



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



In the matter of:

Applicant for Public Trust Position

)  
)  
)  
)  
)

ADP Case No. 14-01287

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2017

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct trustworthiness concerns, but he did not mitigate the psychological conditions trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On October 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines E (personal conduct) and I (psychological conditions). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 19, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 31, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns.

Applicant received the FORM on April 22, 2016. He responded with a letter that I have marked Applicant's Exhibit (AE) A. The case was assigned to me on December 12, 2016. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

### **Findings of Fact**

Applicant is 46 years old. He is seeking eligibility to hold a public trust position. He has a bachelor's degree, which was awarded in 1993. He attended graduate school, but it does not appear that he obtained a post-graduate degree. The most recent information available indicated that he had never married and he had no children.<sup>1</sup>

In 2008, Applicant sent a letter to his doctor with copies to the county sheriff and the FBI. He provided a copy of a computerized tomography (CT) scan of his head that was taken in 2007. The CT included a one-page report that indicated Applicant's history as: "36-year-old patient with visual and auditory hallucinations." The report concluded: "negative CT examination of the brain without contrast." Applicant wrote that the medical-imaging personnel found nothing pathologically wrong in the CT scan, but Applicant saw non-pathological pieces in the scan, which he concluded related to a neural network, with apparent monitoring of his thoughts and possibly his vision. He identified the components as a radio antenna, a camera behind the iris, and audio equipment. He felt that his eyes may have been replaced with a different set of eyes.<sup>2</sup>

Additional complaints in the letters included that there may have been an acid-containing substance being emitted into his nose through his head that, if left untreated by acid-reducing medication, caused auditory and visual hallucinations. He felt that individuals may have been pointing x-ray lasers or microwave lasers at him through his walls. He wrote that he was frequently being followed, and that certain people were "emitting an acid-like substance in public areas from their hands in their pockets or with use of cell phones." He felt their vehicles were "emitting acid-containing substances through their vehicle's exhaust." He felt that his canned food appeared to have been irradiated, and when he tapped on the cans, the sounds mirrored words such as "hate this country."<sup>3</sup>

Applicant was evaluated by a licensed psychologist at the DOD's request in November 2014. He acknowledged that he had hallucinations, which he believed were related to the implants in his head. He believed that his food could be tainted by toxins and radioactivity. He reported that he got rid of the antennas and batteries in his house, which had greatly reduced his concerns about the implants.<sup>4</sup> The psychologist's pertinent diagnostic impressions were:

---

<sup>1</sup> Items 2, 3.

<sup>2</sup> Item 4.

<sup>3</sup> Item 4.

<sup>4</sup> Items 5, 6.

AXIS I: 297.10 Delusional Disorder, 297.1 (Somatic and Persecutory Type)

AXIS V: GAF=65<sup>5</sup>

The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), subtypes delusional disorders by the predominant delusional theme:

**Persecutory Type.** This subtype applies when the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, maliciously maligned, harassed, or obstructed in the pursuit of long-term goals. Small slights may be exaggerated and become the focus of a delusional system. The focus of the delusion is often on some injustice that must be remedied by legal action ("querulous paranoia"), and the affected person may engage in repeated attempts to obtain satisfaction by appeal to the courts and other government agencies. Individuals with persecutory delusions are often resentful and angry and may resort to violence against those they believe are hurting them.

**Somatic Type.** This subtype applies when the central theme of the delusion involves bodily functions or sensations. Somatic delusions can occur in several forms. Most common are the person's conviction that he or she emits a foul odor from the skin, mouth, rectum, or vagina; that there is an infestation of insects on or in the skin; that there is an internal parasite; that certain parts of the body are definitely (contrary to all evidence) misshapen or ugly; or that parts of the body (e.g., the large intestine) are not functioning.

The Global Assessment of Functioning (GAF) scale ranges from 1 to 100. It is used to show psychological, social, and occupational functioning. A number between 60 and 70, with the lower number more severe, indicates:

**Some mild symptoms** (e.g., depressed mood and mild insomnia) **OR some difficulty in social, occupational, or school functioning** (e.g., occasional truancy, or theft within the household), **but generally functioning pretty well, has some meaningful interpersonal relationships.** (emphasis in original)

---

<sup>5</sup> Item 6. The psychologist used the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). The DSM-IV-TR has been replaced by the DSM-5. There are no significant differences in how the two describe delusional disorders or the somatic and persecutory subtypes.

The psychologist summarized:

[Applicant] has a history of somatic and persecutory delusions that have spanned the last twelve years. There are no indications of schizophrenic-type behavior. He denies prominent auditory or visual hallucinations. There were no indications of disorganized speech, disorganized behavior, or negative symptoms of schizophrenia during the evaluation. Although he has had these delusions for a period of time, they have had minimal impact on his occupational functioning and the impact that they have on his social functioning appears to be diminishing. There were no indications that these delusions are the result of substance use, medication, or a general medical condition. . . .

After reviewing the adjudicative guidelines for determining eligibility for access to classified information; it is my belief that [Applicant's] disorder does and will continue to interfere with his judgment, reliability, and trustworthiness. [Applicant] is suffering from somatic and persecutory delusions. He has had this problem for a number of years. It is considered a chronic condition and is unlikely to remit. The conventional treatment for a delusional disorder is psychotropic medication. [Applicant] has tried medication on at least one occasion. He reported that the medication made his condition worse. For individuals with somatic delusions, the side effects of psychotropic medication can have this effect. [Applicant] has chosen not to follow through with treatment to determine if there is a different medication that he might be able to tolerate and benefit from. It is also unlikely that individual psychotherapy would benefit him, given his certainty that what he is experiencing is real. Finally, there are incidences where individuals with this diagnosis decompensate when under stress. As such, it is possible that dealing with classified information would exacerbate his condition, causing him to be more bizarre and increasingly unreliable.<sup>6</sup>

Applicant disputes some of the facts in the report, such as that he was hospitalized in 2008 and that he was arrested in 2002 and 2004 for driving under the influence of alcohol. He stated that he was hospitalized in 2002, not 2008. He admitted to being arrested in 2004, but "he was not shown to be under the influence of alcohol. [He] only accepted guilt to charges of that offense in order to minimize expenses from further proceedings in a court of law." He stated that he "was not arrested in 2002." It appears that he is correct that he was not arrested in 2002; he was actually arrested in 2000.<sup>7</sup>

---

<sup>6</sup> Item 6. The psychologist treated the evaluation as if Applicant was applying for a security clearance, when he is applying for a public trust position. The adjudicative guidelines for both are the same. However, the stress of "dealing with classified information" may be greater than the stress of dealing with sensitive information. I have given little weight to the last sentence in the conclusion.

<sup>7</sup> Items 1-3. Applicant's arrests were not alleged in the SOR and will not be used for disqualification purposes. They may be considered when assessing Applicant's credibility, when determining the applicability of mitigating conditions, and in the whole-person analysis.

Applicant wrote in his response to the SOR that the “[a]ntennas in the proximity of [him] have not affected his judgement, reliability, or trustworthiness, [and that his] yearly job performance reviews reflect this.” In his response to the FORM, he wrote that he provided x-rays from 2006 that “prove that there were objects shown to be implanted in [his] body.” He also disagreed with the psychologist’s conclusion, stating:

Applicant has acquired all of the medical and health support he has needed prior to the last 7 years, has overcome the emotional instability pertaining to his mother’s sickness and death in 2001-2002, is controlling any symptoms of the type of Delusional Disorder with over-the-counter health supplements, and has not exhibited any bizarre or unreliable behavior in recent years.

The SOR alleges that Applicant intentionally provided false information on his December 2012 Questionnaire for National Security Positions (SF 86), during two background interviews in 2013, and in his response to interrogatories when he did not report psychiatric treatment “in approximately 2005,” and his treatment and hospitalization in 2008. Applicant disclosed derogatory matters in his SF 86 and during his interviews, including his two DUI arrests. He convincingly stated that the hospitalization was in 2002, not 2008, and therefore did not have to be reported as beyond the seven-year window. The 2008 timeline was apparently taken from the psychologist’s report. I note that in 2008, Applicant was not living in the city where he was hospitalized, but he was in 2002. Applicant denied being treated in 2005, and “approximately 2005” may have been outside the reporting window.<sup>8</sup> There is insufficient evidence for a finding that Applicant intentionally provided false information during any of the occasions.

## **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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

---

<sup>8</sup> Items 1-3.

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 [sensitive] information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Guideline I: Psychological Conditions**

The trustworthiness concern 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 solely on the basis of seeking mental health counseling.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 28. The following are potentially applicable in this case:

(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 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.

Applicant's behavior was emotionally unstable and included delusions and hallucinations. A psychologist provided a diagnostic impression of delusional disorder, somatic and persecutory type, and that the "disorder does and will continue to interfere with his judgment, reliability, and trustworthiness." AG ¶¶ 28(a) and 28(b) are applicable.

AG ¶ 29 provides conditions that could mitigate trustworthiness concerns. The following are potentially applicable:

(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 gainfully employed, and the psychologist noted: "Although he has had these delusions for a period of time, they have had minimal impact on his occupational functioning and the impact that they have on his social functioning appears to be diminishing."

Nonetheless, I have significant unresolved concerns. The 2008 letter to the FBI was troubling and consistent with the psychologist's diagnostic impression of delusional disorder, somatic and persecutory type, as described in the DSM-IV-TR. While Applicant denied hallucinations in the last several years, there is no indication that he does not still believe in the delusions. None of the above mitigating conditions,

individually or collectively, are sufficient to alleviate psychological conditions security concerns.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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; and

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

There is insufficient evidence for a determination that Applicant intentionally provided false information on his SF 86, during two background interviews in 2013, and in his response to interrogatories. AG ¶¶ 16(a) and 16(b) are not applicable. SOR ¶¶ 2.a through 2.c are concluded for Applicant.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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.

Applicant is suffering from delusions. The psychologist wrote that “[a]lthough he has had these delusions for a period of time, they have had minimal impact on his occupational functioning and the impact that they have on his social functioning appears to be diminishing.” That is promising, but while the delusions persist, he is not a suitable candidate for a public trust position.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant refuted the personal conduct trustworthiness concerns, but he did not mitigate the psychological conditions trustworthiness concerns.

### **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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

---

Edward W. Loughran  
Administrative Judge