KEYWORD: Guideline F

DIGEST: The Judge's adverse conclusions follow reasonably from hid findings of fact. Adverse decision affirmed.

CASENO: 06-23179.a1

DATE: 03/21/2008

DATE: March 21, 2008

In Re:	)	
	)	
----------	)	ISCR Case No. 06-23179
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 20, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the 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 November 30, 2007, after the hearing, Administrative Judge Matthew E. Malone 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.

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, the loss of employment, and (b) she had paid off some of her outstanding debts and has sought the assistance of a credit restoration agency in order to clear up the remaining ones. Applicant's arguments do not demonstrate that the Judge erred.

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. *See, e.g.,* ISCR Case No. 06-11172 at 2 (App. Bd. Sep. 4, 2007).

In this case, the Judge found that Applicant had a serious history of not meeting financial obligations. At the time of the hearing, Applicant still had significant 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 found in favor of Applicant with respect to a number of the SOR allegations. However, the Judge 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*. 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. 06-11172 at 2 (App. Bd. Sep. 4, 2007). 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board