DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: May 27, 2025

In the matter of:	)	
-----	)	ISCR Case No. 22-00761
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Tara Karoian, Esq., Department Counsel

FOR APPLICANT
Daniel S. Conway, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 8, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guidelines E (Personal Conduct) and J (Criminal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Although Applicant requested a decision based upon the written record, the Government requested and was granted a hearing. On March 11, 2024, Defense Office of Hearings and Appeals Administrative Judge Robert Tuider (AJ[1]) granted Applicant security clearance eligibility.

Under Guideline J, the SOR alleged that Applicant was arrested on three occasions, that he was charged with crimes of domestic violence/abuse against two ex-wives, and that Temporary Restraining Orders (TRO) were issued against him in two of the instances. The Guideline J allegations were cross-alleged under Guideline E. In his response to the SOR, Applicant admitted

[1] We refer to the Judge in the DOHA case as AJ only to distinguish him from the judges involved in other relevant proceedings.

the allegations but asserted that he did not commit the underlying offenses. The AJ found in favor of Applicant as to all allegations, and the Government appealed.

In his Decision, the AJ found that the Government had met its *prima facie* burden, concluding that the record "establishes possible concerns" under AG ¶¶ 31(a) and AG 31(b). Decision at 5. In his mitigation analysis, the AJ cited to AG ¶¶ 17(f) and AG 32(c)[2] in concluding that "there is not reliable evidence to support a finding that the allegations occurred as alleged" and that "Applicant refuted the allegations." *Id*. at 6. The Judge also found other mitigating conditions partially or fully applicable, including ones that are inherently contradictory with a determination that the conduct did not occur (*e.g*., an application of "successful rehabilitation" under AG ¶ 32 (d)). On appeal from that Decision, the Government asserted that the AJ substituted a favorable credibility determination for record evidence and that he erred in finding that Applicant did not abuse his two ex-wives. On June 13, 2024, the Appeal Board remanded the case, instructing the AJ to explain why he found Applicant's denial of wrongdoing to be credible in light of significant evidence to the contrary.

On February 25, 2025, the AJ issued a Remand Decision in which he concluded not that the established concerns were mitigated but instead that the Government had failed to establish a *prima facie* case proving that Applicant had committed the conduct alleged in the SOR. Remand Decision at 9. The Government again appealed, asserting that the AJ erred in his determination that the Government failed to establish a *prima facie* case, erred in finding that Applicant did not abuse his two ex-wives, and substituted a favorable credibility determination for record evidence. Consistent with the following, we reverse.

Background

Applicant is in his mid-30s and has worked as a lead analyst for a defense contractor since September 2022. He earned a master's degree in August 2019 and was pursuing a doctorate at the time of his hearing. Applicant served in the U.S. military on active duty from 2009 until early 2017 and in the Reserve force from early 2017 to 2020. He was honorably discharged. Applicant successfully held security clearances while he was on active duty in the U.S. military. Since his release from active duty, Applicant has worked exclusively for defense contractors.

Applicant has been married twice. His first marriage was from August 2012 to December 2017, and his second marriage was from March 2019 to May 2022. Both marriages ended by divorce. He has no biological children.

Applicant's first wife (W1) was an active-duty soldier and single mother whom he met on post and married in August 2012. On May 17, 2017, Applicant and W1 had an argument that escalated and led to W1 petitioning for a temporary restraining order (TRO) against Applicant on the following day. Applicant was arrested and spent two days in custody. He was charged with Abuse of Family and Household Members, a misdemeanor. W1's petition for a TRO detailed two instances of physical and verbal abuse. She stated that Applicant "choked [her] when arguing" and that he "was threatening to use the firearms on [her]." Additionally, the petition noted that her

[2] AG ¶17(f): the information was unsubstantiated or from a source of questionable reliability; and AG ¶ 32(c): no reliable evidence to support that the individual committed the offense.

daughter – Applicant's stepdaughter – was home at the time of the incident and "is afraid of her dad and doesn't want him to come home." (AE F at 3-4.) The court granted the TRO.

On May 31, 2017, W1 moved to dissolve the TRO, and the court granted her request. On June 26, 2017, the State requested a continuance because it was having difficulty locating W1. The case was rescheduled to July 31, 2017, and both W1 and her daughter were present to testify, but the case was postponed due to the court's calendar congestion. On August 21, 2017, the criminal case against Applicant was dismissed without prejudice because W1 and her daughter failed to appear at that hearing. The case was later dismissed with prejudice on September 20, 2017. Applicant subsequently initiated divorce proceedings against W1, and their divorce was final on December 26, 2017.

Applicant married his second wife (W2) on March 14, 2019. She was a Japanese resident citizen whom he met online. She immigrated to the United States on a fiancée visa, making her eligible to apply for permanent residency after two years of marriage.

Applicant was arrested and charged with abuse of W2 twice, as alleged. He disputed the underlying facts that caused the arrests. Both Applicant and W2 made detailed allegations about the abuse they suffered during their marriage in separate TRO petitions. In her petition, W2 detailed six instances of physical and mental abuse that she claimed occurred during their first year of marriage. During his security clearance investigation, Applicant was questioned about some of the alleged events, and his version of the events was summarized in his personal security interview (PSI), as well as in his own 2021 petition for a TRO. Drawing from record evidence, W1's six allegations of abuse, Applicant's four counter-allegations, and Applicant's explanations are set forth below in chronological order.

The first altercation between Applicant and W2 occurred in March 2019. W2 reported she asked him to stop cheating on her and to stop talking to other women. She indicated he responded to her request by threatening to deport her. W2 claimed he turned off her phone service to control her. She noted he breaks and throws things but tries to make it look like she did it. In his PSI, Applicant explained this event claiming they got into a verbal altercation, and it resulted in W2 scratching his arm. He claimed that his arm was bleeding and that he called 911 because he wanted medical attention. Police were called to the scene, but no arrests were made.

On June 10, 2019, W2 again asked Applicant to stop cheating on her. She claimed that their verbal altercation turned physical when he twisted her arm and threatened to break it. She said that she "went to the hospital" because the "left side of her body was numb" after this event. Neither the PSI nor the Applicant's TRO petition address this allegation.

In his 2021 petition for the TRO, Applicant reported that on June 23, 2019, W2 threw dishes at his head and was trying to force him to fill out her green card application. He decided to leave their home, but she grabbed his arm to prevent him from leaving. She cut him with one of her fingernails. He then called the police and requested medical attention. He claimed he was bleeding profusely from the cut.

In July 2019, Applicant was arrested and charged with abuse. W2 reported that on July 2, 2019, Applicant "grabbed [her] hair and pushed [her] to the ground. He hit [her] neck by his arm again and again . . . He stopped [her from] calling [an] ambulance by taking [her] phone." The AJ noted that she claimed that she "had to go to EMS" due to "many bruises and bumps." Decision at 5. In his PSI, Applicant explained that he got into a verbal altercation with W2 regarding his dating history, his past financial debts, and how he does not spend more money on her. During the verbal altercation, Applicant stated that W2 kept swinging her arm at him, attempting to hit him. He claimed to have protected himself by grabbing her arms to avoid her from hitting him. Applicant further explained that W2 fell on the bed while still trying to attack him. He claimed he never hit her. He believes his neighbor called the police. Applicant claimed that this arrest was expunged but presented no documentation to support this claim.

W2 claimed that on August 29, 2019, Applicant grabbed her arm and slapped her face during an argument in the car. She reported that he hit her hand when she tried to get out of the car and that he stopped her from calling the police. W2 stated that he left her on the side of the road after the incident knowing she did not have any way to get home and that he threatened to change the locks to the apartment. Applicant's PSI reflected only that he and W2 got into a verbal altercation. He stated that the police arrived and mediated the situation to make sure there were no problems. No arrest was made.

W2 claimed that on October 29, 2019, she asked Applicant to get her health insurance, but he said she did not deserve any. During their argument, he broke chairs and threw them against the wall, damaging shelf doors and the wall. She also claimed he lifted her body up and threw her against the couch two times, which caused her back pain. She indicated he pushed her into the wall. The PSI did not address this allegation, but Applicant stated in his testimony that she was covered by his health insurance.

Applicant's 2021 TRO application indicated W2 punched him with her right fist while he was sleeping on November 21, 2019. He claimed he woke up to see his face was red and bruised. He was also bleeding from his right arm. He alleged that, later that night, she elbowed him in the face, broke a trophy, and screamed at him.

W2 reported that on February 8, 2020, Applicant pushed her "very intensely" and that she fell as a result. She also noted that Applicant turned off her phone service because he wanted to hide that he hit her. He was arrested on February 9, 2020, and charged with abuse of Family/Household Member. Applicant reported that he and W2 got into a verbal argument. At the end of their argument, W2 left and went to their neighbor's residence. Applicant also left his residence but not before locking W2's bag in his safe. After Applicant left, he received a call from the police department informing him he needed to return W2's bag. Applicant complied, and he retrieved her bag and provided it to the police officer with no action taken against him. About an hour later, the police returned because W2 accused him of physically hitting her. Applicant was arrested and charged with domestic violence and taken to the police substation. He claimed in his PSI that the police released him because the prosecutor did not want to pursue the case due to insufficient evidence. No charges were filed against him. About a week later, Applicant applied for the arrest to be expunged. In the PSI, Applicant explained that W2 admitted lying to the police by telling them Applicant hit her, even though he did not. He also claimed that W2 told the police

he hit her because Applicant raised his voice to her and she got scared. This arrest was expunged from Applicant's record by court order dated February 12, 2020.

On February 26, 2020, W2 filed her TRO application, noting Applicant slapped and pushed her earlier that morning. It contained the details of the earlier incidents detailed above as well as this new allegation. In her TRO petition, W2 responded to Applicant's allegations that she lied to police, stating, "I never lied to them." AE E at 6. On March 10, 2020, a hearing was held regarding the TRO. W2 requested to dissolve the TRO. The judge denied her request and continued the case. On May 26, 2020, W2 requested a second time to dissolve the TRO. The judge denied her request and continued the hearing. At this May 2020 TRO hearing, Applicant was ordered (in contrast to the AJ's finding that he "volunteered") to attend domestic violence intervention (DVI) classes and to provide documentation regarding the status of the classes to the court. He did so for the duration of the active restraining order.

On June 29, 2020, after receiving testimony from both parties, the judge took judicial notice of the records and files. Applicant was to provide the court with documentation related to DVI services and individual or marriage therapy. She also ordered all other provisions of the TRO to remain in effect and continued the hearing until August 24, 2020. On August 24, 2020, the judge ordered that the TRO granted on February 26, 2020, be dissolved per W2's request and vacated it without prejudice.

Although Applicant and W2 had separated in April 2020 and W2 had expressed her desire to file for divorce, the couple reconciled in November 2020 and attempted to work on their marriage, attending marriage counseling together. W2 left Applicant again in April 2021, however, and returned to Japan. Applicant then filed for divorce.

W2 returned from Japan in early August 2021 to respond to the petition for divorce. On August 11, 2021, Applicant filed for a TRO against W2. On September 8, 2021, W2 and Applicant appeared at the TRO hearing. Per agreement of the parties, the judge ordered that the TRO be dissolved with prejudice because Applicant and W2 voluntarily entered into a no-contact order in their divorce case.

Applicant alleged that W2 began to contact him again in November 2021. Specifically, he alleged that on November 12, 2021, W2 sent him several emails that were unrelated to their divorce and appeared at his door despite being cautioned by the family court judge to contact him only on issues related to the divorce. He further alleged that on November 13, 2021, W2 again went to Applicant's apartment, used his spare key, and entered the apartment. Following that incident, Applicant called the police. Applicant reported that W2 again entered his apartment on November 29, 2021, when he was not present and left a bill. He reported that his house key was missing, his walls were damaged, and several personal items were missing.

On November 30, 2021, Applicant filed a petition for an order of protection against W2. In his petition, Applicant claimed that between March 14, 2019 (their wedding day) and June 10, 2021, W2 had been mentally and physically abusive, to include specific allegations that she slapped him in the back of the head while he was driving, dug her fingernails into his skin, screamed and yelled at him, broke items in his home, punched him in the face several times,

threatened to kill herself with his firearm, threw a dustpan at him, and hopped on the hood of his car. The protection order, issued December 13, 2021, is to be effective until December 13, 2029. They were formally divorced June 20, 2022.

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." *Department 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 the AJ's factual findings and argues that the AJ's analyses under the disqualifying conditions for Guidelines J and E and the Whole-Person Concept were arbitrary, capricious, and not supported by the record evidence. When a judge's findings are challenged, we examine them to see if they are supported by substantial evidence, *i.e.*, "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 3 (App. Bd. Aug. 8, 2005). A judge's decision can be found to be arbitrary or capricious if it "fails to examine relevant evidence, fails to articulate a rational connection between the facts found and the choice made, fails to be based on a consideration of relevant factors, involves a clear error of judgment, fails to consider an important aspect of the case, or is so implausible as to indicate more than a mere difference of opinion." ISCR Case No. 94-0215, 1995 WL 396942 at *3 (App. Bd. Apr. 13, 1995) (citing *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)). For the reasons stated below, we reverse the AJ's Remand Decision.

Upon remand, the AJ concluded that the record evidence failed to establish a *prima facie* case under either Guideline J or Guideline E. That conclusion is both curious and wrong for at least four reasons. First, in his Decision, the AJ found — albeit equivocally — that the Government had carried its burden. Second, the Appeal Board concluded in our Remand Order that the Government had met its burden — that "there was evidence that Applicant committed various specific acts of domestic violence." Remand Order at 3. Third, by revisiting the issue of whether the Government had carried its burden, the AJ strayed well outside the bounds of the Remand Order, which specifically required him to reconcile his credibility determination with all the evidence to the contrary. And, fourth, in arriving at his conclusion that the Government failed to make a *prima facie* case, the AJ simply chose to ignore significant evidence of record. For brevity's sake, our discussion will focus on this fourth and dispositive issue — the Judge's failure to consider relevant evidence. For the reasons detailed below, we conclude that the AJ's findings do not reflect a reasonable interpretation of the record evidence and that his conclusions were arbitrary and

capricious as he failed to examine relevant evidence and, consequently, failed to consider important aspects of the case.

It is well-established that DOHA security clearance adjudications are administrative proceedings, and the "beyond a reasonable doubt" burden of proof associated with criminal proceedings is not applicable. Similarly, the "preponderance of the evidence" standard in civil proceedings such as a TRO is not applicable. Instead, the Government must prove any controverted facts by substantial evidence — that is, more than a scintilla, but less than a preponderance of the evidence.

Applicant admitted to the arrests and restraining orders, thus relieving the Government of producing additional evidence as to the specific allegations. Directive ¶ E3.1.14. ISCR Case 07-13766 at 3 (App. Bd. Nov. 12, 2008). Applicant, however, denied the underlying conduct, placing the burden on the Government as to those controverted facts. As we discussed in our Remand Order and as recited in the lengthy chronology of events above, the Government's evidence included petitions for TROs/Protective Orders submitted under penalty of perjury by both of Applicant's former wives, and those petitions detailed multiple acts of domestic violence spanning a three-year period. That substantial record evidence inarguably established a *prima facie* case. The AJ's conclusion otherwise — that the Government failed to carry its burden — is inexplicable and erroneous.

Even had the AJ correctly concluded that the Government presented a *prima facie* case and subsequently addressed the case in terms of mitigation, the analysis he provides in his Remand Decision does not overcome the Board's previous concern — that he substituted a favorable credibility determination for significant contrary record evidence. In our remand, the AJ was instructed to reconcile his favorable credibility determination for the Applicant with the record evidence to the contrary. That is, he was instructed to explain why he believed Applicant's assertions that the underlying domestic violence did not occur in light of the allegations made by both of his ex-wives. The AJ failed to do so. Instead, he again focused on Applicant's denials, emphasized the lack of corroboration of the former wives' allegations of abuse, and minimized or ignored the Government's evidence before concluding that the evidence was "insufficient to establish the allegations that Applicant committed the offenses alleged in the SOR." Remand Decision at 10.

The AJ's Findings of Fact and conclusions regarding Applicant's arrest in July 2019 provide an illustrative example of his problematic approach to the evidence. In his Findings of Fact regarding the July 2019 arrest, the AJ noted that "[t]he only source document contained in the case file describing this incident is the [PSI] of the Applicant conducted under oath on November 3, 2020." *Id*. at 3. That finding is directly contradicted by the record, which contains W2's TRO application discussing the incident in detail. The AJ did not even acknowledge that critical evidence, much less discuss why he did not find it credible. Instead, he later relies on his erroneous Finding of Fact in his analysis section, again citing to a lack of evidence that contradicted Applicant's version of events before concluding that "[t]he evidence that Applicant provided to the investigator clearly does not support the allegation" and that Applicant's PSI, if believed "exonerates Applicant and refutes her allegations." *Id*. at 9. The AJ also found that Applicant's charge from the July 2019 incident "was dismissed with prejudice for lack of

evidence." *Id*. However, a thorough examination of the record reveals that Applicant's claim that the charge was dismissed for "lack of evidence" is unsupported by any corroborating evidence. As we have frequently discussed, charges can be dismissed or not pursued for any number of reasons that do not justify a conclusion that an applicant did not commit the conduct in question. *E.g.*, ISCR Case No. 18-02018 at 4 (App. Bd. Nov. 4, 2021) ("[T]he decision by the law enforcement authorities in this case not to pursue criminal charges against Applicant due to the mother's decision not to let her daughter testify does not amount to a finding of "not guilty" or a determination of innocence."). A judge should not make assumptions or draw inferences about why there was no prosecution without corroborating evidence beyond Applicant's self-serving averments. *See* ISCR Case No. 20-00347 at 7 (App. Bd. Aug 11, 2021).

Applicant was accused of domestic violence by both of his former wives. In all instances, he claimed the underlying conduct for which he was arrested or a TRO was issued did not occur. We have previously noted that similar allegations made against an applicant by different accusers may add weight to the validity of those accusations. ISCR Case No. 14-01763 at 3-4 (App. Bd. Nov. 3, 2015) (discussing a pattern of domestic violence allegations). The AJ failed to consider this important aspect of the case — the improbability that two women, with no known ties to each other, would fabricate similar allegations against Applicant. As we noted previously in this case –

> While the former spouses were not present at the hearing to provide testimony, their statements given under penalty of perjury in a civil judicial proceeding are entitled to significant weight and cannot be ignored simply because the proponents of those statements are not present at the hearing. The [AJ] did not assess the contents of those statements individually and in context with each other, nor did he explain why he discounted evidence which, on its face, would suggest that Applicant's version of events was self-serving.

Remand Order at 5.

Additionally, as we have previously discussed, the time between the incident and the reporting of the incident should be assessed in determining the amount of weight placed on the statements. ISCR Case No. 22-00749 at 8 (App. Bd. Sept. 11, 2023). Here, W1 filed her petition containing the details of the abuse the day after the 2017 incident. The 2019 arrest involving W2 resulted in Applicant's arrest four days after the incident. The petition for the TRO was filed in close relation to Applicant's February 2020 arrest and on the same day as the final allegation of abuse. On remand, the AJ again failed to consider this aspect of the case and failed to explain the weight he afforded to Applicant's denials in the face of this significant evidence to the contrary. In summary, the AJ failed to examine relevant evidence, which led to his failure to consider important aspects of the case. Although a judge is not required to discuss each piece of record evidence in making a decision, the judge cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. *E.g.*, ISCR Case No. 21-01551 at 4 (App. Bd. Jul. 20, 2022.) Simply because an applicant explains events, a judge should not accept the explanation without considering evidence that fairly detracts from it.

While the Board is required to give deference to a judge's credibility determination, that deference has its limits. We evaluate a credibility determination in light of the record as a whole. A judge is expected to explain why an applicant's version of an event is worthy of belief when it is contradicted by other evidence. Failure to do so suggests that the judge merely substituted a favorable impression of an applicant's demeanor for record evidence. *E.g.,* ISCR Case No. 18-01926 at 4 (App. Bd. Sep. 20, 2019). A credibility determination may be set aside or reversed if it is unreasonable, contradicts other findings, is based on an inadequate reason, is patently without basis in the record, or is inherently improbable or discredited by undisputed fact. ISCR Case No. 97-0184 at 4 (App. Bd. Dec. 8, 1998). "When a witness's story is contradicted by other evidence or is so internally inconsistent or implausible that a reasonable fact finder would not credit it, we can find error despite the deference owed a Judge's credibility determination." ISCR Case No. 10-03886 at 3 (App. Bd. Apr 26, 2012), *citing Anderson v. Bessemer City*, 470 U.S. 564 at 575 (1985). Here, the perfunctory manner in which the AJ addressed record evidence of the former wives' allegations constitutes a failure to adequately consider significant evidence contrary to Applicant's assertions and to explain his determination that Applicant was credible. We conclude that the Judge unreasonably substituted a favorable impression of Applicant for record evidence.

Conclusion

The AJ's Remand Decision in this matter was arbitrary and capricious in that it failed to consider relevant evidence, failed to consider important aspects of the case, and offered an explanation for the decision that runs contrary to the record evidence. The standard applicable in national security decisions is that eligibility may be granted only when "clearly consistent with the interests of the national security." *Dept. of Navy v. Egan*, 484 U.S. 518, 528 (1988)). Here, the Judge's Remand Decision is not sustainable under the Egan standard and must be reversed. *See* ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (Reversal is appropriate when the Board concludes from the record that a contrary formal finding or overall grant or denial of security clearance eligibility is the clear outcome.).

ORDER

The favorable security clearance Remand Decision in ISCR Case No. 22-00761 is **REVERSED**.

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

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board