



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-11123
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kathryn D. MacKinnon, Esq., Department Counsel  
For Applicant: *Pro se*

05/10/2013

**Decision**

LYNCH, Noreen A., Administrative Judge:

On January 4, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline I (Psychological Conditions) and Guideline E (Personal Conduct). 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 her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case to Applicant on March 14, 2013. Applicant received the complete file of relevant material (FORM) on March 22, 2013, and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. The FORM consisted of 8 documents. Applicant submitted a timely response. The case was assigned to me on April 26, 2013. Based on a review of the case file, the eligibility for access to classified information is denied.

## Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.a through 1.c, but denied the SOR allegations under ¶¶ 2.a. through 2.e. Applicant is 28 years old. She has never married and has no children.<sup>1</sup> She completed high school in June 2003. Applicant worked in a series of short-term jobs in various settings before her current job. Applicant has been employed with her current employer since July 2010. This is her first application for a security clearance.

The record notes that Applicant has a history of addictions as well as a history of paranoia, psychotic symptoms, and emotionally unstable behavior. She has been diagnosed with Schizophrenia, paranoid type; History of Methamphetamine Abuse, History of Cocaine Abuse, and History of Marijuana Abuse. (Item 7) Applicant has been treated with a variety of prescribed medications including risperdal, lithium, xanax, wellbutin, effexor, and rozerem. During periods of extreme agitation, Applicant received seroquel, klonopin, and ativan. As early as 2007, Applicant was hospitalized for an overdose of oxycontin. In 2009, she was hospitalized for a suicide attempt. Applicant was hospitalized in 2011.

Clinical progress notes from August 2007 until October 2007, describe Applicant's substance abuse treatment for heroin and oxycontin. In 2007, she was in a residential treatment center after being hospitalized for an overdose of pain killers and cocaine. During the 90-day stay, she attended Alcoholic Anonymous (AA) meetings twice a week. According to an October 22, 2007 clinical note, Applicant was struggling with emotions. She quit her job due to stress and explained that she has had five jobs. After an abortion, she stated that she hit "rock bottom." She reported depression and social anxiety. She had not engaged in any psychotherapy, but had tried many antidepressants. She reported using drugs to put her to sleep.

A May 24, 2009, psychiatric admission report detailed Applicant's first known psychiatric hospitalization. Applicant complained that she was hearing things. Her mother brought her to the emergency room because Applicant was paranoid and depressed. A long history of polysubstance abuse and dependence, most recently with heroin and methamphetamines was identified. She denied suicidal feelings. Applicant was diagnosed with methamphetamine induced psychotic disorder, substance abuse disorder, methamphetamine dependence, and heroin dependence. Applicant was not on prescribed medication. Applicant noted that she had chips in her head. The prognosis was fair to poor.

Applicant was readmitted in October 2009 to the same inpatient psychiatric unit in the hospital. Her chief complaint was about the chip implanted in her brain. She was still using meth and heroin. She was not compliant with prescribed medications. Applicant was discharged after two days. The treatment team noted that Applicant, after a medication regime, showed enough improvement to be safely discharged to a less

---

<sup>1</sup>Applicant did give birth to a child, but put the child up for adoption. She was 20 years old and started using drugs more heavily after the adoption was complete.

restrictive environment. The treatment team prescribed medications and a followup plan to include outpatient treatment.

When Applicant submitted a security clearance application (SCA) in August 2010, she disclosed that she received mental health treatment or counseling in May 2009. (Item 4) She also acknowledged in the SCA that she illegally used drugs in the last seven years from approximately May 2003 until May 2009. She specifically noted that in 2007, she used oxycotin, cocaine, and meth. Applicant further noted that she received counseling in 2007. She did not list her hospitalization in 2009 (emergency admission for suicide attempt).

As part of the security background investigation, Applicant was interviewed in September 2010. (Item 5) She explained that she had used drugs several hundred times from 2003 until 2009 and relapsed in 2009 at a party. She noted that she used heroin and meth. She noted that she had been diagnosed with "having a chemical imbalance in her brain" which caused depression. She noted her use of oxycotin. She also recalled that she used marijuana in 2003 until 2008. She noted that she was fired from one job due to her drug use.

A January 2011 clinical report noted that Applicant was diagnosed with acute psychosis. She believed she was the President of Iraq. She still complained about her head and the chip that was implanted. She had not been receiving outpatient treatment. The report indicated that Applicant was aggressive and assaultive with her parents.

Clinical reports dated February and March 2011, depict Applicant as denying depression or confusion. She does not agree with a diagnosis of schizophrenia. She admits to auditory hallucinations. In March 2011, she was compliant with her medications. She also attended small group meetings. The multi-disciplinary hospital team recommended continued stay to stabilize psychotic symptoms. The record reflects that Applicant was discharged on March 31, 2011. The discharge treatment plan required followup outpatient therapy and medications.

A September 2011 medical management progress note described Applicant as gainfully employed as a chemical supply technician. Dr. S noted that Applicant was inconsistent with her medications. He noted that she struggles with depression. He assessed Applicant as stable.

In October 2011, Applicant was admitted to the hospital in crisis. She was hearing voices and reported delusions about a camera monitoring her behavior. She reported self-medicating with alcohol. Dr. S.'s assessment reflected that Applicant was working a swing shift and that this structure may have contributed to increasing symptoms. The diagnosis was schizophrenia, paranoid type. In November 2011, she was discharged.

Dr. S.'s medication treatment notes from May 2012, indicated that Applicant continues to hear voices that threaten her. She reports that she sometimes awakes at night, and that her muscles are twisted in her neck and her back and she feels like she

is being raped. In sum, she has ongoing auditory and tactile hallucinations. Applicant did not followup with the adjunctive treatment that Dr. S had recommended. The specific treatment was not noted in the report. (Item 7a)

On November 15, 2012, a clinical psychologist, Dr.K, interviewed Applicant to assess her suitability for a security clearance. He described Applicant as open and compliant with the testing process. Applicant's affect was normal throughout the interview. Applicant stated that she had been off any illegal drugs for more than one year. She described herself as still suffering from anxiety, but she used deep breathing exercises to cope with the anxiety. She still heard voices but described them as a nuisance. Applicant admitted that she has episodes about twice monthly when "somebody tightens all the muscles in her back and neck and she is concerned that she has a computer chip in her head." Applicant described her treatment with Dr.S. She currently takes medication for anxiety (Zyprexa 40mg, and Xanax 1mg twice a day).

Dr.K administered two clinical assessments. The Minnesota Multiphasic Personality Inventory-2 (MMPI II) resulted in an invalid profile. Dr.K noted that Applicant attempted to present herself in an excessively favorable light, and the scores obtained would under represent the degree of pathology that may be present. The report noted that individuals with this type of profile are most reluctant to change their self-perceptions and are highly unlikely to respond to psychological interpretations and interventions. Dr.K noted that Applicant's mother, who was present, stated that Applicant is "smart enough to look normal for a while." (Item 8) According to the Rorschach test, the initial part of the protocol appeared to be generally normal. Dr.K described Applicant's perceptions as limited and constricted. He explained that as the protocol progressed, Applicant's responses became more disorganized, and the content appeared more aggressive and fear based.

Dr.K concluded that based on the clinical interview, assessment instruments, and self-report, Applicant appears to be in a fragile level of adjustment. Under any type of interpersonal stress, she would be likely to decompensate over time and have difficulty maintaining an organized thought process. Applicant works in a low stress job and has maintained that status for one year. However, her work history shows that she has held short-term employment in various settings. She may be changing jobs frequently to avoid too much pressure. Given her past history of drug use and hospitalizations, any drug use would cause severe decompensation that would be accelerated. Dr.K noted that Applicant's continued belief that she has one or more computer chips implanted in her brain, and that periodically someone controls her body muscles, make her vulnerable to psychotic flare-ups. Her diagnosis is Schizophrenia (non-acute). Her overall prognosis remains guarded given a past history of severe breakdowns and hospitalizations, extreme acting out including drug use, and her current level of social isolation and dependence on her parents. Dr.K is concerned that Applicant is not involved in any outpatient therapy or other forms of treatment. To her credit, she is motivated to seek a more challenging level of employment, but she may be underestimating her ability to cope with stress, pressure, and function in any type of demanding environment. If Applicant maintains her current level of functioning and

stable behavior, her prognosis could be upgraded from guarded to fair after another year. (Item 8)

The record does not contain any treatment reports after the above-referenced November 12, 2012 clinical assessment. Applicant did not submit any treatment documentation in response to the FORM. In her response to the FORM, she noted that the past four years have been life-changing ones. She reports that she no longer uses illegal drugs and feels stabilized on her medication for schizophrenia.

In response to Section 21 of her August 6, 2010, security clearance application, Applicant answered "Yes." She listed her May 2009 treatment. She failed to list her 2007 inpatient drug abuse treatment in response to Section 21, but she did list it in Section 23 of the same security clearance application. In response to Section 23: Illegal Use of Drugs or Drug Activity in the last seven years, Applicant listed various drugs that she used from 2003 until 2009.

During the 2010 OPM interview, Applicant acknowledged her mental health issues, but she did not specifically mention schizophrenia. She was candid about her problems that included "a chemical imbalance." Applicant mentioned schizophrenia in response to DOHA interrogatories, dated May 25, 2012. (Item 6)

Applicant responded to the DOHA 2012 interrogatories, and listed three drugs that she used until 2007. Following that question, Applicant answered "No" to the question as to whether she had used any illegal drugs since 2009.

Applicant was adamant that she did not give fraudulent information or intentionally not disclose information concerning her use of illegal drugs. She states that she has a difficult time remembering all dates and times, but she gave all the information to the best of her knowledge. She is dedicated to staying healthy by not using drugs and alcohol and complying with medication.

## **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>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</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>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</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>7</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:

---

<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

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 medical record shows that she has a history of drug induced psychiatric illness. She admitted the allegations under Guideline I. She has been diagnosed throughout the years with acute psychosis, schizophrenia, depression, methamphetamine induced psychotic disorder, heroin dependence, and bipolar condition. In 2007, Applicant was admitted to a drug rehabilitation center for an overdose. She was hospitalized in 2009 for a suicide attempt and in 2011 for auditory hallucinations. Applicant has been prescribed a wide range of medications, but, at times, she has failed to consistently take a particular recommended medication. She has not had consistent outpatient therapy. In 2012, Applicant was diagnosed with schizophrenia. She reported at that time, she still heard voices. 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 continues to have psychiatric symptoms, including auditory hallucinations. She has a current diagnosis of schizophrenia. She believes she has a computer chip in her head. She has received some inpatient drug abuse therapy and some inpatient psychiatric therapy when hospitalized in 2009 and 2011. She has not had consistent clinical outpatient treatment or therapy. She does report for medication checks every three months. Dr.K, the psychologist, concluded from his 2012 clinical assessments that Applicant is in a fragile state of adjustment. Given her continued beliefs, she is vulnerable to psychotic flare-ups. Applicant has been prescribed many medications, but, at times, has not been compliant. Applicant did not provide a rebuttal to the 2012 mental health evaluation. Dr.K. recognizes her motivation, but his prognosis remains guarded given the past history of breakdowns and hospitalizations. He is concerned about her ability to cope with stress, pressure, and function in any type of demanding environment. He concludes that if Applicant is able to maintain her current level of functioning, her prognosis could be upgraded from guarded to fair after another year. Applicant has not submitted evidence that would mitigate the concerns under this guideline. None of the mitigating conditions apply. I find that she has not mitigated the security concerns under Guideline I.

### **Guideline E, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or



similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from her 2010 security clearance application, when she failed to list additional mental health treatment in 2009, and her last drug use in May 2009. This information is material to the evaluation of Applicant's trustworthiness and honesty. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.

Applicant denies giving any fraudulent information concerning her emotional and mental health on her SF-86 which she completed in 2010. She also denies providing any false or misleading information concerning her past drug use on the 2010 security clearance application or during her 2010 interview. She noted that she used drugs until 2009. She listed treatment from 2007 and 2009. The fact that she did not list every diagnosis that she ever received does not indicate that she intentionally falsified. In her 2010 OPM interview, she was candid about her drug use with various illegal drugs from 2003 until 2009. Her response to questions in the 2012 DOHA interrogatories listed three drugs with uses until 2007. The next question on the 2012 DOHA interrogatories asked if she had used any illegal drugs since 2009, she answered "no". Thus, she acknowledged that she had used until 2009. She answered questions to the best of her ability. She put the Government on notice about the relevant issues. She did not list everything that was in detailed medical notes from her file, but that does not prove that she intentionally provided misleading or false information at any point in the security process. She admitted that she has a difficult time remembering exact dates and times from 2003 until 2009. She did not falsify or mislead the government.

In response to Section 23, she disclosed her past drug use and noted that it occurred between 2003 and 2009. She also listed a number of drugs. She noted treatment in 2007. Applicant answered in the affirmative to Section 21 concerning her emotional and mental health. She reported her 2009 treatment. In her 2010 OPM interview, the notes report that she was interviewed for issues relating to financial difficulties and drugs. She stated that she was diagnosed that she had a "chemical imbalance". Applicant revealed that in 2007 she almost died from an overdose of drugs. The interview notes reveal that she talked openly about all the drugs that she had used up to 2009. Applicant did not intentionally falsify information during the security process. She has mitigated the personal conduct security concerns under Guideline E.

## 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 28 years old. She has worked for her current employer since 2010. This is her first application for a security clearance. She is motivated to upgrade her employment by obtaining a security clearance. She was honest about her history of drugs and mental health issues. She discussed her hospitalizations and her symptoms. She agreed to the evaluation in November 2012 as part of the security clearance process. She is trying to change her life. She has determined that she will not use illegal drugs. She is usually compliant with her medications.

Applicant's long history of mental health issues is not in dispute. She has recognized her illness and is trying to change her life. She has had some inpatient therapy. However, she still reports hearing sounds and talks about the computer chip in her head. This was described in the 2012 clinical assessment. Applicant did not present any later clinical information to refute the 2012 clinical evaluation. She has a diagnosis of schizophrenia. Dr.K confirmed that Applicant is still vulnerable to psychotic flare-ups. He expressed concerns about her lack of outpatient treatment or therapy. He is also concerned about her ability to cope with stress. The psychologist noted that despite her motivations, Applicant's prognosis is guarded. Applicant did not present any documentation from a treating physician or therapist to refute or update the 2012 clinical report. Applicant has not met her burden in this case under Guideline I. She has mitigated the concerns under the personal conduct guideline for the reasons discussed under that guideline. 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.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.e:	For 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.

---

NOREEN A. LYNCH.  
Administrative Judge