KEYWORD: Guideline E

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable decision. The Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or vice versa. A party'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. Adverse decision affirmed.

CASENO: 14-06508.a1

DATE: 06/17/2016

DATE: June 17, 2016

In Re:	)	
	)	
---------	)	ISCR Case No. 14-06508
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 29, 2015, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On April 25, 2016, after the hearing, Administrative Judge Edward W. Loughran 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 issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

In his Appeal Brief, Applicant reiterates his interpretation of the evidence elicited at the hearing and acknowledges "making an error in judgment."[1] Applicant's Brief at 2. However, he argues that the Judge should have given greater weight to his long history as a government contractor and to five character reference letters from managers that had known him for years.[2] *Id.* at 2-3. Those letters were admitted into evidence as Applicant's Exhibit C. Decision at 2; Tr. at 20-21. Applicant has not demonstrated that the Judge's decision is arbitrary, capricious or contrary to law.

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*. A party'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 mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He reasonably explained why the mitigating evidence was insufficient to

[1]The Judge found that Applicant had accepted a relocation package from his company that required him to move close to a facility that was about 90 miles from where he lived. He accepted more than $43,000 to relocate, but then did not move. He submitted a one-year lease of a home within the geographic area of the new work location, but then did not move into that home. After the relocation package was finalized and closed, he collected more than $7,000 for hotel stays, mileage from his home, and *per diem*, for which he was not entitled. Decision at 5.

[2]Applicant states that he was "very flustered" by the "atmosphere" of the hearing setting which he found "very intimidating." Applicant's Brief at 2. However, he makes no specific assertion of denial of due process and none is evident from a review of the transcript. Applicant testified extensively on his own behalf and offered multiple documentary exhibits, all of which were admitted into evidence without objection. The record indicates that Applicant received a full and fair hearing.

overcome the government's security concerns.[3] Decision at 5-7. The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. 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). Therefore, the Judge's decision is sustainable.

Order

The decision is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board

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

[3]In particular, the Judge found Applicant's testimony "inconsistent, not credible, and contradicted by his company's relocation plan." The Judge "[could] not accept that a person of Applicant's age, education, experience, and tenure with his company would believe that his company would pay him [more than $43,000] to move to the location of another facility, and then also pay him mileage, hotel costs, and per diem at the facility's location." Decision at 6.