DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: February 26, 2026

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

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Aubrey M. De Angelis, Esq., Department Counsel
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT
Katie Quintana, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 27, 2025, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), 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 December 10, 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.

Background

Applicant is in his mid-20s. He graduated high school in May 2017 at the age of 16 and attended a university from August 2017 to December 2021, when he graduated with a bachelor's degree. He began working for a government contractor in August 2023. He applied for security clearance eligibility in September 2023 in relation to that employment.

Applicant is the oldest of six siblings. He has two biological sisters, ages 23 and 21, and a biological brother, age 19. When Applicant was about 9 years old, his parents adopted twin one-year-old siblings from a foreign country, a boy and a girl. According to Applicant, they had mental health issues and "made their lives a living hell." Government Exhibit (GE) 2 at 6. In 2014, the adopted boy was removed from the family's home and was eventually adopted by another family. The adopted twin sister (the "victim") remained with Applicant's family.

Applicant, at age 16, "hated" his adopted sister and felt he "had to do something to correct her behavior, but he didn't want to leave marks on her." *Id*. He explained he decided to sexually assault her. She was about 7 years old the first time he sexually assaulted her. The assaults occurred while he was babysitting her. Applicant noted to the investigator that "he did not feel he raped her because she never said, 'no.'" *Id*. Applicant reflected, that after the sexual assault "she became more disciplined around him." *Id*. He sexually assaulted her anally and orally a total of four times over a two-year period.[1] Applicant kept his actions secret by threatening her. He acknowledged that he knew what he was doing was wrong, but that he did not think about it.

In approximately December 2017, the victim reported to their father that Applicant had sexually assaulted her. Tr. at 38. Applicant was "slated to babysit her later in that day." Tr. at 50. She approached their father and said that Applicant had "inappropriately touched her." *Id*. Applicant had last sexually assaulted her a few months prior to December 2017. His parents, mandatory reporters due to their jobs, reported the sexual assault to the police. When the police interviewed Applicant, he denied any improper conduct.

Applicant moved into his grandparent's house, and his parents hired an attorney to advise Applicant on the best options to avoid prison time. He was only permitted to go to college classes, his grandparent's house, and counseling. He was not permitted to use the internet unsupervised. He voluntarily sought counseling before the court required him to do so. Records reflect that the state's Department of Human Resources saw Applicant's offense as "severe." Applicant Exhibit (AE) T at 1.

In July 2018, Applicant entered into a deferred judgment program on one count of Felony sexual assault on a child less than 15 years of age. He was placed on probation for two years and had to register as a sex offender until the probationary period was complete. He successfully completed offense-specific treatment and probation. AE N. His probation officer noted that Applicant worked extremely hard to meet and exceed the multi-disciplinary team's expectations, and he recommended probation be terminated early. AE S. The deferred charge was dismissed six months early, in February 2020, and the record was expunged in November 2020. The state human services database was also updated to reflect expungement in July 2024. Applicant has not participated in counseling since completion of the court mandated counseling. Tr. at 31; AE N; AE R.

[1] The record lacks exact dates, but it is clearly established that the sexual assaults occurred over a two-year period. Therefore, a rough estimate indicates the sexual assaults occurred from fall of 2015 to fall of 2017. Applicant was 16 and 17 years old when he sexually assaulted his 7- to 9-year-old victim.

Applicant's mother and father testified at the hearing. His father knew of the details of the sexual assault as a result of the victim's disclosure. His mother indicated that she did not know what the assault consisted of or how many times it occurred. Tr. at 44.

Applicant indicated that he "doesn't know what his siblings know, but they wouldn't know details." GE 2 at 5. His grandparents knew he was involved in court proceedings, but did not know the details. Even though the court case occurred when he was in college, his college friends are not aware of the charges. *Id*. Applicant testified that his coworkers are not aware he sexually assaulted a child or that the victim was his sibling. Tr. at 32. His girlfriend at the time of the hearing knew only that Applicant had been charged with a Felony that "has been removed." Tr. at 33.

On October 14, 2025, Applicant underwent a psychological evaluation with a licensed psychologist. That practitioner opined that Applicant's "history and pattern of sexual behavior do not merit any sort of mental health diagnosis" nor does he meet the criteria for out-of-control sexual behavior. AE A. However, the psychiatrist noted Applicant "would likely benefit from counseling/psychotherapy in the near future to help him continue to develop appropriate and healthy coping strategies to support him in developing further insight into past behaviors and in managing current and future stressors." *Id*.

It is with this background and context that we turn to the Judge's findings of fact. Regarding the SOR allegations, he found:

> When Applicant was 16 and 17 years old, he had improper sexual relations with his younger, adopted sister on four separate occasions, between January 2017 and January of 2018. As a result, in October of 2018, he was charged with four felony counts of sexual assault on a child, and with one felony count of enticement of a child. After the incidents were disclosed, Applicant went to live with his grandparents. His parents testified that they gave their adopted daughter the power to be in charge of any possible reconciliation between the two siblings. They have, in part, reconciled as evidenced by a "Victim Impact Statement," from his sister who was then attending "boot camp" with the U.S Army. Applicant successfully completed all required therapy; and as a result; in February of 2020, the charges against him were "dismissed with prejudice," and "expunged" from his juvenile record. He never went to trial, and he is "not required to register as a sexual offender."
>
> Applicant was truthful and contrite throughout his hearing.
>
> Applicant's father, a former "[Government] Chaplain," and currently a "Law Enforcement Chaplain" and "Fire Chaplain" for his state, testified on his son's behalf and offered a signed statement regarding his son and adopted daughter:
>
> "In . . . [Applicant's] teenage years he made mistakes and worked through the consequences of his decisions. [Applicant] . . . made amends to the best of his ability and took responsibility for his actions. As . . . [Applicant] worked through the court processes, each person he engaged with noted his restoration behavior and

> concluded with early completion of the court deferment stipulations; resulting in the case being dismissed and expunged. This case was . . . [Applicant's] only contact with law enforcement and since his teenage years, has had no further legal proceedings. Though this circumstance was difficult for . . . [Applicant] and our family, we have moved forward in healthy relationships with one another.
>
> As our family processed through difficult times, . . . [Applicant's adopted sister] gained great strength and confidence. She excelled in high school and graduated at seventeen years old. She is currently serving in the United States Army and training to become a Combat Medic. Though the early years of her life were challenging, she has become a successful young woman.["]

Decision at 2–3 (internal citations omitted).

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, the Government challenges the Judge's factual findings, which he relied upon for his mitigation analysis and Whole-Person analysis. The Government asserts that "the analytical errors in the Administrative Judge's Decision in this case fall into nearly all of [the arbitrary, capricious, or contrary to law categories above], and render the conclusions, when viewed in light of the record as a whole, so implausible that they cannot be ascribed to a mere weighing of

conflicting evidence or a difference of opinion." Appeal Brief at 15. We agree. For the following reasons, we reverse the decision.

Challenged Factual Findings

The Government challenges the Judge's factual findings as incorrect, incomplete, or misleading. First, the Government challenges the finding that Applicant and the victim have reconciled. The Judge stated, "[t]hey have, in part, reconciled as evidenced by a 'Victim Impact Statement,' from his sister who was then attending 'boot camp' with the U.S Army." Decision at 2. Whether it was intentional or due to a grammatic error, this sentence is misleading. The Victim Impact Statement in evidence was written sometime in early 2018 when the victim had just turned ten years old and was in the beginning stages of counseling. It states in part, "No, I don't have any injuries" and reflects, "I miss him and they won't let him come home." AE O. His sister did not attend boot camp until 2025, when she was 17, and there are no recent statements from her in the record. To imply otherwise was misleading, whether intentional or otherwise. Additionally, the Judge's brief factual analysis focused on the *victim's* subsequent personal growth and success instead of the gravity of *Applicant's* commission of multiple sexual assaults. The former is ***entirely irrelevant*** to analyzing Applicant's conduct and assessing his national security eligibility. The Judge's conflating these two things was error.

Next, the Government disputes the Judge's finding that, "When Applicant was 16 and 17 years old, he had improper sexual relations with his younger, adopted sister on four separate occasions, between January 2017 and January of 2018," as erroneous and misleading. Decision at 2. As noted above, the record does not contain specific dates, but it does establish that the sexual assaults occurred over a two-year period from the fall of 2015 to the fall of 2017. The Judge's finding that the sexual assaults occurred over one year — between January 2017 and January of 2018 — is not supported by the record. His finding minimizes the duration of the criminal conduct.

Finally, the Judge found that Applicant's "entire family knows of his past misconduct." *Id*. at 7. The Judge's finding is unsupported by the record. While Applicant's father knows the details of the sexual assault as a result of the victim's disclosure to him, it is clear from reading the record that his "entire" family *does not* know the extent of his past misconduct. Applicant's mother indicated that she did not know what the assault on her daughter consisted of or how many times it occurred. Additionally, neither Applicant's siblings nor his grandparents know the details. His grandparents knew only that he was involved in court proceedings.

Additional Omitted Facts

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). The Government notes that "[t]he Judge's silence on the actual behaviors that led to the criminal charges, including Applicant's hateful motivations, the premeditated nature of the assaults, the victim's age, the fact that Applicant was acting *in loco parentis* as the child's babysitter, and other egregious details simply cannot be ascribed to harmless editorial or grammatical choices." Appeal Brief at 19. While

Applicant asserts that "the regrettable details do not constitute relevant evidence," we disagree. Reply Brief at 3. These errors and omissions represent significant evidence, and the Judge's unexplained disregard of them was error.

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*.

Judge's Mitigation Analysis

Next, the Government argues that the Judge erroneously found that Applicant mitigated all of the SOR concerns, and correctly notes that the Judge failed to identify which of the mitigating conditions under Guidelines D, E, and J specifically applied.

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). The Judge did not do so here. While he listed mitigating conditions that he "considered," he failed to identify which conditions he found applied (fully or partially) and to explain his reasoning with respect to the entire record. 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 in light of the record as a whole. As a result, his decision is unsustainable. Had the Judge considered the whole record including the gravity of the crime, the circumstances and motivation for the conduct, and the potential for pressure, coercion, exploitation, or duress as a result of his conduct, and weighed them against the favorable factors, he could not have reached the conclusion that Applicant's conduct was mitigated.

We note in particular the Judge's analysis of Applicant's behavior under the Guideline for Personal Conduct.[2] The Judge indicated he considered all of the mitigating conditions but specifically listed AG ¶¶ 17(c), 17(d), 17(e), and 17(g). His analysis was as follows:

> Applicant's improper conduct occurred nearly eight years ago when he was a juvenile. His entire family knows of his past misconduct. Applicant has produced evidence of counseling and of the positive steps, to include reconciliation with his

[2] The Judge's decision to invoke AG ¶ 31(a) — a rule concerning the cumulative effect of minor offenses on judgment and reliability — in the context of the rape of a child is deeply problematic. This application trivializes the singular gravity of rape, treating it not as a serious violent crime, but as a minor misstep that only matters when considered as part of a larger pattern of behavior. That posture permeates the decision.

sister, that alleviate any risks that could result from his past conduct. Personal Conduct is found for Applicant.

Decision at 7.

Even when we attempt to decipher which mitigating conditions the Judge found fully applicable from that analysis, as Applicant urges, we find the Judge's analysis is incomplete. His analysis lacks any finding that future offenses are unlikely to recur (required for application of both AG ¶¶ 17(c) and 17(d)), or that Applicant's behavior does not cast doubt on his reliability, trustworthiness, and good judgment (required for application of AG ¶ 17(c)). As we have already highlighted, the Judge's finding that Applicant's "entire family knows of his past misconduct" is factually incorrect and misleading. Additionally, Applicant's girlfriend, friends, and colleagues do not know the extent of his past misconduct, all of which precludes application of AG ¶ 17(e). Finally, AG ¶ 17(g) is not supported by the Judge's analysis or the facts of the case.

"A Judge's responsibility to weigh the record evidence does not mean that the Judge is at liberty to draw whatever inferences or conclusions the Judge wants to draw; rather, the Judge must draw reasonable inferences and reach reasonable conclusions that fairly take into account the totality of the record evidence and evaluate the security significance of the facts and circumstances of an applicant's case in a manner that is consonant with the "clearly consistent with the national interest" standard." ISCR Case No. 02-14995 at 6 (App. Bd. Jul. 26, 2004). His failure to do so was in error.

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 his 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. 25-00026 is **REVERSED**.

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