DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: December 26, 2024

In the matter of:	)	
	)	
-----	)	ISCR Case No. 22-00152
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 2, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations) 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 September 23, 2024, Defense Office of Hearings and Appeals Administrative Judge Nichole L. Noel granted Applicant security clearance eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As originally issued, the SOR alleged eight delinquent debts. In her May 2022 response to the SOR, Applicant denied six debts as paid and admitted the remaining two, representing that she was current on payment plans. In August 2022, the Government amended the SOR to allege that Applicant's excessive gambling contributed to the ongoing nature of the alleged delinquencies. Applicant denied this additional allegation.

Judge's Findings of Fact: The Judge's findings are summarized and quoted below.

Applicant is in her mid-sixties and has held a security clearance intermittently since 1980, both as a member of the Reserve force from 1994 through 2001 and in various contractor jobs. She obtained a security clearance from another federal agency in 2016. Anticipating a position with a different contractor, Applicant completed a new security clearance application in July 2019. Although Applicant disclosed no adverse financial information, the background investigation revealed the alleged delinquent debts, which totaled approximately $71,600.

The debt alleged in SOR ¶ 1.a represents the overpayment of benefits from another federal agency. The debts alleged in SOR ¶¶ 1.b through 1.h arose from a series of significant life events that began in 2016. Prior to that timeframe, Applicant earned a significant salary and "lived a luxurious lifestyle." Decision at 4. In 2016, Applicant unexpectedly assumed custody of an infant grandchild, requiring that she return from her overseas assignment on a federal contract, work in the United States, and cover expenses for her grandchild. During the same time, Applicant assumed caregiver responsibilities for her parents, both of whom had serious illnesses. Applicant relied on the credit cards at issue in SOR ¶¶ 1.c and 1.f to pay expenses for her granddaughter and parents.

Following her parents' deaths in 2017 and 2018, Applicant became the executor of their estate, paid their burial expenses, and assumed some of their debt. Although she inherited one of her parents' homes, Applicant discovered that it was encumbered by a $190,000 loan that a sibling had taken against the property. In late 2018, Applicant learned that her primary residence required significant repairs, which she funded in part by borrowing $14,000 (SOR ¶ 1.b).

In July 2019, the federal contract that Applicant was working on ended three months early. Unemployed for two months, Applicant lived off her savings and could only pay the minimum amount due on her credit cards. In August 2019, Applicant hired a debt consolidation company but admittedly failed to research the company she chose or the service it purportedly provided. After she was sued in February 2020 for the debt alleged in SOR ¶ 1.g, Applicant belatedly realized that the company was not using her monthly payments to satisfy her debts but instead allowing the debts to lapse into delinquent status prior to initiating settlement negotiations. Applicant canceled the servicing agreement in February 2020 and began to perform additional contract work in order to resolve the debts on her own.

When the DoD background investigation began in late 2020, all the debts alleged in the SOR were reported as delinquent. Prior to the SOR being issued in March 2022, Applicant paid off over $30,000 in debt. In September 2021, she sold the home she inherited from her parents, paid the loan on the property, and used some of the remaining proceeds to resolve delinquent debts. Between 2021 and 2022, Applicant resolved SOR ¶¶ 1.d through 1.h, and she resolved SOR ¶ 1.c in 2023. In May 2022, Applicant entered a payment plan of $145 per month for the debt alleged in SOR ¶ 1.b, and she has reduced the debt by $4,000. In June 2022, Applicant entered into a repayment plan of $350 per month for the debt alleged in SOR ¶ 1.a, and she has reduced the debt from $18,000 to $11,000.

Regarding the final allegation – that excessive gambling between February 2021 and June 2022 contributed to Applicant's ongoing financial delinquencies – the Judge stated:

> Applicant used online gaming as her entertainment when the COVID19 pandemic restricted her movements. The game platform, which is advertised as a 'social casino,' allowed her to socialize with other people as she played. She budgeted $2,500 each month to gaming. She testified that some months, she spent less than the budgeted amount and some months she spent more. The game also paid out cash prizes.
>
> Applicant denies that her online gaming constituted gambling. She also denies that her gaming affected her ability to resolve her delinquent accounts or her ability to repay her recurring financial obligations. The bank statements in the record provide detail about Applicant's gaming expenditures and her debt, which are summarized as follows:

Statement Date	Game Spending	Debt Payments
February to March 2021	$9,300	$17,524
March 2021 to April 2021	$3,800	$5,740
June 2021 to July 2021	$4,500	$600
May 2022 to June 2022	$1,700	$1,538
Total	**$19,300**	**$25,402**

> The record contains no evidence of Applicant engaging in online gaming since June 2022. In April 2023, she purchased a home. Since the hearing, she also paid off $20,000 in other non-delinquent debt. The most recent personal financial statement in the record shows that Applicant has $1.3 million dollars in assets and $200,000 in debt, which includes two home mortgages that are in good standing, a car payment, and balances on the debts alleged in SOR ¶¶ 1.a and 1.b. [Decision at 5–6 (internal cites omitted)].

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

The Judge found that the record established the following disqualifying conditions: AG ¶¶ 19(a), 19(c), 19 (e), and 19(i).[1] Regarding the gambling allegation, however, the Judge noted that "[t]he activities that constitute gambling and the type of entity that constitutes a casino are defined by federal and state statutes." Decision at 7. Because those definitions were "not in the record," the Judge concluded that she could not make "a specific finding about whether or not Applicant's

[1] AG ¶¶ 19: (a) an inability to satisfy debts; (c) a history of not meeting financial obligations; (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment or other negative financial indicators; and (i) concealing gambling losses, family conflict, or other problems caused by gambling.

behavior constituted gambling" and resolved the gambling allegation in Applicant's favor. *Id*. Nevertheless, the Judge acknowledged that the record raised questions as to: (1) whether Applicant's spending habits caused or exacerbated her financial problems; and (2) whether her financial habits raised concerns about her current security worthiness. Resolving these questions favorably for Applicant, the Judge found:

> Applicant earned sufficient income to support her chosen recreational activity. Being a clearance holder does not require an individual to forego entertainment or luxury, even in the midst of repaying delinquent debt. Security clearance adjudications are not debt collection proceedings. Rather the purpose of the adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." (AG ¶ 2(a)) While Applicant could have resolved her debt sooner if she applied all of her excess income to her debts, there is no requirement that she do so. She is not required to be a model of financial perfection or restraint. [*Id*. at 7–8.]

The Judge summarized the case in mitigation as follows:

> Applicant's financial problems were caused by events beyond her control, a series of family events, which are unlikely to recur, that generated significant unexpected expenses. She acted responsibly to resolve the debts. Applicant developed a plan for resolving her debt and executed that plan. Acting in good faith, she paid a debt relief service almost $12,000, with the expectation that the servicing company would help her regain control of her financial situation. … When that plan failed, she began working extra jobs to earn the additional income needed to resolve her debts. Doing so, she resolved over $120,000 in debt, including six of the eight delinquent accounts alleged in the SOR. She also has ongoing payment plans for the debts alleged in SOR ¶¶ 1.a and 1.b. The circumstances under which Applicant incurred the debt do not reflect negatively on her current security worthiness. The most recent financial records do not show any indication of ongoing financial issues. [*Id*. at 8.]

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government produces evidence raising security concerns, an applicant bears the burden of persuasion concerning mitigation. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that "a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988). "Any

doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

On appeal, the Government challenges several of the Judge's factual findings and argues that her applications of the mitigating conditions and the Whole-Person Concept were arbitrary, capricious, and contrary to the weight of the record evidence. When a judge's factual findings are challenged, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. "The Board must consider not only whether there is record evidence supporting a judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings, and whether the judge's findings reflect a reasonable interpretation of the record evidence as a whole." ISCR Case No. 02-12199 at 2-3 (App. Bd. Aug. 8, 2005). 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 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. 95-0600, 1996 WL 480993 at *3 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) As detailed below, the Judge's findings do not reflect a reasonable interpretation of the record evidence, fatally compromising her mitigation analysis as she failed to examine relevant evidence and to consider important aspects of the case.

Factual Findings

The Government's initial argument regarding the Judge's factual findings is that she erred in refusing to find that Applicant's activity on Chumba Casino, an online sweepstakes casino, constituted "gambling" within the meaning of AG ¶¶ 19(h) and (i).[2] At hearing, Applicant denied that she gambled and instead characterized her online activities as "gaming." Invoking a dictionary definition, the Government argues that "Applicant's behavior of paying money towards various Chumba Casino's online games, for which she would occasionally win money or other items of value, clearly falls within the definition of gambling." Appeal Brief at 10. The Government asserts that the Judge could simply have taken administrative notice of pertinent statutes or, alternatively, found that "the clear language of the Directive does not require that a particular statute be considered in determining whether Applicant's behavior constituted gambling." *Id*.

These arguments are of mixed merit. First with respect to the administrative notice argument, the record before the Judge and now before us is fairly opaque as to what exactly Chumba Casino is, how it operates, and how one plays the various games. At hearing, Applicant's

[2] AG ¶¶ 19: (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and (i) concealing gambling losses, family conflict, or other problems caused by gambling.

testimony about the mechanics of the online game was confusing and contradictory at best. Tr. at 76-77. Post-hearing, the Government supplemented the record with FAQs from Chumba Casino's website, which provide some broad details about how this sweepstakes casino operates but appear largely intended to address the legality of the games. Government Exhibit (GE) 11. That leads to the second problem with the Government's argument. The legal status of sweepstakes casinos under federal and state law has recently drawn attention from regulators, the casino industry, and some state legislatures because of the very question that the Government is arguing – whether they should be categorized as online gambling. Sweepstakes casinos such as Chumba Casino are apparently structured in a manner that evades definition as "gambling" under federal and state law, allowing them both to operate outside the regulations that govern the casino industry and to operate in states that prohibit online gambling. Rick Maese, *The 'Sweepstakes' Games That Look a Lot Like Online Gambling*, Wash. Post, (Nov. 27, 2024), https://www.washingtonpost.com/sports/2024/11/27/social-casino-sweeps-chumba/. Notably, Applicant was legally playing the sweepstakes casino in a state that prohibits online casino gambling, undercutting the Government's argument that her online activities "clearly fall within the definition of gambling," at least in terms of falling within a legal definition. Appeal Brief at 10. The Government's argument that the Judge could simply have found the governing federal or state statutes and taken administrative notice is therefore misplaced, as there are no such statutes to be found.

Arguably, the Government's alternative argument could prevail—that it does not matter whether an activity constitutes gambling under a particular statute as Applicant's activity on Chumba Casino falls within "the clear language" of AG ¶ 19. We note that the IRS appears to adopt this broader view, as its requirement that one report "gambling income" includes income from various games of chance that would not necessarily meet the legal definition of gambling. GE 14. Said differently, Applicant's winnings from Chumba Casino are within the definition of "gambling income" established by the IRS, despite being earned in a venue that is not recognized as a gambling entity for other regulatory purposes.

As a practical matter, however, we do not need to resolve the thorny issue of whether Applicant's activities on Chumba Casino amount to gambling, an issue clouded both by the state of the record and the state of the law, as Applicant's activities, whether they constitute gambling or gaming, are well-captured by AG ¶ 19(e), *"consistent spending beyond one's means or frivolous or irresponsible spending."* The Judge found that AG ¶ 19(e) applied, a finding that is amply supported by the record, but then determined the concern to be mitigated, an error we address in the mitigation section below.

Although the Government's argument regarding the Judge's finding on gambling is of mixed merit, their arguments about two other factual findings are well-grounded and persuasive. First, the Government challenges the Judge's finding that the "record contains no evidence of Applicant engaging in online gaming since June 2022." Decision at 6. As the Government highlights, Applicant herself testified that she was active on Chumba Casino until September 2022, the month in which she received the additional allegation regarding gambling. Tr. at 166. More importantly, there is substantial record evidence that Applicant continued to play for cash on Chumba Casino until at least May 2023, in direct contradiction of her testimony, and the Judge failed to acknowledge or address this critical evidence.

As background – the record has Applicant's bank statements for four random months between February 2021 and June 2022. Although the record is silent as to why those particular bank statements were submitted post-SOR, it is these documents that caused the Government to amend the SOR and allege gambling (SOR ¶ 1.i). The statements reflect that Applicant purchased "Chumba Gold Coins" on approximately 125 occasions during those four months, typically in the amount of $100 per purchase. Those same records show approximately 17 deposits from "Stichting Custodian Worldpay" (Worldpay), which typically occurred a day or two after the purchase of Chumba Gold Coins. GE 6; AE J. In addition to the four monthly statements, Applicant submitted at hearing her bank statements for the period of December 2022 through June 2023. Those monthly statements reflect no purchases of Chumba Gold Coins, but they reflect 26 additional deposits from Worldpay ending in May 2023, just two months prior to the hearing. AE J.

Under cross-examination at hearing, Applicant admitted that she received her cash prizes from Chumba Casino through Worldpay. Tr. at 144 ("[Government]: And the payouts, when you would receive payouts from Chumba, you would get those from, was it [Worldpay]? . . . Is that who you would receive payments from? [Applicant]: That sounds right."). Shortly thereafter, the Judge *sua sponte* raised a question about the relationship between Chumba Casino and Worldpay and stated that she "need[ed] the government to support the assertion that those two companies are related." *Id*. at 147. After the Judge raised the issue, Applicant equivocated about whether all deposits from Worldpay represented winnings from Chumba Casino, but she failed to articulate any other plausible explanation for the payments. As cross-examination continued, Applicant asserted that she stopped playing Chumba Casino in September 2022. When the Government attempted to question Applicant about continued gaming, as reflected in continued deposits from Worldpay through the spring of 2023, the Judge curtailed cross-examination, citing to a lack of foundation for the relationship between Chumba Casino and Worldpay. *Id*. at 167-168.

Post-hearing and at the Judge's suggestion, the Government submitted documents that confirmed that Worldpay is the payor for Chumba Casino. GE 13. That substantial evidence was buttressed by other significant evidence of record, to include: Applicant's initial admission at hearing that she received her cash prizes from Worldpay, the timing of the purchases from Chumba Casino and the pay-outs from Worldpay, and Applicant's failure, either at hearing or in post-hearing submissions, to establish any other explanation for the payments from Worldpay. In the aggregate, this evidence raised an obvious question of whether Applicant lied at the hearing when she testified that she stopped playing the online game in September 2022.

In her decision, the Judge failed to acknowledge, much less resolve, the question that she herself raised at hearing – whether the deposits from Worldpay on Applicant's bank statements represented Applicant's winnings from Chumba Casino. Instead, the Judge simply omitted any discussion of the issue and found, in the face of substantial evidence to the contrary, that Applicant ceased gaming on Chumba Casino in June 2022. The Judge erred in making this finding without recognizing and analyzing the conflicting evidence. While administrative judges enjoy broad discretion in weighing evidence, that discretion is not unlimited. When conflicts exist within the record, a judge must weigh the evidence and resolve those conflicts based upon a careful evaluation of factors such as the evidence's "comparative reliability, plausibility and ultimate truthfulness." ISCR Case No. 05-06723 at 4 (App. Bd. Nov. 14, 2007). Here, the Judge failed entirely to acknowledge or consider the substantial evidence pointing to Applicant's continued online gaming

after September 2022, which raises obvious and significant questions about Applicant's judgment at the time and her truthfulness at the hearing. We conclude that the Judge's finding that Applicant stopped gaming on Chumba Casino in June 2022 is not supported by such evidence as a reasonable mind might accept as adequate in light of all the contrary evidence. Directive ¶ E3.1.32.1.

The next challenged finding – that "Applicant earned sufficient income to support her chosen recreational activity" of gaming – goes to the very heart of this case. It is an inexplicable and clearly erroneous finding. We pause here to highlight that the record does not contain continuous or complete bank statements, but instead somewhat random monthly statements. For the 18-month period between February 2021 and June 2022, the record holds just four monthly bank statements. Even those limited records establish that Applicant was not earning sufficient income to support her gaming habit given the fact that Applicant was carrying approximately $71,600 in alleged delinquent debt. Notably, the bank statements in the record begin the month after Applicant's January 2021 interview with a background investigator, who put her on notice that her delinquent debt was of security concern. Her bank statement for mid-February through mid-March 2021 reflects that Applicant spent $9,300 on Chumba Casino over approximately 80 transactions and was overdrawn at the end of the statement period. Over the next month, Applicant paid approximately $3,800 to Chumba Casino in over 30 transactions and traveled to another state to gamble in a brick-and-mortar casino. That month, despite receiving over $32,700 in various deposits, Applicant failed to pay down any of the alleged delinquencies and had only about $680 remaining at the end of the statement period. Against the backdrop of Applicant's delinquent debts, the Judge's finding that Applicant earned sufficient income to support her gaming activity is wholly unsupported by the record.

In sum, the Judge's findings of fact do not reflect a reasonable interpretation of the record evidence. Regardless of whether Applicant's activities on Chumba Casino constituted gambling or gaming, the evidence indicates that Applicant was spending beyond her means on online games while failing to pay significant delinquent debt; that she did not earn sufficient income to support her chosen recreational activity; and that she continued to play the online sweepstakes casino game for a full year after the Judge found her to have ceased and was, in fact, still playing in May 2023 as her hearing approached. Moreover, because these erroneous factual findings underpin the Judge's mitigation analysis, the favorable formal findings are unsustainable, as discussed below.

Credibility Determination

At hearing, Applicant steadfastly insisted that her gaming did not interfere with paying her debt, that "one had nothing to do with the other," and that she stopped playing the online game in September 2022. Tr. at 74, 166. In her findings of fact, the Judge appears to have adopted Applicant's testimony on these material issues, without acknowledging and reconciling contradictory evidence, and the Government challenges that implicit favorable credibility determination. We give deference to a judge's credibility determinations, but that deference is not unfettered. As we have previously held, when the record "contains a basis to question an applicant's credibility," the judge "should address that aspect of the record explicitly." ISCR Case No. 07-10158 at 5 (App. Bd. Aug. 28, 2008). Failure to do so suggests that a judge "has merely substituted a favorable impression of an applicant's demeanor for record evidence." *Id*. Here, the

Judge failed to address significant details that detracted from her favorable credibility determination.

First, the Judge failed to acknowledge that Applicant at hearing consistently minimized or misrepresented the extent of her gaming activities and the impact that gaming had on her finances. For example, Applicant insisted repeatedly that her gaming budget was $2,500 per month and that she stayed within that budget, when the bank records clearly proved otherwise. When confronted with the scope of her purchases of Chumba Gold Coins during cross-examination, Applicant simply denied what the bank statements showed. As noted above, Applicant insisted that her gaming did not interfere with paying her debt and that "one had nothing to do with the other," although she was, in some months, clearly spending all discretionary funds on gaming rather than paying delinquent debts. Tr. at 74. Additionally, Applicant was evasive in answering questions about when she started playing the online game. On direct examination, Applicant stated unequivocally that she started playing Chumba Casino in February 2021, apparently to align with the first month for which there were bank records in evidence. Later, under cross-examination, Applicant equivocated: "I said I played in February. I didn't say started. I didn't say ended." *Id*. at 75, 144. Ultimately, as the Government highlights, Applicant's own tax records, submitted post-hearing, show gambling income and loss entries dating back to 2016, a fact that the Judge failed to acknowledge or address.

Second, Applicant misrepresented that various alleged debts were paid off or that she was current on a payment plan at every juncture of the security clearance process: to the background investigator, on her Answer to the SOR, and at hearing. To choose just one example – the debt represented in SOR ¶ 1.c – Applicant told the investigator in January 2021 that the debt had been satisfied in November 2020; on her Answer to the SOR in May 2022, Applicant wrote, "Deny its paid off no debt owed" and "Paid in Full"; and, at hearing, Applicant testified that she was certain she had settled and paid the account, but that the company could not provide documentation as it had no record of her. GE 9; Answer; Tr. at 133. In fact, Applicant ultimately settled and paid the debt in September 2023 – after her hearing. AE EE. Putting aside Applicant's statements to the background investigator and focusing solely on Applicant's Answer to the SOR, it appears that, for a majority of the eight alleged delinquencies, Applicant's response was misleading and inaccurate in that she represented debts as paid when they were not, or herself as compliant with a payment plan when she was not. As the Government argues, "At no point did the Judge acknowledge these inconsistencies, further undercutting her credibility determination." Appeal Brief at 12.

Third, as addressed above, the Judge completely ignored Applicant's more recent bank statements, which reflect 26 deposits from Chumba Casino's payor during the period of December 2022 through May 2023 but no purchases from Chumba Casino. Said differently, the monthly statements reflect pay-outs but no buy-ins. The Government argues that the evidence suggests that Applicant, after receiving the amended SOR in September 2022, changed the manner in which she purchased Chumba Gold Coins in order to shield her continuing gaming from the Government and that the "Judge's failure to consider these significant facts makes her credibility determination unsustainable." *Id*. We agree. We are persuaded that the Judge merely substituted a favorable impression of Applicant's demeanor for record evidence and allowed this favorable impression to distort her findings of fact and her analysis.

Mitigation Analysis

With respect to the eight delinquent debt SOR allegations, the Judge found that Applicant's history of financial problems established disqualifying conditions AG ¶¶ 19(a), 19(c), and 19(e). She concluded, however, that the concerns were mitigated under AG ¶¶ 20(a), 20(b), and 20(d),[3] specifically finding: that Applicant's financial problems were caused by family events beyond her control; that she "acted responsibly to resolve the debts"; that "the circumstances under which Applicant incurred the debt do not reflect negatively on her current security worthiness"; and that "Applicant's financial problems do not raise any behavior that indicates poor self-control." Decision at 8.

The Government challenges this mitigation analysis, noting that it is based largely on the Judge's erroneous findings of fact. Even assuming that Applicant's financial issues initially resulted from circumstances beyond her control, the Government argues her excessive spending and gaming in lieu of paying her delinquent debts preclude application of AG ¶¶ 20(a) and 20(b). The Government highlights that, since 2019, Applicant has made anywhere from $130,000 to $220,000 per year; that she has made more than $190,000 per year since 2021 with a significant monthly surplus; and that she received $140,000 in 2021 following the sale of her parents' home. Despite these significant resources, Applicant did not act on five of the eight alleged debts, which totaled over $52,000, until after receiving the SOR and instead gave herself a monthly entertainment budget of at least $2,500 that she often surpassed.

We concur that the Judge's application of AG ¶¶ 20(a) and 20(b) is not sustainable. As we noted earlier, regardless of whether Applicant's activities on Chumba Casino constituted gambling within the meaning of AG ¶¶ 19(h) and 19(i), they certainly were *"consistent spending beyond one's means or frivolous or irresponsible spending"* within the meaning of AG ¶ 19(e), as Applicant failed to take any significant action on alleged debts while spending thousands of dollars a month on gaming. Contrary to the Judge's conclusion, that behavior was not responsible under the circumstances. Moreover, the evidence that Applicant continued to play on Chumba Casino through at least May 2023, after being put on notice of the security concerns, casts doubt on her current reliability, trustworthiness, and judgment, as does her adamant refusal to even acknowledge that her gaming was adversely affecting her financial life. ISCR Case No. 22-02113 at 7 (App Bd. Jan. 31, 2024). The Judge's conclusion that Applicant's behavior was mitigated under AG ¶¶ 20(a) and 20(b) reflects a clear error of judgment, rendering it arbitrary and capricious.

Finally, the Government argues that the post-SOR timing of Applicant's debt resolution efforts undercuts application of AG ¶ 20(d), which requires a good-faith effort to repay overdue creditors. As the Government highlights, the Appeal Board has long held that the timing of an applicant's efforts to resolve debts is relevant in evaluating the sufficiency of their case for

[3] AG ¶¶ 20: (a) the behavior happened so long ago, was infrequent of occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances; (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. Although the Judge did not cite explicitly to AG ¶ 20(b), her analysis makes it clear that she found it applicable.

mitigation, as applicants who begin to resolve their debts only after an SOR has placed them on notice that their clearance is in jeopardy may lack the judgment to follow rules and regulations when there is no immediate threat to their own interest. *E.g.*, ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug 17, 2018). Despite the resources to address her delinquencies, Applicant failed to address the majority of the eight debts until after she received the SOR. Of the three debts apparently resolved prior to the SOR, at least one was resolved involuntarily, after Applicant received a warrant in debt. As the Government highlights, the Judge failed to acknowledge or address the fact that Applicant only took efforts to resolve most of her debts after she received the SOR. We concur that the Judge's failure to consider this important aspect of the case renders her application of AG ¶ 20(d) arbitrary and capricious.

Conclusion

When the Board finds that a judge's decision is unsustainable, we must determine if the appropriate remedy is remand or reversal. The former is appropriate when the legal errors can be corrected through remand *and* there is a significant chance of reaching a different result upon correction, such as when a judge fails to consider relevant and material evidence. If the identified errors cannot be remedied on remand, the decision must be reversed. Such is the case when, after addressing the identified error, the Board concludes that a contrary formal finding or overall grant or denial of security clearance eligibility is the clear outcome based on the record. ISCR Case No. 22-01002 (App. Bd. Sep. 26, 2023) (citation omitted).

The Government has met its burden on appeal of demonstrating reversible error below. Considering the record as a whole, the Judge's findings are arbitrary and capricious as they fail to consider important aspects of the case, reflect a clear error of judgment, and run contrary to the weight of the record evidence. Accordingly, the Judge's favorable decision is not sustainable under *Egan*.

Order

The decision in ISCR Case No. 22-00152 is **REVERSED**.

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

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

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board