

Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). The SOR was later amended to add allegations under Guideline E (Personal Conduct). Applicant requested that the case be decided on the written record. On November 10, 2008, after considering the record, Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in concluding that Applicant had deliberately falsified his security clearance application and whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant does not challenge the Judge's adverse decision under Guideline B. As to the Guideline E allegations, Applicant contends that he did not deliberately falsify his security clearance application by failing to disclose that he had been employed by the Saudi Arabian Ministry of Education and that he possessed an expired Syrian passport. In support of this contention, he argues that he was confused by the questions that asked for the disclosure of the aforesaid information. Applicant's argument does not demonstrate that the Judge erred.

Applicant elected to have his case decided on the written administrative record. As a result, the Judge did not have an opportunity to question him about the omissions and evaluate his credibility in the context of a hearing. A review of the Judge's decision indicates that the Judge considered Applicant's explanation as to why he failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. Given the record that was before him, the Judge's finding of deliberate falsification is sustainable.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-17691 at 3 (App. Bd. Jul. 19, 2007). An applicant'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. See, e.g., ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the limited mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions and whole-person factors. He reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). “The general standard 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). Accordingly, the Judge’s ultimate adverse decision under Guidelines B and E is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board