



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



In the matter of:)
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XXXXXXXXXX, XXXXX) ISCR Case No. 09-06843
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Stephen C. Stokes, Esq.

06/07/2012

Decision

TUIDER, Robert J., Administrative Judge:

In August 2006, Applicant had a psychotic episode. He received inpatient psychiatric treatment and was diagnosed under Axis I with Bipolar Disorder, Mixed with Psychotic Features. He was reevaluated on July 5, 2011, and he received the same diagnosis. He did not receive follow-up psychiatric treatment or therapy after he was an inpatient in August 2006. He was not completely honest and candid to the psychologist evaluating him on July 5, 2011. Psychological conditions and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 5, 2009, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). (GE 1) On October 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines I (psychological conditions) and E (personal conduct). The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On November 15, 2011, DOHA received Applicant's response to the SOR. On January 3, 2012, Department Counsel indicated she was ready to proceed on Applicant's case. On January 10, 2012, Applicant's case was assigned to an administrative judge. On January 26, 2012, Applicant's case was set for hearing on February 17, 2012. On March 28, 2012, DOHA transferred Applicant's case to me. On April 17, 2012, DOHA issued a hearing notice, setting the hearing for May 17, 2012. Applicant's hearing was held on May 17, 2012. Department Counsel offered seven exhibits, and Applicant offered 12 exhibits. (Tr. 19-20; 177-178; GE 1-7; AE A-L) (Tr. 19-20) There were no objections, and I admitted GE 1-7 and AE A-L. (Tr. 20, 178) On May 30, 2012, I received the transcript.

Findings of Fact¹

Applicant's SOR response admitted the allegation in SOR ¶ 1.b and denied the allegations in SOR ¶¶ 1.a and 2.a. His admissions are accepted as findings of fact.

Applicant is a 52-year-old employee of a defense contractor. (Tr. 141; GE 1) He is employed in the supervision of the maintenance of Army vehicles. He has been employed by the same defense contractor since May of 2007. (Tr. 141) He earned a graduate equivalency diploma (GED) in 1977. (Tr. 174) He requires one more semester of college to earn an associate's degree in maintenance and automobile body repairs. (Tr. 174-175) He has been married for 30 years. (GE 1) He has five children and three grandchildren. (Tr. 150; GE 1) His children are ages 12, 24, 25, 28, and 33. (Tr. 150-151) He is very close to his wife and children. (Tr. 151) They are a strong support system for Applicant. (Tr. 152)

Applicant served 20 years on active duty in the Army, and he retired in 2000. (Tr. 141-142) His rank at retirement was staff sergeant (E6). (Tr. 153) His military occupational specialty (MOS) was 63B, light wheeled vehicle mechanic. (Tr. 143, 153) He served in Iraq as a defense contractor from November 2004 to August 2006. (Tr. 143-144, 153-154)

In July 2006, Applicant was serving in Iraq, when he had a severe case of pneumonia, was admitted to a military hospital for at least a month, had difficulty breathing, and was placed on an IV. (Tr. 144, 154) He believed that he was supposed to drive to Kuwait to see a doctor before being cleared to fly to the United States. Instead, he was placed on a flight from Iraq to the United States. (Tr. 145) "[He] was angry

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

because he was being sent home on the plane, instead of being detained in Iraq to heal.” (GE 5 at 10)² Applicant could not recall anything that happened on the flight or at the airport in the United States. (Tr. 146, 156-157)³ Medical records indicate he made an outburst that he had a biological bomb inside him and that he had AIDS. (GE 4 at 1; GE 5 at 2)

At the airport, the police questioned Applicant and then took him to a psychiatric hospital. (Tr. 147; GE 4) He was placed on various medications, and his body had a reaction to the medication. (Tr. 158-159) He was discharged from the hospital after three days of inpatient care. (Tr. 147; GE 4) He received a discharge report, which indicated a discharge diagnosis of bipolar disorder, mixed with psychotic features. (Tr. 160, 163-164; GE 4) After being discharged from inpatient care, he consulted a physician’s assistant, who told him that if he had another episode he should seek medical help. (Tr. 167, 170; AE M)⁴ He is in Tricare, and his primary care specialist did not provide a referral to a mental health specialist. (Tr. 171) He did not receive any mental health treatment, tests, or evaluation from the physician’s assistant or anyone else (except for Dr. S on July 5, 2011) after he was diagnosed in August 2006 as bipolar. (Tr. 167-168, 171-172; GE 3) Applicant stopped taking his medication after leaving the hospital, and he did not give the medication an adequate opportunity to address his psychiatric issues. (Tr. 66)

Applicant said the psychotic break in August 2006 is the only instance in Applicant’s life where he had a psychiatric incident. (Tr. 148) When he was removed from his position because of the suspension of his security clearance, he was disappointed, but he did not complain or react in a negative fashion. (Tr. 149) He did not have any disciplinary actions taken against him in his present employment. (Tr. 149-150)

When Applicant completed his May 5, 2009 SF-86, he responded to a question about employment that in August 2006 he “became ill (sick) in Iraq and was unable to [return] back to work.” (GE 1 at 23) He also indicated that he was returned from Iraq because of illness, and he was diagnosed with dehydration and pneumonia. (Tr. 160, 163; GE 1 at 18) In response to the question about mental health counseling, he disclosed four days of treatment, and he provided the name of the facility providing the mental health treatment. (GE 1 at 44) He said that he did not disclose his diagnosis of bipolar disease because he was not told to seek additional treatment, and it was the only episode. (Tr. 160-164) He believed his medical problem was actually dehydration

²Applicant claimed that he was not upset with his company for sending him back to the United States. (Tr. 155)

³After viewing the police report, which was not admitted into evidence, Applicant became convinced that the outburst resulting in his detention occurred at a U.S. airport and not on an aircraft. (Tr. 172-173)

⁴Applicant’s physician assistant indicated Applicant “has demonstrated stability cognitive (sic) and profound insight at this time. His judgment, mood, and affect have been normal. All medical issues have been addressed without any hampering from a mental standpoint.” (AE H)

and pneumonia. (Tr. 161) He decided not to go back overseas, and he was unemployed for about 10 months before obtaining employment with his current employer. (Tr. 162)

On June 25, 2009, an Office of Personnel Management (OPM) investigator interviewed Applicant, and Applicant told the OPM investigator that he became sick on the flight from Iraq to the United States, passed out at the airport, and was checked in for observation for four days. (Tr. 165; GE 2 at 4) He said that he was “released [from treatment] with no diagnosis.” (Tr. 165-166; GE 2 at 4)⁵ He did not tell the OPM investigator about the bipolar diagnosis because he “didn’t consider [him]self as being, you know, diagnosed as bipolar.” (Tr. 167)

Applicant’s diagnosis and treatment August 14-16, 2006 (SOR ¶ 1.b)

Applicant was admitted for inpatient treatment from August 14, 2006 to August 16, 2006 for “evaluation of depression and paranoia.” (GE 4 at 1) His medical records note, “when he was placed on the plane, he claimed that he had a biological bomb inside him and that he has AIDS.” (GE 4 at 1) On admission, he was, “paranoid, quite isolative, quite suspicious, unable to provide information, somehow confused and has difficulty focusing.” (GE 4 at 1) The discharge diagnosis was:

Axis I:	Bipolar disorder, mixed with psychotic features.
Axis II:	None.
Axis III:	(Not Relevant).
Axis IV:	Moderate.
Axis V:	Global Assessment of Functioning is 25.

(GE 4 at 2) He was described as very depressed, angry, confused, very paranoid and suspicious, racing and disorganized thought process, poor concentration, insight poor, and not necessarily oriented to time, person, and place. (GE 4 at 3-4) Discharge instructions were to “be arranged by family” and to “follow-up with family doctor.” (GE 4 at 6) He was prescribed various medications to address his diagnosed illness. (GE 4

⁵The SOR did not allege that Applicant omitted information about his August 2006 discharge diagnosis of bipolar disorder, mixed with psychotic features from his May 5, 2009 SF-86 or that he lied to the OPM investigator on June 25, 2009, when he denied knowing his psychiatric discharge diagnosis. The SOR did not allege that he failed to disclose information about his 2006 psychiatric discharge diagnosis on his SF-86 and to the OPM investigator. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR misconduct for the five above purposes, especially as it relates to credibility, and not for any other purpose.

He was not specifically urged to begin psychiatric counseling or treatment or to follow-up with a psychiatrist or psychologist.

Evaluation by Dr. S

On July 5, 2011, Dr. S, a licensed clinical psychologist with 42 years of clinical experience and a focus in psychological testing, evaluated Applicant over a three-to-four hour period. (Tr. 22-23, 26, 95-96; GE 6)⁶ Dr. S reviewed Applicant's treatment records from Applicant's 2006 in-patient treatment and his responses to DOHA interrogatories, and then she used psychometric tests to validate her impressions from Applicant's interview. (Tr. 26-27; GE 5)

There are some factors that tend to support the absence of significant psychological conditions adversely affecting Applicant's mental status, judgment, reliability, and trustworthiness. For example, Applicant's successful Army career and accomplishments supports the absence of diagnosed psychiatric problems; however, there are hereditary factors that may be dormant for years, and then surface. (Tr. 72-73) The absence of a recurrent episode since 2006 is also significant. (Tr. 94) Even though he has had long periods of satisfactory functioning, under stress, he may decompensate into a psychotic episode. (Tr. 100) Applicant was employed since 2007 with a Defense contractor, and he was in a supervisory role when Dr. S did her evaluation. (Tr. 75-76, 98) Stable employment and type of employment are significant factors supporting the absence of a serious, current psychiatric problem. (Tr. 76-77) Applicant's 30-year marriage and raising five children "weigh[s] heavily" in support of his stability, reliability, and trustworthiness and against the diagnosed serious psychiatric problems. (Tr. 92-93)

Applicant completed the Minnesota Multiphasic Personal Inventory 2 (MMPI-2) test. (Tr. 26, 30) The validity scale suggested Applicant's results were valid. (Tr. 31) There was peak on the aberrant experiences scale or T scale for bizarre mentation, and for paranoid ideations or persecutory-type ideas of reference. (Tr. 35) Bizarre mentation "is conceptualizing things in ways that are sometimes, outside of reality, or [an] extreme perception of things that are seen differently than . . . the normal population." (Tr. 39) He received a higher than normal score for "delusional dualization, thought intrusions, and hallucinations." (Tr. 36) Part of his personality score indicated some consistency with "manipulative, incompetent, dishonesty" and perceptions of unfairness. (Tr. 36) Applicant has an elevated hostility scale, which relates to psychologically-based physical illnesses. (Tr. 36) His aggressiveness scale was also elevated. (Tr. 37) A depression subscale indicated "his depression would be manifested by physical malfunctioning, i.e. getting sick." (Tr. 37) His answers were "very typical of people who have a schizotypal personality disorder." (Tr. 40)

⁶Applicant said that Dr. S spent 30 minutes talking to him, and then she gave him a test. (Tr. 170) He contended that Dr. S did not spend sufficient time with him to reach an accurate diagnosis. (Tr. 169-170) Applicant's claim of the lack of a thorough evaluation is not credible. Although her evaluation was inhibited by Applicant's evasive and guarded responses to her questions, Dr. S issued an 11-page report that thoroughly and credibly described Applicant's mental evaluation and diagnosis. (GE 5)

Dr. S diagnosed Applicant as follows:

Axis I: 296.64 Bipolar Disorder, Mixed with Psychotic Features (Tr. 45-46)⁷

300.81 Undifferentiated Somatoform Disorder⁸

300.00 Anxiety Disorder NOS⁹.

Axis II: 302.20 Schizotypal Personality Disorder (SOR ¶ 1.a; Tr. 24; GE 5)¹⁰.

Dr. S did not believe his 2006 psychotic episode was a medical episode because of his scores in the area of bizarre mentation during Dr. S's evaluation. (Tr. 59) Dr. S noted that if Applicant is placed under stress in the future, he may have the same reaction again. (Tr. 65) Dr. S opined that all of the factors cited in her 11-page report were indications that his mental illness adversely affects his judgment, reliability, and trustworthiness. (SOR ¶ 1.a; GE 5) Dr. S recommended that he remain in therapy with a qualified psychologist or psychiatrist, receive medication, and be reevaluated in several years. (Tr. 65, 93-94) The underlying dynamics remain and are untreated. (Tr. 66)

Personal Conduct (SOR ¶ 2.a)

SOR ¶ 2.a alleges that Applicant was evasive and not forthcoming when Dr. S evaluated him concerning details of his August 14-16, 2006 inpatient psychiatric hospitalization. Dr. S said that Applicant attributed his mental problems to his medical problem (pneumonia) he was suffering from at that time. Dr. S noted inconsistencies in Applicant's responses to her questions. He said he did not have a full, clear memory of what occurred on the aircraft. (Tr. 63) He said he had a brief recollection of the

⁷Bipolar disorder is a mood disorder. (Tr. 47) Manic behavior may be shown by aggressive, destructive, and highly active behavior. (Tr. 46) One example would be spending sprees. (Tr. 46) The mood swings from manic to depression. (Tr. 46) Psychotic features are indicated when there is a psychotic break. (Tr. 46) Bipolar disorder is treated with drugs. (Tr. 48) Bipolar affects a person's judgment and reliability to a "tremendous" degree. (Tr. 48) See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (DSM-IV-TR) (GE 7).

⁸"Undifferentiated" means there are health and wellness concerns without being connected to a specific problem. (Tr. 50-51) Health and wellness concerns may affect judgment. (Tr. 51)

⁹"NOS" is an acronym for not otherwise specified. (Tr. 51) Applicant is anxious; however, it is not connected to any particular phobia. (Tr. 52) Applicant has difficulty sleeping, which may be related to anxiety or depression. (Tr. 53)

¹⁰A personality disorder is long term and dysfunctional. (Tr. 54) Applicant is suspicious, and he feels other people are disingenuous. (Tr. 55) He has some signs of schizophrenia, as indicated by his psychotic episode, but he is not schizophrenic. (Tr. 55, 82) There are times when he may have been disconnected from reality. (Tr. 82) His schizotypal personality disorder has a tremendous impact on his judgment. (Tr. 55) He is anxious about people trying to manipulate him. (Tr. 101) He commented "that I can make people afraid of me, and do, I do that sometimes." (Tr. 101, 104) (This comment alone does not establish the diagnosis of schizotypal personality disorder. (Tr. 105-106)) He needs to have things under his control; however, when things did not go his way, a psychotic reaction does not automatically occur. (Tr. 101-105) Axis III, general medical history, and Axis IV, psychosocial environmental problems, do not significantly affect security concerns. (Tr. 56-57) Applicant's Axis V, global assessment of functioning (GAF), at 50, shows that Applicant is not operating at full capacity. (Tr. 57) During his psychotic episode in 2006, his GAF score was 25. (Tr. 58; GE 4)

occurrence on the aircraft, and then the next thing he remembered was being in the hospital. (Tr. 63) Initially, he said he was not informed of the bipolar diagnosis, then later, he implied that he was aware of it when he said “I never researched what that information (the diagnosis) meant.” (Tr. 63-64; GE 5 at 3) After Dr. S explained the diagnosis to Applicant, he said no one explained it like Dr. S did. (Tr. 64; GE 5 at 3) Initially, he said he did not have any medical issues, then later, he described medical and physical issues. (Tr. 64)

Character evidence

Applicant’s supervisor is an assistant program manager and has known him since August 2009. (Tr. 110, 127) He served in the military for 26 years, including service in combat zones, and he retired as a sergeant major. (Tr. 110-111) Applicant supervises 30 employees and ensures maintenance on about 3,000 pieces of equipment. (Tr. 112) He described Applicant as solution-oriented, analytic, and reliable. (Tr. 114-116, 125; AE E) He has excellent interpersonal skills, judgment, and performance. (Tr. 116, 121-122, 125-126; AE E) Applicant received an award for his exceptional contributions to an important Army inspection. (Tr. 117-119; AE L) When his clearance was suspended, his employment was changed so that he could continue to work for the contractor without a clearance. (Tr. 120-121, 134-137; AE J, K) The absence of a security clearance adversely affects his career. (Tr. 137) Although his supervisor is not aware of Applicant’s psychiatric diagnosis, he is aware that Applicant had an incident where he was delirious and started screaming at an airport or on an aircraft. (Tr. 131-133) He recommends reinstatement of Applicant’s security clearance. (Tr. 126)

Applicant’s 2010 employment evaluation indicated his performance was average to excellent, and was consistent with the statements from his friends and colleagues in the next paragraph. (AE I) He “exceeded targets for most goals with respect to quality and/or quantity and delivered these results on or ahead of schedule. [He demonstrates] expected behaviors overall. May require development in some areas.” (AE I at 2) He “exceeded or met all goals this year with great results” and received outstanding results on inspections. (AE I at 3)

Applicant’s spouse, friends, and colleagues, who have known Applicant for many years, described him as compassionate, intelligent, mature, loyal, generous, helpful, hardworking, disciplined, diligent, conscientious, trustworthy, dependable, honest, organized, efficient, and punctual.¹¹ He has excellent communications skills and the ability to work efficiently under stressful conditions. He is a valuable asset to the contractor’s workforce. His character statements support reinstatement of his security clearance.

¹¹The sources of the facts in this paragraph are statements Applicant provided. (AE A-G)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Psychological Conditions

AG ¶ 27 articulates the security concern relating 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 provides three conditions that could raise a security concern and may be disqualifying in this case:

- (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.

AG ¶¶ 28(a), 28(b), and 28(c) apply. Dr. S diagnosed Applicant under Axis I with Bi-polar Disorder, Mixed with Psychotic Features, Undifferentiated Somatoform Disorder, and Anxiety Disorder NOS. Under Axis II, he was diagnosed with Schizotypal Personality Disorder. Her diagnosis of Bi-polar Disorder, Mixed with Psychotic Features, was the same as that made in the discharge summary after his August 2006 inpatient psychiatric treatment. Applicant’s bizarre mentation and stressful periods increase the probability that he may have the same psychotic reaction that he had in August 2006. Dr. S opined that all of the factors cited in her 11-page report were indications that his

mental illness adversely affects his judgment, reliability, and trustworthiness. Dr. S recommended that Applicant remain in therapy with a qualified psychologist or psychiatrist, receive medication, and be reevaluated in several years. (SOR ¶ 1.a) However, the underlying dynamics remain and are untreated. He is not under the treatment of a psychologist or psychiatrist.

SOR ¶ 1.b alleges that the psychiatric entity providing care to Applicant in August 2006 recommended that Applicant receive follow-up care from a psychiatrist or his primary care physician, and that Applicant failed to “follow-up with a psychiatrist and [his] primary care physician.” SOR ¶ 1.b is not substantiated because he does not have a primary care physician or “family doctor,” and this psychiatric entity did not recommend follow-up with a psychiatrist in the discharge summary. He did follow-up with his primary care physician’s assistant, who did not refer him to a psychiatrist or psychologist or for further mental health treatment.

Five mitigating conditions under AG ¶ 29 are potentially applicable:

(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.

None of the mitigating conditions apply. He is not receiving therapy or treatment. He is not compliant with Dr. S’s recommendations. He believes that his psychotic break was due to pneumonia and not due to bi-polar Disorder, Mixed with Psychotic Features, Undifferentiated Somatoform Disorder, and Anxiety Disorder NOS, and Schizotypal Personality Disorder. Because of his denial of the accuracy of this diagnosis, he is not in treatment. He did not provide an opinion from a psychologist or psychiatrist that his condition is under control or in remission, and has a low probability of recurrence or exacerbation.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

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

AG ¶ 16(b) applies. On July 5, 2011, Dr. S interviewed Applicant for the purpose of providing a security-related evaluation. Dr. S is a competent medical authority. Applicant denied knowing about his diagnosis under Axis I of bipolar disorder, mixed with psychotic features after his inpatient treatment in August 2006. He received a discharge report after his inpatient treatment, which indicated the bipolar diagnosis, and he was not truthful to Dr. S about his knowledge of the August 2006 diagnosis.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) 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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

SOR ¶ 2.a indicates in part that Applicant's lack of candor resulted in additional testing. This portion of SOR ¶ 2.a is not substantiated under AG ¶ 17(f) because Dr. S did not describe any additional testing that was required by his evasive and inconsistent answers to her questions.

None of the mitigating conditions apply. The allegation in SOR ¶ 2.a that he intentionally failed to disclose information about his psychiatric history is substantiated. He falsely denied that he was aware of the August 2006 diagnosis of bipolar disorder, mixed with psychotic features. His failure to be truthful in this aspect of his evaluation, as well as several other inconsistent statements, caused Dr. S to question whether he was being fully honest and candid about other aspects of his psychiatric history and treatment. For example, he said he had no memory of his statements and conduct during his psychotic break in August 2006. An honest, candid description of thoughts, feelings and psychiatric history is essential so that a psychologist will be able to provide an accurate, reliable diagnosis and prognosis. His intentional deceptive statement during Dr. S's July 5, 2011 interview of Applicant is recent, serious, and not mitigated.

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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my

comments under Guidelines I and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant served his country as a Soldier from 1988 to 2008. He honorably retired as a staff sergeant. He contributed to national defense while on active duty and while working for Defense contractors, including service in Iraq. During his years of active duty service, he was entrusted with valuable Army equipment, and the lives of Soldiers, and he never abused that trust. He is 52 years old, and I am confident that he has the maturity to comply with security requirements, when he is not undergoing destabilizing stress or undergoing a psychotic break. He is an intelligent person who understands security requirements. There is no evidence of security violations, disloyalty, or that he would intentionally violate national security. Applicant's spouse, friends, and colleagues described his character and duty performance in very positive terms. He is a valuable asset to his company's workforce. He received two award certificates and a strong evaluation in 2010 from his employer. His character statements support reinstatement of his security clearance.

The evidence against approval of Applicant's clearance is more substantial at this time. Dr. S and a psychiatric-treatment facility diagnosed Applicant under Axis I with Bi-polar Disorder, Mixed with Psychotic Features. Dr. S also diagnosed him under Axis I with Undifferentiated Somatoform Disorder and Anxiety Disorder NOS. Under Axis II, Dr. S diagnosed him with Schizotypal Personality Disorder. She determined that Applicant's bizarre mentation and stress increase the probability that he may have a psychotic reaction similar to the one he had in August 2006. Dr. S recommended that he remain in therapy with a qualified psychologist or psychiatrist, receive medication, and be reevaluated in several years. Dr. S noted that the underlying dynamics remain and are untreated. Applicant's mental and personality conditions impair his judgment, reliability, and trustworthiness. See AG ¶ 27. His failure to fully and candidly disclose psychiatric information, during his July 5, 2011 psychological interview by Dr. S shows lack of judgment and "raise[s] questions about [Applicant's] reliability, trustworthiness and ability to protect classified information." See AG ¶ 15.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude psychological conditions and personal conduct concerns are not mitigated. For the reasons stated, I conclude he is not eligible for access to classified information.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge