



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: February 19, 2026

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 In the matter of:)
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 Applicant for Security Clearance)
 _____)

ISCR Case No. 24-02193

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Brittany White, Esq., Department Counsel
 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 February 28, 2025, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations) 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 December 8, 2025, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant failed to file federal income tax returns for tax years 2017 and 2020 (SOR ¶ 1.a) and that she owed the Federal Government more than \$82,000 for tax years 2015, 2016, 2018, 2019, and 2021 (SOR ¶ 1.b). Applicant admitted both allegations.

Background

Applicant is in her early 40s and has worked as an employee of a defense contractor since July 2021. She earned a juris doctorate degree in 2012 and was admitted to two state bars the summer following her graduation. However, she was not able to find full-time employment. She was self-employed as a court-appointed lawyer for indigent defendants from 2015 to 2019. In April 2020, Applicant received a public reprimand and sanctions from the state bar in which she practiced, based upon misconduct occurring between 2015 to 2019. Her law license is voluntarily suspended in that state, and she does not currently practice law. Government Exhibit (GE) 2 at 6. Applicant is not married and has no children. Transcript (Tr.) at 42.

In 2015, Applicant was living alone and working two jobs — as an attorney and as a part-time grocery store shift manager. Tr. at 16. At times, she also worked a third job at a coffee shop. Federal and state income taxes were deducted by her employers for her part-time jobs, but not from her income as a private practitioner. When her accountant prepared her 2015 income tax return, she discovered she owed about \$4,300. She reported her court appointed work was sporadic and she made slightly more than minimum wage at the grocery store. She could not afford to pay the \$4,300 tax debt, so she filed her federal income tax returns, but submitted no payment. The account balance plus accruals was about \$7,000 as of August 2025. Applicant Exhibit (AE) B; Tr. at 16-18, 42.

Since 2015, Applicant has accumulated more than \$82,000 in federal income tax debt and has filed the majority of her federal income tax returns late.¹ Applicant filed her 2016 and 2017 federal income tax returns in December 2024. Her 2016 filing reflected she owed the Federal Government about \$20,000. That debt has increased to about \$43,000 with interest and fees. Her 2017 filing reflected she owed the Federal Government about \$12,000 for income taxes. That debt increased to about \$25,000. She filed her 2018 federal income tax return in February 2025. For 2018, she has a total debt of about \$22,000. She filed her 2019 federal income tax return in December 2024 and owes about \$9,000. Her 2020 federal income tax return was filed in November 2021 after getting an extension, and she owed no debt. Her 2021 federal income tax return was filed in February 2025, and she owed about \$2,000 after interest and fees. She timely filed her 2022 through 2024 federal income tax returns and did not owe any income taxes for 2022 and 2023. She owed approximately \$2,800 for tax year 2024. AE B, F; Tr. 21-29.

The Judge noted that Applicant experienced periods of unemployment, underemployment, and challenges related to a family illness. Decision at 2. In 2014, Applicant's mother was diagnosed with brain cancer, and in 2016 her mother suffered a stroke. Tr. at 43. Applicant was one of her mother's primary caregivers until her mother passed away in August 2021. Additionally, Applicant was laid off in 2000 for about six months. GE 3.

Applicant made an Offer in Compromise to the Internal Revenue Service (IRS) on August 18, 2025. She offered to resolve her federal income tax debts for \$12,000 through monthly payments of \$500 per month for 24 months. Applicant submitted proof of \$500 payments from

¹ She also had delinquent state income tax debts but resolved them using funds distributed from a trust created when her mother died. GE 3; AE G; Tr. at 30.

August through November 2025. By a letter dated September 1, 2025, the IRS acknowledged receipt of Applicant's Offer in Compromise but – as of the close of the record – the offer had not been accepted. AE A, I, J, K. Applicant testified, “The IRS payment that I proposed was \$500. I don't expect them to accept that. They will counter, and I'll deal with that then.” Tr. at 33. Additionally, Applicant testified that she also has approximately \$300,000 in unalleged student loan debt in default and that she was hoping to establish a payment plan to resolve it. Tr. at 31-33.

Applicant's Project Manager speaks highly of her. Her next-door neighbor and friend of 25 years also testified favorably on Applicant's behalf. Decision at 3.

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 did not identify which mitigating conditions he found applicable; that the record in this case does not support a favorable mitigation analysis; and that the Judge failed to consider important aspects of the case. the Government's arguments have merit.

The entirety of the Judge’s mitigation analysis is as follows:

Applicant has filed all her Federal income tax returns, and is awaiting the IRS’s response to her Offer in Compromise. She now has full-time employment; and as such, has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established. Financial Considerations is found for Applicant.

Decision at 5.

While judges have broad latitude and discretion in how to write their decisions, *they must issue a written decision that allows the parties and the Board to discern what the judge is finding and how the judge arrived at that conclusion.* ISCR Case No. 98-0809 at 1-2 (App. Bd. Aug. 19, 1999). A judge must consider pertinent factors and the Adjudicative Guidelines and must articulate a rational explanation for any deviations from them. *Id.* The Judge did not do so here. While he listed AG ¶¶ 20(a), 20(b), 20(d), 20(f), and 20(g) as mitigating conditions he “considered,” he failed to identify which conditions he found applied (fully or partially) and to explain his reasoning.² Further, under the Whole-Person Concept, a judge must assess the totality of an applicant’s conduct and circumstances in order to evaluate the applicant’s security eligibility, not just consider an applicant’s conduct and circumstances in a piecemeal manner. ISCR Case No. 99-0601 at 8 (App. Bd. Jan. 30, 2001). Here, the Judge erred in his failure to articulate a rational explanation for his application of the mitigating conditions and Whole-Person analysis. As a result, his decision is unsustainable.

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 . . . 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 security clearance eligibility is the clear outcome based on the record.

ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (internal citations omitted). From our review of the record and for the following reasons, we conclude that Applicant failed

² AG ¶¶ 20: (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; (f) the affluence resulted from a legal source of income; and (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Notably, we are perplexed that the Judge found that AG ¶ 20(f) was potentially applicable, as there is no allegation of affluence.

to meet her burden to support application of any of the mitigating conditions and therefore denial of national security eligibility is the clear outcome in this case.

The Board has consistently held that:

The mere filing of delinquent tax returns or the existence of a payment arrangement with an appropriate tax authority does not compel a Judge to issue a favorable decision. As with the application of any mitigating condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of mitigating condition 20(g) as well as in considering aspects of other overlapping mitigating conditions, such as, in determining whether an applicant acted responsibly under the circumstances, whether an applicant's past financial deficiencies are unlikely to recur, or whether an applicant initiated good-faith efforts to resolve financial problems.

ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018).

Applicant failed to meet an important legal requirement — filing returns when due — for varying periods of time up to eight years. While she now has full-time employment, has filed her delinquent federal tax returns, and made an offer to the IRS supported by four payments, weighing heavily against those recent favorable factors are the full extent of her failure to file federal tax returns and her inability to repay her federal tax debt. Moreover, although the SOR only alleged failure to timely file returns for tax years 2017 and 2020, the record established that Applicant also failed to timely file for tax years 2016, 2018, 2019, and 2021.

Further, the evidence does not support that future financial problems are unlikely. Rather, Applicant's Offer in Compromise has not been accepted by the IRS, and she does not expect her offer to pay \$500 a month for 24 months to be accepted. Additionally, although not alleged in the SOR, Applicant has defaulted on \$300,000 of student loan debt, which reflects negatively on both her ability to reliably repay her federal tax debt and her overall financial responsibility. The ongoing nature of Applicant's debt reflects a continuing course of conduct and prevents application of AG ¶¶ 20(a), 20(b), 20(d), and 20(g). Furthermore, Applicant's promises to pay or otherwise resolve these delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner.

Conclusion

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). "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. The record does not support a reasonable conclusion that Applicant has met her burden of

persuasion, either under the mitigating conditions or the Whole-Person factors. The Judge's decision does not consider an important aspect of the case and offers an explanation that runs contrary to the weight of the record evidence. Accordingly, in light of the record and considering the *Egan* standard, the Judge's favorable decision is not sustainable.

Order

The decision in ISCR Case No. 24-02193 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