



The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 7, 2008, 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 September 12, 2008, after the hearing, the Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

Applicant’s central argument is that her Chapter 7 bankruptcy action has now been discharged and she is now debt free except for car and furniture payments. The proffer of her discharge in bankruptcy constitutes new evidence, which the Board cannot consider on appeal. Directive ¶ E3.1.29. The bankruptcy action was ongoing at the time of the hearing, and the Judge acknowledged its pendency in his decision. However, he concluded that any positive inference that could be derived from the bankruptcy filing was merely speculative considering the fact that the debts had not yet been discharged. Such a conclusion was not error, and record evidence of a continuing but incomplete Chapter 7 bankruptcy action does not require a Judge to mitigate security concerns arising out of an applicant’s financial delinquencies.

Applicant asserts that her husband’s work-related injuries and the subsequent loss of his income in 2007 resulted in her financial difficulties. In raising these matters, Applicant essentially contends that the Judge’s adverse decision should be reversed because the Judge did not give adequate weight to mitigating evidence. Applicant’s argument does not demonstrate that the Judge’s ultimate conclusions are in error.

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 Judge made a sustainable finding that several of Applicant’s debt delinquencies predated her husband’s injuries and disability. In light of this, the Judge could reasonably conclude that Applicant’s financial problems were not primarily a result of circumstances beyond her control. The Judge reasonably explained why the evidence presented by Applicant in mitigation 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’s ultimate unfavorable security clearance decision is sustainable.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
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