



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD**



Date: June 23, 2026

In the matter of:

Applicant for Security Clearance

ISCR Case No. 23-02082

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Nicholas T. Temple, Esq., Department Counsel
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Melissa L. Watkins, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 24, 2024, 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 March 31, 2026, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

When corrected for a duplicative allegation, the SOR alleged 12 delinquent debts totaling about \$61,200, as well as a termination for misuse of an employer-issued credit card (SOR 1.n). Applicant admitted the debts and termination with explanations. The Judge found for Applicant on all allegations. On appeal, the Government contends that the Judge failed to consider important aspects of the case, rendering his decision arbitrary and capricious. We agree and reverse.

Background

Applicant is in her early forties and single, with no children. She earned a bachelor's degree in 2006 and a master's degree in 2009. She has held a security clearance since 2009, while working as a systems engineer for various employers.

Applicant submitted her most recent security clearance application (SCA) in October 2022. On it, she reported being delinquent on student loan debt in the approximate amount of \$32,600 and cited medical bills as the cause of her delinquency. Applicant reported that she had established an automated payment to the collection agency. The credit reports compiled during the clearance investigation revealed several additional delinquencies, including payday loans and credit cards. In February 2024, the Government issued an SOR alleging twelve delinquencies that were reflected in her credit reports.

Upon receipt of the SOR, Applicant consulted her uncle, an attorney specializing in financial issues. The uncle gave Applicant \$24,000, which she used to take the following remedial actions: established payment plans on her student loan debts, which were the bulk (about \$47,800) of her total debt; paid off delinquent payday loans and credit cards; and brought her car loan account current. Her uncle testified at Applicant's hearing as an expert witness in consumer finance.

At hearing, Applicant attributed her financial problems to a 2016 loss of per diem income upon being transferred from an overseas location to stateside, medical issues and surgery in 2016, and a COVID-era loss of part-time income from her second job. In finding the financial security concerns mitigated under AG ¶¶ 20(a), 20(c), and 20(d),¹ the Judge relied upon Applicant's explanation of the circumstances surrounding her accrual of debt, her February 2024 efforts to remediate, and her testimony that she now has a monthly budget and is working with a debt counselor.

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

¹ 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; 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problems is being resolved or is under control; and 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 failed to consider important aspects of the case, to include Applicant's "extensive international travel during a period of purported financial hardship, failure to address delinquent debts prior to the issuance of [the SOR], and continued cash-flow insolvency." Appeal Brief at 2. The Government's arguments have merit, but we first address as a preliminary matter an issue raised by Applicant on appeal.

At hearing, Government Counsel relied on the documentation submitted to establish its *prima facie* case and elected not to cross-examine Applicant on the international travel reflected in her SCA or any of the SOR allegations. In response to the appeal, Applicant's Counsel argues that "Department [Counsel] did not lack an opportunity to develop its theory during the proceedings below" but asked no questions "about the financial issues it now says are dispositive." Reply Brief at 2, 4. Cross-examination on the issues the Government highlights as "important aspects of the case" would have alerted the Judge to the issues that the Government viewed as dispositive. However, the Judge had an independent obligation to consider all of the record evidence and failed to do so as noted below.

Given this posture of the case, Applicant's Counsel argues that the appropriate decision—if not to affirm—is to remand in order to develop the facts in issue. As discussed below, however, our review of the record convinces us that a remand is inappropriate, as denial of security clearance eligibility is the clear outcome.

We turn now to the specific aspects of the case argued by the Government on appeal.

International Travel

Under direct examination at hearing, Applicant testified that her financial delinquencies were caused by several issues: a loss of per diem income when she transferred from an overseas contract back to the United States in 2015, surgical and medical bills in 2016 and 2017, and reduced income from her secondary part-time jobs during the COVID era. Transcript (Tr.) at 101–104. In her background interview, Applicant described herself as “living paycheck to paycheck” and “in over her head financially” during this lengthy period. Government Exhibit (GE) 6 at 2, 3, 5.

In her SCA, however, Applicant reported the following international vacations between March 2017 and September 2021: Mexico, Jamaica, Canada, Belize, Columbia, the Dominican Republic, Trinidad and Tobago, Barbados, Singapore, Indonesia, the Turks and Caicos Islands, Aruba, Mexico, and Antigua and Barbuda. GE 1 at 20–43. As discussed above, Applicant was not questioned at hearing about her frequent international trips and how they might have contributed to her delinquencies.² Regardless, this travel was indisputably a matter of record. Her SCA revealed 14 international trips in 4.5 years—to Central America, South America, the Caribbean, and Southeast Asia. In 2019 alone, while purportedly living paycheck to paycheck, Applicant traveled to Belize, Columbia, the Dominican Republic, Trinidad and Tobago, Barbados, Singapore and Indonesia.

Based on her testimony, the Judge concluded that Applicant’s financial delinquencies arose from her 2015 loss of per diem income and 2016 medical issues and ignored this record evidence that significantly undermined both her narrative and his conclusion. As a preliminary matter, we note that Applicant’s explanation for her financial delinquencies strains credulity. Applicant is single, with no children, and has been steadily employed as a professional since 2009. A loss of per diem income ten years prior to hearing and 2016 medical bills that amounted to only \$3,000 or \$4,000³ simply do not explain Applicant’s long-term financial delinquencies, which accelerated until issuance of the SOR in 2024.

A judge “cannot simply 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. 02-22603 at 3 (App. Bd. Sep. 3, 2004). In omitting any discussion of Applicant’s decision to travel frequently while she was financially delinquent, the Judge failed to confront and address matters of judgment and self-control that go to the heart of Guideline F. A judge must “take into account the totality of the record evidence, both favorable and unfavorable.” ISCR Case No. 02-05110 at 3 (App. Bd. Mar. 22, 2004) (citations omitted). Here, the Judge erred in failing to acknowledge or consider this important aspect of the case that contradicted his mitigation analysis.

² During direct examination, Applicant made one oblique reference to the expenses associated with her travel. When asked about how a credit card became delinquent (SOR ¶ 1.b), Applicant responded, “It was being used for some of the travel and extra expenses I have that at the time didn’t even have a budget to understand where my expenses went.” Tr. at 108.

³ GE 6 at 2. During her background interview, Applicant stated that medical bills totaling approximately \$3,000 to \$4,000 were not covered by her insurance following her 2016 surgery.

Failure to Address Debts Prior to SOR

In his favorable decision, the Judge relied in large part upon Applicant's resolution of the 12 alleged delinquencies in early 2024, either by establishing payment plans or paying certain debts in full. Although the Judge acknowledged in his timeline that these efforts occurred after receipt of the SOR, he failed to discuss what impact, if any, the post-SOR timing of these efforts should have on his mitigation analysis. We have long held that the timing of debt payments is relevant in evaluating an applicant's case for mitigation, as an applicant who resolves financial problems after being placed on notice that her security clearance is in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to her own interests. *E.g.*, ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017). Yet the Judge omitted any discussion of the timing of Applicant's efforts.

Record evidence indicates that Applicant simply ignored earlier clear signs that she was in financial peril. For example, when asked in her background interview about the credit card account alleged at SOR ¶ 1.i, Applicant disclosed that she did not look at any correspondence from the creditor because she was feeling financially overwhelmed, that she finally received a summons to appear in court in early 2023, and that she was saved from a judgment because the plaintiff's attorney failed to show. Yet, even when facing the prospect of an imminent judgment, Applicant took no action on the debt until after she received the SOR. In applying mitigation condition AG ¶ 20(a), the Judge failed to address why the timing of Applicant's efforts did not raise questions regarding her "current reliability, trustworthiness, or good judgment." Similarly, Applicant's failure to take action to resolve these delinquencies prior to issuance of the SOR undermines the Judge's application of AG ¶ 20(d), which requires a "good faith effort" to resolve one's debts. The Judge's failure to discuss this important aspect of the case is error.

Continued Insolvency

In its final argument, the Government asserts that Applicant is currently insolvent, calling into question the Judge's mitigation analysis. Specifically, the Government asserts that—in the 16 months between her uncle's gift of \$24,000 and her hearing—Applicant missed her car payment 11 times, overdrew her checking accounts at least seven times, and frequently had a savings account balance of zero dollars. Appeal Brief at 4, 11. Although Applicant was not cross-examined about these matters at hearing, the data cited by the Government is derived from Applicant's own exhibits. *See* Applicant Exhibits Q, R, T.

In his brief mitigation analysis, the Judge stated that Applicant "has gotten her finances under control," allowing application of AG ¶ 20(a), which requires a conclusion that the behavior is "unlikely to recur." Decision at 6. Here again, we cannot reconcile the Judge's mitigation analysis with the record evidence, which reflects continued financial problems. In failing to examine how Applicant handled her finances following the resolution of the alleged debts in February 2024, the Judge failed to consider an important aspect of the case that undercut his application of both AG ¶¶ 20(a) and 20(d).

Remand or Reversal

Having concluded that the Judge erred, we turn to the issue of the appropriate remedy:

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).

Applicant argues that remand is appropriate to allow Applicant to respond to the issues raised for the first time on appeal. From our review of the record, however, we conclude that denial of security clearance eligibility is the clear ultimate outcome in light of the issues discussed above.

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 failed to consider relevant evidence and does not consider important aspects of the case. 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. 23-02082 is **REVERSED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein
Administrative Judge
Member, Appeal Board