

KEYWORD: Guideline F

DIGEST: Although Applicant stated in her Response that she objected to the FORM itself, it is clear that she was lodging an objection to the interview summary. Moreover, she specifically mentioned the investigator, who prepared the interview summary, in presenting her argument on appeal. Although the Judge may well have misunderstood Applicant’s objection, given its wording, we conclude that he erred by admitting and considering the summary. We conclude that the best course of action is to remand the case to the Judge. Adverse decision is remanded.

CASE NO: 18-02847.a1

DATE: 06/03/2020

DATE: June 3, 2020

)	
In Re:)	
-----)	ADP Case No. 18-02847
)	
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 December 18, 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 February 11, 2020, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises an issue of due process. She notes that the File of Relevant Material (FORM) advised her that she could object to the admission of her interview summary. In her Response to the FORM, Applicant stated the following:

I would like to object to the inclusion of the [FORM] in this case. It starts off with incorrect information in the second sentence and just keeps going. I read through the investigator’s summary . . . They painted me in such a negative light.

In her appeal brief, however, she notes that the Judge stated that she had not objected and, accordingly, he admitted the interview summary and considered it. Appeal Brief at 1, citing to Decision at 2. She argues that the Judge’s admission of this document was erroneous.

We examine a Judge’s evidentiary rulings to determine if they are arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-05047 at 4 (App. Bd. Nov. 8, 2017). We find Applicant’s argument to be persuasive. Although she stated in her Response that she objected to the FORM itself, it is clear that she was lodging an objection to the interview summary. Moreover, she specifically mentioned the investigator, who prepared the interview summary, in presenting her argument on appeal. Although the Judge may well have misunderstood Applicant’s objection, given its wording, we conclude that he erred by admitting and considering the summary. We conclude that the best course of action is to remand the case to the Judge. He should issue a new decision in which he does not rely on information contained in the interview summary. Other issues raised in Applicant’s brief are not ripe for consideration.

Order

The Decision is **REMANDED**.

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