

Applicant raised the following issue on appeal: whether the Judge erred by concluding that the security concerns raised under Guidelines H, E and J had not been mitigated.

Applicant contends that the Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant's mitigating evidence. In support of his contention, Applicant essentially reargues his case, providing a detailed explanation as to the SOR allegations.¹ Applicant's arguments do not demonstrate that the Judge erred.

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 facts of a case. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, 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*. 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.

In this case, the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions and whole-person factors. The Judge 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*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. Given the record that was before him, the Judge's ultimate unfavorable security clearance decision under Guidelines H, E and J is sustainable.

Order

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

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

¹To the extent that Applicant's explanations constitute new evidence, they may not be considered by the Board. *See* Directive ¶ E3.1.29. Such evidence would not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007).

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