



**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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ARLINGTON, VIRGINIA 22203
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Date: July 2, 2025

In the matter of:)
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ISCR Case No. 23-01853

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Applicant for Security Clearance)
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William H. Miller, 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 October 19, 2023, DoD issued a Statement of Reasons (SOR-2) advising Applicant of the basis of that decision – security concerns raised under Guideline G (Alcohol Consumption) and Guideline I (Psychological Conditions) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On March 27, 2025, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, the Government argues that the Judge failed to completely analyze significant record evidence and made factual findings that were unsupported by the record, and, as a result, failed to properly apply the mitigating conditions and Whole-Person Concept. We agree and reverse the Judge's decision.

Background

Applicant is in her late 20s, married, and has one minor child and two minor stepchildren. She graduated from high school in 2014 and attended college for two years before dropping out and joining the U.S. military in 2018. She was honorably discharged in 2023. Applicant was first granted a security clearance in June 2019 in connection with her military service.

At the beginning of the COVID-19 lockdown, Applicant was residing alone in an off-base apartment due to structural problems in the barracks. She felt lonely and isolated. She had just relocated cross-country when the pandemic began, and this was the first time she lived far from home. She began drinking alcohol to pass the time.

By June 2020, Applicant was consuming an average of a bottle of wine per night. On July 4, 2020, Applicant invited several friends to her apartment to drink alcohol. Subsequently, she drank to the point where she vomited and blacked out. She decided to stop consuming alcohol after realizing that she was consuming too much, but began experiencing memory loss, anxiety, and insomnia. By July 9, 2020, she was having auditory and visual hallucinations, prompting her to check into the hospital. While at the hospital, she was evaluated and diagnosed with delirium tremens and alcohol use disorder, moderate. She endorsed auditory hallucinations, delusions, agitation, anxiety, and tremors. On July 14, 2020, she was transferred to a residential treatment facility where she received inpatient treatment for 30 days. From August 14 to October 23, 2020, she attended outpatient substance abuse disorder (SUD) treatment consisting of weekly individual sessions, attendance of Prime for Life alcohol and drug education, was subject to random urinalysis testing, and was required to abstain from alcohol use. She was released from treatment due to pregnancy and her commitment to have a healthy baby.

Applicant's 2020 hospitalization triggered a Security Access Eligibility Report and the DoD Consolidated Adjudications Facility requested Applicant receive a medical evaluation due to her alcohol use. In April 2021, Applicant was evaluated by a licensed psychologist and diagnosed with alcohol-use disorder, moderate, in early remission. During the evaluation, Applicant hypothesized the alcohol had little to do with her inability to sleep and reported she also had an ear infection and a urinary tract infection causing her too much pain to sleep. Government Exhibit (GE) 6 at 2. The psychologist noted that Applicant "minimized her alcohol use throughout [the] interview and denied having any problem with alcohol." *Id.* at 6. The psychologist's report noted discrepancies between the treatment records and the qualified answers Applicant gave during the medical evaluation to include minimizing her prior drinking history. The evaluator concluded that she lacked insight and did not appear to be aware of how her problematic alcohol use contributed to her July 2020 hospitalization. The psychologist concluded:

During this interview [Applicant] demonstrated questionable judgment and reliability, particularly through her evasive and unreliable reporting of facts that were already established in her [military] medical record. [Applicant] lacks insight, and she appeared bothered that the military requires evaluating someone's clearance if they use alcohol and receive treatment; especially if it was voluntary treatment like in her case. She is not able to provide a plan regarding how she will remain abstinent following the birth of her child, nor is she cognizant of how future

stressors and life changes could influence future decisions to reengage in problematic alcohol use.

Id.

Applicant's child was born in May 2021. On May 6, 2021, DoD issued Applicant SOR-1 alleging her 2020 alcohol consumption and subsequent treatment, as well as her lack of insight into her alcohol problems as described by the psychologist in April 2021.

In July 2021, Applicant relapsed following conflicts with her boyfriend. She expressed a desire to commit suicide after consuming two bottles of wine and her boyfriend took her to the clinic for help. After going to the hospital emergency room, she was transferred to the behavioral health unit. After meeting with a counselor, she was discharged.

In August 2021, Applicant self-admitted into a hospital after attempting to kill herself by drinking a bottle of wine and taking nine sleeping pills. Applicant was experiencing postpartum depression. These feelings were magnified when her boyfriend, the father of the child, moved out of their home shortly before the birth of the baby. At the hospital, she received crisis intervention therapy and was diagnosed with alcohol use disorder (AUD), moderate, and depressive disorder. Upon discharge, she began attending therapy, as recommended, once per week, and she was prescribed a medication for depression as well as a medication to control her alcohol consumption.

Applicant's Answer to SOR-1 is dated September 8, 2021. In her response, she claimed to be "in remission" and that there had been "no recurrences since July 4, 2020." GE 10 at 6. Her Answer did not acknowledge her July and August 2021 relapses.¹

Applicant was admitted to the hospital again on approximately September 7, 2021, after an episode of suicidal ideation and the consumption of two bottles of wine. She reported her last drink was on either September 6 or 7, 2021. GE 8 at 64, 78. She disclosed that she had been experiencing stress and a worsening mood since her boyfriend moved out two weeks prior to admission to the hospital. She indicated she was drinking five or more glasses of wine daily at that time. *Id.* at 19. She was diagnosed with AUD, anxiety disorder, as well as relationship distress with spouse or intimate partner. On September 10, 2021, she revised her frequency of the use of alcohol to "less than monthly" and indicated her drinking was limited to three or four drinks per sitting. *Id.* at 23. The Judge found that, "By October 2021, Applicant's condition had stabilized, as indicated by a therapist's report that concluded she was hopeful, with 'a positive future orientation.'"² Applicant enrolled in individual therapy and was prescribed Lexapro and Antabuse.

On January 14, 2022, despite having a "positive future orientation," and being diagnosed with "Alcohol Abuse, in remission" after her therapy session on January 12, 2022, Applicant was

¹ It appears that the DoD Consolidated Adjudications Facility found that her Answer mitigated the concerns raised in SOR-1, though the resolution of that matter is not explicitly covered in the record.

² Decision at 4 (quoting GE 8 at 70). The Judge cites an October 6, 2021, "Safety Assessment" in support of this finding. We note that the Safety Assessment was part of an uncompleted intake assessment. Two days later when she completed the intake progress, her prognosis was "fair." GE 8 at 82.

admitted to a hospital after another episode of suicidal ideation while under the influence of alcohol. GE 8 at 42-50. This episode was triggered, in part, after a supervisor crept up behind her and pulled her hair. Applicant then completed another 30-day inpatient alcohol rehabilitation, followed by a six-week, intensive outpatient program, and then began attending weekly outpatient individual therapy. While hospitalized, both of Applicant's anti-depressant medications and her medication to prevent alcohol consumption were adjusted. Applicant felt that the adjustments were effective. She was discharged from SUD on April 19, 2023. Answer to SOR-2 at 4, Enc. 1.

As part of her treatment, Applicant was required to attend Alcoholic Anonymous (AA) classes daily for 90 days. After completion of that requirement, she attend AA monthly from March 2022 until she moved in August of 2023. Tr. at 74-75. By the end of 2022, Applicant's psychiatrist began weaning her from the medication to control alcohol consumption. In August 2023, Applicant switched from Lexapro to Wellbutrin. She tapered off Wellbutrin in December 2023. *Id.* At 68. Applicant claimed she has not consumed any alcoholic beverages since the episode that prompted the January 2022 hospital admission.

In March 2024, Applicant sought a psychological evaluation from a psychologist "as part of the proceedings for trying to keep her security clearance." Applicant Exhibit (AE) G at 4. That psychologist diagnosed Applicant with major depressive disorder in full remission, and AUD, moderate, in sustained remission. *Id.* The Judge noted that the psychologist conducted a comprehensive battery of tests and concluded that "she seem[ed] to be generally calm, stable, adaptable, alert, [and] optimistic" with no sign of depression. *Id.* at 3. The report found in part:

Due to relationship stress with her boyfriend, the eventual ending of their relationship, and possible postpartum depression, [Applicant] stated that she resumed drinking in September of 2021 and attempted suicide. She stated that she was hospitalized for 5 days after this attempt, and stopped drinking until January of 2022. She stated that she resumed drinking on 1/25/22, [at] which point she had another suicide attempt.

Following her second suicide attempt in January 2022, [Applicant] stated that she was hospitalized and then completed another 30 days of inpatient alcohol rehabilitation. She stated that this was followed by a 6-week intensive outpatient program, and then weekly outpatient individual therapy. She stated that she also started attending AA meetings in March of 2022, which she continues to attend on a monthly basis. Currently, she reported seeing a psychiatrist for medication management. She noted that she takes Wellbutrin and Amitriptyline, which have been helpful.

Id. at 1-2. The psychologist's assessment concluded: "It is important to note that [Applicant] was open and honest during her interview and with her responses to all questionnaire items completed during the testing process." *Id.* at 4.

Applicant and the father of her child are married now. Their relationship is no longer volatile like it was in the past because they "have worked through everything" with therapy. Decision at 4 (quoting Tr. at 71).

In March 2021, Applicant returned to college. In January 2024, she obtained her bachelor's degree, graduating *cum laude* with a 3.57 grade-point average. While in the military, her job performance was highly regarded. In July 2021, a supervisor described her as a "hard-charging sailor, dedicated to improvement and raising the bar." *Id.* at 2 (quoting GE 10 at 34). Currently, she works as a defense contractor in the cybersecurity field. A coworker describes her as a woman with exemplary commitment to her duties, who "consistently displays a high level of professionalism, integrity, and diligence in handling sensitive information and performing tasks related to [the] organization's mission." *Id.* at 3 (quoting AE E).

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 that the Judge's analyses under the mitigating conditions for Guidelines G and I 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 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)). Here, the Decision failed to consider important aspects of the case, relied upon erroneous findings of fact, and reached conclusions that ran contrary to the totality of the record. For the reasons stated below, we reverse the Judge's Decision.

Conflicting Evidence

The Government's argument that the Judge afforded undue weight to Applicant's 2024 psychological evaluation despite significant conflicting record evidence, without addressing the conflicting evidence at all, underlies the majority of claims of error raised on appeal. These arguments have merit.

Although a judge is not required to discuss every piece of record evidence, he “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.” ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007). Furthermore, when conflicts exist within the record, a judge must weigh the evidence and resolve such 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). A judge is neither compelled to accept a psychologist’s diagnosis of an applicant nor bound by any expert’s testimony or report. Rather, the judge has to consider the record evidence as a whole in deciding what weight to give an expert opinion. *See* ISCR Case No. 19-00151 at 8 (App. Bd. Dec. 10, 2019). A diagnosis may be undercut by inaccurate or incomplete information.

The Government asserts that the March 2024 psychological evaluation, which the Judge relied upon heavily in his mitigating and Whole-Person analyses, relied upon multiple inaccuracies. The report of the evaluation lacks a complete history of Applicant’s alcohol dependence, suicide attempts, and history of hospitalization. While the report identified Applicant’s hospitalization in July 2020 and suicide attempts in September 2021 and January 2022, it omitted any mention of the July 2021 and August 2021 suicide attempts. The evaluator also noted that Applicant continued to attend AA monthly and that she “takes Wellbutrin and Amitriptyline, which have been helpful.” Similarly, in her November 14, 2023 Answer to SOR-2, Applicant asserted that, “[I] still continue with AA meetings presently and have maintained my sobriety.” However, Applicant testified at hearing that she stopped attending AA in August 2023 and discontinued her medications in December 2023. It is also unclear as to whether the psychologist had access to the 2021 evaluation that noted concerns with Applicant’s veracity. We agree that these contradicting or inaccurate statements cast doubt on the reliability of the 2024 psychological evaluation and the weight with which the Judge relies on it. The Judge erred in not identifying and resolving these conflicts based upon a careful evaluation of the evidence’s comparative reliability in light of the inaccuracies.

Credibility

Not only do the above inaccuracies cast doubt on the 2024 evaluation, but they also cast doubt on Applicant’s credibility when viewed cumulatively with other inconsistencies. When the record contains a basis to question an applicant’s credibility (inconsistent statements, contrary record evidence, etc.) the judge should address that aspect of the record explicitly, explaining why he or she finds an applicant’s version of events to be worthy of belief. *See* ISCR Case No. 14-054765 at 5 (App. Bd. Mar. 25, 2016). Failure to do so suggests that a judge has merely substituted a favorable impression of an applicant’s demeanor for record evidence.

Here, the Judge failed to explain why he found Applicant credible despite contrary record evidence. He did not address the 2021 psychologist’s notation that Applicant minimized her alcohol use and denied having a problem with alcohol. He did not examine the discrepancy between her claim in her September 2021 Answer to SOR-1 that she was “in remission” and that there had been “no recurrences since July 4, 2020” in light of the evidence that she relapsed in July 2021 and in August 2021. Nor did he evaluate her multiple omissions to the psychologist in the 2024 evaluation. Applicant appears consistent only in that she is an unreliable historian of her

alcohol use. The Judge erred in failing to weigh these factors as part of his credibility determination.

Guideline G and I Analysis

Applicant's repeated failure to provide full and candid information undermines the Judge's favorable credibility determination. Absent the material omissions and inconsistencies addressed above, the underlying conduct alleged in the SOR could arguably have been mitigated by the passage of time, her abstinence, and favorable prognosis after treatment. However, Applicant's inaccuracies and omissions raise questions about whether she has ever been completely candid with the Government about the nature, duration, or cessation of her alcohol consumption. Accordingly, the Judge's reliance on the unexplained and unsupported credibility determination renders the resultant favorable findings under Guidelines G and I and the Whole-Person Concept unsustainable.

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 national security eligibility is the clear outcome based on the record. ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (citation omitted).

The Government has met its burden on appeal of demonstrating reversible error below. Considering the record as a whole, the Judge's decision is arbitrary and capricious as it fails to examine relevant evidence and important aspects of the case, fails to articulate a satisfactory explanation for material conclusions, and runs contrary to the weight of the record evidence. Accordingly, the Judge's favorable decision is not sustainable under *Egan*. After addressing the identified errors, the Board concludes that a denial of national security eligibility is the clear outcome based on the record and the Judge's favorable decision is reversed.

Order

The decision in ISCR Case No. 23-01853 is **REVERSED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board