



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

Date: July 16, 2025

In the matter of:)
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ISCR Case No. 23-01614

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Applicant for Security Clearance)
_____)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 9, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations) 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 September 24, 2024, Defense Office of Hearings and Appeals Administrative Judge Pamela C. Benson granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

By decision issued December 18, 2024, the Appeal Board determined that the Judge erred in two regards: 1) in failing to consider an important aspect of the case; and 2) in concluding that the Government did not establish any disqualifying conditions. Remand Order at 5–6. We remanded the case for correction of the identified errors, noting that it may be necessary to reopen the record to explore unresolved factual and legal questions. *Id.* at 6, fn. 8. Upon remand, the case was transferred to Administrative Judge Mark Harvey, who held a second hearing on February 4, 2025. On May 5, 2025, Judge Harvey issued a remand decision denying national security eligibility, and Applicant appealed that decision.

Background

At the initial hearing, Judge Benson granted the Government's motion to amend the SOR. As amended, the SOR alleged twelve financial security concerns under Guideline F: eleven federal tax debts accrued between tax years (TYs) 2010 and 2022 and one state income tax debt from TY 2018.¹ In the initial Decision, Judge Benson concluded that the Government had failed to meet its *prima facie* burden. In the Remand Decision, Judge Harvey determined that the Government had established its *prima facie* case, that Applicant had mitigated the alleged state income tax debt, and that he had not yet mitigated the security concerns raised by his federal income tax debts.

Applicant was represented at the initial hearing, on Government appeal of the favorable decision, and at the second hearing. Now *pro se*, Applicant on appeal alleges no specific errors by Judge Harvey in his findings or conclusions. Instead, Applicant requests that the initial decision by Judge Benson be "reinstated." Appeal Brief at 1. In support of this request, Applicant re-submits his counsel's Reply Brief from the Government's initial appeal in a different format, which argues for affirming the original favorable decision. *Id.* at 1–8. Reinstatement of the original decision, however, is not a remedy available at this juncture, as a remanded decision is vacated and becomes a legal nullity. *E.g.*, ISCR Case No. 20-03111 at 2 (App. Bd. Nov. 14, 2022).

In addition to arguing for reinstatement of Judge Benson's favorable decision, Applicant also challenges Department Counsel's presentation of the case both in the Government's initial appeal brief and at the second hearing. Appeal Brief at 10–11. Although the Board has no supervisory authority over Department Counsel, the Board can review claims that the conduct of Department Counsel violated or prejudiced an applicant's rights under Executive Order 10865 or the Directive. ISCR Case No. 02-04344 at 2 (App. Bd. Sep. 15, 2003). Upon review of Applicant's brief and the record, we conclude that Applicant has not established a *prima facie* case of any such violation. Finally, in his sole allegation of error by Judge Harvey, Applicant makes a broad assertion that the Judge "did not take into account the 'whole person' concept that is part of the process." Appeal Brief at 1. This argument simply advocates for an alternative weighing of the evidence, which is not enough to show that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

Conclusion

Applicant has not established that the Judge's conclusions upon remand were arbitrary, capricious, or contrary to law. In the instant case, the Judge examined the relevant evidence, weighed the disqualifying and mitigating evidence, and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "The general standard 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).

¹ The Guideline E allegations were deleted upon Government motion to amend.

ORDER

The unfavorable Remand Decision in ISCR Case No. 23-01614 is **AFFIRMED**.

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