



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-09346

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Erick V. Munoz, Attorney At Law

December 7, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on October 27, 2006. (Government Exhibit 1). On May 9, 2012, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on July 23, 2012, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 10, 2012. A notice of hearing was issued on October 3, 2012, scheduling the hearing for October 17, 2012. The matter was rescheduled for November 7, 2012. At the hearing the Government presented seven exhibits, referred to Government Exhibits 1 through 7, which were admitted without objection. The Applicant called one witness and presented three exhibits, referred to as Applicant's

Exhibits A through C, which were admitted without objection. She also testified on her own behalf. The record remained open until close on business on November 27, 2012, to allow the Applicant the opportunity to submit additional documentation. The Applicant did not submit anything additional. The official transcript (Tr.) was received on November 14, 2012. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 33 years old and has a Bachelors Degree in Computer Science. She is employed by a defense contractor as a Software Quality Engineer, and is applying for a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline I - Psychological Conditions). The Government alleges in this paragraph that the Applicant is ineligible for clearance because her emotional, mental and personality conditions can impair her judgment, reliability or trustworthiness and her ability to properly protect classified information.

The Applicant admits allegations 1.(b), 1.(e), 1.(f), and 1.(g) and denies allegations 1.(a) and 1.(d). She admits in part and denies in part allegation 1.(c), as set forth in the SOR under this guideline. With respect to the allegations she denied, she provided explanations. The Applicant began working for her current employer, a major defense contractor, in 2006.

In 2005, prior to being hired by his current employer, the Applicant was hospitalized for the first of at least six hospitalizations for a mental condition diagnosed as Schizoaffective Disorder with a bipolar feature.¹ (Government Exhibit 3.) It was about this time that she began working as a Software Engineer and living on her own. She testified that the mental condition she suffers from means different things to different people. For her, it manifests in an overwhelming sense of fear. (Tr. p. 53.) She may also speak incoherently, have delusions and hear voices. She believes that if she stays on her medication, she can continue to hold a job, live independently and be high functioning. The Applicant is genetically predisposed to mental illness as she has a family history of schizophrenia and bipolar disorder. (Tr. p. 124.)

¹ The essential feature of Schizoaffective Disorder is an uninterrupted period of illness during which, at some time there is a Major Depressive, Manic, or Mixed Episode concurrent with symptoms that meet Criterion A for Schizophrenia. During the same period of illness, there are delusions, hallucinations for at least two weeks in the absence of prominent mood symptoms. Bi polar type applies if a Manic Episode or Mixed Episode is part of the presentation. Major Depressive Episodes may also occur. Other Criteria for Schiozoeffective Disorder with Bipolar features can be found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision, American Psychiatric Association.

In the past, her psychotic episodes have been triggered by causal events in life. In 2005, she thought that her cousins who were living with her were stealing from her. After being hospitalized and stabilized by medication, she saw a psychiatrist for her condition. It was recommended at that time that she go home and stay with her mother for the rest of her life. (Tr. p. 58.) The Applicant explained that she was sexually abused as a child and the memories of that trigger some things for her. She does not remember each time she had an psychotic episode, but she does recall the last time in 2010. She also remembers some complications in 2009. (Tr. p. 59.)

Since 2005, she has had great difficulty stabilizing her condition on medication and has gone through a litany of different anti-psychotic and mood regulating psychotropic medications to find which works best for her. Medical records reveal that in 2005 the Applicant was taking Geodone and it did not work. It was exhibiting symptoms that she found hard to live with. She complained of breast discharge, weight gain, sleeping problems and her mental health symptoms had not gone away. She subsequently stopped using it, as the side effects were too intense, and she was prescribed another drug.

In 2009, the Applicant was hospitalized several times for psychosis. Medical records reveal that her medication was not working well, as she was not sleeping well and it was hard for her to function. (Tr. p. 60.) She discontinued taking her prescribed medications without the consent of her mental health professional. She explained that she missed her appointment with her psychiatrist. (Government Exhibit 3.) She experienced auditory hallucinations, insomnia, psychosis and dysfunctional behavior. Once hospitalized she was eventually stabilized on medication. It was on this occasion that she was diagnosed with Schizoaffective Disorder bipolar-type. Her treatment plan was to continue with individual and group therapy. She was also placed on a new medication that seemed to work better for a while. (Government Exhibit 3.)

In 2010, there was a triple-homicide in the Applicant's apartment complex. This violent crime triggered another psychotic episode and again she was hospitalized and eventually stabilized on medication. Again, she experienced auditory hallucinations and psychosis. She had difficulty managing voices in her head. She testified that she heard her ex-boyfriend's voice telling her to stay away from other men. (Tr. p. 107.) She also believed that people were coming to kill her, and that she must drive to the state line. (Government Exhibit 3.) The medical records reveal that she was noncompliant with her medication. They also indicate that in regard to some of her medication, she ran out. At that time she was deemed a danger to herself. (Tr. p. 69, and Government Exhibits 4 and 5.)

Medical records of the Applicant dated February 2010, also indicate that she attempted suicide by overdosing on medication about ten years earlier. (Government Exhibit 3.) The Applicant disagrees with the medical records. She stated that she was going through a bad break up with her boyfriend at the time, but that she never attempted suicide. She does admit to having had a suicidal thought. (Tr. p. 67.)

The Applicant testified that her mental illness requires ongoing mental health treatment with both a therapist and psychiatrist. She normally sees her therapist once or twice a month. From June 2009 through February 2011, the Applicant saw her therapist for her mental illness. It was her therapist's opinion that, "the Applicant had a condition that could impair her judgment, reliability, or ability to properly safeguard classified national security information." (Government Exhibit 4.)

From March 2010 through February 2011, the Applicant saw her psychiatrist for her mental illness. At some point, she told her psychiatrist that she believed that she could telepathically communicate with a former co-worker whom she became obsessed with. The coworker filed harassment charges, and the Applicant left the company for that reason. (Tr. p. 108.) In reference to the Applicant's condition, her psychiatrist stated that, "her condition is a chronic illness that can have episodic exacerbations and can have breakthrough symptoms and there is significant potential for this illness to impact her reliability and judgment." (Government Exhibit 5.)

In April 11, 2012, the Applicant was evaluated by a clinical psychologist, at the Government's request. It was the Government psychologist's opinion that, "the Applicant's history was one of inconsistent compliance with treatment, in which the result of her noncompliance has been consistently destabilizing with recurrent psychotic thinking and paranoid delusions." (Government Exhibit 2.) Based upon that history and her statements during his evaluation, he further stated that he had, "identified multiple factors making her unlikely to consistently comply with her prescribed medication in the future." (Government Exhibit 2.)

A treatment evaluation from the Applicant's therapist dated June 28, 2012, states that, "the Applicant is well aware that she must comply with medication. Her increased understanding of how to manage her condition will most likely prevent her from any future hospitalizations." She further states that, "since her last hospitalization, the Applicant has quit smoking, run a marathon, and is currently in a position for a promotion at work." It is her therapist's belief that the Applicant does not pose a threat to national security, since her mental health is stable. (Applicant's Exhibit C.)

The Applicant testified that her stability and mental health is dependent on taking her medication. (Tr. p. 98.) Since 2010, she has been taking Geodone, a medication she had tried a few years earlier, without success, and a sleeping aid, as needed, to prevent her psychosis. She is currently taking 100 milligrams of Geodone which seems to be working. (Tr. p. 127.) She states that she does not like to take the sleeping pills because it causes memory problems. (Tr. p. 127.) In the event that she runs out of medicine or it stops working for some reason, she will experience psychotic episodes.

Presently, the Applicant has taken a break from therapy which is not uncommon for her. (Tr. pp. 90-91.) She stopped seeing her psychiatrist and therapist about two months ago. She plans to start treatment again and see a psychiatrist and therapist on a regular basis. However, at this time she is not sure if she will stick with her most recent psychiatrist or seek out another.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for a security clearance because she engaged in conduct involving questionable judgment, lack of candor, dishonesty or an unwillingness to comply with rules and regulations that can raise questions about an individual's reliability and trustworthiness and ability to protect classified information.

The Applicant completed a security clearance application dated October 27, 2006. The Government alleges that the Applicant falsified material facts in response to Question 21 of the application. Question 21 asked the Applicant if in the last seven years, had she consulted with a mental health professional (psychiatrist, psychologist, counselor, etc) or had she consulted with another health care provider about a mental health related condition. The Applicant answered, "YES", but failed to provide any of the mental health professionals or providers, including the hospitals that provided her treatment, beginning in 2000. (See, SOR.)

The Applicant submitted responses to interrogatories from DOHA signed on February 21, 2011. The Government alleges that the Applicant falsified material facts in response to questions in the interrogatories. Specifically she was asked to identify any counselors, medical professionals or institutions from whom she had received mental status, mental health, or psychiatric evaluation, treatment or counseling. The Applicant identified only one hospital. In fact she had treatment in at least three hospitals.

The Applicant submitted responses to interrogatories from DOHA signed on August 11, 2011. The Government alleges that the Applicant falsified material facts in response to questions in the interrogatories. Specifically, she was asked to identify any counselors, medical professionals or institutions from whom she had received mental status, mental health, or psychiatric evaluation, treatment or counseling. The Applicant identified only one and no others. In fact she has had several mental health providers.

The Applicant testified that she thought that she had listed all of her mental health treatment, although she does not remember all of it. She signed the medical release forms and thought the Government would have access to all of her records. She did not intend to hide anything from the Government. (Tr. pp. 73-86.)

The Applicant's second cousin testified. She is a registered nurse, who has known the Applicant from the age of twelve to sixteen years old, and then reconnected with her after college. She is very close to the Applicant and considers her to be trustworthy and responsible. She would have no problem allowing the Applicant to babysit her children. She is aware of the Applicant's illness and understands that once she stabilizes on her medication she has no problems. (Tr. pp. 23-40.)

The Applicant testified that to help her illness, she tries to stay healthy and fit. She exercises and takes vitamins. She also ran a marathon. She has had no problems at work related to her mental condition. In fact, she had been doing well on the job and is up for a promotion. When she had a psychotic episode in the past, she went to the hospital. She tells her employer that she is not feeling well and that she needs to take time off. She takes either sick leave or vacation time and has never had a problem with

that. (Tr. p. 65.) She further states that she would never jeopardize the national security for her own benefit. (Tr. p. 66.)

The Applicant's work performance appraisal for the period from January 2011 through December 2011 is favorable. It reflects that she either "meets" or "exceeds expectations" in every category, except one. In the remaining category she received a rating of "far exceeds expectations." (Applicant's Exhibit A.) She received an award for her outstanding work performance in October 2012. (Applicant's Exhibit B.) She has never been reprimanded or disciplined for any reason. (Tr. p. 44.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guidelines. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline I - (Psychological Conditions)

27. *The Concern.* 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.

Conditions that could raise a security concern:

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;

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;

29.(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.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* 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.

Condition that could raise a security concern:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question,

posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline I (Psychological Conditions) and under Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's questionable psychological conditions has a direct and negative impact on her suitability for access to classified information.

The Applicant obviously failed to provide all of the names of the mental health professionals and providers that have treated her for her mental health condition on her security clearance application and in response to interrogatories. I do not believe, however, that she intended to conceal this information from the Government for any sinister reason. From her testimony, I glean that she thought that by signing the medical release forms, which she did, the Government would have access to all of her medical records and would identify all of the mental health professionals, providers and hospitals she received treatment from. She now realizes that it was her responsibility to provide this information in response to the Government’s questions. She was careless

in answering the questions, but not intentionally deceitful. I find that the Applicant did not deliberately conceal material information from the Government on her security clearance application or in her responses to interrogatories in regard to questions about her mental health treatment. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

The Applicant has a heavy burden to meet in order to be eligible for access to classified information when she suffers from a chronic psychological illness. Over the past seven years, a number of competent mental health professionals have evaluated, diagnosed and treated the Applicant's mental condition, known as Schizoaffective Disorder with bipolar features. Now, the question to be addressed is whether the Applicant has emotional, mental or a personality disorders, which can cause a significant defect in her psychological, social, and occupational functioning that may adversely affect her ability to properly safeguard classified information. Clearly the Applicant's mental condition poses a security risk. The medical professionals that have evaluated the Applicant, including therapists, psychologists and psychiatrists, have indicated in various ways that the Applicant's psychological problems could cause a significant defect in functioning, which indicates a defect in judgment, reliability, and stability.

Applicant's mental illness is only stabilized by medication. Her illness is not in remission, but is full blown, and can be brought on by causal events if she misses her medication. The nature of the illness is chronic and continuing. Applicant is taking her medication at this time, and has been adjusting the medication to find its best results. Presently, she believes that she has her condition under control. However, her own therapist and treating psychiatrist, as well as the Government psychologist after evaluation, have a different opinion. Although they arrive at their conclusions differently, each of them believe that her condition could impair her judgment, reliability or ability to properly safeguard classified information. The possibility exists that she could stop taking her medication for whatever reason, as she has done in the past. To reiterate the opinion of her psychiatrist, given her history, "multiple factors were identified making her unlikely to consistently comply with her prescribed medication in the future." Furthermore, "episodic exacerbations can have breakthrough symptoms and there is significant potential for her illness to impact her reliability and judgment." Considering this evidence in totality, the Applicant's mental condition demonstrates an emotional, mental, and personality condition that can impair judgment, reliability and trustworthiness and can adversely affect her ability to protect classified information.

Under Guideline I, Psychological Conditions, Disqualifying Conditions 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*, 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*; and 29(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* apply. None of the mitigating conditions are applicable.

There has been no evidence presented in mitigation significant to override the Applicant's heavy burden in this case. Applicant has not met her burden of demonstrating that her psychological condition does not raise a security concern, and Guideline I is found against the Applicant.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Considering all of the evidence presented, it does not come close to mitigating the negative effects of her psychological condition and the impact that it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR. Paragraph 2 is found for the Applicant.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2: For the Applicant.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge