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

Date: August 3, 2026

In the matter of:	)	
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Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Brittany White, 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 E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline I (Psychological Conditions), 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). On April 28, 2026, Defense Office of Hearings and Appeals Administrative Judge Wilford H. Ross granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background

Applicant is in his early 40s. He left high school after tenth grade and later earned his General Educational Development certificate. He was first married from 2001 to 2007 and has two adult children from that marriage, and he has a third child from a different relationship. Applicant married his current wife in 2019. He has participated in multiple prior national security

investigations, has worked for his defense contractor employer since about 2014, and has held his security clearance since about 2019.

Applicant served in the Army from 2001 to 2004, in a Reserve force from 2004 until 2005, and re-enlisted in the Army in 2005. The SOR alleged concerns regarding Applicant's criminal, alcohol, sexual, and mental health histories, beginning in his early 20s while on active duty.

2007 Charges (SOR ¶¶ 1.k, 1.l, 1.n)

Applicant was arrested for driving under the influence (DUI) in May 2007, for which he pled guilty, served two days in jail, and had his license suspended for one year. In July 2007, he was charged with driving on a suspended license. In September 2007, he was charged with public intoxication following a going away party for his upcoming deployment.

2008 Non-Judicial Punishment (SOR ¶ 1.m)

In March 2008, while deployed and due to testing positive for cocaine, Applicant received non-judicial punishment including forfeiture of pay, extra duty, base restriction, and reduction in rank. During his national security investigation in 2012, Applicant explained that "this was the one and only time he experimented with cocaine" and "[it] just so happened" that he was called for urinalysis the next day. Government Exhibit (GE) 2 at 51; GE 5 at 33. In May 2008, he was administratively separated with a General Discharge Under Honorable Conditions.

2008 Charges (SOR ¶ 1.j) & Diagnoses

In September 2008, Applicant and his then-girlfriend got into an argument, she called the police and reported that Applicant threatened her with a firearm, and he was arrested, charged with aggravated assault, and held in jail for five days. The charge was later dropped after the girlfriend refused to cooperate with police, and Applicant avers that he did not have a firearm in the home.

In October 2008, providers at a Department of Veterans Affairs (VA) clinic diagnosed Applicant with post-traumatic stress disorder (PTSD), alcohol dependence, and cocaine abuse. GE 13 at 33-34.

2010 Assault & Weapons Charges (SOR ¶ 1.i)

In April 2010, Applicant was arrested and charged with aggravated assault and unlawful possession of a weapon. His description of the incident leading to arrest was consistent in some respects, including that he was cut off by another driver, got out of his car, and wielded a police baton. Other details of the incident developed inconsistently between Applicant's various retellings, including that: 1) he was driving home alone from a friend's house, the other driver got out of their car and attacked Applicant, at which point Applicant retrieved the baton for protection;[1] 2) he and a friend were going home, an individual from the other car approached Applicant and hit him over the hood of his car, at which point Applicant retrieved the baton and hit the other

[1] GE 2 at 43; GE 5 at 35.

individual, who then took the baton and hit Applicant's friend, who hit the individual back;[2] and 3) he was driving home from dinner with friends, the passenger of the other car approached Applicant's car yelling, at which point Applicant retrieved the baton and exited his car to issue a warning, but the other individual attacked Applicant, pinned him on the hood of his car, took the baton from him and was about to strike when Applicant's friend arrived and tackled the other individual, putting him in a choke hold.[3] Applicant pled guilty to the weapons charge and was placed on probation for one year.

July 2010 DUI (SOR ¶ 1.h)

In July 2010, Applicant was arrested and charged with DUI, speeding, and contempt. He consistently explained that the incident occurred while he was returning home from dinner with friends on his motorcycle. Here again, Applicant reported other details of the incident inconsistently, including that: 1) he drank two beers at dinner, passed a field sobriety test, and agreed to a blood test that returned a .09% blood alcohol content (BAC), which he later successfully challenged;[4] 2) per the blood test results, he was not intoxicated;[5] 3) he drank one beer at dinner, passed a field sobriety test, and agreed to a blood test that returned a .04% BAC reading;[6] and 4) he voluntarily took a breathalyzer test that resulted "at the limit," refused to consent to a blood test, and was taken to the hospital where one was obtained through warrant and resulted again "at the legal limit."[7]

November 2010 DWI (SOR ¶ 1.g)

In November 2010, Applicant was arrested and charged with driving while intoxicated (DWI). Applicant explained variously that: 1) he drank three beers at home and decided to drive to Atlantic City, but was stopped for driving too slowly and his BAC was .11%;[8] 2) he went to a bar to try and make friends, drank four beers, was pulled over driving home with a BAC of .10%;[9] and 3) he went to Atlantic City "to try [his] luck at the casinos," consumed alcohol, decided to drive home, and was pulled over with a BAC "slightly over the .08 limit."[10] He pled guilty, and his license was suspended for seven months.

2011 DWI (SOR ¶ 1.f)

In July 2011, Applicant was arrested and charged with DWI and refusing to submit to a breathalyzer, and his license was suspended for about six months. He first explained that he drove

[2] GE 5 at 15.

[3] Answer at 10.

[4] GE 2 at 44; GE 5 at 36.

[5] GE 3 at 50; GE 4 at 47.

[6] GE 5 at 17.

[7] Answer at 9.

[8] GE 5 at 36.

[9] *Id.* at 18.

[10] Answer at 9.

his motorcycle to a car show, after which he rode with friends in a van to a bar where he drank six beers. He returned to the parking lot and decided against driving his motorcycle home, sat on the motorcycle while waiting for a friend, and police arrived, arrested him, and took him to the police station, where he refused a breathalyzer. GE 5 at 37.

He next explained that he was riding his motorcycle with friends, drank a six-pack of beer during the day, and his motorcycle stopped working. Police arrived and asked if he had been drinking, which he answered affirmatively but refused the breathalyzer and was then taken to the police station. He was later able to prove that he was not driving the motorcycle, and the DWI charge was changed to a refusal charge. *Id.* at 18-19.

He also explained that he drove his motorcycle to a city festival but, when it was time to leave, the motorcycle would not start. He sat on it while awaiting a friend's help when police arrived, saw the key in the motorcycle's ignition, stated they smelled alcohol on Applicant's breath, and arrested him. At the police station, he refused the breathalyzer. Answer at 8.

2011 Charges (SOR ¶¶ 1.d, 1.e)

In August 2011, Applicant was cited for and pled guilty to public nuisance after leaving a restaurant and getting into a fight with a stranger. In December 2011, he was cited for and pled guilty to public drunkenness after leaving a bar with friends.

Applicant testified that, after the December 2011 incident, he decided to take his mental health seriously and "scaled way back" on his drinking, becoming "more of a social drinker" instead of a "daily drinker, like [he] had been in the past." Transcript (Tr.) at 28-29. As of his 2012 background interview, Applicant described his alcohol consumption to be two or three beers on weekends and asserted that he no longer drank to intoxication, which he described as about ten beers and loss of motor function. Despite the 2008 diagnosis by VA providers, he averred that he had never been professionally diagnosed with alcohol abuse or alcohol dependence. GE 5 at 38.

2014-2016 Mental Health Treatment, Sexual Behavior (SOR ¶ 4.b) & 2015 Hospitalization (SOR ¶ 2.c)

In March 2014, Applicant established primary care with a new VA clinic and endorsed having some suicidal ideation and a history of traumatic brain injury. GE 13 at 346. He scored a "6" on the alcohol screening test (AUDIT-C), reporting drinking three or four drinks, two or three days per week, and more than six drinks in a single sitting monthly. *Id.* at 349-50. Applicant was referred for psychosocial assessment, during which he disclosed "a long [history] of (over 30 according to him) arrests, mostly involving DUI's, and getting into fights." *Id.* at 341. After discussing the ill effects of alcohol and options for substance abuse assistance, Applicant reported that he was "not interested in 'stopping drinking'" because "it's not a problem." *Id.*

Applicant was subsequently referred for mental health evaluation with VA attending psychiatrist Dr. J, whom Applicant saw about monthly from April 2014 through October 2015. During the initial consultation, Applicant reported that he had been attending weekly therapy for about a month and a half with a non-VA psychologist due to cheating on his girlfriend, but he did

not "find them particularly helpful." *Id.* at 317.[11] He disclosed one prior psychiatric hospitalization when he was a teenager and discussed his history of "anxiety, depression, anger and [alcohol] abuse." *Id.* Dr. J noted that Applicant's "mood symptoms cont[inue] to fluctuate from mild depressive symptoms to anger and rage almost daily" and that his "anger and rage" were frequently fueled by alcohol use, and he referred Applicant for anger management. *Id.* at 317-18. A provider contacted Applicant about joining an upcoming group session, but there is no evidence that Applicant responded or ever engaged in anger management. *Id.* at 257.

Dr. J initially diagnosed Applicant with mood disorder and alcohol abuse/dependence but also identified that Applicant's "lack of remorse for his wrongdoings, and lack of empathy in addition with emotional disregulation [sic] would suggest cluster B pers[onality] dis[order]." *Id.* at 317-18. During a follow-up in July 2014, Applicant reported improvement in anxiety but still experienced "periods of anger and rage" and reported "sporadic alcohol abuse." *Id.* at 242. Dr. J noted that Applicant "does have significant elements of bipolar dis[order], anger, hypersexuality, distractibility," and modified Applicant's working diagnosis to bipolar I disorder. *Id.* at 242-43. On November 17, 2014, Dr. J opined that Applicant "would benefit from intensive psychotherapy mostly to work on cognitive maladaptive responses" and referred Applicant for cognitive behavioral therapy (CBT). *Id.* at 233.

Applicant had his initial CBT session with VA psychiatrist Dr. GM in January 2015. The session's progress note reflects that Applicant reported "having 'maladaptive behaviors' [and] 'impulsive decisions' . . . mostly around using [alcohol], some drugs, sex and 'violence,'" and that he "sometimes use drugs such as crack[], last time 3 weeks ago and [marijuana] last night." *Id.* at 221-22. He also reported "having casual sex with various people and . . . sleeping with more than 300 women during his active sexual life," and described that "[h]e may spend more than [$1,000] for prostitute[s] without thinking." *Id.* at 222.[12] Applicant described a tumultuous and unstable adolescence that included frequent relocations between parents and grandparent and abuse by a neighbor. He reported that he began using marijuana before he turned 13 and that he had suicidal ideations beginning about the same time. He began using ecstasy at 16, as well as daily marijuana. Applicant cancelled or failed to show up for his remaining CBT sessions with Dr. GM.[13]

On February 17, 2015, Applicant was hospitalized after he made suicidal gestures while intoxicated to his girlfriend via text message and in a "goodbye letter." *Id.* at 213, 216. Applicant did not show up for his next session with Dr. J and stopped taking his medications as of March 2015. Dr. J modified Applicant's primary diagnosis to borderline personality disorder (BPD) and referred Applicant for dialectical behavior therapy (DBT). *Id.* at 213-14. Applicant did not engage in DBT while under Dr. J's care, indicating in multiple subsequent sessions that he was "waiting for his schedule to clear up." *Id.* at 193, 200, 207.

[11] In later sessions with Dr. J, Applicant disclosed having "unprotected sex with random female" in November 2014, and he reported that he found a negative sexual side-effect of one of his medications to be "helpful" because "part of his impulsive behavior is related to sexually unsafe behavior." GE 13 at 220, 232. Applicant was still living with his then-girlfriend as of both disclosures. At hearing, he denied ever physically cheating on her. Tr. at 58-59.

[12] At hearing, Applicant denied using prostitutes and claimed that his statement was "for shock value." Tr. at 58.

[13] *See* GE 13 at 214, 215, 219.

Due to relocation, Applicant had his final visit with Dr. J in October 2015, at which time the BPD diagnosis was affirmed and Applicant was recommended "to connect with VA psychiatry and do DBT." *Id.* at 191. In total, Applicant completed 13 sessions with Dr. J.[14]

Applicant reestablished primary care with a new VA clinic in March 2016, and he was referred to the mental health clinic for DBT evaluation. *Id.* at 172. He was scheduled for a consultation with a licensed clinical social worker in April 2016 but did not show up for the appointment. *Id.* at 152. During the rescheduled screening in May 2016, Applicant expressed wanting to pursue DBT and feeling emotionally unstable. *Id.* at 146-50. The provider chosen was not certified for DBT and offered to provide supportive monthly therapy or for Applicant to reconsult. *Id.* at 152. Applicant scheduled a follow-up session but cancelled the morning-of and did not reschedule. *Id.* at 150. There is no evidence that Applicant ever again pursued or engaged in DBT through the VA or with any other provider.

2016 Warrant (SOR ¶ 1.o)

In September 2016, a warrant was issued for Applicant's arrest for making a false report, which remained outstanding as of at least July 2018. During his 2018 background interview, Applicant explained that, while living in State A, he had planned to purchase a pistol from a friend who lived in State B and travelled to complete the paperwork with a federal firearms license (FFL) holder in State B. GE 5 at 23-24. Applicant claimed that, after the background check, "his firearm purchase was denied with no reason given" initially; however, he later retained an attorney to figure out why and learned that there was "a convicted pedophile" living in State B with "a very similar name and social security number" to Applicant's. *Id.* at 24.

Applicant also explained that he was living in State A and wanted to purchase his roommate's rifle component, but he believed he would be unable to complete the purchase in State A because he had not updated his driver's license after moving out of State B. He and his roommate drove to try and complete the sale with an FFL in State B, but the sale was denied. He claimed that he received a letter notifying him of the warrant in 2020, at which point he contacted an attorney and learned that State B law "precludes anyone from buying a firearm if they've had two DUI convictions." Answer at 12-13.

2019 Public Intoxication & Suicidal Gestures (SOR ¶¶ 1.c, 2.b)

In August 2019, Applicant was arrested for public intoxication. According to Applicant, he and his wife were drinking on vacation, and she returned to their rental cabin while he continued walking around. He was feeling depressed due to the recent deaths of his brother and a friend and an ongoing custody battle with his ex-wife, so he went to sit on a retaining wall overlooking the river to reflect. He first explained that he heard a voice tell him to get down and responded with profanity before realizing it was a police officer, and Applicant then confirmed he had been drinking and was arrested.[15]

[14] Applicant reported his treatment with Dr. J as ongoing as of his 2018 and 2021 SCA disclosures, despite that it ended in October 2015. *See* GE 3 at 44; GE 4 at 40.

[15] GE 5 at 24.

Applicant also explained that, "[w]hile sitting there a police officer told me to get down, which set me off and I cursed at him while telling him I wasn't hurting anyone. After cursing at him he detained me and took me to jail with the charge of public intoxication because he smelled alcohol on my breath. I was really upset over all of this and acted out in my anger, ultimately flooding my cell out of frustration." Answer at 7.

The police report for the incident, however, reflects that bystanders observed Applicant "making statements that he 'did not want to live anymore,' . . . deliberately run[ning] across the road into traffic and [being] nearly struck by multiple cars," and crossing over the fence railing near a river embankment, which witnesses believed to be a suicide attempt. GE 9 at 2. Police responded and observed Applicant to be intoxicated during questioning. Applicant became uncooperative and was arrested and taken to jail, where he flooded his cell with the toilet. During his transport to another jail, Applicant "continued to behave in an irate manner and at one point began throwing himself around the backseat of [the] vehicle in attempt to make it appear that he was in danger from not being seat belted." *Id.*

Regarding the charge's disposition, Applicant has asserted both that he "was given pretrial diversion [and] advised that if he stayed out of trouble the charge would be dismissed" and that "[t]he police officer agreed to drop the charge with no further action" after Applicant explained the loss of his brother and apologized. GE 5 at 6; Answer at 7.

2019-2021 Alcohol Consumption & Mental Health Care

At hearing, Applicant claimed that he did not have "any sort of dependence on alcohol" between his August 2019 arrest for public intoxication and his 2021 domestic violence arrest, discussed more below. Tr. at 36.

In October 2019, however, Applicant initiated therapy with a new licensed social worker, and he endorsed current suicidal ideations three or four times per week and scored a "7" on the AUDIT-C, reporting drinking five or six drinks, two or three days per week, and more than six drinks in a single sitting monthly. GE 13 at 127, 131-32. Applicant's initial diagnostic impressions included anxiety disorder, PTSD, alcohol dependency, and personality disorder. *Id.* at 130. In November 2019, he reported that "his anxiety does increase with stress and deadlines at work, worrying about custody of his children, his ex-wife." *Id.* at 106. Applicant did not show for his next therapy appointment in December 2019 and did not schedule another. *Id.* at 85.

During his initial visit for medication management with VA psychiatrist Dr. C in January 2020, Applicant reported issues with anxiety for years but explained that it was "getting bad over the last year," describing it as "soul crushing." *Id.* at 80. He reported that he was "self-medicating with alcohol." *Id.* Dr. C encouraged Applicant to continue therapy to address his drinking and his treatment plan included, "No [alcohol] or drugs." *Id.* at 81, 82. In April 2020, Applicant reported that he had "been drinking less alcohol lately," and Dr. C encouraged him to "continue to work on cutting down alcohol consumption" and to establish new therapy soon. *Id.* at 72. Citing another relocation, Applicant cancelled his next appointment with Dr. C, and there is no evidence that he ever reestablished mental health services, therapy, or medication management through the VA.

2021 Domestic Battery (SOR ¶ 1.b)

In April 2021, Applicant was arrested and charged with felony domestic battery by strangulation. According to Applicant, he and his wife were intoxicated, gambling in Las Vegas, and lost a sizeable amount of money. In one version of events, Applicant explained that they were both upset, his wife returned to the room, he joined her later, and they argued loudly. A person in the adjoining room heard the argument and called police, and Applicant was arrested. He expressly denied using any physical force against his wife. GE 5 at 6.

In another telling, Applicant explained that he "grabbed [his] wife and shoved her before leaving to cool off," and he was not in the room when hotel security arrived to respond to the neighboring guest's report. Answer at 6. Applicant declined to provide any details of the event and was arrested. At the criminal hearing, his attorney provided a statement from the wife denying the strangulation and stating that she did not want to press charges, and the prosecutor declined to pursue the case. *Id.* at 6-7.

Contrary to either of Applicant's explanations, the arrest report for the incident reflects that a hotel guest contacted hotel security to report that "an unknown female ran into his room seeking refuge from [Applicant]," and security contacted police and detained Applicant in their holding room. GE 10 at 1. When police arrived, Applicant's wife explained that she became upset about the gambling losses, went to the room alone, and fell asleep. She awoke to Applicant pounding on the door and observed him to be "extremely irate." *Id.* His wife laid back down, at which point Applicant grabbed her by the leg and dragged her to the floor, where he proceeded to straddle and strangle her. She described the pain as a "9 out of 10." *Id.* She tried to fight him off, and he pinned her arms to the ground and slapped her across the face several times with an open hand. She eventually broke free and ran from the room to a different floor of the hotel, where she asked another guest for help because "her husband tried to kill her." *Id.* She stayed in his room until security arrived, and the guest observed that her face was bruised and her lips were puffy. Applicant told police that he was asleep when security knocked on his hotel door and he did not know why he was detained. Police observed that the wife had a black eye, petechial hemorrhaging on her eye and forehead, and reddening around her neck consistent with being choked. She later refused to consent to a strangulation exam, provide a statement, or take pictures, and the case was dismissed three months later.

2021-2022 Alcohol Consumption & Mental Health Treatment

To "get back on track" after the 2021 arrest, Applicant claimed to have engaged in mental health treatment from April 2021 until July 2021, at which point he "was feeling better and capable of going back to [his] regular techniques of self reflecting and meditation." GE 5 at 101; Tr. at 61. Applicant produced no records from this purported treatment, citing that the provider appeared to be "no longer in practice." GE 5 at 43. He has subsequently engaged in no mental health treatment. *Id.* at 102; Tr. at 61-62.

During his May 2022 background interview, Applicant asserted that he had "curtailed his drinking to one beer a week" after his last DWI. GE 5 at 7. Although he acknowledged that he was intoxicated during his arrests for public intoxication in 2019 and domestic violence in 2021, he described those consumption levels to be "anomalies." *Id.* He averred that he had never been

addicted to or dependent on alcohol, never received alcohol related treatment or counseling, and that his alcohol use had never caused physical, financial, or professional problems.

2024 Assault & Destruction of Property (SOR ¶ 1.a)

In March 2024, Applicant was charged with assault and destruction of private property. The police report for the incident reflects that security guards were patrolling a parking garage in their vehicle when they saw Applicant, stopped to talk to him, and observed that he was intoxicated. Applicant reached through the driver's side window and grabbed one of the guards by the head and neck, causing the car to roll into a concrete barrier. Applicant was transported to the hospital for further evaluation due to intoxication and issued a citation. GE 11.

Applicant explained that he drank one glass of wine at dinner and his group decided to go to a nearby bar, where they were offered "free 'special cocktails.'" Answer at 5. He claimed to have lost all memory of the evening shortly thereafter and averred that the others in his group had "similar experiences of memory loss and medical problems" and "believed [they] had been drugged against [their] will." *Id.* at 6. He pieced together that he left the bar and was looking for his car in the wrong parking garage when he was approached by the guards, at which point he "must have become scarred [sic] and pushed or punched the security guard while he was in his vehicle, causing it to roll into a concrete bollard." *Id.* The guards restrained Applicant, "but at that moment [he] started having a medical emergency that required [him] to be transported by ambulance to a hospital." *Id.* When he woke up, a nurse explained how he got there and purportedly suggested "that it appeared that [he] had been under the influence of an opioid, such as fentanyl." *Id.* He contends that his introduction of hospital records at the criminal hearing led to the assault charge being dismissed. Applicant did not offer the hospital records at his security clearance hearing or any evidence of a "medical emergency," and he testified that the hospital "didn't perform any drug screening" and he did not "have any substance of evidence to prove" that he had a drug like fentanyl in his system that night. Tr. at 37, 38.

In August 2024, Applicant pled guilty, received a deferred judgment, and was sentenced to one year of probation with conditions, including community service and completion of an alcohol class. Nine months after his plea – and two months after the SOR was issued – Applicant attended the alcohol class and completed his community service. Answer, App. D.

Government-Obtained Psychological Evaluation (SOR ¶ 2.a)

In August 2024, in conjunction with his current national security investigation, Applicant participated in an evaluation with psychologist Dr. S. With the exception of Applicant's Answer to the SOR and hearing testimony, which post-date the evaluation, Dr. S's report reflects that she reviewed all of the documentation underlying the foregoing history, including: Applicant's 2009, 2012, 2018, and 2022 national security investigation reports; 2012 through 2022 VA medical records; and incident reports for the 2007 suspended license charge, 2008 non-judicial punishment, 2019 public intoxication charge, and 2021 domestic violence charge.

During the evaluation, Applicant "endorsed a chronic history of mental health and substance use concerns," starting when he was hospitalized for 30 to 45 days at 12 years old for suicidal ideation. GE 12 at 1. He began drinking at 16, and his alcohol use increased significantly

after he joined the Army. *Id.* He expressed his belief that "alcohol use is a 'personal decision' and [did] not believe he has a problem with alcohol." *Id.* at 2. He indicated that "he has continued to drink," although "not to get drunk," and "reported drinking wine and whiskey, but did not provide the current frequency of his use." *Id.* Applicant also reported having a limited mental health treatment history, with no ongoing mental health treatment as of the evaluation, and expressed no interest in participating in services. *Id.*

He disclosed two adult children from his first marriage, who have "lived with their mother throughout their life and [he] has limited contact with them," and another child from a one-night stand who lives with her mother in a different state. *Id.*

Dr. S opined that Applicant's "judgment, reliability, and trustworthiness are not appropriately intact," and reaffirmed the BPD diagnosis, noting that it "best encapsulate[s] his chronic pattern of interpersonal difficulties, legal involvement, and substance use." *Id.* at 4. Dr. S also diagnosed Applicant with alcohol use disorder, noting his "significant alcohol use and abuse history" and "ongoing alcohol use with limited insight into the negative impact of this use on his romantic and occupational functioning." *Id.*

Applicant-Obtained Evaluations

The SOR was issued on March 27, 2025, alleging and cross-alleging incidents and issues based on the foregoing two-decade history of Applicant's criminal activity, alcohol-involved conduct, sexual behavior, and mental health concerns. In response to receiving the SOR and noting concerns about his security clearance as the basis for self-referring, Applicant scheduled evaluations with two mental health professionals.

LPC's Evaluation

On April 15, 2025, Applicant participated in mental health and alcohol/substance use evaluations with a licensed professional counselor (LPC). There is no evidence that the LPC reviewed any records for the evaluations, was provided the SOR, or was privy to the extent of Applicant's alcohol-related history or prior drug use disclosures. During the evaluation, Applicant discussed only his 2024 arrest, for which he "appeared adamant his alcohol consumption was not enough to have a 'blackout' effect," but noted that it was "undetermined" if his memory loss resulted from a foreign substance other than alcohol. Answer, App. B at 7. Applicant "described he has been highly motivated and proactive in order for his clearance to be reconsidered, and hopefully reinstated." *Id*. He reported that he had not consumed alcohol since the March 2024 incident and planned to remain sober indefinitely. Applicant disclosed his 2014 BPD diagnosis, but the counselor "did not observe any signs, symptoms, or traits to confirm said diagnosis." *Id.* at 8. The LPC's only recommendation was for Applicant to continue to remain sober.

Dr. W's Evaluation

On April 29, 2025, Applicant participated in an evaluation with psychologist Dr. W, who noted his "thorough review of relevant available documents associated with [Applicant's] security clearance." *Id.* at 3. There is no evidence what specific records Dr. W reviewed for the evaluation, and the resulting report identifies only generally that they included "polygraphy, interviews, decision, and appeal." *Id.* Notably, the record contains no information that Applicant has ever

engaged in a polygraph. The report's language suggests that Dr. W did not have access to a complete copy of the SOR, Applicant's VA medical records, or any other records reflecting his history of alcohol-related and criminal incidents.

Applicant "reported a significant history of childhood sexual abuse," including "being sexually molested by teen aged neighbors (male and female) and a female babysitter," and that his parents' divorce and subsequent relocations were traumatic. *Id.* He disclosed prior hospitalizations, including "one week in an inpatient psychiatric facility at age 13 after having made suicidal threats, and overnight in 2014 after expressing "suicide-adjacent frustrations to a friend." *Id.* at 4.

Applicant reported "having relationships with all three of his children," including the two from his first marriage, for whom he claimed he "shared custody." *Id.* He "reported no marital issues or concerns" with his current wife. *Id*.

Other than Applicant's 2024 arrest and BPD diagnosis, Dr. W's report addresses no incidents or concerns as alleged in the SOR. Applicant identified his 2024 arrest as the "events that led to his suitability denial," and explained that it followed his "drinking socially" before he "was apparently slipped a drug that caused him to black out for a period wherein he apparently got into an altercation with a security guard." *Id.* Applicant "reported no other such incidents in the previous 20 years of alcohol consumption" and described a history of only "minor legal charges . . . with no convictions." *Id.* He averred that he had not consumed alcohol since the incident.

Applicant also disclosed that he was diagnosed with PTSD and BPD in 2014, but claimed that he "received individual and group therapy for BPD and alcohol education classes" through the VA. *Id.* He asserted that his diagnoses "helped orient him toward constructively and substantively working on his emotions and behavior through [DBT]," which Dr. W noted is "one of the few effective treatments for BPD supported by scientific research." *Id.* at 5. Dr. W identified Applicant's "successful course of DBT treatment" as a factor indicating Applicant's BPD was being successfully and appropriately managed. *Id*. Noting that Applicant's "symptoms of BPD and PTSD appear very well-managed following appropriate treatment and concerted efforts on his part to manage his emotions and behavior appropriately," and his "commitment to self-reflection and appropriate behavior in relationships," Dr. W opined that Applicant "appears at minimal risk of the emotional and behavioral instability that is traditionally associated with these diagnoses." *Id.*

SOR Response & Judge's Conclusions

In response to the SOR, Applicant admitted all concerns with explanations, some of which varied from those he previously provided, as identified above. In addition to the reports from his two evaluators, he submitted a personal statement; negative drug and alcohol screenings from May 2, 2025; professional records, including his DD-214, resume, and 2020 through 2025 performance evaluations; information about his volunteerism and scholarship-building; and letters attesting to his integrity, professional competence, and leadership qualities from four references, two of whom also testified at hearing.

The Judge favorably noted Applicant's "constructive community involvement" and credited his purported sobriety since March 2024. Decision at 14, 17. Throughout his mitigation

and Whole-Person analyses, the Judge relied heavily on Applicant's professional accomplishments, noting that he "is a self-made man [and] a highly successful mid-level manager on multi-million dollar contracts with nothing more than a GED," has an "outstanding employment record," "has been in a high profile, demanding job for over ten years," has "rise[n] up the corporate ladder," and was supported by "outstanding reviews [and] laudatory letters" from colleagues. Decision at 14, 16, 21. The Judge resolved all allegations favorably.

Scope of Review

On appeal, the Board does not review a case *de novo*, but rather addresses material issues raised by the parties to determine whether there is factual or legal error. When a judge's factual findings are challenged, the Board must determine whether the "findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can be arbitrary or capricious if: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 95-0600, 1996 WL 480993 at *3 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In deciding whether a judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2 (App. Bd. Jun. 2, 2006).

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR OSD Case No. 87-2107, 1992 WL 388439 at *3-4 (App. Bd. Sep. 29, 1992) (citations to federal cases omitted). If an appealing party demonstrates factual or legal error, then the Board must consider the following questions: (1) Is the error harmful or harmless?; (2) Has the nonappealing party made a persuasive argument for how the judge's decision can be affirmed on alternate grounds?; and (3) If the judge's decision cannot be affirmed, should the case be reversed or remanded? *See* ISCR Case No. 02-08032 at 2 (App. Bd. May 14, 2004).

Discussion

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). 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 argues that the Judge's application of the mitigating conditions and analysis under the Whole-Person Concept were arbitrary, capricious, and not supported by the record evidence. We agree and reverse the Judge's favorable decision.

Conflicting Evidence & Credibility Determination

Underlying all claims raised on appeal is the argument that the Judge failed to consider significant unfavorable and conflicting record evidence, which ushered in both an unsupported favorable credibility assessment and an unsustainable weighing of competing mental health evaluations. These arguments have merit.

Misrepresentations by Applicant abound in this record. Already addressed above are his wildly varying explanations for many of the SOR allegations, which are contradicted both internally and by third-party accounts and documents. The Judge's failure to address these significant evidentiary conflicts while accepting Applicant's implausible and inconsistent explanations renders an unsupported – and unwarranted – favorable credibility determination. Standing alone, these failures reflect arbitrary and capricious analysis and an unsustainable decision.[16] Still other evidentiary inconsistencies, on which the decision is again silent, bear noting and cement our conviction that the Judge erred in failing to consider relevant evidence and important aspects of the case.

Regarding alcohol consumption, the Judge credited Applicant's explanation that he "has abstained [from drinking] since March 2024." Decision at 17. That finding is contradicted by Applicant's endorsement of continued drinking during his August 2024 evaluation with Dr. S.

Regarding sexual behavior, the Judge found that Applicant admitted the 2015 statement that he had sex with more than 300 women and paid more than $1,000 for prostitutes, but that he "vehemently denies its truth." Decision at 20. Then, citing Applicant's "overall credibility" and that there was "virtually no corroborating evidence of this alleged conduct" beyond the 2015 statement itself, the Judge concluded that the underlying conduct was unproven. *Id.* The Judge identified no other evidence reflecting on Applicant's sexual history or use of prostitutes, making his use of the word "virtually" to qualify the unavailability of corroborating evidence as curious as it is unclear. Our review of the record reflects that, beyond Applicant's statement to Dr. GM in 2015, his hypersexuality and sexually impulsive and unsafe behaviors are well-documented in his medical records.[17] While those behaviors largely include casual and unprotected sexual encounters, Applicant also separately reported to Dr. J in December 2014 that he was still feeling impulsive and "searching on-line for prostitutes." *Id.* at 230.

Regarding drug use, the Judge addressed the SOR allegation concerning Applicant's 2008 use of cocaine and related military discharge, and found that Applicant "has not used illegal drugs

[16] *See* ISCR Case No. 00-0620, 2001 WL 1729289 at *2-3 (App. Bd. Oct. 19, 2001) (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 575 (1985) ("[T]he trial judge may [not] insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness'[s] story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable fact-finder would not credit it.").

[17] *See id.* at 217, 221, 232, 242; *see also supra* text accompanying note 11.

since this incident." Decision at 3. The Judge's finding is contradicted by the record, which reflects that Applicant has a history of drug use and unreliably reporting on the same. For example, despite insisting that his 2008 cocaine use was "a one time experimental use," he admitted years later that he used cocaine at least "a few times" between 1999 and 2008, and he was diagnosed with cocaine abuse in 2008;[18] as of his CBT referral in January 2015, his "impulsive decisions" involved "some drugs" and he reported using drugs like crack as recently as three weeks prior and marijuana the night before;[19] and he was using marijuana edibles on a weekly basis as of November 2022.[20]

Although a judge is not required to discuss every piece of record evidence, 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). Furthermore, 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, 2007 WL 4379274 at *3 (App. Bd. Nov. 14, 2007).

The record in this case is rife with evidentiary conflicts that went unaddressed. Similarly absent from the decision is any explanation for how the Judge found Applicant's latest accounts credible in light of those conflicts and other record evidence that detracts from his candor and trustworthiness.[21] The Judge's failure to identify the significant unfavorable record evidence identified herein or attempt to evaluate its comparative reliability with Applicant's latest explanations was harmful error.

Piecemeal Analysis

The Government also argues that the Judge engaged in an improper piecemeal analysis when he "separately evaluate[d] Applicant's criminal misconduct predating 2012 with his later arrests." Here again, we agree.

Noting Applicant's explanation that he "was an 'angry young man' between 2007 and 2011," but crediting that he "began receiving treatment from the VA" in 2011 and "has taken control of his mental health and worked extremely hard over a decade to keep it under control," the Judge explicitly divided Applicant's conduct "chronologically into two periods – the first between 2007 and 2011, the second between 2016 and 2024." Decision at 2, 14, 16. The Judge

[18] GE 5 at 33, 103.

[19] Applicant challenged the January 2015 treatment note's reference to current drug use and offered as possible explanations that: 1) "English was not [Dr. J's] first language;" 2) the "records were transcribed by someone else from [Dr. J's] hand written notes;" or 3) Applicant's "roommate at the time was using drugs and he was sometimes discussed, and eventually also became a patient of Dr. J." GE 5 at 49. None of these explanations are credible. Putting aside the myriad other record disclosures about Applicant's long-standing and ongoing drug use, the session underlying the note was with Dr. GM, not Dr. J, and Applicant's roommate at the time was his then-girlfriend.

[20] GE 13 at 42-43.

[21] When the record contains a basis to question an applicant's credibility, the judge "should address that aspect of the record explicitly," explaining why he finds an applicant's explanation to be trustworthy in light of the record as a whole. ISCR Case No. 07-10158, 2008 WL 4635412 at *4 (App. Bd. Aug. 28, 2008).

then concluded that concerns from the period ending in 2011 were mitigated due to the passage of time and Applicant's "conduct since then." *Id.* at 14, 16, 17.[22]

The Judge's findings that Applicant "began taking his mental health seriously in about 2011" and "worked hard to achieve stability" after his BPD and PTSD diagnoses are perplexing, as they are entirely unsupported by the record. *Id.* at 7, 14. To the contrary, Applicant's VA records reflect that: his longest period of consistent mental health treatment was for 13 sessions of medication management between 2014 and 2015; he repeatedly "no-showed" for appointments and declined to respond to contacts from multiple potential providers; and he declined to follow through – ever – with recommendations for anger management, traditional therapy, CBT, or DBT.

Next – and seemingly ignoring the gravity of Applicant's "conduct since [2011]" to include four arrests between 2016 and 2024: one involving suicidal gestures; two of a violent nature and a felony against his wife; three involving alcohol; and one attempt to illegally purchase a weapon – the Judge further divided and analyzed the second period as stand-alone incidents of "other contacts with law enforcement" and "other [alcohol] issues." *Id.* at 13, 17. He characterized the 2016 incident as a "paperwork mistake," the 2019 incident as "singular in nature," the 2021 incident as also, somehow, "singular in nature," and the 2024 incident as "somewhat strange." *Id.* at 14.

Definitionally and stated openly in his decision, the Judge analyzed in piecemeal two decades of Applicant's security significant conduct and ongoing concerns that remain unaddressed. It is firmly established that judges must consider the evidence as a whole and not view it in an isolated or piecemeal fashion. *See* ISCR Case No. 01-08390, 2002 WL 31342455 at *3 (App. Bd. Feb. 12, 2002). The Judge's improper fragmented analysis failed to consider the totality of Applicant's conduct and its security implications.

Competing Mental Health Evaluations

Finally, the Government challenges the weight assigned to the three mental health evaluations, persuasively arguing that the Judge failed to consider Applicant's numerous misrepresentations during the evaluations or that neither the LPC nor Dr. W "appears to have reviewed any pertinent medical records," and that the Judge "summarily dismissed" Dr. S's evaluation. Appeal Brief at 32, 35.

Here, the Judge uncritically accepted and credited the reports from the LPC and Dr. W, never addressing that neither evaluator appears to have been provided the full SOR, the police or

[22] AG ¶¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

incident reports, or Applicant's voluminous medical records. Nor did the Judge address the glaring inconsistencies between what Applicant relayed to those evaluators and what the record otherwise establishes. For example, Applicant represented to Dr. W that he shared both custody of and a relationship with his children from his first marriage and experienced no marital issues with his current wife. He underrepresented the natures and dispositions of his extensive criminal history and claimed he had no other experiences like the 2024 arrest in the past 20 years. Most significantly, Applicant misrepresented that he substantively and successfully engaged in DBT. He did not, and the Judge failed to acknowledge either the weighty misrepresentation itself or Dr. W's heavy reliance on it in reaching his opinion.

The Judge found that, of the four mental health professionals with records in evidence – including "the VA, the government evaluator, Applicant's psychologist, and the alcohol evaluator" – "only the government evaluator found Applicant to have a continuing problem" with his BPD and PTSD diagnoses. Decision at 16. This finding not only fails to consider the comparative reliability of the three reports, but it is also erroneous.[23]

From that problematic finding, the Judge addressed the weight assigned to Dr. S's evaluation. Referring exclusively to Applicant's professional accomplishments and pointing only to Dr. S's apparent failure to discuss the same, the Judge concluded that Dr. S's "findings do not comport with the facts" and opined that, "in [Applicant's] job there is no way that a personality disorder would not show itself over the years." *Id.* He offered no basis for this unfounded opinion. Yet, relying on it and despite the comprehensive evaluation conducted by Dr. S and the obvious shortcomings of the evaluations conducted by the LPC and Dr. W, the Judge discounted Dr. S's evaluation, diagnoses, and prognosis. Through an otherwise unexplained analysis, he concluded that the Guideline I concerns were of *past* mental health conditions that were temporary and are resolved, and there is no indication of emotional instability or a current problem.[24] For all the reasons addressed above, this conclusion is unsupported by the record and is unsustainable.

Conclusion

When the Board finds that a judge's decision is unsustainable, we must determine if the appropriate remedy is remand or reversal. When, even after addressing the identified errors, 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, the decision must be reversed. *See* ISCR Case No. 22-01002, 2024 WL 4445514 at *3 (App. Bd. Sep. 26, 2023). Such is the case here.

The Government has met its burden on appeal of demonstrating reversible error below. Considering the record, the Judge's decision is arbitrary and capricious for all the factors as identified in ISCR Case No. 95-0600. Accordingly, the favorable decision is not sustainable under *Egan* and is reversed.

[23] Multiple providers at the VA, including Dr. J, noted a continuing and unaddressed problem. The finding is also erroneous to the extent that the Judge credited Dr. W as being "Applicant's psychologist" in any substantive way, rather than as one of three evaluators, who each interviewed Applicant in a single, hours-long session.

[24] AG ¶¶ 29(d): the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; 29(e): there is no indication of a current problem.

Order

The decision in ISCR Case No. 24-00247 is **REVERSED**.

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

Signed: Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Eric H. Borgstrom
Eric H. Borgstrom
Administrative Judge
Member, Appeal Board