



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



In the matter of: )  
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----- ) ISCR Case No. 08-09175  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Melvin A. Howry, Esquire, Department Counsel  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Christopher Graham, Esquire  
Tully Rinckey, PLLC

November 9, 2012

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 14, 2007. (Government Exhibit 3.) On January 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 12, 2011, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on April 23, 2012. This case was assigned to me on May 4, 2012. DOHA

issued a notice of hearing on July 9, 2012. I convened the hearing as scheduled on August 14, 2012. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A through J, which were also admitted without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant's counsel submitted Applicant Exhibits K and L on August 23, 2012, which were received without objection. DOHA received the transcript (Tr.) of the hearing on August 21, 2012. The record closed on August 23, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 39, single and has a Ph.D. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline E, Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he falsified material facts to medical authorities and government personnel, both before and during the clearance screening process, concerning his mental health. This paragraph also alleges that Applicant's program access was revoked by another government agency (AGA) because of the same concerns. Applicant denied paragraph 1.a, and admitted the basic facts set forth in 1.b. He also submitted additional information to support his request for access to classified information.

In 1995 Applicant traveled to Indonesia for his employment. (Government Exhibit 1 at section 18.) During that trip he was taken ill with a parasitic round worm, *Ascaris Lumbricoides*. He remained ill for over two years. The round worm passed in December 1997. (Answer at Attachment 2.) In 2008 a doctor connected to Applicant's then health care provider stated, "It took him [Applicant] until the end of 2002 to fully recover from this infection. During the period of 1995 through 2002 he had severe diarrhea, lost considerable weigh and was malnourished." (Answer at Attachment 4, page 6.)

Applicant left this employment in October 1997, before the date when the worm passed. He returned to employment in February 1998. Applicant stated, "I stopped working because I was weak basically and I did have some of these visual effects that are described in the record." (Tr. 38.)<sup>1</sup> He went on to describe the visual effects as follows, "Typically they were faces, typically they were vague and had a day dreaming type of quality to them." (Tr. 39.)<sup>2</sup> Applicant also stated, "I didn't have any mental health

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<sup>1</sup>See Tr. 53.

<sup>2</sup>See Tr. 65-69.

problems. I didn't have any mental health problems throughout. What I had mentioned were the visual imagery, the words coming into my head." (Tr. 50.)

Applicant was evaluated by a psychiatrist (Doctor A) in June 2012.<sup>3</sup> The psychiatrist described Applicant's status as follows:

Between October and December 1997 he [Applicant] developed peculiar mental status symptoms. During this time he describes seeing well-formed visual images of faces of people he had met either professionally or socially, as well as some specific objects such as an avocado. He also reports that on occasion, specific words would come to mind for no particular reason. [Applicant] reports that these symptoms would seem like "daydreams" rather than hallucinations. These symptoms were troublesome to him but were not associated with any delusions or other distortions of reality. [Applicant] sought medical treatment for these peculiar mental status findings and his gastrointestinal symptoms in 1997. His ascariasis was diagnosed and treated, and once treated his peculiar mental status symptoms seemed to end. Over the next several years he developed worsening gastrointestinal symptoms and during mid-1999 through 2002 his peculiar mental status symptoms reappeared, but to a lesser degree than before. By 2002 both [Applicant's] undiagnosed macrocytic anemia, suggestive of vitamin B12 and folate deficiency secondary to intestinal malabsorption, and his peculiar mental status symptoms were resolved. While suffering through intense gastrointestinal symptoms and sporadic peculiar mental status symptoms he remained fully functional in his professional and personal life. The symptoms have not recurred since 2002. (Applicant Exhibit A at 1.)

Applicant described the incidents during this period in a vastly different way to a psychiatrist (Doctor B) and hypnotherapist (Doctor C) in 2002, as further described below.

1.a.(i). March 4, 1999. Applicant saw his personal physician about stomach/gas pain. Discusses the round worm infection. No mention is made of any hallucinations or other mental health topics. (Answer at Attachment 1; Tr. 49-51.)

1.a.(ii). Applicant was interviewed by AGA on March 21, 2000. He stated to an investigator, "His [Applicant's] employment with [company] ended in 10/97 when he voluntarily resigned because of his unusual illness. . . . He felt that it would be in his best interest to take time off during his period of recuperation from 10/2/97 to 2/25/98." (Government Exhibit 5 at 101; Tr. 52-53.)

In approximately September 2000 Applicant invested approximately \$200,000 with people he met at dance class. This couple stated to Applicant that they would buy cut rate designer fashions for a low price, sell them at a higher price, and both they and

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<sup>3</sup>The psychiatrist's curriculum vitae is Applicant's Exhibit K.

Applicant would make money. (Tr. 44-48.) In his testimony, the transaction is described as a normal business transaction, though Applicant stated, "Now this investment was an investment that was not something I normally would have invested in. . . . So I attribute the illness to contributing to my investing in that clothing business because it was unusual for me to invest in that." (Tr. 48.) This transaction is further described below.

1.a.(iii). Beginning on February 11, 2002, and going through October 2, 2002, Applicant saw Doctor B, a psychiatrist. The doctor's hand-written notes are somewhat difficult to read, but they describe Applicant's history of auditory and visual hallucinations, including controlling hallucinations in connection with the investment he made, discussed above. Applicant stated to Doctor B these visual and auditory hallucinations occurred primarily in 1997, but also in 1999. As of 2002 Applicant stated he was no longer experiencing auditory hallucinations and visual hallucinations were infrequent. (Government Exhibit 4 at 7-10, 15-23; Tr. 53-59.)

Applicant also provided Doctor B with a written statement of his history in September 2002. (Tr. 96-97; Answer at 3.) This extensive statement is found in Government Exhibit 4 at 171-189.

The statement starts by describing how, beginning in September 1997, Applicant began attending seminars on a form of philosophy called Chakra<sup>4</sup> run by Mr. S. He had several meetings with Mr. S during that September. After the last:

I went to the . . . farmer's market, and began to have my first of many daily hallucinations that would occur for the next 4 years, with the exception of a 1 year 7 month period. As I was picking up apples, my hands seemed to be moving faster than possible, and the farmer selling them said, look at those hands with a look of amazement. (*Id.* at 172.)

On October 1, 1997, while meeting with his brother, who worked for the same company:

My brother entered and passed gas. I saw the gas as a shiny solid sphere moving toward me, entering my body through my right hand moving in my arm very quickly (I could both see and feel it in my arm) going through my shoulder and lodging in my heart causing a sharp pain in the center of my chest. I left his office terrified of what I had seen. Later on that day, I sat in the stairwell near my office to eat lunch and heard a howling sound coming from deep within my gut progressing to my head and seeming to cause tears to come out of my eyes. I thought this was the blocked energy leaving my root Chakra. [Mr. S] had said that the negative energy could turn to positive energy by rising and turning into tears. After the 2 hallucinations that I viewed as real events at the time, I decided that my brother had blocked my heart and I had to leave, I asked my supervisor to allow me to leave without the formality of a two-week notice, because my

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<sup>4</sup><http://en.wikipedia.org/wiki/Chakra> (last modified Nov. 5, 2012).

life was in danger. She asked me where I was going; I told her The Healing Center in [City One], and then escorted me out. That evening I called my landlord, asking if I could leave my apartment without the formality of a two-week notice, he agreed. I called [Mr. S] and tried to arrange to meet him that day, he said he could not; he had to go to [City Two], and said I'll see you there. The next day I threw out all my belongings away [sic], and arranged to give the rest away to Salvation Army the following day. All day long I had auditory hallucinations of neighbors shouting profanities (at the time I did not recognize them as profanities) in a violent tone adding to my terror. *I made an appointment to go to The Healing Center in [City One], though I canceled it, because controlling hallucinations convinced me to go north.* After finding out that I was missing, my family's search effort would focus on [City One].<sup>5</sup> (*Id.* at 172-173.) (Emphasis supplied.)

Applicant then started bicycling his way to his sister's house in the northern part of his state. In all he cycled approximately 400 miles. "On the way I had many visual hallucinations, which indicated the path I should take." (*Id.* at 173.) Applicant several weeks later would take a bus back to his home city to meet again with Mr. S. For the next two months, according to Applicant's account, he experienced "more complex controlling visual and auditory hallucinations." (*Id.* at 174.)

As stated earlier, the worm passed on December 24, 1997. The hallucinations stopped around this time and Applicant stated, "I attributed the hallucinations to the worm infection, though after exhaustive research on the subject could not find a connection between *Ascaris Lumbricoides* and psychosis." (*Id.* at 175.)

Applicant returned to employment in February 1998. He states that things were "normal again until July of 1999." Then, after attending a seminar on a form of healing through touch:

I slowly began experiencing the return of involuntary movement, controlling auditory, visual, olfactory, and pain hallucinations which were much more sophisticated, intense, and thorough than previously that lasted until now, occurring throughout day and night and maintaining continuous control. Again I became terrified of people and my environment. This second occurrence of psychosis lasted 1 year and 4 months at an intense level, and continues at a background level to this day [2002]. (*Id.*)

Applicant then went through what he described as "classes of controlling hallucinations," giving extensive examples in areas such as Food, Sleep, Exercise, Vegan. In the area of "Food," for example, he states, among other things, "Controlling Hallucinations told me I needed to do headstands every time I ate fruit, which I did but eventually found to be impractical." (*Id.* at 178.)

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<sup>5</sup>City One is located south of Applicant's then home and place of employment.

He had an entry for “Controlling Hallucinations,” which included Images, Sound and Talking. The predominant figure in the Images was Mr. S. Regarding Talking:

In conversations, I constantly would use words that appeared in my mind spontaneously as if a voice were whispering them to me along with the command “say . . . “. For example “say you’re good” would appear in my mind and I would say to the person I was conversing with me [sic] “you’re good”. This sentence was used the most. Controlling thought explained to me that the words were exactly what the person wanted to hear through the hallucinatory voice of [Mr. S].<sup>6</sup> (*Id.* at 182.)

Under the entry “Dancing” Applicant described his involvement with a dance club in 2000. Applicant stated, “I experienced many hallucinations in the dance place. Hallucinatory voices in my mind made it sound very pleasant, but ultimately it would be the single most damaging environment to my life during my psychosis.” He goes on to describe the influence of hallucinations of Mr. S, who appeared constantly at the dance hall. (*Id.* at 183.)

Applicant’s statement then goes on to discuss in great detail several people who he calls “Manipulators.” First of all, he discusses the couple who he eventually wound up suing for \$200,000. Applicant states “involuntary motion of my legs accompanied by images of [Mr. S] would take me across the dance floor toward a seated couple, it was uncomfortable, specially since I did not want to be near them. I obeyed.” (*Id.* at 184.) He describes this couple telling him about their business. Eventually, “Controlling hallucinations ordered me to invest with her, which I did and began receiving 100% return on my investment. I was very reluctant to invest with her, but controlling hallucinations near continuously told me that ‘this is your big Agebat’, a Farsi word for destiny, and I gave her a check.” (*Id.* at 185.) His statement discusses his financial dealings with this couple, which he states were “ordered by controlling hallucinations.” According to the statement, Applicant sold all of his personal investments in mutual funds, as well as applying for credit cards for the interest of this couple. This conduct began in approximately September 2000 and went on until approximately October 2001.

The statement goes on to discuss Applicant’s involvement with two other people who also bilked him for various amounts of money. As before, his conduct was brought about because of the “controlling hallucinations.” (*Id.* at 187-189.)

The final part of this statement is entitled “Violence.” He states, in part:

From June 2000 until September 2001 after returning to my office from dancing at . . . Hotel at 1:00 am, nearly most nights I would get angry hitting my head against my computer monitor, one night pushing the monitor on the ground (fortunately it did not break). . . . On a daily basis

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<sup>6</sup>In his testimony, Applicant would describe Mr. S as a “yoga instructor” and does not talk about Chakra or what he describes in his statements to the medical professionals as the control Mr. S’s “image” had over his life for a long period of time. Rather, he states that Mr. S may have hypnotized him. (Tr. 59-62.)

controlling hallucinations would make me angry and sometimes controlling involuntary movements would slam both hands simultaneously against the sides of my head. (*Id.* at 189.)

1.a.(iv). March 25, 2002. Applicant filed a complaint in court alleging contractual fraud concerning the \$200,000 Applicant invested, beginning in 2000, with the couple he met dancing. (Applicant's Exhibit L.)

1.a.(v). On April 11, 2002, and June 14, 2002, Applicant saw Doctor C, who was a hypnotherapist. (Tr. 59-61.)

The doctor's Clinic Progress Record for April 11, 2002 states:

Pt [Applicant] has had 2 episodes of visual & auditory hallucinations of spontaneous [illegible].

1<sup>st</sup> Episode Oct 3 '97 – During Chackra [sic] therapy – was given instructions on imagery & pt had visual auditory & olfactory hallucinations. Also had involuntary movements of legs after 2<sup>nd</sup> session [with] instructor. Thereafter pt had spontaneous visions & hallucinations relating to brother. Pt made out of character decisions, leaving job, moving etc. These hallucinations continued for 3 months & pt continued to visit instructor PRN.

2<sup>nd</sup> Episode 1999 July while at "raw foods class" pt responded to instructor who "energized his body" & his hands "levitated." Hallucinations continued for 2 yrs! He visualized his original instructor [Mr. S]. "I heard his voice" & he directed pts life [for] two years.

At the end of the session, Doctor C entered a tentative diagnosis of Dissociative Disorder, Not Otherwise Specified (300.15).<sup>7</sup> (Government Exhibit 4 at 13-14.) (Emphasis in original.)

Doctor C saw Applicant again on June 14, 2002. His progress notes are as follows:

Pt brought in detailed description in single spaced typed 5 page report of his previous experiences [with Mr. S] & the Chakcra [sic] therapy. Wants me to review it later for my edification.

Pt recognizes that his previous experiences were either "psychotic states" or mind control based on his hypnotizability. Pt currently better tuned to himself, very careful & deliberate in living his life to prevent "environmental suggestions".

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<sup>7</sup>American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 532-533 (Fourth Edition, Text Revision, APA 2000).

Discussed internal cures & internal alarm system – pt relates.

Pt want to investigate under hypnosis what [Mr. S] did to his mind. I refused!

Pt thanked me & left session. (*Id.* at 95-96.)

1.a.(vi.) Applicant's statement to Dr. C is found in Government Exhibit 4 at 164-168. For the most part it mirrors the statement he gave Dr. B, through the time he returned to work in February 1999. The statement ends with a discussion of his investment with the people from the dance club, where he states:

I ended up investing \$250,000 with a couple who had a small business and were seeking investors. I was told by the controlling hallucinations [and] presented words to say to them (and everybody I spoke to) telling me that I was saying exact words they wanted to hear when I spoke with them. I was told that they would be successful. After leasing them a Mercedes Benz, taking out a loan on my 401K and a number of credit card, and their continual insistence on having more money and never returning the original investment, I began to ignore the controlling hallucinations, and they began to reduce. They still continue in the background of my mind and I have become disciplined in ignoring them. Throughout the majority of the controlling internal visual and auditory hallucinations were of [Mr. S]. (*Id.* at 168.)

On April 11, 2003, Applicant won his lawsuit and is awarded \$226,774. The Judge said in "Amended Judgment After Trial By Court," prepared by Applicant's lawyer, "At the time of the initial discussion regarding the investment, Plaintiff [Applicant] was suffering from a medical condition that apparently made him vulnerable to sharp practices." The "Judgment" also states, "It wasn't until Plaintiff ran out of money and received medical attention for his psychological condition, that he realized he had been deceived by Defendants." He was awarded \$226,774. (*Id.* at 193-196.) On November 20, 2005, Applicant prepared a document entitled, "Second Addendum to Final Report" concerning this law suit. In this statement he says that the references to a medical condition in the judgment "was not and is not a diagnosis of a medical professional," being based solely on his testimony. (*Id.* at 185-187.)

1.a.(vii). On January 31, 2005, Applicant made a statement to an investigator for AGA. Applicant confirmed that he made statements to Doctors B and C "for intermittent perceptual problems related to hearing voices of other people telling him to do things or say things that were inconsistent with his personality." He went on to say that he had experienced "thought insertions." The report goes on, "These 'thought insertions' consisted of saying things to a couple that he met at a dance club indicating that he was receptive to their ideas. This couple ultimately bilked SUBJECT out of thousands of dollars by talking him into investing in their business. SUBJECT believed that voices of unknown men made him agree to invest with this couple." (*Id.* at 46-48; Tr. 62-65.)



1.a.(viii). On July 13, 2005, Applicant made another statement to an investigator for AGA. "Initially in the interview, SUBJECT maintained that all of the perception problems he discussed in the document he provided his psychiatrist [Doctor B] happened as he described." The report goes on to state:

During the interview, SUBJECT stated some of the information in the documents he provided the psychiatrist were not true. When asked if he falsified any of the information SUBJECT stated no. He advised he now realizes some of the incidents he reported as hallucinations probably were innocent events he misinterpreted. He used the example of seeing people smiling at him or speaking to him that he reported as hallucinations. SUBJECT stated it was probable these events did occur but because of his mental state he associated them with the hallucinations. SUBJECT continued to deny falsifying any information he provided to the psychiatrist or any other physician or mental health professional. SUBJECT denied creating the mental health issues to assist with his lawsuit. (Government Exhibit 5 at 38-41.)

Applicant testified that he never had the belief that a person was putting a thought into his mind. He went on to say that most of his visions were like daydreams. (Tr. 66-68.)

1.a.(ix.) On January 31, 2006, AGA began the process of denying Applicant's program access. A document entitled "Supplemental Statement of [Applicant]" dated March 14, 2006, and submitted by his attorney to AGA, does not contain any reference to controlling hallucinations or the year 1997. (Answer at Enclosure 3; Tr. 69.)

However, Government Exhibit 5 at 117-119 contains an undated and unsigned "Reply to Letter Revoking Program Access." This appears to have been prepared by Applicant and submitted by his counsel to the psychologist whose report will be discussed immediately below. "The 'controlling hallucinations' that the letter mentions occurred [sic] while I had Ascariasis and ended with treatment of the Ascariasis in 1997." (*Id.* at 117.) Based on the state of the record, I cannot say with any certainty that this document was presented to AGA.

In February and March 2006 he was interviewed by a psychologist retained by Applicant's then lawyer. Progress notes are hard to read, but they appear to discuss in general detail the events of 1997 through 1999. (*Id.* at 31-41.) At one point Applicant states, "I wasn't making clear distinctions between what were hallucinations and what were not." (*Id.* at 34.) The psychologist's report of March 14, 2006, does not provide any relevant or material information for this Decision. (*Id.* at 65-66.)

Applicant was examined by a clinical psychologist in June 2010. This was at the request of DOHA. The doctor's report is Government Exhibit 7. In part the report says:

The applicant does not have an emotional, mental or personality condition that could impair his judgment, reliability or trustworthiness. He probably

had a psychotic episode triggered by the *Ascaris Lumbricoides* which he believes he first contracted in 1995 in Indonesia, and first noticed in 1997. The symptoms discontinued permanently in 2002. There is no evidence that he was ever prescribed a course of mental healthy treatment. The medical cure for this parasitic infection was the apparent mental health cure as well.

1.a.(x). Another psychiatrist (Doctor D), examined Applicant on June 8, 2008. Applicant denied suffering any psychiatric symptoms since 2002. (Tr. 69-70.) In his report Doctor D stated:

Also, during this time [1995 through 2002] he experienced some unusual symptoms: having images of food in his mind and vague images of faces in his mind. These were most likely caused by his physically compromised condition. In fact he went to be evaluated by a psychiatrist who felt [Applicant] did not have a psychiatric condition, but that these symptoms were caused by his physical illness. (Government Exhibit 4 at 3-6.)

Finally, as stated above, Applicant was evaluated by Doctor A in 2012. This doctor wrote, "In my professional opinion, [Applicant] does not suffer from any major mental illness of any kind." (Applicant Exhibit A at 2.)

1.b. Applicant admitted that AGA revoked his program access in January 2006. He further admits that the revocation was upheld on appeal in October 2006 and second level review in July 2007. (Government Exhibit 5; Tr. 70-72.)

## **Mitigation**

Applicant is a highly successful and respected employee. (Applicant Exhibits D, E.) Applicant received a patent in 2010 for work he did with his employer in 2003 and 2004. (Applicant Exhibit I.) Two of Applicant's supervisors wrote letters on his behalf for this proceeding. One manager, who has worked with Applicant for three years, states, "He possesses a fundamental honesty that invites all to participate in defining a clear path of expectation." (Applicant Exhibit F.) Another supervisor, who has worked with Applicant for five years, said, "Throughout this time [Applicant] has represented himself and his work with utmost integrity." (Applicant Exhibit H.)

In addition, several coworkers and friends also wrote letters on his behalf during the revocation proceeding before the AGA in 2006. Those letters were also very laudatory. (Government Exhibit 5 at 167-173,184.)

Applicant is also a valued and vital friend. His witness has known Applicant since they were at college together. She has a PhD, though she currently works in the media industry. She states, "I would trust [Applicant] with my life. In fact there's nobody I would trust more with anything important to do. He's a man of tremendous integrity. . . . He's

very difficult to corrupt. He's the best person and that's why I've been his friend for 25 years." (Tr. 111-112.)<sup>8</sup>

## **Policies**

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the 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, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a

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<sup>8</sup>See Tr. 115-118; Applicant Exhibit G.

certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (Guideline E, Personal Conduct)**

The security concerns relating to Personal Conduct are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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

Applicant’s conduct in falsifying information either to his own medical doctors, or to various entities of DoD, brings into play the following disqualifying conditions under AG ¶ 16:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

What is beyond dispute is that Applicant did have a round worm infestation for a considerable period of time, and that it did affect him for years. Unfortunately for Applicant, that is all we can be sure about. Applicant at various times has presented at least two equally plausible explanations for his conduct during and after the time of his round worm infestation. On the one hand, there is the Applicant who presented extensive written statements to his doctors, describing a years-long battle with what he described as “controlling hallucinations.” This included the hallucinations that basically forced him to invest \$200,000 in a get-rich-quick scheme in 2000. His conduct in 1997

when he stated he quit his job, left his apartment, abandoned his furniture and proceeded to bicycle almost 400 miles to his sister's home, without word to anyone, can only be called bizarre. Department Counsel argued that Applicant made these statements to his doctors in 2002 in order to falsely influence the law suit he filed at the same time to recoup his money. That is also a plausible explanation of his conduct, and one he did not effectively rebut.

Then there is the Applicant who, while not disavowing these statements, basically acts as if they don't exist. Instead of describing the exact conduct he engaged in when he left his employment, at the hearing Applicant merely stated, "I stopped working because I was weak basically and I did have some of these visual effects that are described in the record." (Tr. 38.) While not a lie, his testimony certainly did not explain or try to mitigate the evidence of his own prior statements, statements he knew were in the possession of the Government, and were exhibits in his case. He also understated this situation during an interview with AGA in March 2000, stating that he decided to leave his work because of his "unusual illness."

The possible explanations for Applicant's conduct are also mutually exclusive. And, no matter which one is true, each is equally damning. The basic fact is that he either lied to his doctors in 2002 when he described in great detail these incidents, or he is lying to us today, by giving those incidents a more reasoned interpretation. It is impossible to reconcile the two stories, and it is the Applicant's burden to do so. His conduct shows extremely questionable judgment, untrustworthiness, unreliability and lack of candor.

AG ¶ 17 (d) says it can be mitigating where, "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." Applicant did not present sufficient evidence to show that he truly understands the gravity of his conduct, or the importance of personal integrity in the security clearance process. This mitigating condition does not have application in this case. There is insufficient evidence that Applicant currently shows consistent good judgment or is reliable.

Applicant is an able and talented man. He is extremely intelligent. Something happened in the period from 1997 through 2002, which he has yet to adequately explain. Paragraph 1 is found against Applicant.

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline E, above, applies here as well. Under AG ¶ 2(a)(3), his conduct is recent. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his personal conduct. Accordingly, the evidence supports denying his request for a security clearance.

### **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 E:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:

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.

WILFORD H. ROSS  
Administrative Judge