

a hearing. On July 30, 2007, 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 raises the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. Because Applicant fails to establish error on the part of the Judge, the Board affirms the Judge's decision.

This case involves allegations of academic dishonesty. One SOR allegation alleges that Applicant was found guilty of plagiarism by University A in 1999. On appeal, Applicant does not dispute the allegation or the underlying conduct. He does argue that the Judge should have concluded that the conduct was mitigated. Another SOR allegation alleges that Applicant was found guilty of academic misconduct by University B in November 2003. While Applicant admits the historical fact of the finding of misconduct by University B, he denies the underlying conduct and alleges error on the part of the Judge for finding that the underlying conduct occurred. Additionally, Applicant argues that consideration of the "whole person" mandated a favorable decision.¹

Applicant argues that the 1999 act of plagiarism is mitigated because of the passage of time and that, in the eyes of University A, his conduct was mitigated because they changed his grade from a grade indicating academic dishonesty to a straight "F." Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The application of Adjudicative Guidelines disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). 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*. In this case, the Judge did not analyze the 1999 plagiarism in isolation, but instead properly considered its security significance with reference to other evidence in the record, including a subsequent instance of academic dishonesty. Applicant's disagreement with the Judge's weighing of the record evidence, or his ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

Applicant argues that he was not guilty of academic dishonesty while enrolled in University B in 2003. He asserts that the university was engaged in unjustified retaliatory action against him for his actions in an unrelated matter. Applicant also asserts that there was insufficient documentary evidence to support a finding that he engaged in academic misconduct. We have reviewed the Judge's findings and the record as a whole, including Applicant's hearing testimony. The Judge's finding that Applicant engaged in academic misconduct at University B in 2003 is based on substantial evidence and reflects a reasonable interpretation of the record evidence. *See 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)).

¹The Judge made formal findings favorable to Applicant on two other SOR allegations, one alleging a cheating incident at University A in 2000 and another alleging that Applicant was advised of the local criminal trespass law as he was being escorted off campus by campus police in April 2004 after being expelled from University B.

Applicant also argues that considering him as a whole person, the Judge's decision must be reversed. He points to his academic achievements and his successful work history and reputation since the instances of academic dishonesty. A review of the Judge's decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances, and considered the possible application of relevant mitigating conditions and factors. He reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Judge has articulated a rational explanation for his unfavorable determination under the disqualifying and mitigating factors as well as the whole-person concept.

Order

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

Signed: Jeffery D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board