



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



In the matter of:)	
)	
)	ISCR Case No. 08-09036
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Daryle A. Jordan, Esq.

02/23/2012

Decision

LYNCH, Noreen A, Administrative Judge:

On January 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline I (Psychological Conditions). The action was taken under 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on November 18, 2011. A notice of hearing was issued on December 19, 2011, and the case was heard on January 24, 2012. Department Counsel offered 12 exhibits, (GE) 1 -12, which were admitted upon stipulation. The Government also presented an expert witness. Applicant testified and presented the testimony of four witnesses, including an expert witness. He submitted five exhibits (AE) A-E at the hearing, which were admitted upon stipulation. DOHA received the hearing transcript on February 1, 2012. Based on a review of the pleadings, submissions, and exhibits, I find

Applicant has met his burden of proof on mitigation regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations ¶¶ 1.a, 1.b, 1.d, and 1.e with explanation. He denied SOR allegation ¶ 1.c. Applicant is 42 years old. He is married. He received his undergraduate degree in 1991, and his first graduate degree in 1996. Applicant obtained a Master of International Policy and Practice in 2002. He has held a top secret security clearance since 2004. Applicant has been employed with his current employer since July 2007. (GE 2)

Applicant's professional career has included employment with various firms and government contracting organizations. He began his career as a computer programmer. He received promotions and increasing responsibilities. His current responsibilities include supervision of several employees. (Tr. 75)

In 1995, Applicant experienced unusual anxiety and nervousness. According to Applicant, he was working as a computer programmer and began to believe that he was being monitored in the workplace. (AE E) He became depressed and worried about things in the workplace. He believed he was being monitored in some way and that perhaps the radio was sending messages that referred to him. His work performance was affected by his anxiety. After talking to his father and seeing a therapist, he voluntarily admitted himself to a hospital. (Tr. 85) Applicant received treatment in the hospital for almost two weeks. He was diagnosed with a delusional disorder, depression, and anxiety. Applicant followed the mental-health recommendation to receive outpatient treatment. He was compliant with his treatment and any prescribed medication. He returned to his employer and earned a bonus for a successful project. (Tr. 87) He eventually left to join another company, which would allow him to use his master's degree in business.

From 1996, until 2001, Applicant received outpatient treatment from a psychiatrist (Dr. R) for his delusional disorder. He was treated with anti-psychotic medications. His psychiatrist noted that from time to time Applicant had exacerbation of symptoms, which necessitated adjustments in the medication regime. Applicant's psychiatrist noted that Applicant's condition "has the potential to possibly impair his judgment and reliability, especially during exacerbation of his condition or symptoms." This psychiatrist has not seen Applicant since August 2001. (GE 4) Since January 2002, Applicant has received treatment from Dr. A, a licensed psychiatrist. (GE 8) Dr. A's medical opinion, in a January 11, 2010 letter, states that Applicant's mental health condition has been readily controlled by his medications and he shows consistent compliance with his treatment plan. (GE 8) He further states that Applicant's depression and anxiety is currently in remission and he has no thought or perceptual disorder. There have been no exacerbations in the past two years. The prognosis is good. Dr. A concludes that Applicant has no conditions that may impair his judgment, reliability, or trustworthiness. (GE 8)

When Applicant completed his first security clearance application in 1995 and again in June 2003, he disclosed his history of medical treatment for depression and other mental-health issues. He noted the name and address of his therapist. (GE1) Applicant received his top secret security clearance after the disclosure of his diagnosis and mental health issues. Applicant has not had any security violations.

In 2003, Applicant worked for a government contractor. During that time, he was promoted to the highest professional level within six months. He states that he believed he experienced a hostile work environment from employees who called him gay. He voiced his concerns to his employer. (Tr. 95) Applicant and his employer met to discuss the issues. Applicant also mentioned "computer monitoring." (Tr. 95) Applicant stated that a peer approached him and told him he was being monitored. (Tr. 96) Applicant told his security officer that the verbal exchange with his work peer alarmed him. Sometime in 2004, Applicant through counsel, filed three discrimination complaints against his employer. Before the filing, Applicant received good evaluations and promotions and bonuses. In 2005, Applicant received a letter from his employer answering concerns about computer monitoring. The letter states that Applicant is subject to the same monitoring as other employees. It also notes that Applicant's performance reviews have been very positive. However, in March 2006, an incident report was written, which Applicant believes is inaccurate, and also that he had no knowledge. (GE 5) Applicant believes after the filing of the claims, he received retaliatory treatment from his employer. (Tr.103) He received a poor performance evaluation. He eventually left the company. (AE B) He discussed these issues with his therapist who helped him work through the issues. (Tr. 128)

Applicant joined another company in August 2006. In January 2007, Applicant was fired from his employment. Applicant was doing a good job, as noted by the owner, but needed to work on "communication." Approximately one week later, he was told that he would not be needed. Applicant was not certain why he was fired. He had raised an issue with the employer about possible sexual harassment. Applicant named a few individuals who asked him inappropriate questions. (GE 9)

Expert Witness Psychiatric Testimony

On October 23, 2010, a government psychologist, Dr. M, interviewed Applicant for approximately one hour. He did not dispute Applicant's earlier stated diagnosis. He noted in his report that Applicant displayed partial insight into his symptom history related to the diagnoses. Dr. M. also noted that Applicant's anxiety is well managed at this time. Dr. M. elaborated in the report that "with regard to his delusional thinking, he was cognizant that he has had problems related to his past beliefs that he was "monitored." The psychologist noted that Applicant showed progress with regard to the influence that such concerns have on his life. Applicant told Dr. M that he was better able to "let go" of his concerns and worries. Applicant noted the antidepressants and anti-psychotic medications that he takes. Applicant is committed to taking the prescribed medications. The report stated that Applicant has been fully adherent to his psychiatric treatment since his hospitalization in 2005 according to his report and available records.

Dr. M's report noted that Applicant described progress and strength in his life in recent years that help him remain focused. He is recently married and has great social and family support in his life. He is physically active and uses humor as a coping skill. He expresses confidence in his work-related activities. Dr. M noted that symptoms related to the delusional disorder may return at times in Applicant's life. He countered that given Applicant's progress in recent years, the prognosis across the diagnosed disorders appears to be good at this time. (GE 11)

At the hearing, Dr. M testified that he performed a mental status evaluation but did not describe the process. He also noted that he reviewed records prepared for the SOR. He stated that the delusional disorder is a paranoid concern of a non-bizarre nature. (Tr. 21) Dr. M learned from the interview with Applicant that the mental health issues have been present in varying degrees throughout at least 15 or 16 years of Applicant's life. (Tr. 22) From the conversation with Applicant, Dr. M believes that Applicant has had a difficult time discerning what is really going on and what's not, – to the point of driving himself to an acute state in the mid 90s and the mid-2000s. Dr. M testified that depression has not been the major issue with Applicant lately, and that "he was actually doing quite well mood wise at the time." Concerning these diagnosed conditions, Applicant's judgment and ability to exercise judgment – symptoms may fluctuate in his life. (Tr. 24) On cross-examination, Dr. M reiterated that Applicant's prognosis is good and that he is doing "really well." (Tr. 31)

Applicant's treating psychiatrist for more than eight years, Dr. A. submitted documentation that stated Applicant is in full remission. (AE C) She has treated Applicant since 2002. She notes that Applicant's disorders were never severe and he was able to function well. She points to completion of his graduate degree and his employment. She notes that Applicant never posed a danger to himself or others. In the time that she has known him, he has not shown any violent tendencies and generally has managed his condition very well.

In a December 8, 2011, report, Dr. A states that Applicant has shown "remarkable improvement in his mental and emotional health in the last few years." His major depression, anxiety disorder, an delusional disorder are in full sustained remission. His medications have been reduced in the last two years. Applicant is compliant with his treatment plan. He attends pharmacological evaluation sessions with Dr. A on a consistent basis. Dr. A points to Applicant's recent marriage as a very close, loving and supportive relationship, which also contributes positively to his stable mental health. (AE C) As to prognosis, Dr. A states that Applicant's prognosis is excellent. She is not aware of any defect in his judgement, reliability, or trustworthiness related to depression or anxiety. Applicant does not exhibit any aggressive, antisocial, or emotionally unstable behavior. She believes there is compelling evidence from his employer that he is an individual who is functioning at a high level of mental and emotional fitness.

Dr. C, Applicant's expert witness, interviewed Applicant in November and December 2011. He reviewed Applicant's medical history, the DOHA documents, the Government's 2010 psychological report, and reports from Applicant's treating

psychiatrist from 2002. (AE E) At the hearing, Dr. C. , a seasoned psychiatrist, testified that Applicant is in very good mental health, and is functioning exceptionally well at his work. (Tr. 57) He also noted that Applicant has recently married and is happy in his marriage. His medical opinion is that Applicant has been treated and is in complete remission. He agreed with the previously stated mental diagnoses by Applicant's treating psychiatrist and the government expert witness. (Tr. 59) Dr. C emphasized that there are problems inherent with labels. He referred to mild, moderate, or severe conditions. He affirmed that Applicant has been receiving psychiatric treatment for almost ten years and his condition is in remission and his function level is good at work, at home, and otherwise. (Tr. 60) Dr. C testified that Applicant's prognosis is good. He stated that the illness has been in complete remission for almost nine years, His mental status is good. (Tr. 60)

When Dr. C interviewed Applicant in November and December 2011, he stated that Applicant presented as a pleasant and very polite chap. "He spoke logically and [I] found him to be very candid and direct." He did note that Applicant always answered questions with a great deal of detail, maybe more than needed, but referred to his organized and systematic profile. Dr. C also found Applicant sincere. He acknowledged that Applicant does not show a great deal of range of emotion. Applicant acknowledged that as well.

Concerning Applicant's insight into his past delusional and paranoid symptoms, Dr. C stated Applicant has "at least partial insight" into his past behavior. He cited to the fact that Applicant recognized his anxieties in the mid-90s and he voluntarily sought help. Dr. C referred to Applicant's treating physician, Dr. A, who notes that Applicant has pursued all treatment measures with her since 2002. Applicant takes medication, and has had therapy sessions. Dr. C again referred to Applicant's marriage as an enhancement in Applicant's life and a stabilizer. As to an ability to safeguard the nation's secrets or classified information, Dr. C does not believe it is a great risk. He noted that Applicant's disorder was in the moderate range of delusion in the mid-90s. He emphasized Applicant's long history of handling classified information and his appropriate behavior. Dr. C also praised Applicant for his cooperation and believes if Applicant became increasingly anxious or suspicious, he would have the tools to reach out to his physician. (Tr. 63)

Applicant testified that he has always performed well academically. In college, he received an award for outstanding contribution in leadership to the school and the community. (Tr. 76) He was also involved in sports, youth groups, and boy scouts. He describes his family as loving and supportive. He acknowledges that he has always been "on the quiet side." He describes his current mental health as good. He is dealing with the stress attached to the security clearance investigation. He emphasized that he has never received a reprimand during his professional career. He also was clear that he never felt he was a threat to himself or to others. (Tr. 116) in sum, Applicant enjoys his work, his colleagues, and his clients. He sees his treating psychiatrist on a quarterly basis. However, if he felt the need, he would go sooner. (Tr. 91)

Applicant's wife testified that she met Applicant in 2004 while playing on a recreational volleyball team. She knew about his 1995 psychiatric hospitalization before their marriage. She describes his demeanor as quiet, shy, and kind. He is logical, patient, reliable, and enjoys sports. They entertain friends. Applicant has an excellent relationship with his in-laws. (Tr. 142) Applicant and his wife have attended work social functions and she reports that he seems well liked and respected. They have been invited to a coworker's party in the near future.

Applicant's employer testified that Applicant has worked for him approximately four and a half years. Applicant is a valued analyst working on several projects for clients in the military. On one project, Applicant is the lead on a major program. (Tr. 152) He has daily contact with Applicant. He describes Applicant as a trustworthy individual who exercises good judgment. He is reliable. Applicant's manager has observed him under pressure. He describes Applicant as very steady, very rock solid. He also communicates well in the business setting. (Tr. 154) Applicant is respected at work for his attention to detail and his rigor. Applicant's job performance is excellent. He has never received any disciplinary actions. He is aware of the specific issue concerning Applicant's mental health, dating back to 1995. He recommends Applicant for retention of his security clearance.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 as to the loyalty of the applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline I, Psychological Conditions

AG ¶ 27 expresses the security concern pertaining to psychological conditions:

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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

AG ¶ 28 describes conditions that could raise a security concern and may be disqualifying:

(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;

(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; 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.

Applicant has a diagnosis of delusional disorder, depression, and anxiety disorder. In 1995, he volunteered to receive hospital observation and treatment for the anxiety. He believed he was being monitored in the workplace. He has received psychiatric treatment from that time until the present. AG ¶ ¶ 28(a) and (b) apply.

AG ¶ 29 provides conditions that could mitigate security concerns:

(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 shows indications of emotional instability; and

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

Applicant has received continuous mental-health treatment since 1996. He has been compliant with all treatment procedures and medication. In recent reports, Applicant is described as “in full remission.” His medication has been reduced and he has been in a stable condition. He sees his treating psychiatrist on a quarterly basis. Applicant is functioning well at home and in the workplace. He has a supportive and loving wife. He has a great social and family support. His treating psychiatrist notes that he is currently showing adaptive behavior and his mood and anxiety symptoms have improved. He does not have any suicidal or homicidal thoughts. He is currently able to recognize that his delusions were not based in reality. His prognosis across the three disorders appears to be good at this time. Applicant has received excellent reviews and recommendations from his current employer. AG ¶ 28 (a), (b), (c), and (e) apply. I find that he has mitigated the security concerns under the guideline.

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 an applicant’s conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 42 years old. He obtained his undergraduate degree, two graduate degrees, and has worked in a professional capacity since 1995. He is praised by his current employer. He has worked successfully in handling classified information. He has held a security clearance since 2004. Applicant married in 2010 and is in a loving, supportive marriage.

Applicant volunteered for hospital observation and treatment in 1995 after experiencing unusual anxiety and delusions. He has a diagnosis, which he does not dispute. He has received treatment since 1996. He has been compliant with his treatment plan and medications. While it is true that Applicant filed three complaints against one employer alleging sexual harassment and a hostile work environment, the

fact that he did so does not question his current mental health. The events in the 2000s are noted, but Applicant has refuted them.

Applicant's treating physician and his expert witness, Dr. C, concur that Applicant's disorders are in remission. They also concur that the prognosis is good. Even the government psychologist, Dr. M. Concurred that Applicant has a good prognosis.

Applicant has met his burden in this case. Clearance is granted.

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, Guideline I: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge