



Administrative Judge James A. Young 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 his findings; whether the Judge erred in concluding Applicant's falsification of his security clearance application was deliberate; whether the Judge erred by concluding that the security concerns raised under Guidelines E and J had not been mitigated.

(1) Applicant asserts that the Judge erred in findings that Applicant's criminal offenses were committed at his girl friend's house, when in fact the lease for the house was in his name as well as his girl friend's name. However, even if the challenged finding was changed to reflect Applicant's interpretation of the record evidence, it would not have undermined the Judge's conclusions. Therefore, any such error would be at most harmless. *See* ISCR Case No. 05-08459 at 2, n.1 (App. Bd. Nov. 16, 2006). Applicant also asserts that the Judge erred in finding Applicant had committed two of the criminal offenses alleged in the SOR because the charges for both were eventually dismissed. In this regard, Applicant has not met his burden of demonstrating that the Judge's material findings with respect to Applicant's conduct of security concern do not reflect a reasonable or plausible interpretation of the record evidence.

The Board's review of a Judge's findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, (1966). A Judge can find an applicant has engaged in criminal conduct even if the criminal charges against the applicant were dropped or dismissed. *See* ISCR Case No. 03-11906 at 3 (App. Bd. July 19, 2005); ISCR Case No. 03-21761 at 5 (App. Bd. Nov. 28, 2005). Considering the record as a whole, the Judge's material findings with respect to Applicant's criminal conduct reflect a reasonable interpretation of the record evidence and are supported by substantial evidence. *See, e.g.*, ISCR Case No. 03-21933 at 2 (App. Bd. Aug. 18, 2006).

(2) Applicant also contends that he did not deliberately falsify his security clearance application by failing to disclose that he had been arrested on five criminal charges in 2002 and one criminal charge 2003. In support of this contention, he argues that the omission of the information was due to a misreading the question, and he subsequently provided the correct information. Applicant has not demonstrated that the Judge erred.

The Judge had the opportunity to consider Applicant's explanation for 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 omission was deliberate and intentional. On this record, the Judge's findings of deliberate falsification are sustainable. *See* Directive ¶ E3.1.32.1; ISCR Case No. 04-03849 at 2-3 (App. Bd. Jan. 26, 2006). The security concerns raised by Applicant's falsification were not necessarily overcome by Applicant's subsequent disclosures to the government. *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004).

(3) Finally, Applicant contends that the Judge erred in concluding that the security concerns raised by his disqualifying conduct had not been mitigated. With respect to the falsification of his security clearance application, Applicant argues that the Judge should have found the disqualifying conduct mitigated, as a matter of law, because the conduct was an isolated incident; it was not recent; it was not likely to recur; and Applicant had subsequently provided the correct information voluntarily. With respect to his criminal conduct Applicant argues the Judge should have found the disqualifying conduct mitigated, as a matter of law, because two of the charges resulted in dismissals; the conduct was unsubstantiated; the conduct was an isolated incident; the conduct was not likely to recur; and Applicant was pressured to commit the conduct. The Board does not find these arguments persuasive.

“[T]here is a strong presumption against granting a security clearance.” *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied* 499 U.S. 905 (1991). Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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 recency 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 the 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. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before him, the Judge’s ultimate unfavorable clearance decision under Guidelines E and J is sustainable.

**Order**

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

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board