



Applicant raised the following issue on appeal: whether the Judge erred by concluding that the security concerns raised under Guideline F had not been mitigated.

Applicant argues that the Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant's mitigating evidence which shows that Applicant has held a security clearance without incident for approximately 20 years and has now established a plan to pay off his outstanding debts. In his brief, Applicant submits new evidence in the form of an additional statement about his continuing efforts to resolve his financial problems. The Board does not find Applicant's arguments persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Its submission does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007).

The absence of security violations does not bar or preclude an adverse security clearance decision. The federal government need not wait until an applicant actually mishandles or fails to properly handle classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F. 2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). An applicant with good or exemplary job performance may engage in conduct that has negative security implications. *See, e.g.*, ISCR Case No. 99-0123 at 3 (App. Bd. Jan. 11, 2000). The Directive's Guidelines set forth a variety of examples of off-duty conduct and circumstances which are of security concern to the government and mandate a whole person analysis to determine an applicant's security eligibility. A whole person analysis is not confined to the workplace. *See* ISCR Case No. 03-11231 at 3 (App. Bd. June 4, 2004).

“[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. 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 found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time of the hearing, Applicant still had delinquent debts and was still in the process of resolving his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. 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 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.*, ADP Case No. 03-14873 at 2 (App. Bd. Sept. 28, 2006). Given the record that was before him, the Judge's ultimate unfavorable security clearance decision under Guidelines F is sustainable.

**Order**

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

Signed: Michael D. Hipple

Michael D. Hipple  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board