



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



In the matter of: )  
 )  
----- ) ISCR Case No. 06-25152  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

September 10, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines I (Psychological Conditions), J (Criminal Conduct), and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted her security clearance application on July 9, 2004. On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines I, J, and E. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on April 28, 2008; answered it on the same day; and requested a hearing before an administrative judge. DOHA received the request on April 30, 2008. Department Counsel was ready to proceed on June 12, 2008, and the case was assigned to me on June 13, 2008. DOHA issued a notice of hearing on July 2, 2008, scheduling the hearing for July 23, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified on her own behalf, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. The record closed upon adjournment of the hearing. DOHA received the transcript (Tr.) on August 4, 2008.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of several definitions and diagnostic criteria set out in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). Without objection from Applicant, I took administrative notice as requested. Excerpts from DSM-IV are attached to the record as Hearing Exhibit I.

### **Findings of Fact**

In her answer to the SOR, Applicant denied the allegations, but she admitted some of the facts alleged in the SOR during the hearing. Her admissions are incorporated in my findings of fact.

Applicant is a 64-year-old administrative aide for a defense contractor. She has worked for her current employer since July 1988 and has held a clearance since February 1990.

Applicant was married in July 1964 and divorced in September 1967. She remarried in July 1971 and was divorced in August 1982. She had two miscarriages and gave birth to a stillborn son in December 1964. She graduated from college with a bachelor of science degree in 1997.

Applicant's 91-year-old father, a retired Air Force officer, submitted a letter identifying himself as a "proud parent" and describing Applicant's life as "exemplary" (AX A). A co-worker who has worked for the same employer for 26 years and known Applicant for about eight months described her as caring, considerate, and hard-working (AX B).

On January 28, 2005, Applicant entered a hospital near her home and place of employment. In her answer to the SOR, she stated she voluntarily entered the hospital because she was feeling sad and sleepy and suffering from an upset stomach. The intake summary states she was referred to the hospital by her therapist (GX 5 at 19). At the hearing, she testified she was referred by her therapist (Tr. 123).

The clinician who made the intake assessment at the hospital observed that Applicant's insight and judgment appeared to be impaired (GX 5 at 21). She was discharged from the hospital on February 28, 2005, with a diagnosis of major depressive disorder, recurrent, severe, with psychotic features; and anxiety disorder NOS (not otherwise specified) (GX 5 at 48). The discharge summary recites that Applicant found her work stressful, suffered from depression, appeared to have some paranoia, and had a pattern of having difficulty getting along with coworkers and effectively completing her job tasks for 8-10 years (GX 5 at 47-48). The prognosis was "somewhat guarded," because her thought processes and related illness were longstanding and Applicant was "reluctant to admit to some of the internal difficulties and to address them behaviorally" (GX 5 at 49).

In response to DOHA interrogatories, Applicant submitted a letter from the therapist who referred her to the hospital for treatment. The therapist stated that when she was treating Applicant, she observed no indications that Applicant would do anything to risk compromising sensitive information. On the contrary, she observed with Applicant reflected "rigid loyalty to protocol and a quite pride in her role as an adherent to security matters" (GX 2 at 3).

On July 5, 2006, a security investigator contacted Applicant by telephone to arrange an interview. At the time, the investigator had slightly less than four years of experience in security investigations (Tr. 80). The investigator had Applicant's case file, and he knew she was a mature woman, but he did not know she lived alone (Tr. 46, 77). The record does not reflect the investigator's age, but he obviously is much younger than Applicant. The security investigator's account of the conversation with Applicant is significantly different from Applicant's account.

The investigator reported to his superiors that Applicant immediately became "belligerent, aggressive, and seemingly irrational" when he identified himself and told her the purpose of his call. The investigator stated Applicant did not want the interview conducted at her place of employment, which is the normal practice, and he eventually agreed to schedule the interview at her home. According to the investigator, Applicant accused the investigator, her employer, and the Department of Defense of persecuting her, and she could not understand why she was required to divulge personal medical information to the government and her employer. She accused the investigator of recording their conversation. According to the investigator, she told him she would slit his throat if he revealed her personal information to anyone. The investigator testified he asked her if she realized she had just threatened the life of a government representative, and she responded, "Yeah, I do and I'm glad I did it . . . I've been getting harassed by the government for a long time now." After the investigator filed the report of his conversation with Applicant, he was told to cancel the interview, which he did. (Tr. 56-57, GX 4 at 1-2.)

Applicant testified the investigator was "preying" on her, and he wanted to conduct the interview at her home, and that he promised to be discrete. She did not believe he was a government investigator (Tr. 126-27). She testified she becomes very

defensive and belligerent when she is “preyed on by a male.” She admitted telling the investigator she would slit his throat (Tr. 103-04). She testified she “freaked” and was so frightened she jumped a four-foot fence in her back yard and stayed overnight with a neighbor (Tr. 111). The next day she drove to another state to visit her cousin (Tr. 125). She believes her security clearance is at risk because she refused to allow the investigator to interview her at home (Tr. 105, 108, 110).

The interview was rescheduled for July 20, 2006, at Applicant’s place of employment. The original investigator conducted the interview, with an additional investigator present. During this interview, Applicant described her personal history as well as her history of medical and psychological treatment. At the end of the interview, the additional investigator asked Applicant about her threat to slit the original investigator’s throat. Applicant responded that she “freaked out” during the telephone conversation, because she did not think the caller was a government investigator. She admitted making the statement, denied that the threat was sincere, and expressed regret for saying it. She told the original investigator that if he had come to her home as originally scheduled, the police would have been at her house when he arrived (Tr. 65, 74; GX 4 at 5-6).

In her answer to the SOR, Applicant denied threatening the security investigator. When confronted with the discrepancy between her answer to the SOR and her testimony, she stated she did not type the answer to the SOR, did not notice the denial, and merely signed it (Tr. 130-31). After reviewing her written response to the SOR, she admitted she “must have” written it, but that it was a mistake (Tr. 133).

The Department of Defense referred Applicant to a licensed clinical psychologist for evaluation on September 18, 2007. Applicant’s medical history recited in the evaluation report recites that Applicant completed a seven-day hospitalization for psychiatric treatment in 1979 and the four-week treatment described above in 2005. The psychologist observed that Applicant sometimes exhibits “idiosyncratic thought processes.” He noted that Applicant seemed to place great importance on generational and gender differences and was “mildly critical” of those of different gender and generational groups (GX 3 at 4). The psychologist made a provisional diagnosis of psychotic disorder; major depressive disorder recurrent, severe, with psychotic features; and bipolar I disorder, most recent episode unspecified, severe with psychotic features. He stated his diagnosis was provisional because he did not have historical, objective data, such as previous treatment records (GX 3 at 3). He concluded his evaluation with the following comments:

Overall, [Applicant] appears to experience some mild and transient psychiatric symptoms on a day-to-day basis. These include a suspicious style of perceiving events and an idiosyncratic, rigid thinking style that probably does not interfere with daily functioning (though discussion with co-workers and supervisors would help to determine functional work impairments). Likewise, [Applicant] may be subject to mild transient mood swings as a result of daily stressors. In reviewing [Applicant’s] life events

and psychiatric treatment episodes, it appears that during times of stress [Applicant's] mood swings may become more severe, and her thinking may shift from mildly suspicious to more significantly distorted and paranoid. It is unclear from the information provided and the psychological evaluation whether [Applicant] has ever experienced a gross psychotic break, though her reactions as described in the DoD testimonials suggest that she is capable of paranoid, distorted, and bizarre thought processes (GX 3 at 5).

Applicant testified that this diagnosis was based on one hour of observation and that the psychologist also "hinted, very strongly, that he was bought and paid for by DOD" (Tr. 121-22).

Applicant testified she began receiving therapy and psychiatric care after menopause because it caused chemical reactions in her body (Tr. 103). She testified her supervisors and colleagues know she has been taking antidepressants for many years (Tr. 107).

Applicant submitted an assessment by the psychologist who has been treating her for the past three years, disagreeing with the government psychologist's assessment. The cover letter, signed by a registered nurse but approved by Applicant's psychologist, states that the "highly un-specific, unusual cluster of diagnoses" submitted by the government psychologist is inconsistent with what Applicant's psychologist has observed over a three-year period. Her psychologist describes her as "a woman who has been actively engaged in a recovery process from a major depressive disorder." He further opined that she is "not homicidal, overtly psychotic, threatening, and does not show evidence of any symptoms of bipolar disorder" (AX E at 1).

The medical records submitted by Applicant include an evaluation by a clinical neuropsychologist in October 2005. This evaluation found no signs of dementia, but it found weakness in executive functioning. The psychologist explained:

While deficits in executive functions can result from brain injury, especially in the frontal lobes, they are also seen in patients with organic mental disorders such as major depression, OCD, and psychosis, even if the patient's acute symptoms have resolved. The nature of [Applicant's] executive deficits appears to fit this pattern, and consequently they reflect more of a functional disorder rather than the sign of dementia or brain disease.

The neuropsychologist concluded that Applicant would be more responsive to medication than therapy (AX E at 82).

Applicant currently is taking citalopram, labeled as a "selective serotonin reuptake inhibitor used to treat depression" (AX C), and seroquel, labeled as an "atypical antipsychotic used to treat schizophrenia or bipolar disorder" (AX D). She

testified she takes seroquel “for sleeping” and has been taking it since her hospitalization in 2005 (Tr. 115-17).

The progress notes from Applicant’s psychologist reflect that on April 17, 2007, she felt “beaten up” by her employer, politicians, and her country, and she “hates” them all (AX E at 25). On February 12, 2008, she was agitated and “off the wall” at work after watching a movie the night before, and her friends at work told her to “back off” (AX E at 20). On April 29, 2008, she expressed concern about the government psychologist’s evaluation of September 2007, and she accused the government psychologist of making suggestive gestures toward her that she rejected (AX E at 19).

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline I (Psychological Conditions)**

The SOR alleges that, in February 2005, Applicant was diagnosed by a psychologist with (1) major depressive disorder, recurrent, severe with psychotic features; and (2) generalized anxiety disorder that resulted in impaired judgment and impaired insight (SOR ¶ 1.a). It also alleges that, in September 2007, she was diagnosed by a licensed clinical psychologist with (1) psychotic disorder, not otherwise specified; (2) major depressive disorder recurrent, severe, with psychotic features; and (3) bipolar I disorder, most recent episode unspecified, severe with psychotic features.

The security concern under Guideline I is set out in AG ¶ 27 as follows:

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.

A potentially disqualifying condition under this guideline may be raised by “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.” AG ¶

28(a). A potentially disqualifying condition also may be raised by “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.” (AG ¶ 28(b)). The diagnoses from February 2005 and September 2007 raise both disqualifying conditions.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 28(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated if “the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan.” AG ¶ 29(a). Applicant appears to have scrupulously complied with her treatment plans. The issue is with the first prong, whether her condition is “readily controllable with treatment.” The discharge summary from her hospitalization in 2005 was guarded, and her subsequent behavior raises doubts about whether her psychological condition is “readily controllable.”

The episode with the security investigator in July 2006 occurred because Applicant felt threatened by a “male predator.” Based on all the evidence and my observations of her demeanor and the security investigator’s demeanor, I believe she actually felt threatened, was terrified, and was acting defensively when she threatened to slit his throat. What the investigator may have actually said appears to have been filtered through her concern with generational and gender differences and her fear of telephone calls from unidentified males. I do not believe the investigator made suggestive comments, but I do believe Applicant’s fear was real, and she reacted accordingly.

Applicant’s agitated and “off the wall” behavior after watching a movie also raises doubts whether her condition is fully controllable. Her problems are further indicated by her suspicion that the government psychologist conducting the evaluation in September 2007 made suggestive gestures toward her. Her own psychologist describes her as “engaged in a recovery process,” but he does not opine that she is recovered. Based on all the evidence, I conclude Applicant has not carried her burden of establishing the first prong of AG ¶ 29(a).

Security concerns also can be mitigated if “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.” AG ¶ 29(b). Applicant is voluntarily receiving treatment. Her condition appears to be “amenable to treatment,” but not fully controllable. Her psychologist believes she is engaged in the recovery process, but he did not offer a prognosis. I conclude Applicant has not carried her burden of establishing AG ¶ 29(b).

Finally, security concerns can be mitigated by a “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.” AG ¶ 29(c). The evaluation in September 2007, although it is a provisional diagnosis, falls short of concluding her condition is under control or in remission, and it indicates the possibility of more severe episodes during times of stress. I conclude AG ¶ 29(c) is not established.

### **Guideline J, Criminal Conduct**

The SOR alleges Applicant threatened to slit the throat of a security investigator if he disclosed any information about her (SOR ¶ 2.a).

The concern raised by criminal conduct is that it “creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses” and “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” AG ¶¶ 31(a) and (c).

Department Counsel did not present any evidence or request that I take administrative notice of any federal, state, or local statute criminalizing her conduct. I am satisfied, however, that Applicant did not entertain the *mens rea* required to criminalize her conduct. She did not believe the investigator was an agent of the government, she perceived a threat, and she reacted defensively. I conclude no disqualifying conditions are raised under this guideline.

### **Guideline E, Personal Conduct**

The same conduct alleged under Guideline J is also alleged under this guideline. The concern under this guideline is that “[c]onduct 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 ¶ 15.

A disqualifying condition under this guideline may be raised by “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.” AG ¶ 16(c). A disqualifying condition also may be raised by “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.” AG ¶ 16(d). Applicant’s threat to kill the security investigator reflects impaired judgment sufficient to raise AG ¶¶ 16(c) and (d), shifting the burden to her to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline can be mitigated by showing that “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” AG ¶ 17(c). Applicant’s threat was serious and recent, and it reflects impaired judgment. I conclude this mitigating condition is not established.

Security concerns also can be mitigated if “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” AG ¶ 17(d). Applicant has generally acknowledged her psychological problems, obtained treatment, and complied with her treatment program. While her psychologist believes she is “engaged in a recovery process,” she is not yet recovered, as evidenced by her recent perception that the government psychologist made suggestive gestures toward her. I conclude this mitigating condition is not established.

Finally, security concerns can be mitigated if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). Applicant has taken positive steps to deal with her psychological problems, and she has made significant progress, even though her vulnerability is not yet eliminated. I conclude this mitigating condition is established.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant has worked for a defense contractor and held a clearance for many years. She appears dedicated and proud of her work. She is unlikely to intentionally violate any security rules. However, there is substantial evidence that she suffers from conditions beyond her control that affect her perception of events and impair her judgment and insight.

After weighing the disqualifying and mitigating conditions under Guidelines I, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on criminal conduct, but she has not mitigated the security concerns based on psychological conditions and personal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline I (Psychological Conditions): AGAINST APPLICANT

Subparagraphs 1.a and 1.b: Against Applicant

Paragraph 2, Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge