



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-02257
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Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

August 23, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is granted.

On October 8, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories¹ to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

Applicant's request for access to classified information. On October 28, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guideline (AG)³ for psychological conditions (Guideline I).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 20, 2010. Pursuant to a Notice of Hearing issued on April 22, 2010, I convened a hearing in this matter on May 19, 2010. The parties appeared as scheduled. The Government presented four exhibits that were admitted without objection as Government's Exhibits (Gx.) 1 - 4. Applicant testified on his own behalf, presented one witness, and proffered two exhibits that were admitted without objection as Ax. A and B. I left the record open after the hearing to give Applicant time to submit additional relevant information. DOHA received a transcript (Tr.) of the hearing on May 28, 2010. The record closed on June 3, 2010, when I received Applicant's post-hearing submission, which is included in the record without objection as Ax. C.

Findings of Fact

Under Guideline I, the Government alleged that Applicant has received mental health treatment since March 2006 after being diagnosed as having a major depressive disorder (SOR 1.a); that in September 2006, he committed a "suicide gesture" by swallowing 10 pills of a prescribed medication (SOR 1.b); that he received in-patient treatment between November 5 and 15, 2006, for having suicidal ideations (SOR 1.c); that he received in-patient treatment between January 26 and 31, 2007, for having suicidal ideations and for physically abusing his wife (SOR 1.d); that on August 24, 2007, he attempted suicide by overdosing on prescribed medication and that he was subsequently hospitalized for mental health treatment (SOR 1.e); that in March 2008, his wife reported that he threatened to kill her (SOR 1.f); that he has failed to take medications as prescribed during his treatment since March 2006 (SOR 1.g); and that, on May 20, 2009, his treating physician stated he thought the Applicant's mental condition might impair his judgment or reliability when safeguarding classified information (SOR 1.h).

Applicant admitted the allegations at SOR 1.a - 1.e and 1.g. As to SOR 1.d, Applicant admitted to receiving in-patient mental health treatment, but denied physically abusing his wife. As to SOR 1.h, he admitted that his physician has that opinion, but avers that he disagrees with it, insisting he has made "dramatic" improvement in his mental health since that opinion was given. Applicant denied outright the allegation at SOR 1.f. Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

Applicant is 41 years old and has been employed since September 2008 by a charitable organization that provides manpower to employers in the community. Through that organization, Applicant has been working as a requisitions clerk at a military facility. He requires a clearance to access that facility and to work on computer systems that process sensitive information. (Gx. 1; Tr. 40 - 42)

Applicant served in the U.S. Air Force as an aircraft mechanic from November 1995 until November 2005, when he was honorably discharged as a Staff Sergeant (paygrade E-5). Applicant held a security clearance without incident throughout his Air Force career. Applicant and his wife have been married since October 1994. They have two children they adopted as infants, who are now ages 6 and 9. (Tr. 77)

Applicant's discharge from the Air Force was not expected. Because he had developed chronic back problems on active duty, he was not allowed to re-enlist in November 2005 as he had planned. Applicant was medically discharged with a disability and severance pay. It was not until November 2007 that the Veterans Administration (VA) recognized his disability and provided him with a monthly benefits payment based on a 70% disability. It has since been increased to 80% and he receives about \$1,600 each month. (Tr. 48 - 52)

After his unexpected discharge, Applicant was unable to find consistent work that he could perform given his physical problems. He was either unemployed or underemployed until October 2008. In about March 2009, Applicant's wife lost her accounting job, which had paid about \$28,000 annually. She had also lost previous jobs because of the amount of time off she needed to care for Applicant. (Tr. 52; Gx. 4) The net effect of their employment problems was severe financial hardship. They accrued bills they could not pay, they lost a vehicle to repossession, and their house was foreclosed. (Gx. 1) On May 20, 2009, Applicant filed for Chapter 7 bankruptcy liquidation of his debts. His debts were discharged on September 11, 2009. (Gx. 3)

Another, more important effect of Applicant's post-military circumstances was that he became severely depressed. His condition sometimes manifested itself through instances of self-destructive behavior. In March 2006, Applicant was evaluated at VA medical facilities near his home and diagnosed as having a major depressive disorder. In September 2006, he took 10 pills of a prescribed medication in an attempt to get attention for his problems. (Tr. 64) His psychiatrist characterized this act as "a suicide gesture" because Applicant likely knew the pills he took would not actually kill him. Through subsequent treatment it was determined, because of his suicidal ideations, that he should receive in-patient treatment, which he did from November 8 - 15, 2006. (Gx. 4)

After his release, he continued to experience depression, which caused difficulties in his marriage and his relationship with his children. The chronic back condition which precluded his Air Force re-enlistment continued to cause him significant pain and complicated his mental health issues. Applicant was again admitted to a VA medical facility for mental health treatment from January 26 - 31, 2007. In addition to his ongoing treatment for depression and the medical problems with his back, one of the issues addressed during his January 2007 treatment was his behavior toward his wife.

His conduct was characterized in the medical records as abusive. Of particular note was an argument they had during which Applicant pushed his wife. At the hearing, she testified that he did not do so to hurt her, but was just trying to leave the room and shoved her aside as he went past her. She was not hurt and was not fearful for her safety at the time. Applicant's wife further testified that she had discussed this incident during a meeting with Applicant's therapist, but that she was surprised that it was reported as physical abuse. (Gx. 1; Tr. 69 - 72)

Applicant was again admitted for in-patient mental health treatment after he tried to kill himself on August 24, 2007. His suicide attempt consisted of taking between 30 and 40 doses of a prescribed anti-depressant. He was hospitalized from August 25 - 29, 2007. Upon discharge, he and his wife arranged for marital counseling and she was allowed to control Applicant's access to his medications. At the time, he was being prescribed 21 different medications for his depression, anxiety, sleep disorder, high blood pressure, migraine headaches, and back pain. (Gx. 4)

Applicant's subsequent individual and group therapy sessions discussed his ongoing frustrations with his finances – in early 2007 he was in the process of losing his house – and his wife's reactions to their circumstances. As of February 8, 2008, Applicant was still at severe risk of harming himself because he was afraid his wife would leave him when they had to surrender their house. He was also having trouble controlling his temper, as evidenced by an incident of road rage. During a joint marriage counseling session at the same VA facility where Applicant was attending group mental health counseling, Applicant's wife reported that he was verbally abusive to her in front of their children and that he had threatened to kill her. Applicant also acknowledged this during one of his group therapy sessions. (Gx. 4)

On May 20, 2009, Applicant met with his psychiatrist for a regularly scheduled appointment. The doctor observed during that appointment that Applicant was "taking [his] medications sporadically," but that he was also "compliant with prescribed medications," which Applicant felt were effective. (Gx. 4) Applicant also presented the doctor with the interrogatories from DOHA adjudicators. Question 10(a) therein asked for the doctor's opinion about whether Applicant had a condition "that could impair his judgment or reliability, particularly in the context of safeguarding classified national security information..." The doctor responded that Applicant may have difficulty when depressed. In response to Question 10(b), which asked for additional information in the event of a positive answer to 10(a), the doctor stated that Applicant was being treated for major depression and that he may have difficulty functioning if he "decompensates." Finally, in response to question 10(c), the doctor listed Applicant's prognosis as "fair." (Gx. 2)

Applicant no longer attends group counseling and he sees his psychiatrist every three to six months. Since late 2008, he has been assessed as being at low or no risk of harming himself. He no longer has thoughts of harming himself or others, and he has been compliant with his medication regimen. In November 2009, he was still diagnosed as suffering from depression (Gx. 4); however, in April 2010, his diagnosis was changed to "depression in full remission." (Ax. A) At hearing, Applicant's wife testified that she experienced a marked improvement in Applicant's personality and behavior over the

previous 12 to 18 months. She attributes that, in large measure, to a reduction in the anti-depression medications that he was taking. After meeting with a VA pharmacist, it was concluded that some of the medications were conflicting, which may have contributed to his abusive behavior and his anger management difficulties. She also cited their participation in joint marital counseling through their church as helping improve his mental health over the past year. (Tr. 69 - 80) Applicant still takes numerous prescribed medications, but they are only for his back, his blood pressure, and to manage his sleep patterns. (Tr. 43 - 44)

When he submitted his SF 86 in October 2008, Applicant disclosed the fact that he was suffering from and being treated for depression, and that he was having financial problems. (Gx. 1) Applicant enjoys a reputation in the workplace for integrity, trustworthiness, sound judgment, and reliability. His performance and work ethic were praised by the contracting officer's technical representative and the security manager at the military facility where Applicant works. (Ax. B)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ Directive. 6.3.

applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Psychological Conditions

The security concern about Applicant's mental health problems, as stated in AG 27, is that:

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.

The Government presented reliable information, which along with Applicant's admissions, was sufficient to support the allegations in SOR 1.a - 1.f, and 1.h. Since March 2006, Applicant has been treated for severe depression and anxiety, which arose from the circumstances surrounding his medical discharge from the military and subsequent financial problems. His treatment was provided by the VA and included a complex regimen of medications, group therapy sessions, and periodic evaluations by a psychiatrist whom he still sees every three to six months. In 2006 and 2007, Applicant was hospitalized for treatment after expressing suicidal thoughts, committing a suicidal gesture, and after actually attempting suicide. During treatment, medical records reflect that Applicant was verbally abusive to his family, that he may have physically assaulted his wife, and that he became so angry during an argument that he threatened to kill her. As recently as May 2009, Applicant's psychiatrist opined that Applicant's judgment may be impaired if he becomes depressed, and that Applicant's prognosis at the time was fair.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

As to SOR 1.g, available information shows that Applicant was generally compliant with his medication prescriptions. Any deviation from the medication plan was based on a reasonable conclusion that the medications were either ineffective or harmful. There is no information that shows Applicant refused to take medications. Rather, he and his wife discussed his medications with a pharmacist who identified conflicts between some of the medications. Based on the foregoing, SOR 1.g is resolved for the Applicant.

Nonetheless, the Government established the remaining allegations, thereby requiring application of the disqualifying conditions at 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 emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior*) and AG ¶ 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*). The Government's information was sufficient to shift the burden to Applicant to refute, mitigate, or extenuate the resulting security concerns under Guideline I.

Applicant established that in the past 12 to 18 months, his condition is much improved. His wife, who lives with him and has observed him on a daily basis for at least the past 16 years, has noticed a drastic improvement in his behavior and his ability to handle stress. Applicant's April 2010 psychological evaluation reported his depression is in remission, and that he is at low risk of adverse conduct due to his depression. This would appear to negate the May 2009 opinion from his psychiatrist that Applicant's judgment may suffer if he becomes depressed or decompensates in response to stress.

Further, Applicant is no longer on anti-depression medications, and it appears that some of his problems with anger, stress, and aggressive behavior were due to conflicting medications, a circumstance that has long since been resolved. With the discharge of his debts through bankruptcy in May 2009, his steady and successful employment since September 2008, and the productive use of marital counseling, Applicant's circumstances are much improved. He still suffers from chronic back pain and other ailments, but available information shows that he is much better able to deal with adverse circumstances.

The foregoing requires application of the mitigating conditions at AG ¶ 29(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*); AG ¶ 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*); AG ¶ 29(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 emotional instability*); and AG ¶ 29(e) (*there is no indication of a current problem*). On balance, I conclude that

available information is sufficient to mitigate the security concerns about Applicant's judgment raised by his past mental health problems.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline I. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 41 years old and presents as a mature adult who has always been concerned with the well-being of his wife and children. He served honorably in the U.S. Air Force until 2005, held a security clearance throughout his 10-year career, and would have continued his military service but for a chronic medical condition that kept him from re-enlisting. His performance in his current job has been outstanding. In a short time, he has impressed his co-workers, his boss, and the military customers he supports with his reliability, sound judgment, hard work, and trustworthiness. The circumstances that caused or exacerbated his depression were not of his own making, and they are largely non-existent today. Applicant has at all times been candid about the adverse information in his background, and his testimony was sincere and forthright. A fair and commonsense assessment⁸ of all available information bearing on Applicant's past and current circumstances shows he has addressed satisfactorily the government's doubts about his ability or willingness to protect the government's interests as his own.

Formal Findings

Formal findings 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.h:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant or continue Applicant's access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 5, *supra*.