



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: February 2, 2026

In the matter of:)	
)	
-----)	ISCR Case No. 24-01209
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

William F. Savarino, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 27, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline D (Sexual Behavior), Guideline I (Psychological Conditions), Guideline M (Use of Information Technology), 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 November 24, 2025, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Scope of Review

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the judge committed factual or legal error.

When a judge's factual findings are challenged, the Board must determine whether the findings "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" and shall give deference to the judge's credibility determinations. 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).

Discussion

On appeal, Applicant challenges the Judge's factual findings and mitigation analysis and contends that the Judge was biased against him. For the following reasons, we remand the decision.

Applicant first argues that the Judge made a series of errors that caused him to fail to consider important aspects of the case. Among the alleged errors, Applicant challenges the Judge's reliance on a November 2023 DoD procured psychological evaluation, which he characterized as the "most recent" psychological evaluation. Decision at 15. The Judge heavily relied on the November 2023 evaluation in his mitigation analysis under each Guideline, and he did not discuss or even acknowledge lengthier and more recent psychological and psychiatric treatment records and evaluations from Applicant's mental health providers, entered in evidence as Government's Exhibits 14 and 15. This was error.

While a judge is not required to discuss every piece of record evidence in reaching a decision, 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, 2007 WL 1560031 at *3 (App. Bd. Apr. 6, 2007). Applicant's latest treatment records represent such significant evidence, and the Judge's unexplained disregard of them was error.

To that end, a judge must weigh conflicting 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, 2007 WL 4379274 at *3 (App. Bd. Nov. 14, 2007). A judge is neither compelled to accept a DoD mental health consultant's diagnosis of an applicant nor bound by any expert's testimony or report, and he must instead consider the record evidence as a whole in deciding what weight to give. *See* ISCR Case No. 99-0288, 2000 WL

1805217 at *2 (App. Bd. Sep. 18, 2000). Here, the Judge failed to explain why he gave more weight to the November 2023 evaluation and he therefore erred in his analysis.

Next, Applicant argues that the Judge erroneously found that he “hacked” into his ex-girlfriend’s Instagram account despite the fact he did not compromise anyone’s digital device or computer system, and the Instagram profile was public and accessible to anyone with an Instagram account. In part, the Judge found that Applicant “stopped hacking into his ex-girlfriend’s computer ‘a few months’ before the hearing, due to ‘external pressure’ from DoD security personnel who regarded it as a problem.” Decision at 9. The record is devoid of any evidence that Applicant “hacked” into his ex-girlfriend’s computer. Instead, it reflects that Applicant created a new username to follow his ex-girlfriend after she blocked his existing username upon their breakup.

The Decision also reflects several procedural errors. We note that the Judge erred in failing to analyze SOR ¶¶ 1.a, 1.b, 1.f, 2.b, 2.c, 2.d, and 2.f entirely.¹ Additionally, he erred in analyzing unalleged conduct in his application of disqualifying conditions AG ¶¶ 13(c), 13(d), and 16(e). In summary, the Judge’s personal feelings about Applicant’s past conduct permeated his decision, which is apparent not only through his choice of adjectives and incomplete² or inaccurate³ characterization of certain conduct, but also in his improper analysis of unalleged conduct and, most critically, unexplained disregard of the opinions of multiple long term and ongoing treatment providers. While the Judge is entitled to weigh conflicting evidence and expert opinions, that weighing must be reasonable and explicit. *See* ISCR Case No. 98-0507 at 4 (App. Bd. May 17, 1999) (When a record contains conflicting evidence, the judge must “carefully consider the record evidence as a whole and weigh it in a reasonable manner” and make factual findings that reflect a reasonable interpretation of the evidence.).

Conclusion

As we have held in the past, the public’s confidence “in the fairness and integrity of the industrial security program depends, to a large degree, on there being both the substance and the appearance of a fair and impartial adjudication after reasonable consideration of the record evidence as a whole.” ISCR Case No. 02-23979 at 4 (App. Bd. Aug. 25, 2004). Where a judge “makes statements or acts in a manner that could lead a reasonable person to question whether the judge considered all the record evidence, then a party could understandably question whether he or she received fair consideration of the evidence it presented.” *Id.* Given the Judge’s expressed firm opinions about Applicant’s behavior and unexplained omission of potentially mitigating evidence, we conclude that the best resolution is to remand this case to a different judge. Because Applicant’s credibility may be important to the issues in this case, the judge assigned on remand should ascertain if the parties consent to have a determination made on the basis of the existing record. If both parties consent to such a determination, then the judge may render a new decision

¹ *See* ISCR Case No. 01-03107, 2002 WL 32114507 at *4 (App. Bd. Aug. 27, 2002) (“[A] judge *must* consider and evaluate an applicant’s conduct under any and all Guidelines under which it has been alleged in the SOR.”) (emphasis in original).

² The Judge’s discussion of the unalleged activity in the park failed to mention that Applicant was accompanied by a date at the time.

³ The Judge’s use of the term “hacking” was inaccurate.

without holding a new hearing. If either party declines to consent to having the case decided on the basis of the existing record, then the judge should hold a new hearing and issue a decision that complies with all of the relevant provisions of the Directive. The Board retains no jurisdiction over a remanded decision. However, the Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Order

The decision in ISCR Case No. 24-01209 is **REMANDED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board