



the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On May 24, 2007, after considering the record, Administrative Judge Joseph Testan 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 issues on appeal: whether the Judge erred in concluding Applicant’s falsification of his security clearance application was deliberate; whether the Judge’s unfavorable clearance decision under Guideline F is arbitrary, capricious, or contrary to law.

(1) Applicant argues that he did not deliberately falsify his security clearance application by failing to disclose 14 debts that had been delinquent for more than 90 or 180 days, as well as an unpaid Judgement in response to three different questions. In support of that argument, Applicant contends that he failed to disclose the information because he was ashamed of his credit history. Applicant’s argument does not demonstrate that the Judge erred.

The Judge had the opportunity to consider Applicant’s explanation for why he failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant’s explanation. The Judge considered Applicant’s explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant’s omissions were deliberate and intentional. On this record, the Judge’s finding of deliberate falsification is sustainable. *See* Directive ¶ E3.1.32.1. His ultimate unfavorable clearance decision under Guidelines E and J is likewise sustainable.

(2) Applicant also argues that the Judge should have concluded that the security concerns raised by his history of financial difficulties had been mitigated because he had paid off most of the debts and was making payments on the remainder of them. Again, Applicant’s argument does not demonstrate that the Judge erred.

“[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. 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. 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 that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

The Applicant has not met his burden of demonstrating that the Judge erred in concluding that the Guideline F allegations 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 outstanding debts and was still in the process of making arrangements to repay them. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent and still ongoing. 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 Judge specifically noted that Applicant had paid off many of the debts. 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