

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant filed his notice of appeal on August 10, 2008. By letter dated August 13, 2008, Applicant was informed that his written appeal brief had to be received by the Appeal Board no later than September 11, 2008. *See* Directive E3.1.30. On September 10, 2008, the Board received a fax from Applicant stating that he was "away until 15 September 2008, with limited connectivity." The Board construed that communication as a request for additional time, and notified Applicant by letter dated September 10, 2008, that his deadline for filing his appeal brief was rescheduled to October 10, 2008. By letter dated October 15, 2008, the Board granted Applicant an additional extension until November 4, 2008, based on an October 10, 2008 letter from Applicant in which he stated, in part, that he was having difficulty understanding the information on DOHA's website. The Board's October 15, 2008 letter outlined DOHA's general procedures and included, as an enclosure, a second copy of the Appeal Instructions. Applicant was also informed that no component of DOHA could assist him in drafting his appeal brief, but he was otherwise permitted to seek assistance.

On November 4, 2008, the Appeal Board received a letter from Applicant which it construed as an appeal brief requesting that the Judge's decision be reversed. The Board then allowed the non-appealing party (Department Counsel) the requisite 20 days to file a reply brief. The Board subsequently received a letter from Applicant, dated November 24, 2008, raising additional issues. The Board deems the November 24, 2008 letter to be untimely, and will not consider the issues raised therein. Applicant has not demonstrated that the Judge's decision is arbitrary, capricious or contrary to law.

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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the SOR alleged that Applicant had accumulated 14 debts totaling approximately \$89,273. Decision at 2. The Judge found that: "None of the debts alleged in the SOR were resolved as of the date of the hearing, and no payments had been made on any of the debts." *Id.* 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 conditions and factors. He reasonably explained why the mitigating evidence was insufficient to overcome 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 his 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board