



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-03718
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

04/16/2012

**Decision**

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LYNCH, Noreen A., Administrative Judge:

On November 10, 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 elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on January 24, 2012. Applicant received the complete file of relevant material (FORM) on February 2, 2012, and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. The FORM consisted of 12 documents. Applicant did not submit a response. The case was assigned to me on March 30, 2012. Based on a review of the case file the eligibility for access to classified information is denied.

## Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations ¶¶ 1.a and 1.b. Applicant is 55 years old. He was divorced in 2008, and has two children. He received his undergraduate degree in December 1979. He has held a security clearance since 2004. Applicant has been employed with his current employer since November 2002. (Item 1)

The record notes that Applicant has a history of alcohol abuse and depression. He has been diagnosed with Major Depressive Disorder, Bipolar Disorder, Dysthymic Disorder, and Substance Dependence. (Items 7-9,11,12) His treating psychiatrist, Dr. H, prescribed medications to treat Applicant's depression and additional conditions. Applicant's diagnoses have changed over the years. As early as 1990, Applicant was diagnosed with Dysthymia and possible Bipolar Disorder. (Item 11) Early reports from 1991 until 2002, noted a good prognosis. (Item 11-12)

When Applicant submitted a security clearance application (SCA) in February 2009, he disclosed that he received mental health treatment or counseling since July 2005. (Item 4) He also acknowledged in the SCA that he illegally used Hydrocodone from October 2004 until January 2005 for his back pain. Applicant further noted that his use of alcohol affected his marriage. In 2008, he voluntarily attended a program for depression and alcohol treatment. As a result of the 2008 treatment, Applicant was referred to outpatient counseling. He has been under the care of Dr. A, a psychologist, from January 2008 until the present. (Item 4)

Dr. A's January 2008, clinical report described Applicant as having a history of major depression (recurrent and severe); general anxiety disorder; and alcohol dependence. She noted no history of suicide attempts or suicidal ideation. According to a February 6, 2008 clinical note, Applicant continued to be depressed. Dr. A reported that Applicant was compliant and seemed to understand that more intense treatment was needed. She told Applicant about an intensive outpatient treatment center.

Applicant attended the intensive outpatient program for one month. When he was discharged in March 2008, he was on the following medications: Abilify, Lamivctal, Risperdal, Trazadone, Effexor, Vistaril, and Inderal. In October 2008, Dr. H, prescribed Klonopin for anxiety. During this time, Applicant noted that he was counseled for poor work performance; lateness; and absence from work. He also acknowledged that his depression is probably related to his marital separation. His wife did not like his use of Internet pornography. (Item 9)

As part of the security background investigation, Applicant was interviewed in March 2009. He explained that he pulled a muscle in his lower back and his physician prescribed a muscle relaxer. When his prescription expired, Applicant ordered an additional 60 pills over the Internet (Item 6). He reported that he placed a second order but decided not to use the drug after January 2005 because he feared that he might become addicted to the medication.

In March 2009, Applicant was diagnosed by Dr. H, as Bipolar. Dr. H modified Applicant's medications to include Alprazolam for its mood-altering ability. Applicant said that he stopped drinking in January 2008. He attended Alcoholics Anonymous (AA). He is also working on anger management. Applicant reported continued anxiety in June 2009. Dr. A's note of August 2009, described Applicant as "stable at this time." (Item 7)

The treatment notes from July 2010 indicated that Applicant did not renew certain medications that he was prescribed. He reported that he was overwhelmed and felt he could not handle life anymore. (Item 8) Applicant was prescribed another medication, but it is not clear if he took the prescribed medication as indicated. He took his other medications on a sporadic basis.

On June 14, 2011, a psychologist, Dr. F, interviewed Applicant to assess his suitability for a security clearance. She described Applicant as cooperative. He appeared to be very tense and agitated but conversed in a clear manner. Applicant admitted to being depressed and anxious. He described himself as moody and having suicidal ideation. He acknowledged problems with alcoholism, and he attended AA three times a week. Applicant described his treatment with his psychiatrist, Dr. H. He noted that he takes medication for anxiety and depression.

Dr. F administered two clinical assessments. The Minnesota Multiphasic Personality Inventory-2 revealed that Applicant is experiencing a great deal of emotional turmoil, feels tense, nervous, and fearful, and has problems with maintaining attention and concentrating. Dr. F noted that Applicant is unstable, despondent, hopeless, and often ruminates about suicide. (Item 5) According to the FIRO-B awareness scale, Applicant allows other people to control his actions. He feels most comfortable when other people decide what he should do. Applicant's checked responses to the awareness scale indicated that he feels hopeless about the future, feels unable to control thoughts or activities, and is not able to participate in regular social activities. (Item 5)

Dr. F concluded that based on the clinical interview, assessment instruments, and self-report, Applicant is functioning in a seriously impaired manner. She noted that he appears to have a debilitating anxiety disorder that causes him to have severe doubt about making decisions. She noted that Applicant may show extremely poor judgment. Although she reviewed his past treatment and his current medication, she concludes that he is still functioning at an impaired level. (Item 5) Her diagnosis is Social Anxiety Disorder and Dysthymic Disorder. Dr. F noted in her report that Applicant was open and forthright about his emotional problems. Applicant also admitted to being very stressed about his job.

The record does not contain any treatment notes for 2011 from Applicant's treating psychiatrist, Dr. H or his psychologist, Dr. A. Applicant did not submit any documentation in response to the FORM.

## 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. . . ." <sup>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</sup>

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."<sup>4</sup> "The clearly consistent standard indicates that security clearance

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

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

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

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

determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> 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 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’s record shows that he has a history of depression. He has been diagnosed throughout the years with Depression, Dysthymic Disorder, Anxiety, and Bipolar Disorder. In the early 1990s until 2002, Applicant had some counseling and treatment. He has received consistent psychiatric treatment from approximately 2005

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

<sup>6</sup> *Id.*

until 2010. Applicant has had various prescribed medications, but at times has failed to consistently take a particular recommended medication. AG ¶¶ 28(a), (b), and (c) 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 1991 and intensive treatment from 2005 until the present. Applicant admitted that he has been diagnosed with the above-referenced conditions. He has attended treatment programs for many years. Early reports describe his history of alcohol abuse. He has a 2011 mental health evaluation that notes his depression and suicidal ideation that was not present in earlier reports. Dr. F, the psychologist, concluded from her 2011 clinical assessments that Applicant is functioning in a seriously impaired manner. She noted that he may show extremely poor judgment. She recognized that he has been seeking help, but he is still not receiving a favorable prognosis. Applicant has been on various medications. At one point, he was not in compliance with his prescribed medications. Applicant did not provide a rebuttal to the 2011 mental health evaluation. His treating psychiatrist did not provide a current, clear prognosis. It does appear from the record that his condition has deteriorated. Applicant has not submitted evidence that would mitigate the concerns under this guideline. None of the mitigating conditions apply. I find that he has not 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 55 years old. He obtained his undergraduate degree in 1979. He has held a security clearance since 2004. He is divorced and has two children. He has been employed with his current employer since 2002.

Applicant admitted that he has had a history of depression and other mental health disorders. He obtained some counseling as early as 1990. He received treatment in 2005 and completed an intensive outpatient treatment program in 2008. He continued to see a therapist. He has been on various medications. He has not always been compliant with his physician's recommendations for taking medications. In June 2011, Applicant received a diagnosis of social anxiety and dysthymic disorder. Dr. F detailed that Applicant described himself as having suicidal ideation. His judgment is poor. The psychologist noted that despite his previous treatment, he was functioning in a seriously impaired manner.

Applicant did not present any documentation from his treating physician or therapist to refute or update the 2011 clinical report. Applicant has not met his burden in this case. The record evidence in the FORM supports a finding that Applicant be denied a security clearance. Clearance is denied.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge