

The Judge found, *inter alia*, that Applicant was arrested five times between 1992 and 2007. She found that Applicant pled guilty in four of the incidents to one or more of the charges against her. The Judge concluded that this criminal conduct was not mitigated. The Judge also found that Applicant falsified a 2005 security clearance application by leaving off a 1999 arrest. The Judge concluded that the falsification was not mitigated.

The first section of Applicant's appeal brief contains her arguments concerning why a case against her has not been established under Guideline J, or why the Judge's adverse findings on the allegations under Guideline J are otherwise improper. Applicant's brief is not a model of clarity, but a fair reading of same reveals that the arguments Applicant proffers regarding the Guideline J allegations are couched in terms of why the government failed to establish that she falsified her security clearance application with regard to the underlying criminal conduct. Any issue regarding the content of Applicant's security clearance application would be, as far as the SOR in this case is concerned, a matter for consideration under Guideline E, as opposed to Guideline J. Also, only one of the five Guideline J allegations involves underlying criminal conduct that is the subject of the lone SOR allegation alleging falsification under Guideline E. There is no presumption of error below. Applicant's arguments about failure to establish falsifications do nothing to establish error regarding the Judge's Guideline J findings.

Applicant makes reference to matters directly related to Guideline J only when talking about allegation 1.e of the SOR, an allegation dealing with possession of a controlled substance. There, Applicant maintains that the Judge failed to fully explain the reasons for her adverse finding. The Applicant also mentions matters she considers mitigating, such as negative results on post-conviction drug tests. After a review of the Judge's decision, the Board concludes that the Judge adequately explained her reasons for her adverse finding under SOR allegation 1.e. The matters that Applicant cites in mitigation do not establish that the Judge's conclusion was arbitrary, capricious, or contrary to law.

In the remainder of her brief, Applicant states: (a) the government did not prove the falsification allegation under Guideline E against her; (b) additional allegations and information were presented that were not addressed in the SOR and should not have been used adversely against Applicant; and (c) the Judge improperly used parts of the record to influence her adverse decision on allegations based on other parts of the record. Applicant has failed to establish error on the part of the Judge.

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. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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 under Guideline E and considered the possible application of relevant conditions and factors. However, the Judge concluded that there was insufficient evidence to mitigate the Guideline E allegation. This conclusion is reasonably supported by the record.

Applicant has failed to establish that the Judge considered matters not specifically alleged in the SOR improperly or that the Judge was unduly influenced by negative aspects of the record when evaluating other parts of the record. There is a presumption in favor of regularity and good faith on the part of DOHA Judges as they engage in the process of deciding cases. *See, e.g.*, ISCR Case No. 99-0019 at 5 (App. Bd. Nov. 22, 1999). After considering the Judge's decision, the Board concludes that the Judge's decision made proper use of evidence not directly linked to the SOR allegations, and used such evidence appropriately in her whole person analysis. The Judge's decision complies with the requirements of Directive ¶ E2.2.1 in that the Judge considered the totality of Applicant's conduct in reaching her decision, and she was not improperly swayed by any particular portion of the record in reaching her findings and conclusions. *See*, ISCR Case No. 05-03948 at 3-4 (App. Bd. May 21, 2007). The Judge's adverse decision 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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board