

Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided upon the written record. On March 15, 2007, after considering the record, Administrative Judge Robert J. Tuider 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.¹

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 her control—a prolonged period of unemployment; (b) Applicant had been making payments on some of her outstanding debts; (c) she had excellent performance reviews from her employer; (d) she had not engaged in any illegal activity; and (e) Applicant's debts could not be used against her. In support of her argument, Applicant provides an updated version of her response to the government's file of relevant material, which provides additional explanations about her financial situation, including her efforts to resolve some of her debts subsequent to the close of the record in this case. Much of Applicant's submission in this regard 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, her 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).

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. Jun. 4, 2004).

“[T]here is a strong presumption against granting a security clearance.” *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th 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

¹The Judge found in favor of Applicant with respect to SOR paragraphs 1.d through 1.g. Those favorable findings are not at issue on appeal.

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 her 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 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.*, ADP Case No. 03-14873 at 2 (App. Bd. Sep. 28, 2006). Given the record that was before him, 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 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