



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



In the matter of:)	
)	
)	ISCR Case No. 08-08721
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden F. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

July 29, 2011

Decision

HEINY, Claude R., Administrative Judge:

In August 2010, a clinical psychologist diagnosed Applicant with a cognitive disorder and a delusional disorder. The psychologist found Applicant's suffered from delusions. Applicant failed to rebut or mitigate the psychological conditions security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a Statement of Reasons (SOR) on November 1, 2010, detailing security concerns under Guideline I, psychological conditions.

In Applicant's undated answer to the SOR, she did not request a hearing, but Department Counsel did. Government's request for a hearing was made Hearing Exhibit (H Ex.) II. On March 2, 2011, I was assigned the case. On March 21, 2011, DOHA issued a Notice of Hearing for the hearing held on April 12, 2011.

At the hearing, the Government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence without objection. Department Counsel also offered copies of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, DSM-IV-TR for 294.9 and 297.1, which were admitted as H Ex. I. Applicant testified on her own behalf and submitted Exhibit A, which was admitted into evidence without objection. On April 20, 2011, DOHA received the hearing transcript (Tr.).

Motion to Amend SOR

On April 12, 2011, the Government moved to amend the SOR because the wording of Guideline I was from an earlier, outdated version of the DoD Directive 5220.6. The motion requesting the current wording of Guideline I be substituted for the earlier wording was granted. (H Ex. III, Tr. 18, 127) The decision will be based on the wording of the current Directive. Although the wording of Guideline I changed, the allegations remained the same.

Findings of Fact

In Applicant's Answer to the SOR, she admitted the factual allegations, but denied her the police or company employees were unable to substantiate her assertions. She also denied in SOR 1.d. that she had not sought professional assistance or counseling. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 54-year-old senior administration associate who has worked for a defense contractor since July 1991, and seeks to maintain a security clearance. Applicant called no witnesses other than herself, and produced no work or character references.

In September 2005, Applicant informed her company's security office that she believed she was being stalked 24 hours a day, seven days a week by persons unknown. (Ex. 2. Tr. 75) She believed the unknown persons may have been from her work. In December 2005, she went to the local police because she was being stalked. (Ex. 2) In her police affidavit, she listed events at a local discount store, at her apartment, and being following to church, to work, and to her mother's home in another town. She stated she noticed two men sitting in front of a discount department store

when she entered. (Tr. 29) They followed her into the store and followed her when she left the store. The two then returned to the store. (Tr. 30). A couple of weeks later, she went to a different store of the same store chain in another city when a car followed her for approximately a mile after leaving the store before that car drove a in different direction. (Tr. 32) She did not recognize the individuals in the vehicle that followed her and never saw them again. (Tr. 32)

Applicant was driving to her mother's place, when a car that had been behind her, pulled up beside her, then in front of her, and applied the brakes. (Tr. 37) When Applicant changed lanes, the other car would speed up. When she tried to get back into the slow lane, the other car would hit their brakes. This happened four times before the other car drove off. (Tr. 37) The people in the other car were in their twenties. (Tr. 38)

In later 2005 or in 2006, Applicant returned to her apartment from grocery shopping when she heard someone come up the stairs at her apartment, knocked on her door, and then jiggled the door knob before departing. (Tr. 34) In 2006 or 2007, she noticed a truck followed her from the highway to her apartment complex. She later noticed the vehicle was still there with its engine running.

Neither company officials nor the police department told Applicant they were unable to substantiate her concerns. (Tr. 74, 135) She never talked with company officials after relating her initial concerns about being followed 24/7. The company told her the findings related to her hostile work complaint discussed below. After initially making her complaint, she has not returned to the police. (Tr. 144)

In 2007, Applicant filed a hostile environment complaint with her company's ethics office. (Ex. 2) She reported three men made inappropriate comments to her at work. While walking down the hall, one of the men lunged at her. (Tr. 82). She believed a hostile environment was created when another of the three said to her, "good to see you; you're here." (Tr. 84) Another individual said, "It's about time you got here; or, Oh, you're here; or, you know, Where you been." An investigation determined there was no problem with any of the men. The investigator interviewed the men who stated they had no problem with Applicant. (Tr. 81) She never received a report after the ethics office told her their findings. (Tr. 88)

During the summer of 2007, a vehicle swerved into her lane for no reason. In August or September 2008, Applicant's neighbor told her a young man between 19 and 22 in her complex had pointed his hand at her door and motioned as if he was shooting the door with a gun. (Tr. 44, 72) Three weeks later, she called 911 and related the incident. The police talked to the young man who said he had not meant to offend Applicant. (Ex. 2) In January 2009, she stated she did not feel she was being taken seriously and wanted someone to talk with her about any investigation that had been conducted. Applicant did not think anyone believed her suspicions. (Ex. 2)

In June 2010, Applicant was again driving to her mother's home and had pulled on to the interstate highway when an incident occurred with three cars. (Tr. 40) The three vehicles appeared to be traveling together. When she sped up, they sped up. When she slowed down they did too. This continued for approximately five miles. Later she noticed the police had pulled the cars over. The police then stopped Applicant and asked her if she knew the individuals in the three cars. (Tr. 41) She did not. She has not followed up with the police about this incident. (Tr. 42) Also in 2010, Applicant and her sister were driving to her mother's place, when a vehicle came up behind her and the driver started blowing his horn and flashing his lights. (Tr. 95) She drove to the city square, where the driver from the other car asked her if she was alright or if she needed help. (Tr. 95) Applicant stated the other driver appeared angry. (Tr. 112) The other driver stated she was going slow, 20 m.p.h. (Tr. 97) Although a number of the incidents involve Applicant driving her car, she never thought the other individuals might be upset with her due to the way she was driving. (Tr. 113)

In June 2010, Applicant was evaluated by a clinical psychologist. During the first two visits, Applicant was given a series of tests.² During the third visit, she talked with the clinical psychologist. (Tr. 120) The psychological evaluation states:

. . . she showed a generally even and positive attitude and denied any unusual thinking except feeling that she was being followed. A long discussion about this ensued with [Applicant] presenting details about various individuals following her for a number of years, in a number of situations. She could not be dissuaded by any logical arguments to the contrary. (Ex. A)

The diagnostic impression listed in Axis I³ was "294.9 Cognitive Disorder Not Otherwise specified" and "297.1 Delusional Disorder NOS." (H. Ex. 1, Ex. 3) Additionally, Applicant was extensively interviewed and her file carefully reviewed. (Ex. 3, Ex. A, Tr. 110) Axis V⁴ gave a GAF (Global Assessment of Functioning) as 50, which indicates serious impairment in social, occupational, or school functioning.

The Report of Psychological Evaluations recommendations stated:

[Applicant's] neuropsychological status appears impaired at this time. These moderate to moderately severe spatial and conceptual problems

² The tests included: the Beck Depression Inventory, the Beck Sheehan Anxiety Inventory, the Minnesota Multiphasic Personality Inventory (MMPI), the 16 PF Personality Factor profile, a Thematic Apperception Test, Rorschach tests, Incomplete Sentence Blank, Life Script, Wechsler Memory scale test, the Raven's Progressive matrices, the Shipley Institute of Living test, conceptual tests, the Halstead Reitan test, and the Hooper Visual Organization test. (Ex. 3)

³ Axis I is "Primary Diagnostic Impression," which lists clinical disorders or other conditions that may be a focus of clinical attention.

⁴ Axis V is Global Assessment of Functioning Diagnostic Impression Stage.

could possibly account for her episodes of psychotic thinking. Her delusions are quite specific but appear episodic, as she is quite certain at times that she is being followed but these are discrete episodes rather than daily events. . . Later testing showed some neuropsychological deficits as noted above. It is possible that these events are episodic and possibly related to some un-diagnosed medical condition which causes some neuropsychological deficits . . . These can be quite severe at times and appear to account for some flaws in her thinking and interaction with others . . . Unfortunately it is not known at this time whether her judgment and reliability in the future can be ascertained or fully be determined without further medical and neuropsychological evaluation. (Ex. 3, Ex. A)

Once the evaluation was completed, the clinical psychologist called Applicant to discuss her findings. In discussing the material, it was noticed that minor changes to the evaluation were necessary. (Tr. 47) A second Report of Psychological Evaluation was made two days after the first. (Ex. A) The changes in that second evaluation appear here in quotations. The diagnostic impression in Axis I remained the same. To Axis III⁵ was added "History of sleep apnea." To the Recommendations section was added the sentence "It is noted that she has a history of sleep apnea since 2004." In the Intellectual and Neuropsychological test result section was added to the non verbal intelligence test, Raven's Progressive matrices she scored in the "lowest" twenty percentile. The results of the Shipley Institute of Living scale show overall intelligence "in the low average range." The degree of conceptual loss is difficult to determine "but does appear to be significant." Applicant received copies of both letters. (Tr. 49)

The evaluation recommended Applicant see a neurologist because of her memory loss, which she did in November 2010. (Tr. 52) She had an MRI, which revealed no problems. (Tr. 54) She told the neurologist her physician had recommended she see a neurologist. She never gave the neurologist a copy of the psychologist's findings and recommendations. (Tr. 125) The neurologist did not prescribe any medicine. (Tr. 58) She saw the neurologist again the day before the hearing. Applicant stated the neurologist could give a full report. (Tr. 101) Applicant was given two weeks to provide any additional information to include a report of the neurologist's findings. (Tr. 102, 124) No information was received.

When Applicant asked the clinical psychologist why she thought Applicant was delusional, the psychologist stated because of the test results and Applicant's spotty memory. (Tr. 115) Applicant never considered obtaining a second opinion as to her mental state. (Tr. 121) Although concerned about the psychologist's letter, Applicant did not have a problem with the recommendation. (Tr. 121)

Applicant asserts she has great interpersonal relationships with people. (Tr. 137) Except for the underlying factors of the ethics report, she asserts she never had a

⁵ Axis III: General Medical Diagnostic Impression.

problem with coworkers. (Tr. 135) She has never had a clearance violation. (Tr. 137) She asserts her employer never advised her to seek additional counseling. (Tr. 136) Applicant believes there was never a totally independent investigation into her allegations. (Tr. 139)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I, Psychological Conditions

Adjudicative Guideline (AG) ¶ 27 articulates the security concerns relating to psychological problems:

Certain emotional, mental, and personality disorders 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 healthy counseling.

Conditions that could raise a security concern and may be disqualifying include (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 emotional 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;
- (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.

Since at least 2005, Applicant believes she has been stalked 24 hours a day, seven days a week by persons unknown. She believed the unknown persons may be from her work. In 2005, she reported her concerns to her employer and to the local police department. In June 2010, Applicant was evaluated by a clinical psychologist. During her first two visits, Applicant was given a series of tests and during the third visit had a long discussion in which she presented details about various individuals following her for a number of years and in a number of situations. Applicant could not be dissuaded by any logical arguments to the contrary.

The diagnostic impression was that Applicant suffered from “294.9 Cognitive Disorder Not Otherwise specified” and “297.1 Delusional Disorder NOS.” Applicant’s GAF score was 50, which indicates serious impairment in social, occupational, or school functioning. The clinical psychologist found Applicant’s neuropsychological status was impaired and it is unknown whether Applicant’s future judgment and reliability could be ascertained or fully be determined without further medical and neuropsychological evaluation. Even though Applicant was aware the clinical psychologist believed she was delusional, she never considered obtaining a second opinion as to her mental state. I find AG 28(a) and 28(b) apply.

Conditions that could mitigate security concerns include (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 emotional, mental, or personality disorder is cured, 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 a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotionally instability; or

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

Applicant meets none of the mitigating factors. AG 29(a) and 29(b) require compliance with a treatment plan or enrollment in a counseling program. Since being notified of the diagnosis and findings, she has not sought additional counseling or obtained a second opinion related to her mental status. There is no favorable prognosis. Neither AG 29(a) nor 29 (b) apply. AG 29(c) does not apply because there is no recent opinion that the condition is under control, is cured, in remission, or has a low probability of recurrence. AG 29(d) does not apply because there is no indication the condition was temporary and that it has been resolved. There is nothing in the record indicating there is no current problem. AG 29(e) does not apply.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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. For at least the last five and a half years, Applicant believes she is being followed twenty-four hours a day, seven days a week. A number of the incidents relate to Applicant's driving and it does not appear she is being followed. Her coworkers' comments, as she related them, fail to establish a hostile work environment and the company found such. A qualified clinical psychologist determined Applicant had a delusional disorder and a cognitive disorder. There is nothing in the record indicating any changes to these diagnoses. These disorders raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant not mitigated the security concerns arising from her psychological conditions.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Psychological Conditions: AGAINST APPLICANT

Subparagraphs 1.a – 1. d: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge