

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 6, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 23, 2010, after the hearing, Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge considered or gave adequate weight to her evidence of mitigation and whether the Judge’s decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm the Judge’s adverse security clearance decision.

The Judge made the following relevant findings of fact: Since May 2006, Applicant has worked for a Defense contractor as a security guard. From April 2005 until May 2006, Applicant was unemployed or worked at temporary jobs without benefits. During that time, Applicant incurred significant medical debt for which she did not have insurance. Applicant also has significant delinquent credit card debt, some of which accrued while she was working before April 2005. Applicant blames some of her debt on the fact that she was a single parent raising three children. Her children are now all grown and living elsewhere. Applicant has made arrangements to pay off a series of delinquent medical bills and has been making payments on them since August 2009; she has not contacted other creditors to whom she owes larger amounts of money that have been reduced to judgments. Although Applicant was aware of at least one judgment and one credit card debt, she did not list any debts in her responses to financial questions on her security clearance application. Applicant has consulted an attorney about filing for bankruptcy. Applicant is highly regarded by her co-workers and her supervisors.

In her brief, Applicant points out steps she has taken since her hearing to improve her financial situation. The Board is not able to consider that information, since it constitutes new evidence. *See* Directive ¶ E3.1.29. Other than the new evidence, we construe Applicant’s appeal as challenging the Judge’s findings and conclusions under Guideline E.

Applicant maintains that the Judge did not consider or give adequate weight to her evidence of mitigation and that his decision is therefore arbitrary, capricious, or contrary to law. There is a rebuttable presumption that the Judge considered all the record evidence, and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 07-18303 at 2-3 (App. Bd. Nov. 13, 2008). The Judge explained why he concluded that the omissions from Applicant’s security clearance application were deliberate. Applicant had the burden to extenuate or mitigate the security concerns raised by those omissions. Directive ¶ E3.1.15. The Judge discussed Applicant’s explanation and denials. However, the Judge explained why Applicant did not present evidence sufficient to overcome the security concerns raised by the omissions. 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. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable

security clearance determination. 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*. A party'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. *See, e.g.*, ISCR Case No. 08-03845 at 2 (App. Bd. Feb. 24, 2009).

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board