



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: May 21, 2025

In the matter of:)	
)	
)	
-----)	ISCR Case No. 23-02891
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Brittany M. White, Esq., Department Counsel
 Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 16, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 25, 2025, 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.

Judge’s Findings of Fact

Applicant is in his early 40s. His childhood was difficult, “with a father who was an alcoholic, and a mother who was a multi-drug abuser,” and he testified to a cycle of incarceration,

drug use, and living on the street. Decision at 5. Regarding the conduct and concerns alleged in the SOR, the Judge summarized that “Applicant was, until 2016, a career criminal.” *Id.*

Under Guideline H and Guideline E, the SOR cross-alleged various illegal drug use, including opioids from 2007 to August 2012, methamphetamine from 1999 until August 2012, and marijuana from 1995 through March 2023. Applicant was also arrested three times in August 2001 for being under the influence of a controlled substance and, on the third occasion, was convicted and sentenced to one year in jail.

Under Guideline J and Guideline E, the SOR cross-alleged a significant history of criminal conduct, beginning in 1998 with a conviction following arrest for burglary and grand theft of firearms for which Applicant, then a juvenile, was sentenced to six months at a youth center. The Judge noted that, “[f]rom that time, until approximately 2016, he was either in prison, on probation, or on parole” for a variety of property, weapons, violent, and drug offenses. *Id.* at 3. In two 2012 arrests, Applicant was charged with possession of a loaded firearm and multiple counts of possession of methamphetamine and sentenced for the combined offenses to four years in prison. As addressed more fully, below, Applicant explained that he had an epiphany at this point and began improving himself.

In January 2020, Applicant was charged with assault by means likely to cause great bodily harm after he got into a physical altercation with a coworker, whom Applicant punched several times. He was placed on informal probation for three years and required to engage in various services. He successfully completed probation and is no longer on any restriction.

The Judge found that Applicant’s conduct was disqualifying but, through application of both the mitigating conditions and the Whole-Person Concept, resolved all concerns favorably.

Scope of Review

The Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the judge committed factual or legal error.

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

Discussion

On appeal, the Government argues that the Judge's application of the mitigating conditions and his analysis under the Whole-Person Concept were arbitrary, capricious, contrary to law, and not supported by the record evidence. For the following reasons, we affirm the Judge's decision.

Whole-Person Concept

The nature of this case warrants that we address at the outset the Whole-Person Concept, which requires that eligibility determinations be made through a careful weighing of multiple variables of an applicant's life using all "available, reliable information about the person, past and present, favorable and unfavorable." Directive ¶ 6.3; AG ¶¶ 2(a), 2(d).

The Government charges that the Judge's Whole-Person analysis is flawed because he "did not cite to any new relevant facts in finding the established security concerns mitigated" thereunder. Appeal Brief at 25. Analysis under the Whole-Person Concept need not be conducted separately or distinctly from analysis under applicable Guidelines. To the contrary, the Directive requires that the Guidelines be evaluated *in the context of the whole person*. AG ¶ 2(c).

This case is unquestionably unique, both in terms of the extent of Applicant's criminal and drug use histories, as well as his exceptional efforts at rehabilitation. Under these unique circumstances, Applicant's cases in mitigation under the three Guidelines are inextricably linked to analysis of his whole person. This is well-represented in the Judge's decision, in which consideration of Applicant's whole person is woven throughout.

Of the general factors to consider in evaluating alleged conduct and the whole person, rehabilitation is particularly relevant in this matter. The Judge attempted to summarize the record's most significant evidence of rehabilitation, but also noted that the "decision can barely touch on the voluminous evidence in the record showing how [Applicant] was able to rise above a very challenging childhood and adolescence, followed by an adulthood of crime, to be the person he is today." Decision at 10. To that end, we note the following information drawn from the decision and record:

During his final period of incarceration beginning in 2012, Applicant became a Christian and began receiving an education. Although he was sentenced to four years of incarceration, he was released to probation early in 2015. Applicant testified that his subsequent release from supervision in 2016 – at the age of about 33 – was the first time he had been free of incarceration, parole, and probation since he was 15. He married in 2018.

Applicant's fisticuffs in January 2020 resulted in an assault charge; however, impressed by the changes that Applicant had already made in his life, the presiding judge put him on informal probation for three years. During that time, he engaged in various services to address anger management and to resolve personal issues that had affected him most of his life. For over two years, he attended one-on-one therapy with a psychologist, who submitted a letter on Applicant's behalf and concluded:

I think that [Applicant] is currently at a point of social, emotional, and cognitive development that is significantly above average compared to other males his same age. This is a remarkable improvement and achievement. In my opinion he is no longer a threat to others but a mature individual with good values, the ability to handle well the stress and difficulties in life and be there for others now that others have been there for him.

Applicant Exhibit (AE) E at 2 (emphasis in original).

Applicant also continued his education and earned his bachelor's degree in computer science in 2022, graduating with a 3.919 GPA, the highest in his class. One of Applicant's former professors identified him as a leader among students, a reliable and honest student, and a hard-working and dedicated computer scientist. Another former instructor advocated for Applicant's employment with his company, which knew of Applicant's background, and Applicant has been employed there as a software engineer since mid-2021. The company's president commented on Applicant's strong performance ratings, absence of security incidents, reliability, and dependability.

Applicant has also been involved in helping at-risk youth and instructing future law enforcement officers. The Chief Deputy Probation Officer of the county where Applicant used to live, who has known him since at least 2017 and recounted him speaking to her classes and at juvenile hall, praised Applicant by noting:

As an instructor and a Chief Deputy Probation Officer, I teach students and officers that one must believe offenders have the ability to change. . . . [Applicant] exemplifies this belief. I'm very proud of his progress and he is a reminder of why I have chosen the career I have.

AE R. The Judge concluded his favorable decision by opining that "Applicant is an impressive man who has truly turned his life around after a start that would have crushed most people." Decision at 12.

In addition to, and implicit in, his robust discussion of rehabilitation, the decision reflects that the Judge evaluated Applicant's case through other relevant general factors, including his age and maturity, the recency of and circumstances surrounding the conduct, and the likelihood of recurrence. The Judge thoroughly addressed the record's unfavorable evidence alongside the favorable evidence supporting mitigation and Applicant's whole person, and reasonably concluded that the favorable was sufficient to overcome the security concerns. The Government's disagreement with the Judge's evaluation of this case under the Whole-Person Concept and the general factors of AG ¶ 2(d) is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Guideline H

The Judge found that Applicant used methamphetamine and opioids during the period when he was in and out of prison but stopped in 2012 “when he decided to turn his life around,” and that his marijuana use continued until 2023. Decision at 9. Relying on Applicant’s assertions that he no longer uses any illegal substances and his demonstrated changed circumstances, the Judge concluded that the Guideline H concerns were mitigated under AG ¶¶ 26(a) and 26(b).¹ The Government challenges the Judge’s favorable mitigation analysis as based primarily on an erroneous credibility determination and unsupported factual findings, and argues that the Judge failed to sufficiently consider that Applicant has “never participated in any consistent substance abuse programs” and that he used marijuana after submitting his security clearance application (SCA). Appeal Brief at 17. These arguments are of mixed merit.

First, regarding his lack of drug counseling, Applicant acknowledged that he was required to attend substance abuse counseling during his periods of parole and probation, but that he did not take it seriously until 2012.² The record reflects that Applicant’s methamphetamine-related conduct³ and his use of opioids⁴ occurred during a prior, albeit significant, criminal stage of his life and that he ceased involvement with both drugs in 2012.⁵ As of his hearing, Applicant’s abstinence from methamphetamine and opioids had continued for *over twelve years*. The Government seems to suggest that, despite the lengthy period of voluntary abstinence from these two serious drugs, Applicant’s failure to fully engage in counseling before 2012 leaves room for doubt about his sincerity or ability to sustain abstinence in the future. We are unpersuaded by such an argument. Considering both the passage of time since Applicant used either of those drugs and the breadth of evidence of considerable and lasting positive changes that he has made since 2012, the Judge’s conclusion that Applicant’s non-marijuana drug involvement is mitigated is amply supported by the record and Appeal Board precedent.⁶

With respect to this marijuana use, the record reflects that Applicant began using the drug in the 1990s and continued using infrequently until about 2010. He resumed in 2016 when

¹ AG ¶¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence.

² See GE 1 at 58; Tr. at 56. Beyond Applicant’s general recollection of having not taken counseling seriously, the record is not clear what types, frequencies, or durations of counseling were included in his terms of supervision, nor is there evidence that any of those terms remain open or unsuccessful.

³ SOR ¶¶ 1.b, 1.d, 1.e, 2.b, 2.c, 2.f-2.h. Applicant asserted that his arrests involving controlled substances were, to the best of his recollection, for methamphetamine. GE 2 at 17.

⁴ SOR ¶ 1.c.

⁵ GE 1 at 58; GE 2 at 18; Tr. at 53.

⁶ To the extent that the Government is advocating that Applicant’s marijuana use, which continued until March 2023, should revive the concerns about his otherwise-mitigated methamphetamine and opioid use, we disagree that such an analysis is appropriate under the facts of this case. Applicant’s marijuana use is distinguishable from his use of methamphetamine and opioids, particularly considering the comparative legality under state law, nature, recency, and circumstances of use. See ISCR Case No. 24-00914 at 3-4 (App. Bd. Apr. 9, 2025) (discussing the analysis in cases alleging mixed drug use).

recreational marijuana was legalized in his residential state and described himself as a weekly user until around the time that he submitted his October 2022 SCA. Applicant used marijuana several more times in early 2023 and ceased again in March 2023.

To the extent that the Government is arguing that Applicant's lack of substance abuse counseling calls into question his future marijuana abstinence and undermines the Judge's mitigation analysis, we are again unpersuaded. Satisfactory completion of a prescribed drug treatment program is a condition that affords mitigative credit in Guideline H cases,⁷ but it is not the only path to mitigation, nor is it a required step on that path.⁸

The Government's appeal takes greater aim at the Judge's failure to sufficiently consider certain significant contrary evidence – i.e., Applicant's post-SCA marijuana use – which carries implications to both Applicant's judgment and his latest promise to abstain. This argument has some merit.

After disclosing his prior marijuana use in his October 2022 SCA, Applicant averred that he had no intention of using it in the future, citing the drug's illegal status under federal law and not wanting to lose his job or potential security clearance. About three months later, however, he used marijuana several more times between January and March 2023. Applicant reported his additional use to the security investigator in March 2023 and stated again that he had no intention of using in the future. Applicant's marijuana cessation date has since remained fixed in March 2023, and he has reiterated his intentions against future use.

Applicant's post-SCA marijuana use occurred with knowledge that it was inconsistent with national security eligibility, raising questions about his judgment and reliability,⁹ and also undercuts his renewed statement against future marijuana use.¹⁰ These were significant matters to be addressed by the Judge in determining if Applicant had met his burden of persuasion in both mitigation and the Whole-Person. The decision, however, is silent to Applicant's promise made in his SCA that he would not use marijuana again or that, several months later, he did.

Leaning on the Whole-Person Concept, the Judge concluded generally that Applicant's marijuana use was mitigated and addressed Applicant's commitment to abstinence by finding simply that his "testimony and other evidence showed someone who has truly changed his attitude about marijuana and can be depended upon not to use it in the future." Decision at 9. The Judge's sparse analysis about Applicant's post-SCA marijuana use is, on its face, insufficient. The Judge should have more explicitly addressed how Applicant's post-SCA marijuana use weighed in assessing Applicant's judgment and why he found Applicant's renewed statement against future use reliable considering the similar promise Applicant made, and broke, earlier in his investigation.

⁷ See AG ¶ 26(d).

⁸ The absence of a specific mitigating condition that is applicable to the facts of a case does not preclude a judge from making a favorable decision. See ISCR Case No. 03-12882 at 3 (App. Bd. Jul. 20, 2005).

⁹ See ISCR Case No. 20-01772 at 3 (App. Bd. Sep. 14, 2021) (The Appeal Board has "long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information.").

¹⁰ ISCR Case No. 07-00852 at 3-4 (App. Bd. May 27, 2008).

That said, the Board does not measure a judge’s decision against a standard of perfection, but rather reviews it as a whole to determine if there is error. DISCR OSD Case No. 90-1054, 1992 WL 388310 at *4 (App. Bd. Jul. 20, 1992) (citations omitted). Post-SCA marijuana use is a consideration in, but not a bar to, eligibility. Looking to the Judge’s otherwise thorough mitigation analysis and weighty reliance on the Whole-Person Concept, his basis for finding Applicant’s post-SCA marijuana use mitigated is evident. Applicant’s post-SCA use occurred only a few times, permissibly under state law and early in his investigation when he believed he would not be granted eligibility, and Applicant promptly and voluntarily disclosed the use to his investigator. The Judge found Applicant’s March 2023 cessation date credible¹¹ and, as of the hearing, Applicant’s abstinence from marijuana had continued for over fifteen months. Considering the decision in its entirety, we conclude that the Judge adequately addressed Applicant’s marijuana use and his basis for finding Applicant’s renewed promise to abstain credible is supported by the record. Any error resulting from his not explicitly addressing the post-SCA use was harmless.

Guideline J

The Government next charges that “the Judge erroneously concluded that the Guideline J concerns were sufficiently mitigated under [AG ¶¶] 32(a), 32(c), and 32(d),” and argues that his analysis was flawed “because he undertook a narrow, piecemeal approach in which he minimized, or completely ignored, the security significance of the totality of the facts when weighed in context with each other.” Appeal Brief at 18.

Turning first to AG ¶ 32(c), which affords mitigation when there is “no reliable evidence to support that the individual committed the offense,” the Government argues that “there was no reasonable ground upon which to apply [the condition], and the Judge’s use of it is wholly inappropriate.” *Id.* The Judge did not apply AG ¶ 32(c) and this argument is moot.

The Government also contends that the Judge’s application of mitigating conditions AG ¶¶ 32(a) and 32(d)¹² was erroneous, based largely on what it describes as an overemphasis on the passage of time since Applicant’s last criminal charge in January 2020. To that end, the Judge assessed that:

¹¹ The Government argues that Applicant’s use of marijuana after stating he had no future intent and after submitting his SCA detracts from a favorable credibility assessment in terms of Applicant’s renewed statement against future use. The Appeal Board gives deference to a judge’s credibility determinations and a party challenging such a determination has a heavy burden of persuasion on appeal. Directive ¶ E3.1.32.1. Applicant was forthcoming about his unfavorable information throughout his investigation and adjudication and there is no evidence that his March 2023 marijuana cessation date is false. The Judge had the opportunity to personally observe Applicant’s demeanor at hearing and could form impressions about the credibility of his testimony based on those observations, which are bolstered by numerous personal, professional, and academic references. The Government’s disagreement with the Judge’s favorable credibility assessment is not sufficient to meet its heavy burden of persuasion on appeal.

¹² AG ¶¶ 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.

Applicant has truly turned his life around. This decision can barely touch on the voluminous evidence in the record showing how this man was able to rise above a very challenging childhood and adolescence, followed by an adulthood of crime, to be the person he is today. Faith, education, and the ability of people to see through the gangster he was to the fine and upstanding man he now is. The incident in 2020 was brought about, at least in part, by his not fully committing to the lifestyle he has now chosen. However, he has had successful therapy, he has a good job where he is respected, he is married, and he has friends. What is truly compelling is that a chief deputy probation officer has used Applicant to educate prospective law enforcement officers and juveniles about how a person's life can change for the better.

Decision at 10. While the mitigation analysis addressed, in relatively minor part, that Applicant's last criminal charge occurred in 2020, it focused more heavily on Applicant's changed circumstances and efforts at rehabilitation since that incident. The Judge's analytical focus was appropriately placed.¹³

The Government also argues that the record contains a "paucity of mitigating evidence" to corroborate Applicant having "turned his life around." Appeal Brief at 20 (quoting Decision at 10). This argument is puzzling considering the sheer breadth of evidence in this case supporting Applicant's rehabilitation. In applying AG ¶¶ 32(a) and 32(d), the Judge identified the positive changes that Applicant has made *since the 2020 assault charge*, as reflected not only in Applicant's testimony, but in numerous substantive reference letters from a variety of sources, which weighed heavily in the Judge's finding of rehabilitation. The Judge opined that the 2020 incident "was brought about, at least in part, by [Applicant] not fully committing to the lifestyle he has now chosen," and cited Applicant's subsequent successful therapy and professional development for mitigation. Decision at 10.

The Government next challenges that Applicant's rehabilitation is further undercut by the absence of "meaningful aspects of that change." Appeal Brief at 21. The "meaningful aspect" that the Government appears to find lacking is, once again, evidence of substance abuse counseling, which it contends "would bear favorably on the issues of mitigating [sic] or rehabilitation." *Id.* Applicant's failure to fully engage in whatever substance abuse counseling may have been included in his various terms of parole and probation is a matter properly considered under the disqualifying conditions, which the Judge did when he applied AG ¶ 31(d) and found that "Applicant was a career criminal until 2012." Decision at 9. It does not, however, bar mitigation of the criminal conduct concerns or an overall favorable finding. *See* ISCR Case No. 05-03635 at 2 (App. Bd. Dec. 20, 2006) ("The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular

¹³ *See* ISCR Case No. 02-24452 at 3-4 (App. Bd. Aug. 4, 2004) ("The sufficiency or insufficiency of an applicant's period of conduct without recurrence of past misconduct does not turn on any bright-line rules concerning the length of time needed to demonstrate reform and rehabilitation, but rather a reasoned analysis of the facts and circumstances of an applicant's case based on a careful evaluation of the totality of the evidence record within the parameters set by the Directive.").

facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole.”). The absence of Applicant’s participation in substance abuse counseling does not detract from the Judge’s sustainable Guideline J mitigation analysis.

Guideline E

After finding Applicant’s cross-alleged conduct disqualifying under AG ¶¶ 16(c) and 16(e), the Judge concluded that the Guideline E concerns were fully mitigated through application of AG ¶¶ 17(c), 17(d), 17(e), and 17(g) and referred simply to his analyses under Guidelines H and J. The Government challenges this as insufficient and a failure “to conduct the requisite separate analysis under Guideline E.” Appeal Brief at 23.

The Government first contends that the Judge’s favorable findings under Guidelines H and J do not allow him to “perfunctorily dismiss the associated Guideline E allegations.” *Id.* We disagree with the characterization of the Judge’s resolution of the Guideline E case as “perfunctory.” To the contrary, the Judge relied on his thorough Guideline H and Guideline J analyses to resolve the cross-alleged Guideline E case. As discussed more fully below, this reliance was reasonable considering the commonalities of the underlying allegations in terms of timeframe, circumstances, and the conduct’s potential security significance.

The Government next argues that the Judge was required to “conduct an ‘independent and separate analysis’ regarding whether [the] behavior is mitigated under Guideline E.” *Id.* We agree that a judge must consider and evaluate an applicant’s conduct under all Guidelines under which it has been alleged in the SOR. *See* ISCR Case No. 01-03107 at 3 (App. Bd. Aug. 27, 2002). A judge is not required, however, to supply a new and distinct analysis under each Guideline to sufficiently address the concern, which is especially true in cases of cross-alleged conduct.

In the instant case, the SOR alleged Applicant’s criminal history under Guideline J and his drug use history under Guideline H and then simply cross-alleged everything under Guideline E. As the Government correctly notes, the Board has long held that an applicant’s security-related conduct may have independent weight under more than one Guideline. *See* DISCR OSD Case No. 88-1198, 1992 WL 404179 at *11 (App. Bd. Nov. 13, 1992). The mere fact that conduct is cross-alleged under Guideline E does not, however, automatically mean that it has independent weight under Guideline E. *Id.* Rather, the Guidelines contemplate that behavior will have independent security significance under Guideline E in a broad range of cases by focusing on the concepts of questionable judgment and irresponsibility. *See* ISCR Case No. 06-20964 at 6-7 (App. Bd. Apr. 10, 2008) (citing AG ¶ 2(e)).¹⁴

The reliance on Guideline E as a mechanism through which to separately evaluate an applicant’s judgment and responsibility, coupled with the requirement that cross-alleged conduct carry independent weight, results in a strained Guideline E analysis when – as here – the underlying security concerns are already rooted in questions about the individual’s trustworthiness, judgment,

¹⁴ AG ¶ 2(e): Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior.

reliability, and willingness to comply with laws, rules, and regulations.¹⁵ In this case, those matters were substantively addressed in the Judge’s Guideline H and Guideline J analyses, under which he clearly articulated his conclusion that Applicant’s conduct was mitigated under Guideline E through the passage of time (AG ¶ 17(c)), his participation in counseling and demonstration of other positive life changes (AG ¶ 17(d)), his positive steps to eliminate any vulnerability resulting from the conduct (AG ¶ 17(e)), and his disassociation from criminal contacts (AG ¶ 17(g)). While a more detailed analysis of the applied conditions – both mitigating *and* disqualifying – would have been preferable, under the facts of this case and upon consideration of the Judge’s decision as a whole, we conclude that the Judge reasonably explained why Applicant’s criminal and drug use histories were not a security concern under Guideline E.

Conclusion

The Government has not rebutted the presumption that the Judge considered all the evidence or shown that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. As the trier of fact, the Judge was required to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See ISCR Case No. 05-03635 at 2. A review of the Judge’s detailed decision persuades the Board that he did not simply ignore or disregard record evidence adverse to Applicant. Indeed, the decision indicates the Judge acknowledged the adverse evidence and weighed it against the favorable. The Government’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *Id.*

The record supports that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The decision is sustainable on the record.

¹⁵ The security concern under Guideline H is that the “illegal use of controlled substances can raise questions about an individual’s reliability and trustworthiness and raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” AG ¶ 24. Similarly, the security concern under Guideline J is that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness, and calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” AG ¶ 30. Both concerns can be mitigated through a finding that, among other things, the behavior “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” AG ¶¶ 26(a), 32(a).

Order

The decision in ISCR Case No. 23-02891 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board