

amended) (Directive). Applicant requested a hearing. On May 8, 2008, after the hearing, Administrative Judge Erin C. Hogan 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.

Applicant asks that the Judge's adverse clearance decision be reversed. In support of that request, Applicant states that since the hearing he has transferred to a new job at another company and has received a substantial pay raise. This new increase in pay has allowed him to re-enter the Consumer Credit Counseling Services Program, and to qualify for the California Child Support Division's Compromise of Arrears Program. He argues that participation in these programs will mitigate the security concerns raised by his financial problems.

The Board cannot consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. Given the totality of the record evidence, Applicant's submission on appeal does not demonstrate that the Judge's decision is arbitrary, capricious, or contrary to law.

Once there has been a concern articulated regarding an applicant's security eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. 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. 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." *See, e.g.*, ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007). "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." *See, e.g.*, ISCR Case No. 05-03143 at 3 (App. Bd. Dec. 20, 2006).

In this case, the Judge found that Applicant had a serious history of not meeting financial obligations. 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 recent and still ongoing. *See, e.g.*, ISCR Case No. 07-10312 at 2 (App. Bd. Jul. 15, 2008). 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 conditions and factors. She found in favor of Applicant under Guideline E and as to some of the SOR allegations under Guideline F. However, she reasonably explained why the mitigating evidence was insufficient to overcome all of the government's security concerns. The Board does not review a case *de novo*. After reviewing the

record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her decision, “including a ‘rational connection between the facts found and the choice made.’” *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)). Therefore, the Judge’s ultimate unfavorable security 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: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board