DEPARTMENT OF WAR
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD

Date: May 4, 2026

In the matter of:	)	
	)	
---	)	ISCR Case No. 25-00062
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Troy Nussbaum, 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 4, 2025, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal 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). At hearing, the Government amended the SOR to correct a typographical error in the Guideline H allegation and add two allegations under Guideline E (Personal Conduct). The amendments were made without objection. On February 19, 2026, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background

In Applicant's answer to the SOR, he admitted the allegations under Guidelines G and J (SOR ¶¶ 1.a through 2.a.) He denied the allegation under Guideline H (SOR ¶ 3.a). He did not admit or deny the Guideline E allegations (SOR ¶¶ 4.a and 4.b).

Applicant, in his mid-40s, has been employed with a defense contractor since late 2021. He served on active duty in the U.S. Navy from 2001 to 2013, when he retired with a 100% permanent disability. His military service included three deployments to Iraq. Applicant held a security clearance while on active duty in the military. He received a clearance again in 2017, while employed by a federal contractor, and he held it until 2019 after he was convicted of driving under the influence (DUI) and was fired by his employer. Applicant received an associate degree from a community college in 2005 and a bachelor's degree in 2018. He married in 2005 and divorced in 2021. He has one minor child. The evidence pertaining to the allegations is summarized below.

Guidelines G and J

The SOR alleged six alcohol-related incidents that occurred from 2005 through 2023. Those same incidents were cross-alleged as criminal conduct under Guideline J (SOR ¶ 2.a). The specific allegations are discussed below, in chronological order.

SOR ¶ 1.g alleged Applicant was arrested in 2005 and charged with domestic violence battery, with alcohol involvement. Applicant claimed that he and his then wife attended a wedding at which they both consumed alcoholic beverages. Applicant initially claimed he was not intoxicated. According to Applicant, his wife attempted to get into the driver's seat of their vehicle, and he tried to restrain her because she was intoxicated. The Judge found that "[d]uring the scuffle that followed, he struck his wife above the eye,"[1] despite Applicant's testimony at hearing that "I don't admit that I hit her, no." Transcript (Tr.) at 66. The police were summoned. They arrested Applicant and held him overnight. He was charged with battery and domestic violence, both misdemeanors. He received deferred prosecution. His command required him to complete a domestic violence intervention program and undergo alcohol evaluation and counseling. In fall 2005, his command reported to the Navy Central Adjudication Facility that he was attending a domestic violence intervention program, undergoing alcohol evaluation and counseling, and was abstaining from use of alcohol.[2]

SOR ¶ 1.f alleged Applicant was charged with drinking on the beach in 2011. Applicant was given a citation for drinking beer on the beach and paid a $300 fine. He testified that the police officer told him that beer was allowed only if it was in an unmarked container, and not in a marked beer can like Applicant was holding. Applicant disclosed this incident during his interview with a security investigator in 2023. At the hearing, he testified that he did not know that he had been charged with a crime. The Judge found that there was no evidence in the record indicating whether this conduct was a crime or a minor civil infraction. He found that the allegation was established for an infraction, but not for a criminal charge and noted that this distinction was relevant to the allegation of falsifying his security clearance application (SCA), alleged in SOR ¶ 4.a.

SOR ¶ 1.e alleged that Applicant was arrested in November 2018 and charged with DUI. Applicant testified that this incident occurred when he was driving home from a social event after consuming four to six alcoholic drinks and hit a large boulder in the road. About three hours after

[1] Decision at 3.

[2] Applicant also testified that he "never received any type of counseling or [was] never told, hey, your drinking is getting out of control. You need to get this handled." *Id*. at 22.

the incident, a breathalyzer registered a blood-alcohol content of about 0.15, indicating heavy intoxication. Applicant was charged with DUI. He pleaded guilty and was sentenced to 365 days in jail, with 364 days suspended, and a $5,000 fine, which was suspended.

SOR ¶ 1.d alleged that Applicant was arrested in December 2018 and was charged with drunk in public, public intoxication or swearing. Police records reflected that officers responded to a report of a drunk and disorderly person at a bar, who refused to leave the premises as the bar was closing. As the police approached the bar, they observed Applicant trying to cross a busy street late at night. According to the officer, Applicant passed in front of the police vehicle and was almost hit by it. Applicant testified that he was running across the street to catch an Uber. The officer noticed a strong odor of alcohol and observed that he was standing unsteadily. Applicant refused to answer questions. He was arrested for being drunk in public. The charge was *nolle prosequi*.

As part of Applicant's sentence for the 2018 DUI, Applicant was required to undergo a drug and alcohol evaluation in January 2019, which concluded that he did not meet the criteria for treatment at that time, but that he should be referred for education on alcohol's impact. The evaluation also noted, however, that Applicant "report[ed] use of alcohol as being controlled and infrequent, and has never presented a problem in his life," and repeatedly reported that "[t]his is [his] 1st offense of any kind," thereby omitting the incidents as alleged in SOR ¶¶ 1.d, 1.f, and 1.g. Applicant Exhibit (AE) B at 3, 5, 19. Applicant's failure to disclose to the evaluator the incident alleged in SOR ¶ 1.d is particularly noteworthy as it occurred a little more than a month prior to the date of the evaluation, and he affirmatively asserted during the evaluation that he last used alcohol during the November 2018 DUI. AE B at 3. Moreover, Applicant did not disclose the DUI arrest when he was hired by a defense contractor in 2019. He was fired in 2019 when his employer learned about it.

SOR ¶ 1.c alleged that Applicant was arrested in early 2022 and charged with public intoxication. A police officer observed Applicant sleeping in a chair on a public sidewalk. The officer and two employees of a nearby restaurant attempted to wake him. The police report reflects that Applicant was unable to communicate or to stand on his own. He was taken into custody for his own protection, charged with public intoxication, and released on bond the following day. At the hearing, Applicant disputed the police account and testified that he was sitting in a chair while waiting for an Uber and was not incapacitated. The Judge "found his explanation implausible and contrary to the evidence." Decision at 4.

SOR ¶ 1.b alleged that Applicant was arrested in about 2023 and charged with public intoxication and resisting arrest, search, or transport. The Judge noted Applicant claimed to have spent about five hours at a bar but that he had only three alcoholic drinks during that period. Applicant explained that he had left his jacket with a bartender. When he decided to leave the bar, he asked another bartender for his jacket. In his security interview in 2023, he told the investigator the other bartender ignored him, which made him angry. At the hearing, he testified that the bartender argued with him and questioned whether it was his jacket. A police officer asked Applicant to step outside and Applicant complied, but he insisted that he would not leave the premises until he had his jacket.

The area outside the bar was crowded and noisy. Applicant claimed that his hearing aids were not functioning and that he was unable to hear what the police officers were telling him. He became agitated to the extent that the police officers used a taser twice to subdue him, and they arrested him for being drunk in public and resisting arrest. He appeared in court in 2023. He pleaded guilty to disorderly conduct and being drunk in public. He paid a fine for the disorderly conduct and received deferred sentencing for being drunk in public. He testified that this incident made him decide to stop drinking.

After the alcohol-related incident in February 2023, Applicant claimed to have stopped drinking alcohol. He opened a fitness business concentrated on physical fitness, mentoring, and counseling. As of the date of the hearing, he had been operating his fitness business for about three years. He advertised his business on the internet, with a photograph of his wrecked truck from the November 2018 DUI incident (SOR ¶ 1.e) and the statement, "This is what addiction looks like when you lose control." Government Exhibit (GE) 10. His advertisement further stated, "Drugs and alcohol consumed my entire life. . . . I help men who've lost their way. Men who are done running from their pain and ready to fight back. I help them regain control, quit the vices and substances that hold them down, and build the strong, disciplined life they've always wanted. If you're ready to stop surviving and start truly living, I'm here to show you how." *Id*. Applicant claimed that his advertising was not an admission that he was involved with drugs, but instead was a marketing tool for search engine optimization.

After receiving the SOR, Applicant underwent a phosphatidyl ethanol (PEth) test in May 2025, which was negative. In the same month, he submitted a written statement of intent to "remain free from all alcohol abuse," and he acknowledged "that any future involvement with alcohol or alcohol use misconduct of the same will be grounds for revocation of my security clearance and any national security eligibility." AE C. He was evaluated by a certified alcohol and drug counselor in September 2025, who concluded that Applicant had a mild alcohol use disorder in the past but that his current diagnosis was no current disorder, sustained remission. The counselor recommended no substance use treatment at that time. Applicant underwent additional PEth tests in October 2025 and January 2026, both of which were negative.

Guideline H

SOR ¶ 3.a alleged Applicant tested positive for cocaine in a 2004 random urinalysis conducted by his Navy unit. He was interviewed at the time by a Navy investigator and denied using cocaine. At the hearing, he testified that he refused to admit his guilt, that he was tried by court-martial, and that he was found not guilty after a forensic scientist testified that his urine sample was contaminated in the laboratory by spillage from another urine sample. The record does not include any documentation of a court-martial. The Judge found that there was no evidence that refuted Applicant's explanation. The Government elected not to appeal the Judge's favorable finding under Guideline H. Appeal Brief at 3.

Guideline E

SOR ¶ 4.a alleged Applicant falsified his May 2017 SCA by deliberately failing to disclose the 2011 charge of drinking on the beach. His SCA included multiple questions about police records, including "Have you ever been charged with an offense involving alcohol or drugs?"

Applicant answered "No" and did not disclose the incident in June 2011 when he received a citation for drinking beer on the beach and paid a fine of $300. At the hearing, he testified that he did not disclose this incident in his SCA because he did not believe the citation amounted to being charged with a crime. However, he disclosed it in his most recent SCA in March 2023 and testified that he did so because an investigator who was helping him complete the SCA suggested that he disclose it. As noted above, the Judge found no evidence in the record that the citation Applicant received for drinking beer at the beach amounted to being charged with a crime and found Applicant's testimony credible in this regard. As a result, this allegation was found for Applicant, and the Government is not challenging the Judge's findings on appeal. Appeal Brief at 21.

SOR ¶ 4.b alleged Applicant also falsified his May 2017 SCA by deliberately failing to disclose that he used marijuana once in 2016. Applicant's May 2017 SCA asked, "In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance." Applicant answered, "No," failing to disclose his marijuana use in 2016. When Applicant participated in the 2025 drug and alcohol assessment, he disclosed "a single instance of marijuana use in 2016." AE A at 2. At the hearing, Applicant testified that he told the evaluator that he purchased a cannabidiol (CBD) product at a store to treat back pain in 2016. He used the product only once because it did not relieve his back pain. Applicant testified that he was told by the evaluator that, regardless of it being CBD, it was considered marijuana. The Judge found there was no evidence in the record showing that the CBD contained sufficient THC to be illegal, and even if the CBD was illegal, there is no evidence that he knew it was illegal.

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 the Judge's credibility analysis and the weight that the Judge gave Applicant's explanations. 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)). For the reasons stated below, we reverse the Judge's Decision.

Conflicting Evidence

On appeal, the Government argues that the Judge afforded Applicant a favorable credibility assessment, despite conflicting record evidence and, in some instances, without addressing unfavorable evidence at all. These arguments have merit.

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). The Board's deference to a judge's credibility determination is not absolute. For instance, a credibility determination may be set aside or reversed if it is unreasonable, contradicts other findings, is based on an inadequate reason, is patently without basis in the record, or is inherently improbable or discredited by undisputed fact. *See* ISCR Case No. 97-0184 at 5 (App. Bd. Dec. 8. 1998) (internal citations omitted). "When a witness's story is contradicted by other evidence or is so internally inconsistent or implausible that a reasonable fact finder would not credit it, we can find error despite the deference owed a judge's credibility determination." ISCR Case No. 10-03886 at 3 (App. Bd. Apr. 26, 2012), citing *Anderson v. Bessemer City*, 470 U.S. 564 at 575 (1985). When the record contains a basis to question an applicant's credibility (*e.g.*, prior admissions, inconsistent statements, or contrary record evidence), the judge should address that aspect of the record explicitly, explaining why he finds an applicant's version of events to be worthy of belief. *See* ISCR Case No. 14-05476 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.

The Government argues that the Judge erred because he "— explicitly and implicitly — found Applicant to be untruthful" throughout the Decision, yet ultimately found Applicant credible. Appeal Brief at 25. The Government cites the Judge's multiple adverse credibility findings. For example, the Judge noted that Applicant's testimony about the underlying facts of his 2022 public intoxication arrest were "implausible and contrary to the evidence." Decision at 4. The Judge also found Applicant was terminated in December 2019 for not disclosing his 2018 DUI to his employer and that Applicant struck his wife above the eye in 2005, despite his denials of both incidents. Additionally, the Judge relied upon the police report for the 2018 drunk in public charge, despite Applicant's contradictory statements. The Judge erred in failing to explain why, despite these contradictions, he found Applicant credible in his other claims, including Applicant's claim of sobriety since 2023.

In addition to the inconsistencies the Judge noted, the Government cited numerous other contradictions in the record with respect to Applicant's alcohol use that raised concerns about Applicant's veracity. These included:

> (1) Applicant's lie during his initial testimony that he was not intoxicated at the time of the 2005 incident, followed by his subsequent admission on cross

> examination that he was intoxicated; (2) Applicant's initial denial of ever attending alcohol-related counseling in the military, followed by his subsequent admission that he had; (3) Applicant's inaccurate recitation to either his 2019 or 2025 evaluators regarding his problematic history of alcohol consumption or his number of alcohol-related law enforcement encounters; (4) Applicant's admission that he lies to clients about previously having a drug . . . problem; (5) Applicant's failure to disclose his March 2022 public intoxication arrest in his March 2023 SCA or his July 2023 subject interview and that Applicant had to be confronted with the arrest during the subject interview before disclosing it; (6) Applicant's testimony — contradicted by the police report — that he was not intoxicated during the 2023 arrest.

Appeal Brief at 25-26.

The Judge should have addressed these additional contradictions in the record and explained why he found Applicant's version of events to be credible. Additionally, the Government argues that, in light of Applicant's multiple inconsistent claims, the Judge should have questioned Applicant's self-serving explanation that he used CBD instead of marijuana. We agree.

We have previously held that an applicant's acceptance of responsibility is an indication of whether he has reformed and rehabilitated himself, which is then used in concluding if that individual has demonstrated the high degree of reliability, trustworthiness, and good judgment required of persons granted access to classified information. When an applicant is unwilling to accept responsibility for his own actions, "such a failure is evidence that detracts from a finding of reform and rehabilitation." ISCR Case No. 96-0360, 1997 WL 1882602 at *3 (App. Bd. Sep. 25, 1997). Applicant's adherence to multiple implausible explanations for his alcohol-related conduct seriously undercuts the Judge's finding that he has mitigated his misconduct. *See* ISCR Case No. 03-01009 at n.7 (App. Bd. Mar. 29, 2005). While we recognize that the details of the alcohol-related arrests spanned nearly two decades and occurred while Applicant was intoxicated, our concern remains. The record does not establish that Applicant accepted responsibility for his alcohol misuse or criminal conduct. Instead, Applicant attempted to minimize the Government concerns and, in doing so, provided intentionally inaccurate explanations.

Given Applicant's documented history of lying about his alcohol use, the Judge failed to explain his finding that Applicant "acknowledged his maladaptive alcohol use." Decision at 9. Nor did the Judge explain why he found Applicant's self-serving testimony that he stopped using alcohol in 2023 and his promise to abstain in the future credible. Applicant's problematic alcohol usage spans over 18 years, and records reflect significant periods of abstinence during deployments and after arrests, followed by criminal alcohol-related incidents. While the Judge found that a "significant period of time that has passed without any evidence of misconduct," Applicant's intentionally inaccurate explanations are additional evidence of misconduct that should have been considered when examining the application of mitigating conditions. Decision at 9. The remaining evidence the Judge relied upon to support Applicant's rehabilitation — including the results from three PEth tests taken after receiving the SOR, his alcohol evaluations which lacked full disclosure of his alcohol use history, his fiancée's testimony, and letters from those that know him — are

outweighed by his history of lying about his alcohol use and his failure to take accountability for his actions.

In summary, Applicant's self-serving versions of events are implausible and controverted by both police reports and logic. The Judge failed to adequately address this contradictory evidence. In concluding that Applicant mitigated the Guideline G and Guideline J concerns, the Judge substituted a favorable credibility determination that is inconsistent with the record evidence. This flawed credibility determination distorted his findings of fact and his analysis regarding Applicant's claims of rehabilitation and rendered the Decision arbitrary and capricious.

Whole-Person Summary

The Government argues that the Judge's Whole-Person analysis addresses the record evidence in a piece-meal fashion and does not consider the record as a whole. Specifically, the Government highlights Applicant's numerous inconsistent statements, addressed above. Given the record in this case, the Government's argument is persuasive. Moreover, the Judge's Whole-Person analysis simply incorporates his comments under Guideline G and Guideline J concerns. To the extent that we found error there, we find similar error here.

Conclusion

The Government has met its burden on appeal of demonstrating reversible error. 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. *See* ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (citation omitted).

Considering the record as a whole, the Judge's findings are arbitrary and capricious as they fail to consider important aspects of the case, reflect a clear error of judgment, and run 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. 25-00062 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
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