



basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 18, 2007, after the hearing, Administrative Judge Jacqueline T. Williams 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 erred by concluding that the security concerns raised under Guideline F had not been mitigated.<sup>1</sup>

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 showed that: (a) Applicant’s indebtedness had resulted from circumstances beyond his control—a divorce and serious medical problems, and (b) Applicant has been in the process of consolidating his debts and filing for a Chapter 13 bankruptcy. In support of his argument, Applicant provides documentation updating his financial situation, and attesting to his good character and work performance. Part of this submission relates to debts cited in SOR paragraphs which were resolved in Applicant’s favor and are not at issue on appeal. With respect to the balance of Applicant’s submission, his arguments do not demonstrate that the Judge erred.

The Board may not consider Applicant’s 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).

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. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 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. The Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all 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

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

is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 2-3 (App. Bd. Sep. 4, 2007). Given the record that was before her, 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