

KEYWORD: Guideline F

DIGEST: Applicant argues that the Judge was biased against her. She contends that the Judge characterized her as someone who intentionally did not pay her debts, which was inaccurate. A Judge is presumed to be unbiased, and a party who argues otherwise has a heavy burden of persuasion. We have examined the Decision in light of the record as a whole and find nothing that would likely convince reasonable person that the Judge lacked the requisite impartiality. Applicant has not met her heavy burden of persuasion on this issue. Adverse decision is affirmed.

CASE NO: 19-02087.a1

DATE: 02/12/2020

DATE: February 12, 2020

In Re:	)	
	)	
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	)	
Applicant for Public Trust Position	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On July 31, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On December 11, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge was biased against her and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant has worked for different employers between 2004 and 2018, when she began her current job. This is her first effort to obtain a trustworthiness designation. Her SOR alleged numerous delinquent debts, for auto loans, a credit card account, telecommunication services, and a debt for medical services. The Judge resolved two of these debts—the medical account and one telecommunication services debt—in her favor. However, he found that she had not demonstrated resolution of the remaining allegations, which total \$26,000. He cited to Applicant’s promises to address some debts in the future as well as her claim that she does not intend to resolve others because they are not listed on her credit report as reasons for entering adverse findings.

Applicant attributed her financial troubles to a diminution in pay when she took a job in a different state, medical expenses, and a five-month period of unemployment/underemployment when she experienced a leg injury and complications with a pregnancy. Applicant presented no documentary evidence about her current financial situation, a budget, or whether she has participated in financial counseling.

Though noting that Applicant’s financial difficulties were affected by circumstances that were outside her control, the Judge concluded that she had not demonstrated responsible action. He cited to his finding that Applicant had presented no evidence about her current financial condition and concluded that her having resolved two accounts (after receipt of the SOR) was not sufficient to establish a track record of debt payment.

### **Discussion**

Applicant argues that the Judge was biased against her. She contends that the Judge characterized her as someone who intentionally did not pay her debts, which was inaccurate. A Judge is presumed to be unbiased, and a party who argues otherwise has a heavy burden of persuasion. *See, e.g.*, ADP Case No. 07-00966 at 3 (App. Bd. Aug. 24, 2009). We have examined

the Decision in light of the record as a whole and find nothing that would likely convince reasonable person that the Judge lacked the requisite impartiality. Applicant has not met her heavy burden of persuasion on this issue.

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. She cites to the Judge's finding that she had not submitted evidence regarding her current finances, etc. She states that she would have provided such evidence if she had been requested to do so. We note that the File of Relevant Material (FORM) provided Applicant guidance as to her right to submit a documentary response to its contents, and the cover letter accompanying the FORM contained similar information. Letter to Applicant, dated September 20, 2019. Moreover, Applicant's brief cites explicitly to the provisions of the Directive that placed upon her the burden of persuasion as to mitigation, suggesting that she was generally aware of her rights and responsibilities. Appeal Brief at 1-2; Directive ¶¶ E3.1.14 and 15. We find nothing in the record to demonstrate that Applicant was not adequately apprised of her duty to present evidence in mitigation or that she failed to understand the nature of that duty. To the extent that she is arguing that she did not receive the due process afforded by the Directive, we resolve this issue adversely to her. *See* ADP Case No. 15-07882 at 2 (App. Bd. Dec. 7, 2017).

Applicant contends that the summary of her clearance interview distorted her answers and painted her as irresponsible. Department Counsel advised her of her opportunity of comment on the accuracy of the summary and make corrections as appropriate. FORM at 2. Despite this guidance to Applicant, her Response to the FORM included no reference to her interview summary. Her argument on appeal supplies no reason for us to conclude that the Judge erred in his treatment of this evidence.

The balance of Applicant's arguments consists of a challenge to the manner in which the Judge weighed the evidence. Disagreement with a Judge's weighing of the evidence or an ability to argue for a different interpretation of the record is not sufficient to show that the Judge weighed the evidence or reached conclusions in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case 18-00166 at 2 (App. Bd. Nov. 29, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the 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)). The Judge's adverse decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No 18-00166 at 2. *See also* Kaplan v. Conyers, 733 F.3d 1148 (Fed Cir 2013), *cert denied*.

**Order**

The Decision is **AFFIRMED**.

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

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

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board