



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



In the matter of: )

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SSN: ----- )

Applicant for Security Clearance )

ISCR Case No. 08-04823

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 30, 2008

**Decision**

WESLEY, Roger C., Administrative Judge:

**History of Case**

On July 9, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 21, 2008 and requested a hearing. The case was assigned to me on August 26, 2008, and was scheduled for hearing on October 8, 2008. A hearing was held on October 8, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on three one witnesses (including himself) and no exhibits. The transcript (R.T.) was received on December 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

## **Procedural Issues and Rulings**

Before the close of the hearing, Applicant requested leave to keep the record open to enable to supplement the record with a more legible copy of his Department of Veterans Affairs (VA) medical records and update from his current VA treating physician (Dr. A). For good cause shown, Applicant was afforded two weeks to December 17, 2008 to supplement the record. Applicant did not supplement the record.

## **Summary of Pleadings**

Under Guideline I, Applicant is alleged to have (a) been treated for post traumatic syndrome disorder (PTSD) by the VA since at least 2003 and (b) been diagnosed in May 2008 by Dr. B with PTSD with psychiatric features, which in Dr. B's professional opinion could cause a significant defect in judgment and reliability.

Under Guideline E, Applicant is alleged to have (i) been terminated in December 1997 from a postal authority due to two cited incidents that occurred during Applicant's employment probation and (ii) been employed by 10 different employers since 1997.

For his answer to the SOR, Applicant admitted each of the allegations. He provided no explanations or affirmative claims in his answer.

## **Findings of Fact**

Applicant is a 53-year-old security guard for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Applicant's background**

Applicant enlisted in the U.S. Army in 1975 and served six years before his discharge in 1981 (see ex. 2). Following his discharge, he continued to serve in the inactive Army reserves. He completed his inactive reserve duty in 1997 (ex. 1), and received an honorable discharge in recognition of his 23 years of military service (R.T., at 55). He has completed college credits (R.T., at 47-49) and received satisfactory grades for his work.

Applicant married his first spouse (W1) in 1979 and divorced her in April 1990. He has two children and a grandchild from this marriage (see exs. 2 and 3; R.T., at 43). Applicant married his second spouse (W2) in June 1990. He currently lives with W2, his two daughters, and his one grandchild.

Applicant's Army reserve unit was activated for the Gulf War in 1989. Applicant served in the Gulf War theater as an Army MP between 1989 and 1990 (R.T., at 57-58). Several years following his return from his Gulf War service he began experiencing dreams about Iraq (R.T., at 58-59). As these dreams intensified, he sought medical assistance at a VA facility (R.T., at 59-60). At the VA, he was treated for PTSD and other psychiatric symptoms (see ex. 3; R.T., at 59-61).

Applicant's VA medical records cover his treatment at the VA between May 2003 and October 2006. Applicant's psychiatric difficulties include PTSD symptoms (including intrusive memories, nightmares, insomnia, flashbacks, hyperarousal, hypervigilance, avoidance, paranoia and depression). VA records also reveal Applicant's history of auditory hallucinations of people calling his name and visual illusions (see ex. 3).

In 2000, he was diagnosed with PTSD with psychotic features. In the periodic evaluations he has received from the VA, he has consistently been diagnosed with PTSD with prominent symptoms of paranoia, visual hallucinations, and anxiety, along with the indicated possibility of an underlying psychotic process separate from his PTSD disorder (see exs. 2 and 3). More recently, his current mental health providers affiliated with the VA confirmed that Applicant continued to suffer from PTSD with psychotic features, along with a history of chronic intermittent psychosis (R.T., at 88-94).

While able to work as a security guard (according to his medical records), he still reports more distress and paranoia and other observed psychiatric symptoms (see ex. 3). His latest assessments reveal significant improvement (*viz.*, no flashbacks or nightmares and decreased anxiety). His current VA treatment plan calls for continued medications prescribed by his treating physicians (Drs. B and D).

In an October 6, 2006 memorandum, Applicant's then-treating VA physician (Dr. C) found Applicant to have a somewhat brighter affect, with more spontaneous speech (see ex. 3). Dr. C credited Applicant with benefitting from his current medication regimen at the time, and did find Applicant to present no acute risk of harm to himself or others (see ex. 3). However, Dr. C did not find any basis to change either Applicant's diagnosis or prognosis in the future.

Still concerned about Applicant's mental health, Applicant's command referred him to Dr. A (a licensed clinical psychologist) in May 2008 for a compulsory mental health examination. At the outset of his psychological session with Applicant, Dr. A took some background information from Applicant. Dr. A then reviewed Applicant's VA records and PTSD diagnosis before conducting an interview and administering a mental health examination (ex. 2). According to Dr. A's evaluation, Applicant's evaluation consumed approximately four to five hours and consisted of questioning and testing (R.T., at 63-64). Applicant considers Dr. A's assessments to be biased and not indicative of what kind of person he really is (R.T., at 64).

In his interview with Dr. A, Applicant described his various conditions. In addition to his PTSD, he suffered from high blood pressure, diabetes, acid reflux, a dislocated disc in his back, anemia and lung disease (ex. 3). Applicant identified the following medications he is taking for his various medical conditions, including Quetrapine for a psychic disorder, Oxycodine for pain, Citaloprain for depression, Metformin for diabetes, and Hydrochlorothiazide for high blood pressure (see ex. 3). He also takes Seroquel to aid his sleep (R.T., at 51). His medications are seldom adjusted, and he feels they have helped to stabilize his emotional conditions (R.T., at 84-87).

Dr. A administered a separate mental health examination. He observed Applicant's affect to be dysphoric and his mood depressed (in part over his loss of a

security job of four years). Dr. A found Applicant's psychomotor movements to be mildly retarded. Applicant informed Dr. A of his PTSD condition and his problems with sleep and nightmares. He described the voices he heard and flashes he detected from time to time (ex. 3). Dr. A credited Applicant with fair short term memory recall and poor concentration. Overall, Dr. A estimated Applicant to function within a low normal range of cognitive ability.

Besides the medical history he obtained from Applicant and mental examination he performed on the subject, Dr. A administered two separate tests to Applicant. On the Beck Depression Inventory, Applicant recorded a BDI rating of 12, indicating a mild mood disorder (consistent with someone like Applicant who takes anti-depressant medication). In a second test, Dr. A administered the Minnesota Multi-plastic Personality Inventory. Results of this test confirmed the following: Applicant numbs his feelings with stress; he feels alienated, is disorganized in his thinking; he has interpersonal relationship difficulties; he feels broken and/or damaged and unlovable; he has impaired reality testing; he has communication difficulties; and he habitually exercises poor judgment (see ex. 3).

Based on his compiled interview data and review of Applicant's medical records, Dr. A found Applicant to have mild cognitive impairments. Citing his observations of Applicant, review of Applicant's medical history and medications, mental health examination, and administered tests, Dr. A diagnosed Applicant PTSD with psychotic features on the Axis I scale of the *DSM-IV* (American Psychiatric Assoc. (2005)). Dr. A deferred any diagnosis on the Axis II scale and noted Axis IV stressors to include unemployment and moderate familial disruption (see ex. 3). Dr. A opined that Applicant's illness (a) is of a continuing nature, (b) has and is causing a significant defect in judgment and reliability with a poor prognosis for improvement, (c) and is a condition that is not in remission (ex. 3).

Since 1997 Applicant has worked for 10 different employers for mostly periods of short duration (see ex. 1; R.T., at 45-46). There is no probative showing, though, that Applicant showed a lack of judgment and reliability in any of these individual employs (R.T., at 75-78). While he freely admits to being terminated for cause by a postal employer after the second of two vehicle accidents involving the truck he used in making his work deliveries (R.T., at 68-73), he provides no probative indicators of reckless or careless behavior.

Applicant assures he was not culpable in either of the two cited incidents and reported each to his employer (R.T., at 68-73). While a cause and effect relationship between his two identified incidents and his eventual termination is evident based on the facts presented, the evidence in balance does not establish that Applicant acted recklessly or carelessly in either of the incidents.

Applicant's coworkers find Applicant to be reliable and trustworthy (R.T., at 29-30, 39-40). One coworker assures that Applicant is in good standing with his union and has not had any grievances filed against him (R.T., at 38). While on active duty, Applicant received various awards recognizing his service contributions (R.T., at 56).

## Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### Psychological Conditions

*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 raised solely on the basis of seeking mental health counseling. See Adjudicative Guidelines (AG), ¶ 27.

### Personal Conduct

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

### Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a

reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant presents as an experienced and well regarded security guard with a lengthy medical history of PTSD with psychotic features that begin manifesting during Applicant's Gulf tour of duty in 1991. Applicant has been treated at the VA for his disorder for over five years. His compiled medical records from the VA and more recent evaluation by a licensed psychologist engaged by DoD confirm the medical impressions he made with his treatment providers assigned to treat him at the VA. Afforded an opportunity to provide an updated diagnosis and more positive prognosis, Applicant failed to provide any post-hearing submissions. His diagnosed disorder raises ongoing security concerns. Posing initial security concerns as well are Applicant's termination stemming from two adverse incidents that occurred during his probationary period in 1997, and the multiple jobs he has held (10 in all) since 1997.

Beginning in 1991 during his Gulf tour, Applicant began experiencing PTSD symptoms (including intrusive memories, nightmares, insomnia, flashbacks, hyper-arousal, hyper-vigilance, avoidance, paranoia and depression). He continued to manifest these symptoms years after his return from MP duty in the Gulf. VA records also reveal Applicant history of auditory hallucinations of people calling his name and visual illusions.

In 2000, Applicant self-referred himself to the VA for consultation and evaluation. For the ensuing eight years, he was treated by trained VA medical personnel for his diagnosed condition of PTSD with psychotic features. All of the medical practitioners who treated him at different intervals consistently diagnosed him with PTSD with psychotic features.

### **Applicant's psychological issues**

Appellant's adverse psychological assessment raises security concerns about his judgment and reliability to access classified information. Applicable disqualifying conditions raised by the emotional, mental and personality disorder guideline are DC ¶

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 DC ¶ 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.” Application of these guidelines, though, requires the assumed acceptance of each of the identified medical professionals who evaluated him.

Each of the covered evaluations by the VA medical specialists and the engaged DoD psychologist consistently affirm a PTSD diagnosis with psychotic features for Applicant, and offer little promise of his surmounting his disorder, even with the medications he has been receiving to address his multiple symptoms. Based on the recent evaluations of Dr. A and his treating physicians at the VA (primarily Drs. B, C and D), Applicant continues to suffer from a mental disorder (*i.e.*, PTSD with psychotic features) that could impact his judgment and reliability.

While Applicant certainly benefits from the various medications he regularly takes to stabilize his condition, he continues to exhibit signs in the professional opinions of the mental health providers who have evaluated him over the past two years that he continues to be at risk to judgment or stability lapses that might imperil the safety of his employer or larger security interests of the nation. Afforded an opportunity to provide more positive evidence of progress with his disorder, he failed to do so.

Based on a thorough review of Applicant’s produced medical records to date in this record, Applicant is not in a position to claim any of the benefits of the mitigating conditions of the psychological conditions guideline. Neither MC ¶ 29(a), “the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan,” MC ¶ 29(b), “ the individual has voluntarily entered a counseling or treatment program for a condition that is amendable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional,” MC ¶ 29(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,” or MC ¶ 29(e), “there is no indication of a current problem,” has any applicability to Applicant’s diagnosed disorder and the treatment he is receiving to stabilize his condition.

Whole person assessment of Applicant’s medical disorder and steps he has taken to neutralize risks of judgment relapses is not sufficient either to avert still active risks of serious lapses associated with his disorder. Without more persuasive medical data to establish good remission and a promising prognosis, it is simply too soon to make safe predictive judgments about Applicant’s ability to withstand risks of potential judgment and trust lapses associated with his diagnosed disorder. Taking into account all of the compiled accounts and evaluations in this administrative record, both from a proof and current relevance context, Applicant fails to carry his evidentiary burden at this time, and unfavorable conclusions warrant with respect to the guideline covering psychological conditions.

## **Personal Conduct issues**

Personal conduct issues raised over Applicant's (a) prior employment termination as the result of two accidents he had with his work vehicle and (b) assortment of employers he has had over the past eleven years (10 in all) are insufficiently developed to establish any sufficiently probative links to judgment lapses covered by the personal conduct guideline to substantiate the allegations in the SOR. While both his two accidents and work history may suggest some work-related deficiencies they do not without more reflect lapses linked to his diagnosed disorder or security-related problems that are necessarily implicit in his work history. Coworkers who have worked with Applicant find him both reliable and trustworthy in his security assignments. And the evidence does not contain any documented reports of adverse information relative to Applicant's employment endeavors.

Considering all of the evidence and circumstances surrounding Applicant's employment history, there is not enough to substantiate judgment and reliability deficiencies under the personal conduct guideline. Favorable conclusions warrant with respect to the allegations covered by the personal conduct guideline.

In reaching my recommended decision, I have considered the factors enumerated in the preamble of Appendix 8 of Regulation 5200.2-R and the Personnel Security Standards and Procedures Governing Eligibility.

## **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors listed above, this Administrative Judge makes the following formal findings:

PSYCHOLOGICAL CONDITIONS:	AGAINST APPLICANT
Subparagraphs 1a and 1.b:	AGAINST APPLICANT
PERSONAL CONDUCT:	FOR APPELLANT
Subparagraphs 2a and 2.b:	FOR APPLICANT

## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



