



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12683
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

04/16/2014

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline I, psychological conditions. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On December 13, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Appellant answered the SOR on January 6, 2014. Department Counsel requested a hearing. The case was assigned to me on March 7, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2014. I convened the hearing as scheduled on April 7, 2014, by video-conference. The

Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A through E, and they were admitted without objection. DOHA received the hearing transcript (Tr.) on April 15, 2014.

### **Findings of Fact**

Applicant admitted both allegations in the SOR with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. She is a high school graduate and is one credit from receiving her bachelor's degree. She intends on completing the class this summer when the course is offered. She was married from 1999 to 2003 and from 2004 to 2011, both ending in divorce. She has two children ages ten and seven. Applicant served in the Navy from 2001 to 2006, attaining the rank of E-5. She was honorably discharged. She has never held a security clearance.<sup>1</sup>

In 2003, after the birth of her second child, Applicant suffered post-partum depression. She was treated while on active duty. She had recurring symptoms in 2005. She was later diagnosed with bipolar disorder and in 2008 with paranoid schizophrenia. She has been treated with medication for these disorders.<sup>2</sup>

Applicant sought treatment in 2011 because she had a feeling that someone was following her and she was becoming increasingly more paranoid. She also felt like someone was watching her. Applicant reported to her psychiatrist, that she had been hearing other people, and she could not understand what they were saying, but she would occasionally answer them. She felt, at the time, her symptoms were out of control. Her doctor diagnosed her with paranoid schizophrenia, with acute exacerbation, and placed her on medication.<sup>3</sup>

As part of the security review process, DOHA requested a psychological evaluation by a mental health professional retained by the government. The certified psychologist diagnosed Applicant with a psychotic disorder and a schizoaffective disorder. She continued to experience auditory hallucinations and paranoid ideations. The report noted that Applicant struggles with her symptoms. Applicant indicated that she dealt with the symptoms by pushing through in order to get her work done and care for her children despite her psychiatric problems. The psychologist noted that she clearly suffers from serious psychiatric problems. He opined that "given the chronicity and severity of her illness it is possible she could experience periods of

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<sup>1</sup> Tr. 26-27, 32, 38-39.

<sup>2</sup> Tr. 27, 39-41.

<sup>3</sup> Tr. 28-31, 41-42; GE 3.

decompensation during which she would be more cognitively impaired.” This could adversely affect her judgment and/or reliability in the future. He further opined that Applicant should remain under psychiatric care, continue taking her medications and seek individual counseling.<sup>4</sup>

In a letter provided from the licensed medical health counselor (LMHC) who works with Applicant’s doctor, she confirmed Applicant began individual mental health therapy under her doctor’s care in January 2014. Her doctor provided a letter stating that she has been diagnosed with schizoaffective disorder and she remains stable.<sup>5</sup> Her LMHC noted that Applicant has been compliant with her medical regimen and therapy and has remained stable. She stated:

She has made great strides combining all suggested self-help interventions including meditation, exercise, balanced diet, recreation, as well as her medication compliance and weekly therapy. Due to this on-going dedication to her treatment plan, she is a model patient and her functioning in all areas of her life is excellent.<sup>6</sup>

Applicant admitted that despite being under psychiatric care, taking her medications, and attending counseling, she continues to have symptoms. She stated that she understood that these symptoms could affect her judgment and reliability. Despite her mental health issues, Applicant stated she has been able to work full time, attend college, and take care of her children, as a single parent. Her parents visit her for six months during the year, and they help her. Her sister lives in the same city, and she speaks with her daily. She also has a few close friends who are aware of her mental health issues, and all of these people are available to her as a support system. She stated she understands the risk her diagnosis poses, but she has done everything to minimize it and functions well. She stated that she has a proven track record showing compliance with her treatment, and she is a reliable employee. She believes she has a strong moral character and has worked hard to control her illness.<sup>7</sup>

Applicant provided character letters including from her ex-husband, supporting her strong moral character. Despite her illness, her ex-husband still trusts her with their daughter. He has great confidence in Applicant and believes she has strived to move forward in her life and overcome her many challenges. She is doing everything to live a normal life.

Applicant provided other character letters describing her as loyal, reliable, dedicated, trustworthy, intelligent, strong, focused, patient, passionate, adept,

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<sup>4</sup> Tr. 24-26, 34-35, 41-42; GE 4.

<sup>5</sup> AE B.

<sup>6</sup> Tr. 36; AE A.

<sup>7</sup> Tr. 22-26, 31-32, 36, 42-44.

resourceful, motivated, responsible, a team player, a superior worker, and a role model.<sup>8</sup>

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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<sup>8</sup> AE C.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline I, Psychological Conditions**

The security concern relating to the guideline for psychological conditions is set out in AG ¶ 27:

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 on the basis of seeking mental health counseling.

I have considered all of the disqualifying conditions set out in AG ¶ 28 and the following two are potentially applicable:

- (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
- (b) an opinion of a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, and trustworthiness.

Applicant has been diagnosed by a psychiatrist and a psychologist employed by the U.S. Government with schizoaffective disorder. Despite being compliant with her medications and treatment plan, she continues to have audible hallucinations and paranoia that she is being followed. She appears to be an exemplary employee. She is attending college and raising two children as a single mother. However, the psychologist opined that her mental illness could adversely affect her judgment and/or reliability in the future. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions set out in AG ¶ 29. They are:

(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 is compliant in her treatment plan and despite doing everything she possibly can to control her mental disorder, she continues to have symptoms. Her condition is not temporary and continues to be a problem. She has been diagnosed with schizoaffective disorder by two mental health professionals. Both encourage her to remain in treatment, which she has done. Due to her condition, the psychologist opined that her judgment and reliability could be adversely affected in the future. I find Appellant's mental condition has not been resolved and security concerns remain. I find none of the above mitigating conditions fully apply.

### **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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline I in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

By all accounts, Applicant is an outstanding employee, a hard worker, a good mother, and a good student. She was incredibly honest and forthcoming about her mental diagnosis. She has been proactive in addressing what she described as “this unforgiving” condition. She manages to be a productive person despite this condition, by pushing through and working toward accomplishing her goals. However, despite her best efforts she still has symptoms of the disease that she cannot control and that could affect her judgment and reliability. Therefore, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant is unable to mitigate the security concerns arising under the psychological conditions guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge