DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: July 16, 2024

In the matter of:	)	
-----	)	ISCR Case No. 23-00706
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
John Hannink, Esq., Department Counsel
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT
Sabreena El-Amin, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 27, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline I (Psychological Conditions) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 26, 2024, Defense Office of Hearings and Appeals Administrative Judge Pamela C. Benson granted Applicant's security clearance eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, the Government argues that the Judge's application of the Guideline I mitigating conditions (MCs) and her analysis under the Whole-Person Concept were arbitrary, capricious, and contrary to law and the record evidence. For the reasons stated below, we affirm the Judge's decision.[1]

[1] Applicant filed a cross-appeal challenging the admission of Government Exhibit (GE) 4, the report of the psychological evaluation conducted during the security clearance adjudication process. We resolve the cross-appeal

The Judge's Findings of Fact

Applicant is in their early twenties.[2] While in college, they completed an internship with a defense contractor and applied for a DoD security clearance. After graduating in 2021, they began working full-time as a software engineer for the same contractor.

Applicant described a difficult childhood in which they were verbally and emotionally abused by their mother, who had a mental health condition. Their parents divorced when Applicant was 11 years old, and their mother was hospitalized on more than one occasion due to alcohol abuse. Applicant did not feel safe living with their mother and had to watch over their two younger siblings as all three of them were neglected. When Applicant was 12 years old, they suffered from a depressive episode that required inpatient treatment. Another student looked at their artwork without permission and reported it to school officials due to the graphic nature of the artwork, which depicted Applicant's "ghost" getting back at bullies. Applicant had a mental health evaluation, was referred for inpatient treatment from approximately February 2012 through March 2012 for a condition diagnosed as depressive disorder with suicidal ideation, and was prescribed medication.

Throughout Applicant's high school years, Applicant received mental health counseling and was prescribed various medications, but their treatment was not consistent. At the age of 14, they made two half-hearted suicide attempts, which they stopped prior to harm. During this time, Applicant was diagnosed with bipolar disorder, anxiety, and depression. Their mother died from complications related to excessive alcohol use in 2016, when Applicant was 16 years old.

While in college, Applicant voluntarily referred themselves for a partial hospitalization program from approximately November 2019 to December 2019 for a condition diagnosed as major depressive disorder – severe. After the treatment program was completed, they continued to see a therapist and a new psychiatrist and continued taking medication.

During Applicant's security clearance investigation, the DCSA CAS requested Applicant submit to a psychological evaluation. In September 2022, Applicant met with a clinical psychologist, who found that Applicant met the criteria for bipolar II disorder, most recent episode depressed (severe), other specified trauma and stressor related disorder, and autism spectrum disorder. The evaluator concluded there was a reasonable concern that Applicant's psychological conditions impaired their judgment, reliability, and trustworthiness.

Applicant disagreed with the psychologist's findings from the September 2022 evaluation. In November 2022, they started seeing a new therapist and, under the supervision of their

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adversely to Applicant. GE 4 is an admissible record under Directive ¶ E3.1.20 (official records or evidence compiled or created in the regular course of business). *E.g.*, ISCR Case No. 09-04696 at 3 (App. Bd. Jul. 3, 2013). Directive ¶ E3.1.19 provides that the Federal Rules of Evidence (FRE) shall serve as a guide in DOHA proceedings. GE 4 is also admissible into evidence under FRE 803(6) (records of regularly conducted activity). The Judge's admission of GE 4 into evidence did not violate Applicant's right to cross-examination under ¶ E3.1.22. ISCR Case No. 18-01755 at 2 (App. Bd. Jul. 11, 2019).

[2] Applicant identifies with they/them pronouns. Decision at 1.

psychiatrist, underwent a complete "med wash" to eliminate all medications and then slowly add individual medications as needed. However, no new medications have been added, and Applicant has been completely free from medications for over a year. They have felt "remarkably better," as the medications had "made them violently ill and kept them in a state of mental fog." Decision at 4. Additionally, the new therapist has challenged them to set specific goals and has "been more involved in helping them improve." *Id*.

Applicant submitted their current treatment records. In May 2021, Applicant submitted to neuropsychiatric testing, which indicated diagnoses of autism spectrum disorder, without intellectual or language impairment, and major depressive disorder. The test results did not indicate a diagnosis of bipolar disorder. Applicant's treating psychiatrist, therapist, and certified physician assistant have updated Applicant's diagnosis to major depressive disorder, in full remission. Applicant has been seeing their therapist on a weekly basis since November 2022. The therapist reported that there have been no major depressive-type symptoms since medications were discontinued in January 2023 and that Applicant appeared to be doing better than when they were treated with medications. Based on patient reports and clinical observation, the therapist reported that Applicant has demonstrated improvements in their overall insight and judgment/impulse control. Applicant continues to participate in weekly therapy sessions to the current time and is fully compliant with their treatment plan.

The Judge's Analysis: The Judge's analysis is summarized and quoted below.

The facts of this case establish disqualifying conditions under AG ¶¶ 28(a)–(c).[3] Although Applicant has not consistently taken medications as prescribed due to side effects, AG ¶ 28(d)[4] is not fully established as Applicant's treating psychiatrist has taken Applicant off all medications since January 2023, with positive results.

All mitigating conditions under AG ¶ 29 were considered.[5]

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[3] AG ¶ 28: (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and (c) voluntary or involuntary inpatient treatment.

[4] AG ¶ 28(d): failure to follow a prescribed treatment plan . . . including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

[5] AG ¶ 29: (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 has indications of emotional instability; and (e) there is no indication of a current problem.

The Judge summarized the case in mitigation as follows:

> Applicant had a difficult childhood. As a 12-year-old, Applicant was evaluated and referred for inpatient treatment. It is clear from their testimony and medical records that they predominantly suffered from depressive symptoms throughout their high school and young adult years.
>
> In November 2022, Applicant started treatment with a new mental health professional and currently continues treatment on a weekly basis. In conjunction with their psychiatrist, physician assistant, and therapist, Applicant was slowly weaned from all medications. The plan was to put them on medication when their symptoms required it, but since January 2023, Applicant has remained medication-free. The current treatment records reflect that Applicant has improved, and their current diagnosis is autism spectrum disorder, and major depressive disorder, in full remission. Applicant is currently participating in treatment, and they are compliant with their treatment plan. The current medical and mental health staff have provided a favorable prognosis as recently as February 2024. Applicant successfully mitigated the psychological conditions security concerns. [*Id.* at 8.]

Discussion

On appeal, the Government contends that the Judge's mitigation analysis was arbitrary or capricious in that it "failed to specify which MCs applied; used piecemeal analysis of selected portions of the record evidence by focusing exclusively and uncritically on AE C [Applicant's post-hearing submission of letters from providers]; ignored significant aspects of the case including Applicant's long, complex, and cyclical medical history; and drew conclusions that are unsupported by the totality of the record evidence and that are at odds with Appeal Board precedent." Appeal Brief (AB) at 21. For the reasons detailed below, we are not persuaded by the Government's arguments.

The Appeal Board may reverse or remand the judge's decision to grant deny or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32.3, E3.1.33. A judge's decision can be found to be arbitrary or capricious if "it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion." ISCR Case No. 97-0184 at 5, fn. 3 (App. Bd. Jun. 6, 1998) (citing *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)).

This arbitrary and capricious review standard is highly deferential. ISCR Case No. 20-01097 at 7 (App. Bd. Jun 15, 2022) (citing *ATT Corp. v. FCC*, 220 F.3d. 607, 616 (D.C. Cir. 2000)). Our scope of review under the standard is narrow, and we may not substitute our judgment for that of the judge. Said differently, we may not set aside a judge's decision "that is rational, based on consideration of the relevant factors, and within the scope of the authority delegated to the [judge]." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 42. A judge's conclusions are often subjective

in nature and are sustainable if they constitute reasonable inferences drawn from the evidence. *E.g.*, ISCR Case No. 17-02225 at 3 (App. Bd. Jun. 25, 2019).

The Government fairly highlights that the Judge's mitigation analysis was brief, consisting of only two paragraphs, and that she neglected to identify which mitigating condition she found applicable. AB at 18. The Government's position is that none of the mitigating conditions found in MC ¶ 29 fully apply and that the Judge erred in concluding otherwise. Specifically, the Government contends: that Applicant's condition is not readily controllable with treatment, as required by MC ¶ 29(a); that the record does not contain a favorable prognosis, as required by MC ¶ 29(b); and that there is no evidence that Applicant's previous psychological condition has a low probability of recurrence or exacerbation, as required by MC ¶ 29(c); and that the record does not support application of either MC ¶¶ 29 (d) or (e) as there is no evidence that Applicant's condition was temporary or that there is no current problem. Although the Judge did not cite explicitly to the mitigating conditions she found applicable, the decision implicitly cites to MC ¶¶ 29(a) and (b), as the Judge highlights Applicant's ongoing compliance with their treatment plan, the fact that Applicant is in remission, and the fact that they have a favorable prognosis.

We are unpersuaded by the Government's arguments regarding the Judge's application of these mitigating conditions, as the Government appears largely to argue for a different interpretation of the evidence. For example, turning to the Government's argument that Applicant's condition is not readily controllable with treatment, the Government details at considerable length Applicant's psychiatric history, which began at age 11 or 12, and the various medical and therapeutic treatments that were tried, often to little avail, through Applicant's middle school, high school, and early college years. The Government argues that the decision's "extremely brief mitigation analysis ignored or disregarded this significant aspect of the case" and instead focused on statements provided by her current psychiatric team. AB at 23. The Government's argument on this specific issue neatly captures a thread that runs throughout its appeal brief. The Government views Applicant's medical history as "long, complex, and **cyclical**." *Id*. at 21 (emphasis added). The Judge's decision reflects instead a **linear** view of this case, with Applicant emerging from a difficult childhood and the turbulence of adolescence into adulthood, with a significant improvement in her mental health as she consistently seeks and heeds psychiatric treatment.

A party's "disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, there is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise, and the appealing party has a heavy burden when trying to rebut that presumption.

Administrative judges' decisions are not measured against a standard of perfection and there is no requirement that a judge discuss every aspect of the evidence in her decision or to expressly cite or explicitly quote every provision of the Directive that is applicable in a case. Instead, the long-standing requirement is that the judge's decision must be written in a manner that allows the parties and the Board to discern what findings the judge is making and what conclusions he or she is reaching. *E.g.*, ISCR Case No. 16-02536 at 5 (App. Bd. Aug. 23, 2018).

In this case, the Board's review of the Judge's decision in its entirety persuades us that the Judge considered the relevant evidence and the pertinent provisions of the Directive sufficiently with regard to establishing mitigation. Now an adult in control of her own mental health treatment, Applicant has been under consistent psychiatric treatment since August 2019 and has been with the same practice since April 2021. In light of Applicant's various diagnoses over her teen years, her current psychiatrist requested at the onset of treatment that Applicant submit to neuropsychiatric testing. That testing indicated diagnoses of autism spectrum disorder and major depressive disorder, and Applicant's psychiatric team ultimately adopted those diagnoses, eliminating the diagnosis of bipolar II. In its letter of February 2024, the psychiatric practice noted that the current diagnosis is "major depressive disorder, in full remission." AE C at 1.

The Government challenges the Judge's uncritical adoption of this diagnosis, noting that Applicant did not submit full medical records that would provide greater detail about the change in diagnosis but instead submitted letters from her psychiatric and therapist team, with relatively few treatment records. However, although the Government may have desired more medical records, the Judge was well within her authority to find the summary from Applicant's current psychiatric team sufficient and to give significant weight to the diagnosis, as the team has been treating Applicant for three years. Moreover, the record supports the Judge's conclusion that Applicant "predominantly suffered from depressive symptoms throughout their high school and young adult years." Decision at 8. Indeed, the medical records indicate that bipolar disorder was affirmatively ruled out by some previous providers and that Applicant's current psychotherapist concurs in the psychiatrist's assessment that Applicant does not have bipolar II disorder but rather major depressive disorder in remission. AE C at 2, 9. With regard to the change in diagnosis, the Board notes that Applicant's current diagnosis of major depressive disorder is not one that raises a *per se* security concern.[6] With regard to the conclusion that Applicant is in "full remission," the Judge was again well within her authority to rely on the medical opinion of the psychiatric team that has been treating Applicant for three years.

The Government also challenges the Judge's determination that there is a "favorable prognosis," as required by MC ¶ 29(b), citing to the Board's decision in USN-M Case No. 23-00060-R (App. Bd. Jun. 9, 2023). In that case, Applicant argued that the Judge erred in failing to consider a diagnosis of "PTSD and major depressive disorder in remission" as a favorable prognosis for the application of MC ¶ 29(b), and the Board held that "Applicant has not established that the Judge erred in concluding that her medical records do not reflect a favorable prognosis." *Id.* at 5. That case is easily distinguishable from the case at hand, and we decline to apply this particular holding as broadly as the Government would like. Said differently, in the context of this case, we decline to find that the Judge erred in discerning a favorable prognosis from the letters and records submitted by Applicant's treating psychiatric team and psychotherapist, as her

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[6] In November 2016, the Director of National Intelligence (DNI) issued a memorandum revising the mental health questions in Section 21 of Standard Form 86, the security clearance application (SCA). DNI Memorandum on Revisions to the Psychological and Emotional Health Questions on the Standard Form 86, Questionnaire for National Security Positions, dated November 16, 2016. *See also* ISCR Case No 20-01838 at 6, n. 3 (App. Bd. Dec. 29, 2022). As revised, the SCA lists the psychological disorders that are considered by their very nature to raise security concerns: Psychotic Disorder, Schizophrenia, Schizoaffective Disorder, Delusional Disorder, Bipolar Disorder, Borderline Personality Disorder, and Antisocial Personality Disorder.

conclusion constitutes a reasonable inference drawn from the evidence. ISCR Case No. 17-02225 at 3.

In summary, our review of the record confirms that, although the Judge did not explicitly cite to the mitigating conditions she found applicable, the record evidence adequately supports her ultimate conclusion. Given the evidence that Applicant has been medication-free for over a year with no full depressive episodes, that they are fully compliant with treatment, and that the major depressive disorder is in remission, the Judge could reasonably conclude that Applicant's condition was mitigated under MC ¶ 29(a) or MC ¶ 29(b). Contrary to the Government's argument, we find that the Judge's decision was rational, based on consideration of the relevant factors, and within the scope of her authority. *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 42.

The Government failed to establish the Judge committed harmful error. None of their arguments are enough to rebut the presumption that the Judge considered all of the record evidence or sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, we conclude that the Judge's whole person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching her decision. The Judge's decision is sustainable on the record.

Order

The Judge's decision in ISCR Case No. 23-00706 is **AFFIRMED**.

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Separate Opinion of Board Member James B. Norman in ISCR Case No. 23-00706

I respectfully dissent from my colleagues' affirmation of the Administrative Judge's decision in this case.

The Appeal Board may reverse or remand a Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32. While the majority correctly states that the arbitrary and capricious review standard is highly deferential and we may not substitute our judgment for that of the Judge, it also correctly notes that, in deciding whether the Judge's rulings or conclusions are arbitrary and capricious, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 97-0184 at 5, n.3 (App. Bd. Jun. 16, 1998). In this instance, the Judge failed to consider an important aspect of the case and articulate a satisfactory explanation for her conclusion that Applicant's long-term mental health conditions which could impair their judgment, reliability, and trustworthiness are mitigated. Specifically, while apparently relying heavily on the conclusion in Exhibit C that Applicant's symptoms were in remission, she did not address the scope, significance, and relevance of remission and Applicant's prognosis for long-term mental health stability in the context of their past medical history.

At the outset, the Judge did not identify the specific Mitigating Conditions that she applied, instead simply noting that she considered five Mitigating Conditions under ¶ 29. Her relatively brief analysis leaves us guessing which Mitigating Conditions she concluded either fully or partially applied and the rationale for making those determinations. This was error. ISCR Case No. 20-00618 at 5 (App. Bd. Jan. 18, 2023). As we have previously stated, the Judge's decision must be written in a manner that allows the parties and the Board to discern what findings the Judge is making and what conclusions he or she is reaching. *Id.* While one could attempt to extrapolate from the Judge's narrative which Mitigating Conditions were being applied, neither the parties nor the Board should be left to speculate; particularly in a case with complex medical issues such as this.

This lack of specificity directly impacts the Judge's substantive mitigation analysis. To the extent that one can correlate her mitigation discussion with the specific Mitigating Conditions, the Judge appears to have focused on Mitigating Conditions 29(a), (b) and (c). MC 29(a) requires that "the identified condition is **readily controllable with treatment**, **and** the individual has demonstrated **ongoing and consistent compliance with the treatment plan**." MC 29(b) provides mitigation 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 f**avorable prognosis** by a duly qualified mental health professional." MC 29(c) requires 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**. (Emphasis added to each)

Common to each of these Mitigating Conditions is that an applicant's mental health must be stable to the point that it no longer impacts judgment, reliability, and trustworthiness. Although remission can be mitigating, it cannot stand alone in a vacuum. It must be evaluated in the context of the scope of what it medically encompasses and the long-term prognosis for continued remission. The significance of what is encompassed by Applicant's remission and their prognosis is critical to this case because security clearance decisions are not an exact science, but rather are predictive judgments. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). At the same time, clearance eligibility is open-ended. Therefore, the eligibility analysis must encompass more than a snapshot of an applicant's current mental health, particularly when the disqualifying concerns are complex and span a lengthy period of time. The Government cannot grant a clearance without significant medical evidence that an applicant's mental health will continue to be stable.

Applicant's current period of remission and the prognosis for continued remission must be specifically assessed in the context of their lengthy and complicated mental health history that includes periodic bouts of severe anxiety and depression, suicidal ideations, hospitalizations, and multiple diagnoses by multiple mental health professionals.[7] Doing so requires a foundational medical opinion that elaborates beyond simply concluding that a condition is in remission. There must be evidence of what remission means relative to Applicant. Therefore, the burden is on Applicant to show that a mental health provider has concluded to a medical certainty that a sufficient time period has passed such that Applicant can be considered in long-term remission and that relapse is not likely to occur.[8] The more serious or long-term an applicant's disqualifying circumstances are, the stronger the evidence of rehabilitation needs to be for the Judge to find that an applicant has overcome the negative security implications. ISCR Case No. 08-03726 at 4 (Oct. 2, 2009). In a case involving long-term mental illness, an applicant has a very heavy burden to show that not only is the illness amenable to treatment and is in remission, but that there is a long-term prognosis to a medical certainty that it will remain in remission.

While medical evidence provides a factual foundation for analysis, it is the Judge's responsibility to weigh the significance of the medical professionals' expert opinions. It is not reasonable or possible for a Judge to make independent conclusions or assumptions about medical matters such as remission and prognosis.[9] As the majority has opined, the weight to be given to

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[7] Although, as the majority correctly notes, major depressive disorder is not *per se* a security concern it is, nonetheless, disqualifying if it adversely impacts an applicant's judgment, reliability, and trustworthiness. Applicant's mental health history reflects significant disqualifying concerns in addition to depression and the Administrative Judge found that "AG ¶¶ 28(a)-(c) have been established by the facts of this case." Decision at 6.

[8] The Diagnostic and Statistical Manual of Medical Disorders - 5 (DSM-5) defines full remission of Major Depressive Disorder II as "During the past 2 months, no significant signs or symptoms of the disturbance were present." DSM-5 at 188. However, although there is no bright line rule for determining the point at which the passage of time becomes mitigating, this threshold clearly is not outcome-determinative in the context of a clearance decision which must predict much further into the future.

[9] Assessing remission differs from situations in which the passage of time reflects reform that can be assessed by a lay person. *C.f.* ISCR Case No. 03-18522 at 2 (App. Bd. May 16, 2005) (Not arbitrary or capricious for the judge to conclude a period of drug use cessation is mitigating.) It is more analogous to situations involving matters that are beyond the authority and expertise of DOHA administrative judges such as making factual pronouncements about the relationship between the United States and foreign countries. *E.g.,* ISCR Case No. 02-00318 at 4 (App. Bd. Feb. 25,

Applicant's evidence is within the Judge's discretion. But the Judge must explain how she reached her conclusions, particularly in light of the fact that none of the evidence specifically addresses what is meant by remission nor does it offer a prognosis for the future. It was incumbent upon the Administrative Judge to have elaborated upon this aspect of the case based upon the record medical evidence. This differs from the majority's opinion that the Government's arguments amount to alternative weighing of the evidence because this is critical evidence that appears not have been weighed.

A judge's findings of fact must be based on the record evidence as a whole, including any evidence that runs contrary to those findings. Furthermore, if a judge does not discuss or even mention a significant aspect of the case that reasonably could be expected to be explicitly taken into account in the decision, then a serious question arises as to whether the judge forgot that aspect, ignored it, failed to take it into account, dismissed that aspect of the case for no apparent reason, failed to understand the significance of that aspect of the case, or engaged in an arbitrary and capricious analysis. ISCR Case No. 02-02195 at 3 (App. Bd. Apr. 9, 2004). In this case, the Judge's failure to adequately address remission or prognosis leaves her analysis incomplete and constitutes error.

In light of the errors identified, above, the best resolution of this case is to remand it to the Judge to correct those errors and for further processing consistent with the Directive.

Signed: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board

2004). A judge must rely on medical professionals to establish factual evidence involving medical, technical, and scientific matters and then exercise discretion to assess the significance of those facts.