



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04052

Appearances

For Government: Chris Morin Esq., Department Counsel
For Applicant: *Pro se*

11/01/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline I, psychological conditions. Eligibility for access to classified information is denied.

Statement of the Case

On February 23, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on March 23, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2018. I convened the hearing as scheduled on August 15, 2018. The Government offered

exhibits (GE) 1 through 4.¹ Applicant and three witnesses testified. He offered Applicant Exhibits (AE) A and B. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on August 23, 2018.

Findings of Fact

Applicant denied the sole allegation in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He is a high school graduate. He served in the Army National Guard from 2003 to 2009 and was honorably discharged. He is not married and has no children. He has worked for his present employer, a federal contractor, since May 2015.²

Applicant completed his security clearance application (SCA) in August 2015. In it he answered "yes" about whether he had consulted a health care professional regarding an emotional or mental health conditions or was hospitalized for such a condition. He provided the dates of treatment or counseling as March 2014 to April 2014.³

Applicant was interviewed by a government investigator in August 2016. He disclosed to the investigator that in approximately early 2013 he began having memory issues that worsened progressively over time. It caused him to have difficulty functioning at work because he was unable to remember simple tasks, and he would become confused in the middle of a conversation. He sought medical assistance to determine the cause of his memory issues.⁴

Applicant disclosed to the investigator that in approximately March or April 2014, his medical doctor advised him to see another doctor to rule out psychological causes of Applicant's memory issues. Applicant said that he attended three to five evaluation sessions with doctor. Her credentials were not provided, but the purpose of the sessions were to evaluate his memory. He told the investigator that the doctor determined that his memory problems were not due to a psychological condition. Applicant told the investigator that he did not have any additional mental health counseling or treatment.⁵

Applicant further disclosed during his August 2016 interview that he was being treated by a neurologist for his memory issues. He believed he had visited this doctor about five or six times since January 2015. Applicant said he was not participating in any

¹ Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter.

² Tr. 17-19.

³ GE 1.

⁴ GE 2.

⁵ GE 2.

mental health counseling, but only neurological evaluation and treatment. He was prescribed a drug for his memory issues, which he took daily. Applicant researched the drug on the Internet and learned it was used to treat dementia associated with Alzheimer's disease.⁶

The investigator noted that Applicant had difficulty providing specific information during the interview. In particular, when discussing Applicant's financial history and issues. Applicant repeatedly told the investigator that because of his memory issues he was unable to recall details and specifics about his accounts.⁷

Subsequently, the Government requested and Applicant agreed to an independent psychological evaluation.⁸ An evaluation was conducted in October 2017 by a licensed psychologist. In the report, the psychologist noted that for over three years Applicant has had significant cognitive problems. The neurologist who treated Applicant from November 2015 to May 2016, previously reported Applicant was quite symptomatic and required further treatment. Applicant underwent a neuropsychological evaluation in September 2016, which strongly recommended a psychiatric evaluation to rule out any contributory psychopathology. Applicant had reported a history of depression to multiple physicians in the past, and it was unclear if he had received sufficient and consistent treatment to address his depression. The Government psychologist noted that Applicant's recent history of cognitive and psychological symptoms had caused significant impairment. Pursuant to medical documentation, the psychologist noted that Applicant complained of memory loss, confusion, disorientation, mood swings, sleep disturbances, tremors, and occasional falls. Applicant disclosed to the government psychologist that in 2014, his employer recommended he undergo medical evaluation due to observable performance issues including losing track of tasks, forgetting conversations that occurred less than 20 minutes prior, losing tools, and getting lost in the building in which he worked.⁹

As part of the Government psychologist's evaluation in October 2017, Applicant's psychiatric history was disclosed. It was learned that the doctor who evaluated him 2014, diagnosed him with a cognitive disorder and circadian rhythm sleep disorder. He was prescribed an antidepressant and sleep aid to help his issues. Despite this treatment, Applicant reported to the Government psychologist that he continued to have memory difficulties.¹⁰

In November 2015, Applicant had a neurological evaluation by a medical doctor and was diagnosed with moderate severity memory loss and was prescribed a cognition-enhancing medication commonly prescribed for Alzheimer's patients. Applicant reported

⁶ GE 2.

⁷ GE 2.

⁸ GE 3.

⁹ GE 4.

¹⁰ GE 4.

initial improvements, but then later reported worsening memory and work performance issues.¹¹ The Government psychologist stated in her report:

When interviewed, the consulting neurologist did NOT recommend [Applicant] for a position involving national security because his condition was not under control and could impact his judgment and reliability. Applicant has been followed by [neurologist] at [health clinic].¹²

Applicant's neurologist recommended a full psychiatric evaluation. Applicant continued to receive medication management. However, it was noted that Applicant's neurologist had left his practice, and Applicant needed to find another doctor.¹³

In September 2016, Applicant had a comprehensive neuropsychological evaluation by a Ph.D. at a memory health network. This doctor indicated an auditory/verbal learning disorder, and indicated that a cognitive disorder could not be ruled out. Findings were inconsistent with neurodegenerative disease. Based on Applicant's past history of issues, the doctor strongly recommended he seek individual counseling.¹⁴

During his October 2017 evaluation with the Government psychologist, Applicant reported his understanding for participating in the evaluation was related to his "neuro issues" and noted although "my logic centers are fully intact with no signs of degeneration, it's harder for me to recall memory" and "it takes a lot for me to pull it up."¹⁵ As a means of explanation, he told the psychologist "my secretary isn't filing things correctly."¹⁶ He reported that without medication, "I can't verbally talk or write and have trouble with words and even understanding what you're saying even if you were speaking slowly."¹⁷ He further told the psychologist, that without medication, "We wouldn't be having a conversation at all. I'd pause after 2-3 words, and there would no logical flow." Applicant confirmed during his testimony that if he does not take medication, it is extremely difficult for him to understand and choose the right words and form sentences.¹⁸

Applicant further reported during the October 2017 evaluation that he experienced moderate to significant functional impairment in occupation, social, community and daily

¹¹ GE 4.

¹² GE 4.

¹³ GE 4.

¹⁴ GE 4.

¹⁵ GE 4.

¹⁶ GE 4.

¹⁷ GE 4.

¹⁸ Tr. 28; GE 4.

living domains as a result of his memory impairment. He uses compensatory strategies daily to manage his responsibilities, to include his schedule, paying bills, and keeping track of essential items. There are mutual benefits for living with his mother with respect to reminders for financial management as well as cooking. He no longer cooks on the stove because he forgot he was cooking, walked away from the stove, and caused a grease fire. Applicant has restricted his community activities and primarily drives as necessary to work and appointments. He rarely drives at night and never while raining as he perceives stimulus overload and too much information for his brain to process. Applicant testified that since taking medication he no longer has these issues and the information provided was a historical statement. He stated that he still has problems driving at night because it is difficult to process what he is seeing to know whether he should take action. So for safety purposes he does not drive at night.¹⁹

Applicant told the psychologist that at work he has difficulty with cognitive flexibility should a task demand change as well as multitasking, and completing tasks quickly. He had difficulty grasping the big picture, even with medication. He reported difficulty with verbal and written communication and substitutes wrong words. He rarely catches an error unless brought to his attention. Applicant reported numerous other memory and cognitive issues to the psychologist. He stated that his current medication “boosts connectivity within the brain and gives me 85-90% of me.” Applicant testified that when his drug dose was increased from 5 milligrams to 10 milligrams, many of these issues went away. He further stated that after he had his evaluation with the Government investigator in October 2017, his dosage was increased.²⁰

The psychologist noted that Applicant reported his perceptions of the problem are:

[T]hat his symptoms are of a neurological basis and discounts the possibility any underlying psychological issue which lends credence to the potential for denial or minimization as [Applicant] reported no real interest in therapy or psychological evaluations as they have nor revealed anything substantial historically.²¹

Applicant testified and explained that every time when he was sent to a psychologist, each would conclude that his psychological conditions were due to his neurological issues and they all treated him for depression. Since he started medication, it has not been recommended he see a psychologist.²²

The Government psychologist reviewed the historical data, coupled with Applicant’s description of persistent and significant neurocognitive symptoms and

¹⁹ Tr. 28-30; GE 4.

²⁰ Tr. 30-31; GE 4.

²¹ GE 4.

²² Tr. 32-33.

diagnosed Applicant with “Unspecified Neurocognitive Disorder.”²³ She opined: in her October 2017 evaluation that:

Despite treatment with [drug name] a cognitive enhancing medication, [Applicant] continues to describe very significant neurocognitive symptoms and limitations although he reported his perception that his speech and functional abilities would be more severely impaired without the medication.²⁴

She noted that there is plausibility of a psychiatric overlay associated with his history and symptoms. Applicant reported to the psychologist that he was scheduled to have a new evaluation in December 2017. She noted that that evaluation may provide additional relevant diagnostic information as well as prognostic indicators.²⁵

The psychologist’s found that given Applicant’s medical history and self-reported cognitive and memory limitations that significantly impact his daily functioning, including occupational functioning, she stated that Applicant’s judgment, reliability, and decision-making are somewhat compromised. Applicant’s memory deficiencies affect his ability to process new and complex information. She further opined that these deficiencies are risk factors that could impact his ability to safeguard sensitive material. Based on the information, it is her opinion that Applicant’s “prognosis is guarded due to the intensity and duration of symptoms and functional limitations despite medication interventions.”²⁶

Applicant testified that in mid-2017 he began treatment with a new neurologist and the dose of his medication was recently increased. The medication is for cognitive memory disorders. He also take a sleep medication. He sees this doctor every six months. His last appointment was a month ago. Applicant stated that the doctor believes Applicant can take care of himself. Applicant admitted that without medication, he has extreme difficulty communicating. He said he has been on medication since 2015. He stated that many symptoms that he disclosed to the Government psychologist were historical and before he started taking his current medication. This is inconsistent with the evidence provided.²⁷

Applicant believes the medication he takes is working. He testified that he is compliant with his prescribed medication requirements and intends to remain so. He testified that in December 2017 he had a memory assessment evaluation, which was not done by his neurologist, but a psychologist to evaluate his cognitive function. He said the

²³ GE 4.

²⁴ GE 4.

²⁵ GE 4.

²⁶ GE 4.

²⁷ Tr. 21-27.

results of that evaluation indicated he has a steady cognitive function that is not degenerative. His verbal center is impaired, and he has some difficulty speaking, but it is non-degenerative. He said that under his current treatment, he has no current problems. He said he performs his job and there are no security issues. Applicant did not provide any independent evidence to corroborate his statements, to include a copy of the memory evaluation, his doctor's medical evaluation, a more recent diagnosis, or an updated prognosis from a medical or other health care professional since his October 2017 evaluation.²⁸

A coworker with whom Applicant has worked with for three years testified. She said he was an exceptional worker and can work through any problem. He has shown attention to detail. He has occasional gaps in memory, but nothing unusual or that a normal person would not experience. He is reliable, and she believes he will safeguard sensitive material.²⁹

Applicant's sister testified. She stated that Applicant's memory issues have improved over the past three years. Applicant is focused and motivated to do whatever he needs to do. Before his treatment, he had mood swings and was depressed. Since he has been on medication these have not occurred. She said his condition has vastly improved. She lived with Applicant from 2012 until 2014. She now visits him for several days about every two months.³⁰

Applicant's mother testified. She stated that Applicant was very different before he started medication. She said he takes his medication daily. She said although Applicant lives with her, he could live independently. They live together due to financial necessity. She has no safety concerns about Applicant.³¹

Applicant is described in a character letter from someone, who has known him for 14 years, as trustworthy and dependable. She stated that Applicant has been recognized for his outstanding work. Applicant received a certificate of appreciation from a commanding officer for his support and exemplary performance from March 17 through 24, 2018.³²

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating

²⁸ Tr. 33-38.

²⁹ Tr. 40-43.

³⁰ Tr. 44-48.

³¹ Tr. 49-52.

³² AE A, B.

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 national security eligibility will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 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 and an opinion, including prognosis, should be sought. No negative interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 28, and the following is potentially applicable:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

Applicant was evaluated by a licensed psychologist in October 2017 and diagnosed with an “Unspecified Neurocognitive Disorder,” and the psychologist found that his judgment, reliability, and decision-making are somewhat compromised. The psychologist determined that Applicant’s memory deficiencies affect his ability to process new and complex information. These deficiencies are risk factors that could impact his ability to safeguard sensitive material. Further, the psychologist found that based on the information provided, it is her opinion that Applicant’s prognosis is guarded due to the intensity and duration of symptoms and functional limitations despite medication interventions. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

(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 psychological/psychiatric condition was temporary, 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.

The evidence is insufficient to conclude any of the above mitigating conditions apply. I do not have a favorable prognosis from a duly qualified medical professional, or a recent medical opinion that Applicant's condition is under control, in remission, or has a low probability of recurrence or exacerbation. I do not have evidence, other than Applicant's testimony, that his condition is readily controllable with treatment. Applicant testified that he is compliant with taking medication for his condition, but I do not have evidence from a professional indicating there is a treatment plan in place, the specifics of the plan, how long he has been on it, and if he is compliant with the plan. I do not doubt Applicant is taking medication, and it has helped him, which shows he is amenable to treatment, but without independent corroborating evidence and a more recent than October 2017 opinion by a qualified medical professional acceptable to the Government, the evidence is insufficient to conclude the issues raised have been mitigated and are no longer a security concern.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 33 years old man. Several years ago he began having cognitive and memory issues. He sought treatment and is on medication. However, there is insufficient evidence that the alleged security concerns regarding Applicant's judgment and reliability have been mitigated. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline I, psychological conditions.

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
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Subparagraph 1.a:	Against Applicant
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Conclusion

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

Carol G. Ricciardello
Administrative Judge