant defect in the individual's psychological, social, and occupational functioning that may adversely affect the individual's ability to properly safeguard classified information. Clearly the Applicant's mental condition poses a security risk. The medical professionals that have evaluated the Applicant including psychiatrists and psychologists indicate that the Applicant's psychological problems could cause a significant defect in functioning, which indicates a defect in judgment, reliability, and stability.

Applicant's mental illnesses are not controlled or in remission, but are full blown. The nature of the illnesses are continuing. Applicant is continuing to take her medication and is currently adjusting the medication to find its best results. However, her condition is not yet under control. Considering this evidence in totality, the Applicant's mental condition demonstrates an emotional, mental, and personality condition that can impair judgment, reliability and trustworthiness and can adversely affect her ability to protect classified information.

Under Guideline I, Psychological Conditions, Disqualifying Conditions 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*, and 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* apply. None of the mitigating conditions are applicable.

There has been no evidence presented in mitigation significant to override the Applicant's heavy burden in this case. Applicant has not met her burden of demonstrating that her psychological condition does not raise a security concern, and Guideline I is found against the Applicant.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Considering all of the evidence presented, it does not come close to mitigating the negative effects of her psychological condition and the impact that it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge