

occasionally consumed alcohol from November 2024 until April 2025, including to the point of intoxication on November 27, 2024 (SOR ¶ 1.e); and that he has never sought treatment for his AUD (SOR ¶ 1.f). All Guideline G allegations were cross-alleged under Guideline E. In his Answer, Applicant admitted all allegations.

Discussion

There is no presumption of error below, and the appealing party has the burden of raising and establishing that the judge committed factual or legal error that is prejudicial. Directive ¶ E3. *See* DISCR OSD Case No. 90-1524, 1993 WL 185187 at *3 (App. Bd. Feb. 17, 1993). In deciding whether the Judge’s rulings or conclusions are arbitrary or capricious, we will review the decision to determine whether: 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. 97-0435 at 3 (App. Bd. Jul. 14, 1998) (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

The Government asserts that the Judge erred in “failing to view the record evidence as a whole.” Appeal Brief at 11. Its first argument is that the Judge rigidly applied Guideline G and Guideline E disqualifying conditions in a piecemeal manner without looking at the overall context of the SOR allegations, finding only SOR ¶¶ 1.a and 1.d raised disqualifying conditions and ignoring the important, “scope-widening role of ¶ 16(c)” under Guideline E. Appeal Brief at 12. The Government further argues that the Judge misapplied mitigating conditions AG ¶¶ 23(a) and 23(b), and that their application is unsupported by any reasonable reading of the record evidence as a whole.

We have held that when the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). However, allegations of conduct that represent distinct security concerns do not automatically warrant being resolved in an applicant’s favor simply because the allegation overlaps with another allegation. SOR ¶ 1.a stated, “You have consumed alcohol, at times in excess and to the point of intoxication, from about 2011 until at least November 2024.” The Judge found that SOR ¶¶ 1.b and 1.e were duplicative with SOR ¶ 1.a “to the degree they cite to the same date of last intoxication” but that there was no separate disqualifying condition that relates to these allegations” which resulted in her considering them as “relevant facts.” Decision at 6. The Government argues that in finding them duplicative, “the Judge engaged in an erroneous, piecemeal analysis that failed to consider the totality of the concerns presented by Applicant’s long, cyclical history of problematic alcohol consumption, abstinence, relapse, and resistance to pursuing any form of voluntary treatment.” Appeal Brief at 12–13.

Here, Applicant’s consumption of alcohol from 2011 to July 2024 and resumption of alcohol use in November 2024 after stating in interrogatories that he had stopped alcohol consumption, represents independent concerns even if they fall under the same disqualifying condition. After reading the Judge’s decision, we conclude that the Judge incorrectly found that SOR ¶¶ 1.b and 1.e duplicated ¶ 1.a. First, both SOR ¶¶ 1.b and 1.e expand the period of concerning

alcohol use to “at least April 2025.” Secondly, SOR ¶ 1.b noted that Applicant’s alcohol use from November 2024 through April 2025 was after Applicant expressed to DCSA that he had stopped consuming alcohol. Applicant stated that he “decided to change dietary habits and eliminate alcohol and begin an exercise regimen to try to improve [his] overall health.” Government Exhibit (GE) 4 at 3.

If an appealing party demonstrates factual or legal error, then the Board must first consider if the error is harmful or harmless. *See* ISCR Case No. 02-11489 at 2 (App. Bd. Sep. 11, 2003) (citations omitted). An error is harmless when there is not a significant chance that, but for the identified error, the judge would have reached a different result. DISCR OSD Case No. 91-0129, 1992 WL 388334 at *3 (App. Bd. Jul. 23, 1992). Here, the Judge’s error was harmless because she fully considered Applicant’s habitual alcohol consumption, including the “relevant facts” in SOR ¶¶ 1.b and 1.e, and found the disqualifying conduct mitigated under AG ¶¶ 23(a) and 23(b).

With respect to the rest of the Government’s arguments, we find that the Judge examined the relevant evidence, articulated a satisfactory explanation for her conclusions, and drew a rational connection between the facts of the case and her decisions. A diagnosis of AUD that has gone untreated is of adjudicative significance, even if mild and in early remission. This diagnosis itself raises concerns with an individual’s ability to self-regulate or otherwise avoid problematic behaviors, such as driving after consuming alcohol, which he admitted doing, and negative effects on his life, as it ended his marriage and harmed his health. Here, the Judge found that the case was distinguished by the candor of Applicant at every juncture of the process. In this specific case, the unique facts and Applicant’s candor about his setbacks provide important mitigation under the Whole-Person Concept. We see no errors in the Judge’s analysis.

Conclusion

The Government failed to establish the Judge committed harmful error. None of the arguments are enough to rebut the presumption that the Judge considered all of the record evidence or sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. The Judge’s decision is sustainable on the record.

Order

The decision in ISCR Case No. 25-00224 is **AFFIRMED**.

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer Goldstein
Jennifer Goldstein
Administrative Judge
Member, Appeal Board

Separate Opinion of Board Member Allison Marie

I respectfully dissent. Underlying the Judge's analyses and ultimate favorable decision were two principal positions, both unsupported by the record and contrary to the Directive and Appeal Board precedent. Significantly, the Judge afforded Applicant substantial credit because he had "been exceedingly candid in describing his alcohol consumption and in sharing the negative impact drinking had on his marriage." Decision at 8. As discussed below, the Judge improperly treated Applicant's candor as evidence of his future reliability.

Additionally, the Judge inferred – without evidentiary support – that Applicant's continued regular alcohol consumption after the December 2024 evaluation resulted from his ignorance of the psychologist's diagnosis and recommendations and that, now informed, Applicant could be trusted to maintain abstinence going forward. Because this unsupported assumption supplied the analytical foundation for substantial portions of the Judge's mitigation analyses, the resulting conclusions are not sustainable.¹

Background

At various points during his national security investigation, Applicant explained that his alcohol consumption increased beginning in 2011 alongside experiencing marital issues and anxiety, and he would drink three to five beers or bourbons per day, five to six days per week. GE 5 at 6, 7; GE 6 at 2, 3. Applicant explained that he used alcohol "because his marriage was failing," and that his wife told him "that he was drinking too much, that he needed to cut back, or to receive counseling." GE 5 at 6. His wife expressed that the amount he was using was negatively impacting their marriage and his physical health, and Applicant reported years later that "it was 'hard to hear' her identify the deleterious impact of his alcohol use on him and their marriage." GE 6 at 2. In late 2015 or early 2016, "in an attempt to please his spouse and try to save their marriage, he stopped drinking completely." GE 5 at 6; GE 6 at 2. Applicant's marriage ended in divorce in early 2017.

In early 2019, Applicant resumed drinking. GE 4 at 6. His consumption was initially two or three drinks per day, three or four times per week, but increased over 2020 to near-daily drinking and near-weekly intoxication. GE 5 at 6; GE 6 at 2.

In July 2023, during his interview with a background investigator, Applicant described his then consumption as about two to three drinks daily, and he estimated drinking to intoxication approximately twice monthly, most recently about four days before his interview. GE 5 at 6. At the time, he reported that he did "not feel his alcohol use is a problem or excessive, nor [did] he believe he abuse[d] alcohol." Id. He expressed wanting "to cut back on his use, not due to any other issue except he now has high blood pressure and [knew] alcohol is not good for that." Id. at 7. Over the next year, however, Applicant's consumption increased per sitting.

On July 13, 2024, in response to interrogatories, Applicant described his recent drinking as four to six bourbons per day, five to six days per week, and two to three beers, two to four times per month. GE 4 at 3, 4. Citing that a "recent physical check-up indicated elevated blood pressure

¹ Although I believe there was harmful error in the disqualification analyses under both Guidelines, I limit my discussion to the Guideline G mitigation analysis due to the significance thereof.

and blood sugar despite taking medicine to control those factors,” Applicant expressed that he “decided to change dietary habits and eliminate alcohol and begin an exercise regimen to try and improve [his] overall health.” Id. at 3. He later explained that his “primary care provider informed him that his alcohol consumption was having a deleterious impact” on his various medical conditions. GE 6 at 2-3. On July 13, 2024, he asserted that he did not intend to consume alcohol in the future. GE 4 at 3.

Applicant abstained from alcohol for about five months. In November 2024, he resumed drinking and, in celebration of his birthday, “overindulge[d]” and drank to intoxication. GE 5 at 13; Answer at 2.

On December 13, 2024, Applicant participated in a psychological evaluation at the request of the Defense Counterintelligence and Security Agency (DCSA) in conjunction with his national security adjudication. In discussing Applicant’s most recent decision to stop drinking as of July 2024 due to health concerns and whether he believed he had an alcohol use problem, Applicant stated, “I do think I had a problem. I was drinking too much and for no reason. It was more than was healthy” and “I wasn’t doing anything after work besides going out and wasting time.” GE 6 at 3. Then, noting some improvements to his physical and mental health over the intervening months, Applicant represented that “he had a ‘few drinks’ on his birthday a couple weeks ago” and expressed a “desire to continue abstaining from alcohol on a day-to-day basis and only drink for ‘special occasions.’” Id. at 3.

In the evaluation report, the psychologist diagnosed Applicant with AUD, mild, in early remission, and concluded that he did “not currently present with a condition that could pose a risk to his judgment, reliability, or trustworthiness concerning classified information; however, he has very recently presented with a condition that would pose a risk.” Id. at 6 (emphasis added). Noting Applicant’s “brief 6 months” of abstinence, and accounting for what she understood was his “one period of use” consisting of a “few drinks” for his birthday, the psychologist concluded, “it is highly recommended that he continue to abstain and pursue additional support in the form of evidence-based psychotherapy to address the role alcohol played in this life socially and psychological[ly], particularly during times of increased stress, as it is likely doing so will increase his chances of long-term success.” Id. (emphasis added). In terms of his treatment motivation, however, the psychologist found that Applicant’s “profile reflects someone whose interest in and motivation for treatment is substantially lower compared to adults in treatment.” Id. at 5.

The psychologist further concluded that “the length of time of [Applicant’s] sobriety is too early to provide a strong rationale regarding the likely impact of his mental health condition on his judgment, reliability, or trustworthiness concerning classified materials in the foreseeable future” and therefore recommended that Applicant “be evaluated again in approximately 1 year, after he has had additional time to abstain from alcohol and/or pursue evidence-based psychotherapy to support developing a safe drinking plan should that ultimately be his choice.” Id. (emphasis added). Applicant was informed that the evaluation report would not be provided to him, but that he could request a copy through DCSA. Notably, when offered the contact information to pursue that request, Applicant declined and expressed that he would “contact his security manager for [the] contact information should he desire a copy of the evaluation.” Id. at 1.

On April 22, 2025, in response to further interrogatories, Applicant described that, from November 2024 until April 2025, he “would drink occasionally on dates or other social activities,” and he estimated that, during the last three years, he had “driven a car while being at least ‘buzzed’ or ‘tipsy’ from drinking alcohol” approximately “once or twice” per year. GE 5 at 8, 14. Applicant asserted that he last consumed alcohol on April 20, 2025 – two days before submitting the interrogatory response. Citing a desire to “refocus [his] efforts to continue losing weight and to better control high blood pressure,” he averred once again that he did not intend to consume alcohol in the future. GE 5 at 8, 13.

Applicant did not commence that abstinence.

Four months later, on August 25, 2025, in his Answer to the SOR, Applicant acknowledged that his “alcohol consumption has resumed, but to a lesser degree than prior to July 2024.” Answer at 2. He did not define what he meant by “a lesser degree.” He acknowledged, “[a]t the time of my statement on July 13, 2024, I did intend to stop drinking, but did make a mistake and begin drinking again in late November.” *Id.* (emphasis added). Applicant further acknowledged, “it is still best for me to abstain completely moving forward,” and asserted, “I am committing myself to abstain from alcohol moving forward, and plan to begin attending Alcoholics Anonymous meetings” later that same week. *Id.*

In terms of the SOR itself, Applicant admitted all allegations and requested that his case be decided based on the written record. He received a complete copy of the File of Relevant Material (FORM) on December 22, 2025, and was notified of his ability to respond with any objections or additional information for the Judge to consider.

Applicant did not respond to the FORM.

The Judge resolved all allegations favorably. Noting that Applicant “did not have the opportunity to consider whether to alter his consumption in light of the evaluator’s findings,” the Judge found that “based on the information in his Answer, [Applicant] is now in compliance with both the abstinence and the counseling recommendation.” Decision at 6-7. The Judge concluded,

While Applicant has vacillated between decreased consumption and complete abstinence, he is drinking less and his health is improving. Total abstinence is not required under [Guideline G], and even the evaluator acknowledged the option of “developing a safe drinking plan” in her recommendations. Now that he has been made aware of the evaluator’s recommendations, he has expressed an openness to AA and counseling. His current alcohol consumption does not cast doubt on his current reliability, trustworthiness, or judgment.

Id. at 8. On appeal, the Government challenges the Judge’s Guideline G and Guideline E analyses as arbitrary, capricious, and contrary to law and unsupported by the record.

Guideline G Analysis

The Majority first addresses two of the Government’s arguments in tandem, including that the Judge conducted a rigid and piecemeal disqualification analysis, specifically noting her

favorable resolution of SOR ¶¶ 1.b and 1.e as duplicative of SOR ¶ 1.a, and that the Judge’s application of mitigating conditions AG ¶¶ 23(a) and 23(b) was unsupported by the evidence.

Finding merit in the Government’s argument that SOR ¶¶ 1.b and 1.e represent independent concerns in that both “expand the period of concerning alcohol use” beyond that identified in SOR ¶ 1.a, and because SOR ¶ 1.b addressed Applicant’s continued alcohol use after asserting that he had stopped, the Majority find that the Judge erred in resolving them as duplicative. The Majority goes on to conclude simply that the error was harmless because the Judge “fully considered Applicant’s habitual alcohol consumption, including the ‘relevant facts’ in SOR ¶¶ 1.b and 1.e, and found the disqualifying conduct mitigated under conditions AG ¶¶ 23(a) and 23(b).”

AG ¶ 23(b)

Neither the Judge in her Decision² nor the Majority now grapple with how AG ¶ 23(b) applies to the facts of this case considering the condition’s requirements for *both* affirmative action *and* an established pattern of changed conduct,³ or Appeal Board precedent insisting on the same.⁴

Regarding the Judge’s finding that Applicant “is drinking less,” the Government correctly notes that the record contains no meaningful evidence concerning Applicant’s actual alcohol consumption after July 2024 or establishing what “less” means. Appeal Brief at 20. Prior to July 2024, Applicant’s consumption was at least four to six bourbons per day, five to six days per week. His assertion that he had been drinking “to a lesser degree than prior to July 2024” fails to establish whether his consumption had been reduced to a level consistent with rehabilitation or merely remained problematic to a lesser extent. Without quantification, duration, or corroboration, the Judge’s treatment of “drinking less” as evidence of rehabilitation was arbitrary and capricious.

The Government also persuasively challenges the Judge’s conclusion that Applicant is “now in compliance” with the recommendations for abstinence and counseling. Appeal Brief at 21-23. Applicant asserted that, as of his Answer, he was recommitting to abstinence and planned to initiate counseling and support programs. He thereafter declined to respond to the FORM with updated information about the status of either of those things. The evidence does not establish that Applicant had undertaken any meaningful course of treatment, counseling, or rehabilitation by the close of the record and, at most, reflected an intention to *begin* compliance through *future* abstinence and *future* AA attendance. The Judge’s finding about compliance is therefore without evidentiary support, and her reliant favorable analysis was arbitrary, capricious, and contrary to Board precedent.⁵

² The Board recently highlighted the steps expected of a judge in analyzing conduct under potentially applicable conditions. See ISCR Case No. 24-02063, 2026 WL 1477156 at *3-5 (App. Bd. Apr. 16, 2026).

³ AG ¶ 23(b) affords mitigation when the individual: 1) acknowledges his pattern of maladaptive alcohol use; 2) provides evidence of *actions taken* to overcome that problem; and 3) has *demonstrated a clear and established pattern of modified consumption or abstinence* in accordance with treatment recommendations. (Emphasis added).

⁴ See ISCR Case No. 06-08708, 2007 WL 4735371 at *3 (App. Bd. Dec. 17, 2007) (“The word ‘pattern’ describes ‘[a] mode of behavior or series of acts that are recognizably consistent.’”) (citing Black’s Law Dictionary (8th ed. 2004)).

⁵ See ISCR Case No. 14-01490, 2016 WL 2655448 at *3 (App. Bd. Apr. 15, 2016) (judge’s finding that applicant maintained sobriety after submitting his Answer, despite that applicant submitted nothing in response to the FORM,

To that end, long-established in Appeal Board precedent is that promises of future good behavior, even when sincerely made, are not evidence that demonstrates a track record of reform and rehabilitation, and that is especially true in cases of prior broken promises to abstain from alcohol.⁶ Even if simply asserting an intention could satisfy AG ¶ 23(b)’s “actions taken” prong (it cannot), and even acknowledging that what amounts to a “pattern” will be fact-dependent and case-specific, surely a “pattern” is more than one day. Accordingly, the Judge’s finding of mitigation through application of AG ¶ 23(b) is unsustainable.

AG ¶ 23(a)

The Judge placed significant weight on the fact that Applicant allegedly did not receive the written evaluation report, including the formal diagnosis and recommendations, until the FORM was issued. From that, she effectively inferred that Applicant’s newfound awareness of the diagnosis and recommendations transformed his likelihood of future compliance and, presumably as a result, applied AG ¶ 23(a).⁷ The inference, however, is devoid of evidentiary foundation.

Applicant never claimed that he continued drinking because he lacked awareness of the December 2024 diagnosis and recommendations; never asserted that the diagnosis materially changed his understanding of his alcohol misuse; and never asserted that he would have behaved differently had he received the report earlier.

More fundamentally, the relevant issue is not whether Applicant possessed the psychologist’s written report, but whether he had sufficient awareness of the seriousness of his alcohol-related concerns to take meaningful corrective action.⁸ Applicant was already aware that his alcohol consumption had contributed to the breakdown of his marriage, negatively affected his health, prompted extensive scrutiny during his national security investigation, and led to referral

was unsupported by the record) (citing *In re: Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244 at 254 (D.C. Cir. 2013) (“[A]bsence of evidence is not evidence of absence.”)).

⁶ See, e.g., ISCR Case No. 94-1109, 1996 WL 149307 at *3 (App. Bd. Jan. 31, 1996); ISCR Case No. 06-17541, 2008 WL 351349 at *3 (App. Bd. Jan. 14, 2008) (applicant’s “one month of abstinence and his stated intention to continue an alcohol treatment program begun the same month as the hearing [were] not sufficient to establish a *pattern* of abstinence or responsible use, as required by the Directive.”) (emphasis in original).

⁷ AG ¶ 23(a) affords mitigation when: 1) due either to the passage of time since the behavior occurred, the infrequency of the behavior, or the unusual circumstances under which the behavior occurred, 2) the behavior either is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment. Here again, the Judge did not address which elements of the condition’s first prong warranted a conclusion that Applicant’s alcohol misuse is either unlikely to recur or no longer raises doubts about his national security eligibility. Applicant’s admitted alcohol misuse has been ongoing with intermittent periods of abstinence since 2011, and it ceased, at best, the day he submitted his Answer. The conduct being unquestionably both recent and repetitive leaves only the possibility that the Judge determined that it occurred under an unusual circumstance and, presumably, that circumstance was ignorance of the psychologist’s December 2024 recommendations until he received the FORM.

⁸ An applicant’s claim that his failure to modify concerning conduct resulted from ignorance of a diagnosis or recommendation does not end the analysis about continued consumption. Rather, when such a claim is made, the judge must still examine whether the individual reasonably did not know he should abstain from alcohol. See ISCR Case No. 06-08708, 2007 WL 4735371 at *4 (reversing grant, where judge summarily credited applicant’s testimony that his failure to abstain was because he did not receive a discharge summary containing his diagnosis and recommendation until it was provided in advance of his hearing).

for a formal alcohol evaluation.⁹ Applicant acknowledged in his Answer that his alcohol consumption was problematic enough as of July 2024 that he intended to stop drinking at that point and characterized his resumed use in November as a “mistake.” Answer at 2.

The foregoing circumstances occurred entirely before Applicant received the FORM or its attached report. The record overwhelmingly establishes that Applicant had sufficient awareness of his alcohol concerns prior to receipt of the psychologist’s report but, as of the close of the record, had merely expressed an intention to take corrective action. Absent the Judge’s unsupported inference, nothing in the record supports that Applicant’s continued alcohol consumption occurred under such unusual circumstances that it was unlikely to recur, as required under AG ¶ 23(a).

Government’s Remaining Arguments

The Majority resolves “the rest of the Government’s arguments” by acknowledging that,

A diagnosis of AUD that has gone untreated is of adjudicative significance, even if mild and in early remission. This diagnosis itself raises concerns with an individual’s ability to self-regulate or otherwise avoid problematic behaviors, such as driving after consuming alcohol, which he admitted doing, and negative effects on his life, as it ended his marriage and harmed his health.

Still, noting that “the Judge found that the case was distinguished by the candor of Applicant at every juncture of the process,” the Majority concludes that the Judge’s various analyses were not error in light of “the unique facts [of this specific case] and Applicant’s candor about his setbacks [that] provide important mitigation under the Whole-Person Concept.” Both the Judge’s heavy reliance on Applicant’s candor during his adjudication and the Majority’s significant deference to that favorable credibility determination are problematic.

Working in reverse, the deference owed to a judge’s credibility determination is premised on the well-established principle that a judge who personally *observes a witness at hearing* can assess their demeanor while testifying and form impressions about their credibility.¹⁰ In matters decided, as here, on the written record, that deference is diminished. In deferring fully to the Judge’s favorable credibility determination, the Majority overlooks that the Judge incorrectly equated candor with reliability.

In cases involving substance misuse or addiction, candor and predictive reliability are distinct considerations. An applicant may sincerely intend to abstain from alcohol and may genuinely believe, at the time the assurance is given, that future abstinence will occur. A history of relapse after prior similar assurances, however, undermines confidence that the conduct will not recur. In such circumstances, the dispositive concern is not dishonesty or lack of candor, but whether the applicant has established through sustained conduct that future reliability concerns

⁹ Moreover, despite the foregoing awareness going into the evaluation, Applicant specifically declined the option to obtain and review the resulting report. On the foregoing record, his intentional election to not obtain the report cannot reasonably be transformed into mitigating evidence.

¹⁰ ISCR Case No. 97-0625 at 2 (App. Bd. Aug. 17, 1998).

have been mitigated. The Judge's finding that Applicant was candid during his adjudication was not a substitute for record evidence of reform and rehabilitation.¹¹

By compartmentalizing and minimizing certain of Applicant's admitted and established conduct – i.e., admitted drinking-and-driving behavior; repeated broken abstinence promises; declination to demonstrably engage in treatment or counseling – the Judge failed to evaluate the cumulative significance of Applicant's longstanding cyclical pattern of alcohol misuse, temporary reduction, resumed consumption, and renewed assurances of future abstinence, which extended into the adjudicative process itself. These facts were directly relevant to the likelihood of recurrence, rehabilitation, judgment, and reliability. On this record, Applicant's thrice renewed assurance of future abstinence as presented in his Answer – with no evidentiary support that he maintained that assurance for even a single day – remained entirely aspirational rather than demonstrated, and the Judge's finding of mitigation is unsustainable.

Conclusion

The Government has met its burden on appeal of demonstrating prejudicial error warranting reversal. The Judge's favorable decision is based on an inference drawn unreasonably from the record and an overextended credit for candor, without which the record evidence does not support a conclusion that Applicant mitigated the security concerns arising from his longstanding and unresolved pattern of alcohol misuse, repeated unsuccessful assurances of abstinence, and lack of demonstrated rehabilitation or sustained behavioral change. Accordingly, on this record and under the breadth of Appeal Board precedent, the Judge's favorable decision is arbitrary, capricious, and contrary to law, and it should be reversed.

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board

¹¹ See DISCR Case No. 94-0215, 1995 WL 396942 at *4 (App. Bd. Apr. 13, 1995).