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**DEFENSE LEGAL SERVICES AGENCY**  
**DEFENSE OFFICE OF HEARINGS AND APPEALS**  
**APPEAL BOARD**  
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Date: July 1, 2025

In the matter of:

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Applicant for Security Clearance

ISCR Case No. 23-01450

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Andrew H. Henderson, Esq., Department Counsel  
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 22, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) 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 April 3, 2025, Defense Office of Hearings and Appeals Administrative Judge Darlene D. Lokey Anderson granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline B, the SOR alleges that Applicant has a long-term girlfriend who is a citizen and resident of Thailand and that he provides her approximately \$700 per month in financial support. Under Guideline E, the SOR alleges that Applicant's access to classified information was suspended in August 2020; that he was terminated or resigned under threat of termination in April 2016; and that, while employed by his current employer, Applicant's supervisors were forced to

become involved after coworkers complained about Applicant's conduct. For the below reasons, we reverse the Judge's decision.

### **Background**

Applicant is 59, unmarried, and has no children. He has a bachelor's degree in aeronautics. He served in the U.S. military from November 1991 until his retirement in September 2011. After retirement, Applicant accepted a job with a federal contractor. He worked for that first contractor from November 2012 through August 2015, when a new company took over the contract. He worked in the same position for the second contractor from August 2015 to April 2016, when he was terminated as discussed below. Applicant has worked as a contractor for his present employer since July 2016. From July 2016 to September 2020, Applicant worked for his current employer in South Korea. He held national security eligibility throughout the course of his military career and employment as a contractor, until it was suspended by the Director of the Defense Counterintelligence and Security Agency in September 2020. When his national security eligibility was suspended, Applicant returned to the United States but continued to work for his current employer.

### **Guideline B**

In late 2010, while visiting Thailand as a tourist, Applicant met an 18-year-old citizen and resident of Thailand (NF), who became his "girlfriend."<sup>1</sup> NF was working as a bar girl or hostess when Applicant met her, and they began a romantic relationship. After about a year, NF stopped working, and Applicant began financially supporting her. From late 2010 to September 2016, Applicant would contact her every couple of days or so.<sup>2</sup> He was living in the United States during this timeframe. Their in-person contact increased when Applicant moved to South Korea in 2016 and decreased again when he returned to the United States in 2020.

Applicant's girlfriend is now 33. She has a 9-year-old son with a different man. Applicant maintains daily contact with her and sends her money through Western Union frequently. Applicant's estimates of how much money he sends her fluctuate. His Answer to the SOR reflected that in 2024 he only sent her \$1,000 to \$1,200, but his March 2023 SCAs indicated he sends about \$325 every two weeks. He reported that he gave NF \$10,000 for an anniversary gift about seven years ago, and coworkers report that Applicant sent her \$10,000 at the time that his clearance was suspended in 2020. Applicant believes that NF saved around \$35,000 of his money in a Thai bank account for the purchase of their retirement home. In Applicant's answer to Interrogatories, he explained that she has since spent that money to build a house on her family's property in Thailand. NF is listed as the owner of the home. He continues to send her money to pay her living expenses as needed. They communicate by messenger frequently, though his estimates on their contact vary.

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<sup>1</sup> Applicant has been inconsistent in his statements about when the relationship began. In an October 2020 background interview, Applicant reported that the relationship began in late 2010, and he affirmed that date in interrogatories and testimony. In completing his 2019 and 2023 security clearance applications (SCAs), however, Applicant listed the date they met as October 2012.

<sup>2</sup> The Judge found Applicant would "see" her every couple of days or so, but in-person contact is not supported by the record, except during the time he lived in South Korea or was traveling to Thailand. Decision at 3.

In April 2013, Applicant completed an SCA to renew his national security eligibility. On it, he disclosed his travel to Thailand from September 2010 to October 2010 and from December 2010 to January 2011, but he failed to report any foreign contacts, to include NF.

In his 2019 SCA, Applicant disclosed his two previously-reported trips to Thailand along with five other trips there including: April 2017, December 2017 to January 2018, June 2018, January 2019, and April 2019. He also disclosed that he cohabitated with NF since September 15, 2016. In his subsequent 2020 background interview, Applicant clarified that it was at this time that NF became his “serious girlfriend.” Government Exhibit (GE) 7 at 8. Several times a year, she would fly from Thailand to visit him in South Korea and stay around one to three months at a time, and Applicant would visit Thailand to see her a couple times a year.

Applicant’s March 30, 2023, SCA lists travel to Thailand in May to June 2022. Additionally, Applicant testified he last traveled to Thailand in December 2024. Since his return to the United States in late 2020, Applicant currently only travels to see NF once per year. He plans to move to Thailand after he retires. Applicant claims his girlfriend has no affiliation with the government of Thailand. Applicant also asserted that he reported his relationship with NF to his current employer’s security office, via his supervisor, in compliance with security rules and regulations.<sup>3</sup>

During the course of Applicant’s background investigation, several coworkers referenced Applicant’s financial support of other female foreign nationals in Thailand and/or South Korea whom he met in bars. One coworker told the investigator that Applicant had “side girls,” with whom he would occasionally go on dates and have sex without his girlfriend’s knowledge. Testifying for Applicant at the hearing, the coworker confirmed this information. Applicant denies sexual relations with any of these women. Instead, he testified that he sent money to the two other female foreign nationals to help during COVID-19, when they lost their jobs. These relationships are not alleged in the SOR.

In assessing the heightened risk of Applicant holding a security clearance, an applicant’s ties to a hostile country are important. However, even countries friendly to the United States have attempted to gain unauthorized access to classified information. The Judge took administrative notice of information provided by both the Government and Applicant concerning Thailand, which included the following:

In a 2023 Report to Congress, the US-China Economic and Security Review Commission reported that Thailand is a member of the China-led Asia Pacific Space Cooperation Organization (APSCO), is a recipient of Chinese Arms, and is one of the top five most frequent military diplomatic partners of the Chinese People’s Liberation Army (PLA) with whom they have conducted military exercises. Chinese companies are expanding their presence in Thailand and are circumventing Thai law to secure ownership of local media outlets in an effort to

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<sup>3</sup> In the Judge’s analysis, she incorrectly concludes that, “When the relationship started, he reported it to his employer, and the fact that he was financially supporting her.” Decision at 8. The evidence suggests only that he reported it to his *current* employer. When the relationship started in 2010, Applicant was still on active duty. The record evidence does not support a finding that Applicant reported the relationship to his command.

shape the media environment in Thailand. Significant human rights issues reported in 2023 include credible reports of arbitrary arrest and detention, political interference in the judiciary, political prisoners, arbitrary and unlawful interference with privacy; serious restrictions on freedom of expression and media and the use of criminal libel laws; serious restrictions on internet freedom; extensive gender-based violence including domestic or intimate partner violence and sexual violence; among others.

Decision at 6.

#### Guideline E

Applicant's background investigation revealed several incidents of inappropriate behavior while employed as a contractor in the defense industry. The SOR alleged that he was terminated from his second defense contractor employer in 2016 following a conflict with a coworker, and it described two prior incidents as well. The Judge highlighted one of those incidents as being of "particular concern." *Id.* at 4. Applicant brought a target practice silhouette, with bullet holes in it, into the workplace and hung it on the office wall where it was visible to all. The Judge found that "[n]ames of coworkers were written on the silhouette as well as threats" despite Applicant's denials that names or threats were written on it. *Id.* His explanations of record about why he brought the silhouette into the office vary from claiming it was a joke to asserting that he brought the target into work "to display to my coworkers as a challenge to improve their marksmanship." Answer to SOR (Answer) at 3.

The SOR also alleged, and the Judge discussed, an incident in which Applicant brought a sword to work, took it out of its case in front of his coworkers, and purportedly swung it around. Applicant was told to remove the sword from the workplace and to not bring it back. Applicant admitted bringing the sword to the office but testified, "I did not swing the sword, nor did I use the sword in any manner that could be construed as a threat." Transcript (Tr.) at 40.

As the SOR alleged, Applicant was terminated from this employment in 2016, following a conflict with a coworker for which he was reprimanded. Applicant has given conflicting reports of why he was terminated. In his background interview of October 2020, Applicant identified the cause as an isolated incident in April 2016 in which he followed the female coworker into the ground control room "for no particular reason" and remained in the room for 15 to 20 minutes "to make sure [she] did not fiddle with anything." GE 7 at 3. Applicant repeatedly asserted to the investigator that he and the female colleague had no personality conflicts or issues of any kind prior to this single incident, after which he was informed that he was released. *Id.* at 3–4. In his subsequent Answer to the SOR, Applicant asserted instead that the termination was due to a "verbal confrontation" with the female coworker because she was violating procedures in a manner that "constituted interference with an aircraft in flight." Answer at 3. At hearing, Applicant reverted to his explanation that he had merely followed the female colleague into a room: "She was told to go and write down some radar settings. And so I went into . . . the ground control station and sat and watched the mission while she was in there transcribing whatever it is that she was writing, I never spoke to her and I never approached her or said hi or bye or anything. And then after 15 minutes, I left." Tr. at 102. Applicant professed that he was completely surprised to

have been reprimanded and released in the wake of the incident: “I couldn’t believe what I was hearing because I didn’t do anything wrong.” *Id.* at 118.

The evidence of record paints a markedly different picture of the events prior to Applicant’s termination. In addition to the alleged silhouette and sword incidents discussed above, the record evidence suggest a host of other workplace issues at this employment, to include: that Applicant had been the subject of IG investigations, that he had been the subject of an Air Force Office of Special Investigations investigation; that he frequently viewed “soft porn” or scantily-clad Asian women on his Government computer; that he had personality conflicts with multiple employees; that coworkers considered him to be “mentally unstable” and a “loose cannon”; that he “blew up” and screamed at a female coworker in front of others, resulting in a complaint against him and a reprimand; and that the same coworker later initiated a second complaint for continued harassment. GE 11 at 1; GE 12 at 2; GE 13 at 2, 3. Contrary to Applicant’s repeated assertions, the weight of the evidence confirms that it was not an isolated incident that led to Applicant’s termination.

During the security clearance adjudication process, Applicant has also made conflicting statements about whether he resigned or was fired from this employment. In his 2019 SCA, Applicant reported both that he “left by mutual agreement” and that he was “released from company after reprimand.” GE 3 at 15–16. In two SCAs submitted in March 2023, Applicant stated that he quit before being fired following “false allegations.” GE 1 at 13; GE 2 at 13. In his response to Government interrogatories in October 2023, Applicant acknowledged that he was “terminated” from his position with the defense contractor. GE 5 at 10. In his Answer to the SOR, however, Applicant stated that he “resigned voluntarily” because he “did not wish to be associated with such an unprofessional organization.” Answer at 3. At hearing, he again denied that he was fired. Tr. at 104. The record supports a determination that Applicant was fired.

Following his termination in April 2016, Applicant was hired by his current employer and moved to a jobsite in South Korea. The SOR alleged that coworkers at this new employment complained about Applicant’s conduct, requiring supervisors to become involved. The Judge acknowledged that Applicant was accused of yelling and screaming at a coworker and creating a hostile work environment. Decision at 4. She noted that a witness to the argument stated that Applicant is opinionated and vocal, tends to speak “without a filter,” and at times says things that are highly inappropriate. *Id.* Nevertheless, the Judge found favorably for Applicant on this allegation, stating that the Government provided no evidence to support it.<sup>4</sup>

The Government’s evidence, however, included statements from a coworker and supervisor at this employment that confirmed significant problems between Applicant and his colleagues, arising from Applicant voicing “unprofessional and unethical” opinions, including racist and sexist comments and opinions about the attractiveness of various female employees. GE 10; GE 14. The tensions caused by Applicant’s behavior resulted in complaints and in management separating shifts in at least two instances so that colleagues did not have to work alongside him. In August 2020, Applicant’s employer was informed that his security clearance and access to

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<sup>4</sup> The Judge relied in part on Government’s concession during closing argument that there may be insufficient evidence in the record to support the allegation at SOR ¶ 2(c). Post-hearing, however, the Judge admitted GE 10 through 15 without objection. GE 10 and GE 14 directly address the issue alleged at SOR ¶ 2(c).

classified information was suspended. Applicant was subsequently transferred from South Korea to a stateside location where he remains employed by the same defense contractor.

### **Scope of Review**

On appeal, the Board does not review a case *de novo*, but rather addresses material issues raised by the parties to determine whether there is factual or legal error. When a judge's factual findings are challenged, the Board must determine whether the "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.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can 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. *See* 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)). In deciding whether a judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2 (App. Bd. Jun. 2, 2006).

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR OSD Case No. 87-2107, 1992 WL 388439 at \*3-4 (App. Bd. Sep. 29, 1992) (citations to federal cases omitted). If an appealing party demonstrates factual or legal error, then the Board must consider the following questions: (1) Is the error harmful or harmless?; (2) Has the nonappealing party made a persuasive argument for how the judge's decision can be affirmed on alternate grounds?; and (3) If the judge's decision cannot be affirmed, should the case be reversed or remanded? *See* ISCR Case No. 02-08032 at 2 (App. Bd. May 14, 2004).

### **Discussion**

On appeal, the Government argues that the Judge's application of the Guideline B mitigating conditions, Guideline E mitigating conditions, and analysis under the Whole-Person Concept were arbitrary, capricious, and not supported by the record evidence. Applicant argues in his Response Brief that the Judge properly applied the mitigating conditions and that her findings are entitled to deference.

#### **Guideline B**

At the outset, the Board notes that the Judge's analysis identifies three disqualifying conditions under AG ¶ 7 "as potentially applicable" to Applicant's relationship with his girlfriend

in Thailand: AG ¶¶ 7(a), 7(b), and 7(f).<sup>5</sup> However, the Judge never states which, if any, she found to be applicable. Instead, she concludes that “these contacts do not pose a significant security risk to the U.S. government” without conducting any heightened-risk assessment or examining a potential conflict of interest. Decision at 8. As we have previously stated, a 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 she is reaching. ISCR Case No. 16-02536 at 5 (App. Bd. Aug. 23, 2018). In failing to identify what disqualifying conditions she found applicable, the Judge clouded appellate review, leaving the Board to decipher what may have been her reasoning and conclusions.

“Heightened risk” is not a high standard to meet. It is a risk that is greater than the normal risk inherent in having a family member living under a foreign government. Depending on the circumstances of a case, one or more foreign contacts even in a country that is friendly to the U.S. may create a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. ISCR Case No. 17-04278 at 3, n.1 (App. Bd. May 23, 2019). Here, the Judge found that Thailand has strengthening ties with China, that U.S. citizens are at risk of death or injury due to the possibility of indiscriminate attacks in public places, and that significant human rights abuses have occurred in Thailand. These facts establish a heightened risk. Moreover, the SOR alleges, and Applicant admits, that Applicant’s long-term girlfriend is a citizen and resident of Thailand and that Applicant provides her financial support. Consequently, the record supports the application of AG ¶¶ 7(a) and 7(b).

Turning to mitigation, the Judge found that Applicant established AG ¶¶ 8(a), 8(b), 8(c), and 8(e).<sup>6</sup> Focusing on the alleged relationship with NF, the Government argues that Applicant failed to meet his burden of persuasion to afford full application of any of the mitigating conditions. We agree. The Judge errs in her analysis of AG ¶¶ 8(a) and 8(c) for two reasons: she minimized the nature of Applicant’s relationship with his girlfriend; and she failed to sufficiently consider the security significance of the heightened risk with respect to Thailand, especially as it relates to

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<sup>5</sup> AG ¶¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology; 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

<sup>6</sup> AG ¶¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; 8(b): there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

China. On the first issue, despite finding that Applicant and NF have “daily or weekly telephonic contact” and cohabitated from 2016 to 2020, the Judge deemed their contact to be “limited, casual, and infrequent.” Decision at 3, 9. That conclusion runs contrary to the record evidence and constitutes error. The close nature of Applicant’s relationship with NF is reflected in his regular communication with her, his significant financial support of her, and his plans to have a future with her, even if their relationship is currently long-distance.

The Judge also does not give any consideration to the relevant risks associated with Thailand in her mitigating analysis, though she included them in the statement of facts. In Guideline B cases, the nature of the foreign government involved, including its human rights record, are among the important considerations for the judge, including as part of the Whole-Person analysis. ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007). Crucial to this analysis is an accurate and current assessment of the geopolitical situation in the country. *See* ISCR Case No. 07-14508 at 4 (App. Bd. Oct. 22, 2008). The Judge failed to sufficiently consider the current relevant geopolitical situation of Thailand.

Applicant had the burden to establish mitigation. Yet the Judge failed to recognize Applicant’s burden to demonstrate that his girlfriend is not a means of coercion or exploitation and failed to properly weigh the evidence. Applicant has invested both emotionally and financially in his relationship with NF. Although he served honorably in the military for 20 years and argues that he is firmly rooted in the United States, Applicant reports no close ties in the United States, no significant financial assets, and no other longstanding relationships or loyalties in the United States. Indeed, there is significant evidence to the contrary. Applicant’s coworkers reported that Applicant expressed a preference for Asia, to include: that he “always talked about how he would rather live in an Asian country over the US”; that he traveled extensively in Asia and had ties to female foreign nationals; that he “talked negatively about his . . . past in the military”; that he felt wronged by the U.S. government and “would go on rants about [his branch of service] and government and was very bitter towards [his branch of service]”; and that he talked frequently about his plans to retire in Thailand. GE 11 at 2; GE 12 at 2; GE 13 at 3. These same coworkers expressed reservations about Applicant’s security clearance eligibility in light of their concerns. *Id.* In concluding that Applicant “has shown a deep and longstanding relationship with or loyalties to, the United States,” the Judge failed to examine and weigh this troubling evidence to the contrary. Decision at 9.

In summary, the Judge erred in finding that Applicant met his burden to establish that it is unlikely he will be placed in a position of having to choose between the interests of his girlfriend and the interests of the United States, or that Applicant’s sense of loyalty or obligation to his girlfriend is so minimal, or that Applicant has such deep and longstanding relationships and loyalties in the United States, that he can be expected to resolve any conflict of interest in favor of the U.S. interest. The Judge’s application of AG ¶¶ 8(a), 8(b), and 8(c) reflects a clear error in judgment and offers an explanation that runs contrary to the record.

The Judge also found that Applicant established AG ¶ 8(e), concluding that: “All foreign contacts he has made have been promptly reported to his company supervisor and security officer, and he plans to continue to follow all reporting requirements. He has been open, honest, and candid, about these relationships with the Government during the entire security clearance



process.” *Id.* However, the record does not support that he reported his relationship to his active-duty command in 2010 or to the first two contractors that employed him from 2012 through 2016. He did not report his relationship with NF on his 2013 SCA, nor did he report his “side girls” on his subsequent SCAs. The Judge’s application of AG ¶ 8(e) runs contrary to the record evidence.

### Guideline E

The Judge identified AG ¶¶ 16(c), 16(d), and 16(e)<sup>7</sup> as raising security concerns without analysis and identified AG ¶ 17(d) as the singular mitigating condition that was potentially applicable.<sup>8</sup> Regarding the allegation at SOR¶ 2(b), that Applicant was terminated following a series of events at the second defense contractor, the Judge found that Applicant “admits that the underlying conduct occurred, but not that his behavior was inappropriate.” Decision at 10. That finding is contradicted by the record. Applicant denied writing names or threats on the silhouette, denied harassing his female coworker, denied a verbal confrontation with her, denied any other issues while employed at this jobsite, and denied being terminated in April 2016. The Government argues persuasively that the language of AG ¶ 17(d) requires Applicant to first acknowledge his mistake and then engage in counseling or other corrective behaviors. Applicant’s constant minimization of his troublesome conduct is incongruent with a finding that he has acknowledged the behavior. As we have held in the past, when an applicant is unwilling to accept responsibility for his own actions, “such a failure is evidence that detracts from a finding of reform and rehabilitation.” ISCR Case No. 96-0360 at 3 (App. Bd. Sep. 25, 1997). The record evidence does not support full application of AG ¶ 17(d).

### Whole-Person Analysis

The Government argues that the Judge’s Whole-Person analysis addresses the record evidence in a piece-meal fashion and does not consider the record as a whole. Specifically, the Government highlights Applicant’s numerous inconsistent statements, addressed above. Given the record in this case, the Government’s argument is persuasive. Moreover, the Judge’s Whole-Person analysis simply incorporates her comments under Guidelines B and E. To the extent that we found error there, we find similar error here.

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<sup>7</sup> AG ¶¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; 16 (d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (2) any disruptive, violent, or other inappropriate behavior; 16 (e): personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person’s personal, professional, or community standing.

<sup>8</sup> AG ¶ 17 (d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

## Conclusion

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). The standard applicable in national security decisions is that eligibility 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).

The Government has met its burden on appeal of demonstrating reversible error below. Based on the record before us, the Judge’s decision in this matter was arbitrary and capricious in that it failed to examine relevant evidence and consider relevant factors and important aspects of the case, failed to articulate a satisfactory explanation for its conclusions, and it offers an explanation for the decision that runs contrary to the record evidence. It 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 decision in ISCR Case No. 23-01450 is **REVERSED**.

Signed: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein  
Administrative Judge  
Member, Appeal Board