



of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 3, 2007, after the hearing, Administrative Judge LeRoy F. Foreman 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 issue on appeal: whether the Judge's unfavorable clearance decision under Guideline F is arbitrary, capricious, or contrary to law.<sup>1</sup>

Applicant contends that the Judge should have concluded that the security concerns raised by his multiple unpaid debts had been mitigated. In support of that contention, Applicant notes that the Judge found in his favor with respect to five of the nine SOR allegations. Applicant also argues that he has acted reasonably in his efforts to resolve the debts that are the subject of the four remaining SOR allegations that the Judge found against him on. He further complains that the Judge drew certain unfavorable inferences from the record evidence, when that evidence in fact supported a favorable inference.<sup>2</sup> Applicant's brief essentially reargues his case with respect to the evidence he presented at the hearing, and provides additional statements as to the circumstances of his financial situation. Applicant's arguments do not demonstrate that the Judge erred.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Therefore, the Board may not consider Applicant's additional explanations as to the circumstances of his financial situation, and they do 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 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). Considering the record as a whole, the Judge's material findings, and the inferences drawn from those findings, reflect a reasonable interpretation of the record evidence and are supported by substantial evidence.

“[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.

---

<sup>1</sup>The Judge found in favor of Applicant with respect to SOR paragraphs 1.a, 1.b, 1.d, 1.e, and 1.f. Those favorable findings are not at issue on appeal.

<sup>2</sup>For example, Applicant notes that in the whole-person section of his decision, the Judge stated that when Applicant received an equity line of credit, instead of paying off his delinquent bills, he purchased a motorcycle and remodeled his house. Applicant's Brief at 1-2; Decision at 6-7. Applicant argues that one reason he purchased the motorcycle was because it saved him approximately \$140 a month on gas.

Directive ¶ E3.1.15. “The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply 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. 06-09462 at 2-3 (App. Bd. Jul.19, 2007). “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*.” *See, e.g.*, ISCR Case No. 05-03452 at 3 (App. Bd. Jul. 3, 2007). “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 that 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. 05-07747 at 2 (App. Bd. Jul. 3, 2007).

The Applicant has not met his burden of demonstrating that the Judge erred in concluding that the security concerns raised by Applicant’s unpaid debts had not been mitigated. Although Applicant strongly disagrees with the Judge’s conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Judge found that Applicant had a history of not meeting financial obligations which extended over many years. At the time the case was submitted for decision, he still had significant outstanding debts and was still in the process of trying to resolve his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing and presented a security concern. *See, e.g.*, ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007). 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. He found in favor of Applicant with respect to five of the SOR allegations. However, the Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all of 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. Jun. 29, 2005). The Board does not review a case *de novo*. Given the record that was before him, the Judge’s ultimate unfavorable clearance decision under Guideline F is sustainable.

**Order**

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairman, 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