

KEYWORD: Guideline F

DIGEST: The Appeal Board cannot consider new evidence on appeal. Applicant failed to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 12-08414.a1

DATE: 11/30/2015

DATE: November 30, 2015

In Re:)	
)	
-----)	ADP Case No. 12-08414
)	
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 eligibility for a public trust position. On July 29, 2014, 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 that the case be decided on the written record. On September 4, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Claude R. Heiny declined to grant Applicant eligibility for a public trust position. 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 adverse trustworthiness determination is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable trustworthiness determination.

The Judge made the following findings of fact: Applicant is 46 years old. She has unpaid taxes, delinquent debts following a home foreclosure and a repossession, and eight collection and charged-off accounts, which together total more than \$57,000. She was unemployed from late 2007 until early 2011. In 2008 she returned to school and incurred student loan debts in excess of \$20,000. In early 2012, her debt delinquencies included \$12,500 on a mortgage, \$18,000 on student loans, \$12,000 in state property tax, and three other accounts in the amount of \$15,000.

In 2012, Applicant was interviewed about her delinquent obligations. At that time, she acknowledged some debts, and claimed unfamiliarity with others. She explained how some of the debts came about and that none of them were paid. She never indicated that she intended to pay her debts. In 2014, in response to written financial interrogatories, Applicant submitted a budget, wherein her net monthly income after expenses and debt payment was \$87. She included four of the SOR debts in her budget but indicated she was making no payments on these debts. The only monthly payment she was making was \$225 on an automobile loan. She provided a receipt indicating she had paid a \$19 medical bill.

Applicant provided no evidence of credit or financial counseling.

The Judge reached the following conclusions: Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple. She produced limited evidence of circumstances beyond her control. She has been full-time employed since 2012, and the only document showing payment was a \$19 payment in 2014 on a medical debt. She has not demonstrated that her financial problems are under control or that she has a plan to bring them under control. There is no documentation she has maintained contact with her creditors or reached a repayment agreement with any of them. Having paid only \$19 on her delinquent debt in the past three and a half years, she has not acted responsibly or reasonably under the circumstances.

Applicant argues that she has been a diligent and trustworthy employee who has never handled sensitive information inappropriately. She asserts that, despite her financial profile of the last three years, She is no risk to her company or its security policies. Applicant's arguments do not establish error on the part of the Judge.

Applicant's appeal submission contains assertions and documents that were not part of the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Applicant's favorable work record was evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision. Applicant's arguments are 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 sustainable findings that Applicant had a significant history of not meeting financial obligations, and that she had not demonstrated responsible actions with regard to her debts. Central to the Judge's analysis was his finding that, despite having income from a full-time position for a year and a half, Applicant had managed to retire only a single debt in the amount of \$19. This finding, and the resulting conclusion that Applicant had not demonstrated reasonable behavior with regard to her debts, are supported by the record. The Judge adequately discussed why, given the state of the record, the disqualifying conduct established under Guideline F was not mitigated.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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 general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge's ultimate unfavorable trustworthiness decision is sustainable.

Order

The Judge's decision is AFFIRMED.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board