

KEYWORD: Guideline H; Guideline I

DIGEST: There is substantial evidence, including Applicant’s own statement, to support the challenged finding that Applicant has bipolar disorder. Adverse decision affirmed.

CASENO: 12-00322.a1

DATE: 04/30/2014

DATE: April 30, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-00322
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Richard L. Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 10, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline I

(Psychological Conditions) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 17, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding that Applicant had been diagnosed with bipolar disorder and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 26-year-old high school graduate who has attended college. He has worked for a Defense contractor since June 2008. This is his first request for a security clearance.

Applicant's SOR alleged a history of substantial drug abuse, including the use of heroin, that extends back many years. Applicant received treatment for his drug problems on multiple occasions, the most recent being in February 2011. The following month Applicant was discharged to a halfway house, where he lived until January 2012. He has been drug free for well over two years. He attends Narcotics Anonymous (NA) and does not intend to use drugs again.

When he entered inpatient treatment in February 2011, Applicant's diagnosis was bipolar disorder and heroin dependence. Upon discharge, his diagnosis was heroin dependence and "bipolar (?)." Applicant testified that the doctor who treated him during a six-day detoxification in January 2011 continued to treat him until the following November, at which point the doctor decided to stop Applicant's medication. Applicant has not consulted a mental health professional since. Applicant stated that he attempted to contact this doctor but decided not to do so insofar as this person was not a Government psychiatrist. Applicant provided no corroboration from this doctor.

Applicant presented several character witnesses, including his father, a friend from high school, a co-worker, and his NA sponsor. They testified to Applicant's commitment to sobriety, his diligence and reliability, and his serious commitment to NA participation. Applicant also submitted four character affidavits attesting to his honesty, trustworthiness, and his having remained drug-free for two and a half years.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under both Guidelines,¹ clearing him under Guideline D. However, the Judge found that Applicant had not met his burden of persuasion regarding Guideline I. The Judge stated that he had given careful consideration to evidence of Applicant's diagnosis of bipolar disorder. He stated that Applicant failed to corroborate

¹The Judge found that Applicant's circumstances raised the Guideline I disqualifying condition contained at Directive, Enclosure 2 ¶ 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[.]"

his testimony that a doctor had told him he no longer required treatment for that condition. The Judge noted evidence that Applicant is no longer in counseling and stated that the record does not contain a favorable diagnosis by a mental health professional.

Discussion

Applicant challenges the Judge's finding that he had been diagnosed with bipolar disorder. We examine a Judge's findings to see if they are supported by substantial record evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012), quoting Directive ¶ E3.1.32.1.

The record contains voluminous copies of Applicant's medical records. Government Exhibit (GE) 2, Answers to Interrogatories. These records include a psychiatric discharge summary from a hospital, dictated and electronically signed by a named person identified as an M.D. This physician diagnosed Applicant as having "bipolar disorder, not otherwise specified." Psychiatric Discharge Summary, dated January 21, 2011. It is reasonable to conclude that a physician practicing in the behavioral health program of a hospital is a mental health professional within the meaning of the Directive. Moreover, in two clearance interviews, summaries of which are included in GE 2, Applicant stated that he had been treated for bipolar disorder,² and it is acknowledged in Applicant's answer to the SOR. He also testified to the same effect at the hearing.³ Tr. at 166. Considering the record as a whole, the challenged finding is based upon substantial record evidence.

Applicant takes issue with the Judge's application of the Guideline I mitigating conditions, stating that he did not consider the evidence of Applicant's many witnesses regarding his sobriety and his emotional stability. The Judge made detailed findings about Applicant's character evidence, acknowledging his "strong support system" and excellent work record. Decision at 11. Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-00723 at 3 (App. Bd. Feb. 4, 2014). Given the Judge's findings that Applicant was diagnosed with bipolar disorder and that he failed to corroborate his claim that he had been released from treatment, the adverse decision is supportable. Applicant's argument on appeal

²"[Applicant] was taken to the [Hospital] . . . [Applicant] was treated for bi-polar and opiate dependency. [Applicant] received counseling from [Doctor A] . . ." Summary of November 14, 2011, Interview at 2. "[Applicant] was asked if he has consulted with a health care professional regarding an emotional or mental health condition or was he hospitalized for such a condition in the last 7 years. [Applicant] listed yes . . . [Applicant's] doctor was [Doctor A] . . . [Applicant's] nature of counseling was he was diagnosed with bipolar disorder and is taking medication. He was in the psych ward." Summary of September 9, 2011, Interview at 2. The physician whom Applicant named in these interviews is the same one identified in the psychiatric discharge summary described above.

³"[Q]: What precipitated that event to get you into the hospital? [A]: I was suicidal and my girlfriend at the time called the police on me. And they took me to the hospital because that's the procedure. [Q]: Were you experiencing an overdose? Was there a concern at all? [A]: Withdrawal . . . [Q]: An what was their diagnosis; do you recall? [A]: I believe they diagnosed me bipolar, yes, sir. [Q]: And opiate dependence? [A]: Yes, of course." Tr. at 165-166.

constitutes a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 09-08295 at 3 (App. Bd. Feb. 6, 2012).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board