



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



In the matter of:)
)
-----) ISCR Case No. 10-02219
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

05/09/2012

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a longstanding history of mental-health issues, including hospitalizations, self-mutilation, and suicide attempts. Since September 2011, she has been under the care of a board-certified psychiatrist who has diagnosed her with anorexia nervosa, bulimia nervosa, and depressive disorder, but no other psychiatric disorders. The psychiatrist disagrees with past diagnoses of bipolar disorder and borderline personality disorder. The psychiatrist rates her prognosis as excellent. Although Applicant is making progress, her track record of ongoing and consistent compliance with her psychiatrist’s treatment plan is less than 12 months in duration. This relatively brief period of stability is not enough to mitigate and overcome the security concerns stemming from her history of mental-health issues. Accordingly, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about September 15, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline I for psychological conditions.

Applicant timely answered the SOR and requested a hearing. A prehearing conference with counsel was held February 8, 2012.² The hearing took place March 15, 2012. The transcript (Tr.) was received March 27, 2012.

The record was kept open for two things. First, to allow Applicant to submit an additional letter of recommendation as Exhibit M. But in a post-hearing conference, Counsel for Applicant indicated no such documentation would be forthcoming.³ Accordingly, Applicant's Exhibits consist of A through N, excluding M. Second, Department Counsel submitted a written summary of Applicant's medical records under Fed.R.Evid. 1006, to which there was no objection.⁴ Accordingly, Department Counsel's Exhibits consist of 1 through 15.

Findings of Fact

The SOR alleged a longstanding history of mental-health issues from 1992 to 2010, including hospitalizations, self-mutilation, and suicide attempts. In Applicant's reply or answer to the SOR, her responses were mixed with admissions and denials. At the hearing, she admitted that all the SOR allegations are true and correct.⁵ Her admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 34-year-old employee of a federal contractor. She is seeking to obtain a security clearance for her job as a systems engineer working in the field of

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Appellate Exhibit I.

³ Appellate Exhibit II.

⁴ Exhibit 15; Appellate Exhibit II.

⁵ Tr. 93–95.

information assurance for a large defense contractor.⁶ Her educational background includes a 2004 bachelor's degree in computer science with a minor in mathematics, and a 2009 master's degree in systems engineering. She completed an internship with a technology company during 2003–2004. She then worked as a systems engineer for a large defense contractor from June 2004 to about November 2011, when she began her current job.

Applicant has a longstanding history of mental-health issues.⁷ She disclosed this history when she completed a security clearance application in March 2009.⁸ In response to a question seeking information about her mental and emotional health, she reported 11 incidents of treatment, counseling, or hospitalization. She has been diagnosed with multiple psychological conditions, including major depression, bipolar disorder, borderline personality disorder, bulimina, anorexia, generalized anxiety disorder, and posttraumatic stress disorder. She has received treatment at eating disorder centers. She has engaged in self-mutilation since the late 1990s. On multiple occasions since 2003, she has been hospitalized for suicidal behaviors, including cutting, overdosing, and swallowing razor blades. She has swallowed bleach as a way to cleanse herself. She has not, at times, followed medical advice to take prescribed medications.

In addition to admitting all the SOR allegations, Applicant stated at hearing that she feels like a different person today largely due to (1) the course of treatment from her current psychiatrist, (2) a great job that she loves, (3) a strong support system, which includes friends and her church, and (4) an improved relationship with her mother.⁹ She states that she is in compliance with the instructions of her current psychiatrist, to include taking the prescribed medications, which have changed under his care.¹⁰ She has no desire to repeat any of her past behavior, and she regrets that behavior.¹¹ And she intends to continue following the instructions and recommendations of her psychiatrist, whom she sees weekly.

Applicant has had treatment for depression for about the last 20 years, although there were periods when she was doing well and did not require treatment.¹² She has

⁶ Tr. 120–122.

⁷ Exhibits 1–15. Because Applicant does not dispute the SOR allegations, it is unnecessary to go into great detail about the various incidents, and a summarized approach is sufficient to describe her history. In addition, a summarized approach aids in protecting Applicant's privacy.

⁸ Exhibit 1.

⁹ Tr. 95–96.

¹⁰ Tr. 98.

¹¹ Tr. 99.

¹² Tr. 106–107.

“always followed a therapist” during this period.¹³ She has been under the care of her current psychiatrist since September 2011, after she decided that she did not agree with the medication regimen prescribed by her previous psychiatrist as well as having a poor patient-doctor relationship.¹⁴ She was referred to her current psychiatrist, with the assistance of her health-insurance company, because she was seeking a psychiatrist who would provide therapy in addition to medication, and who was a Christian.¹⁵

Applicant’s current psychiatrist has been practicing psychiatry for more than 20 years.¹⁶ He was board certified by the American Board of Psychiatry and Neurology in 1993, and he has engaged in private practice of psychiatry since 1999. His curriculum vitae,¹⁷ which is more than 20 pages in length, reflects the education, positions, experience, presentations, continuing medical education, and previous experience providing expert testimony consistent with a highly experienced board-certified psychiatrist.¹⁸ Since September 2011, the psychiatrist has seen and evaluated Applicant on 21 occasions, with each occasion consisting of about a 50-minute session.

The psychiatrist did not appear at hearing, but he prepared a three-page letter describing his evaluation of Applicant.¹⁹ He noted the following matters in his letter: (1) Applicant fits the diagnostic criteria for anorexia, bulimina, and depressive disorder; (2) she has no other psychiatric disorders; (3) he rejected the past diagnosis of bipolar disorder and explained why; (4) he rejected the past diagnosis of borderline personality disorder and explained why; (5) he rejected the past diagnosis of generalized anxiety disorder; (6) he noted that her psychiatric conditions have not caused her occupational dysfunction and she has in fact had high occupational functioning; and (7) he noted that her past suicidal behaviors have not affected her ability to function in the workplace at a high level. He also assessed Applicant’s prognosis as excellent:

Given [Applicant’s] high level of functioning in the past while her conditions were less well controlled than they are presently, and that is very compliant with treatment, and that she is presently functioning at a higher level than previously, her prognosis is excellent. Given the fact that [Applicant] has always functioned very high level at work and there has never been any question of impairment in judgement, reliability nor

¹³ Tr. 107.

¹⁴ Tr. 112–114.

¹⁵ Tr. 112–113.

¹⁶ Exhibits J and K.

¹⁷ Exhibit K.

¹⁸ Although formal rules of evidence do not apply here, this psychiatrist would easily qualify as an expert under Fed.R.Evid. 702.

¹⁹ Exhibit J.

stability in her work reviews, I believe there is no risk in giving [her] a security clearance.²⁰

In addition to the favorable evaluation from her psychiatrist, Applicant presented evidence of her good character in the form of six letters of recommendation, past awards, honors, and accolades, and workplace performance reports.²¹ All these matters are quite favorable. Three of the authors of the letters of recommendation appeared at the hearing and reaffirmed opinions expressed in their letters. Uniformly, they trust and have faith in Applicant's judgment, reliability, and trustworthiness. Most impressive was Applicant's former supervisor and fellow classmate during the master's degree program. He described her as a highly organized employee who does exemplary work.²² He stated that her mental-health issues did not adversely affect her performance at work, and he was unaware of any workplace violations or infractions by her.²³ He is aware of her past mental-health issues, he described her as brutally or exceptionally honest about those matters, and he stated that she was able to compartmentalize the medical issues and deal with those matters away from the workplace.²⁴

Applicant had a good appearance at the hearing, she was calm, polite, and well spoken, she engaged in appropriate behavior, to include having eye contact with the witnesses, counsel, and me, throughout the hearing. Although she had difficulty recalling specific dates and events, I found her overall testimony was credible.

Law and Policies

It is well-established law that no one has a right to a security clearance.²⁵ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

²⁰ Exhibit J at 3.

²¹ Exhibits A–I, and L.

²² Tr. 72.

²³ Tr. 73–74.

²⁴ Tr. 79–81.

²⁵ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁶ 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.³¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.³⁴

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.³⁵ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

²⁷ Directive, ¶ 3.2.

²⁸ Directive, ¶ 3.2.

²⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁰ Directive, Enclosure 3, ¶ E3.1.14.

³¹ Directive, Enclosure 3, ¶ E3.1.15.

³² Directive, Enclosure 3, ¶ E3.1.15.

³³ *Egan*, 484 U.S. at 531.

³⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

³⁵ Executive Order 10865, § 7.

Discussion

The central issue here is whether Applicant's suitability for access to classified information is questioned or put into doubt due to a longstanding history of mental-health issues. Under Guideline I,³⁶ the suitability of an applicant may be questioned or put into doubt due to an applicant's psychological conditions. The overall concern under the guideline 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.³⁷

The guideline has three conditions that could raise security concerns and may be disqualifying.³⁸ The following conditions are most pertinent:

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(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.

The extensive documentary evidence, along with Applicant's admissions, support a conclusion that Applicant has engaged in emotionally unstable, irresponsible, dysfunctional, and bizarre behavior. Likewise, the evidence supports a conclusion that Applicant has, at times, not taken medicines prescribed to her. Taken together, these matters raise concerns about Applicant's judgment, reliability, or trustworthiness.

The guideline also has five conditions that could mitigate security concerns.³⁹ The following conditions are most pertinent:

³⁶ AG ¶¶ 27, 28, and 29 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁷ AG ¶ 27.

³⁸ AG ¶¶ 28 (a)–(c).

³⁹ AG ¶ 29 (a)–(e).

AG ¶ 29(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; and

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.

These two mitigating conditions apply in Applicant's favor based on her ongoing treatment with her psychiatrist, who has been treating her since September 2011.

Although Applicant's evidence was impressive (e.g., the favorable evaluation by her psychiatrist), she did not meet her burden to present sufficient evidence to explain, extenuate, or mitigate the security concerns raised by her longstanding history of mental-health issues. She is now under the care of a board-certified psychiatrist who has diagnosed her with anorexia nervosa, bulimia nervosa, and depressive disorder, but no other psychiatric disorders, and he disagrees with certain past diagnoses. Although he is entitled to his opinions, I have not rejected those diagnoses and have accepted them as the diagnoses then made.⁴⁰ The psychiatrist rates her prognosis as excellent, and it is evident she is making progress under his care. Although she is progressing, her track record of ongoing and consistent compliance with her psychiatrist's treatment plan is less than 12 months in duration. Given her longstanding history and associated behaviors, this relatively brief period of stability is not enough to mitigate the security concerns. With that said, this conclusion is not carved in stone. Applicant is a well-educated, hard-working, and successful person with a bright future. She may well be able to mitigate the concerns and obtain a security clearance with additional time and compliance with treatment. But it is simply too soon to make a favorable clearance decision.

The evidence here justifies current doubts about Applicant's judgment, reliability, or trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.⁴¹ In particular, I gave Applicant credit for her academic achievements, her good employment record, her volunteer activity, and the substantial evidence of her good character. I have also considered that her longstanding history of mental-health issues is not something that she chose to undertake, and I have empathy for her and anyone else struggling with mental-health problems. Although these matters weigh in her favor, they are not enough to mitigate and overcome the security concerns. Based

⁴⁰ Tr. 174–176.

⁴¹ AG ¶ 2(a)(1)–(9).

on the evidence before me, Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline I:	Against Applicant
Subparagraphs 1.a–1.p:	Against Applicant

Conclusion

In light of the record as a whole, 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.

Michael H. Leonard
Administrative Judge