

KEYWORD: Guideline F

DIGEST: Absent unusual circumstances errors in a synopsis are unlikely to be harmful. In light of the record even if the Board were to ascribe error to the points raised by Applicant the errors would be harmless. Adverse decision affirmed.

CASENO: 07-01610.a1

DATE: 03/07/2008

DATE: March 7, 2008

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In Re:)	
)	
-----)	ADP Case No. 07-01610
)	
)	
Applicant for Public Trust Position)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Jr., Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a trustworthiness designation. On May 14, 2007, DOHA issued a statement of reasons 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 hearing. On October 31, 2007, after the hearing, Administrative Judge Christopher Graham denied Applicant’s request for a trustworthiness designation. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge made factual errors in the synopsis and the body of his decision; whether the Judge’s decision is arbitrary, capricious, or contrary to law because the Judge failed to consider all of Applicant’s mitigating evidence or failed to give proper weight to that evidence; and whether the Judge erred by failing to take into account Applicant’s 22 years of Naval service with a security clearance and the negative impact that an unfavorable determination will have on Applicant’s current job.¹

Applicant is a retired Navy member. The woman he married in 2000 had several judgments against her when they married. She was irresponsible in handling their financial affairs. Applicant’s credit record was negatively impacted. Applicant filed for bankruptcy under Chapter 13 in 2001; the petition was dismissed in 2003. Applicant refiled under Chapter 7, and his debts were discharged in December 2003. Since that time, Applicant has incurred over \$30,000 in delinquent debt. Applicant set up repayment plans shortly before the hearing. The Judge found in Applicant’s favor as to six of the 11 debts listed in the SOR.

Applicant disagrees with statements in the synopsis of the Judge’s decision. The Board reviews a Judge’s decision in its entirety, not just isolated sentences, to discern what the Judge found and concluded. *See, e.g.*, ISCR Case No. 02-30587 at 3 (App. Bd. Jun. 15, 2005). Absent unusual circumstances, any flaws or errors in the synopsis of a Judge’s decision are not likely to be harmful. *See, e.g.*, ISCR Case No. 05-03846 at 4 (App. Bd. Nov. 14, 2006). Even if the Board were to assume, solely for the purposes of deciding this appeal, that there were errors in the synopsis, they would not constitute harmful error.

Applicant also cites factual findings in the Judge’s decision which he considers to be in error. Some of the supposed errors are differences of interpretation or characterization. However, even if the Board were to ascribe error to the points Applicant makes, the errors would be harmless in light of the totality of Applicant’s financial situation revealed by the record. *See, e.g.*, ISCR Case No. 03-20367 at 3 (App. Bd. Apr. 22, 2005).

Applicant argues that he has mitigated any trustworthiness concerns that might exist under Guideline F and that the Judge either did not consider or did not give adequate weight to his evidence of mitigation. There is a rebuttable presumption that the Judge considered all the record evidence, unless the Judge specifically states otherwise; 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

¹Applicant’s appeal brief contains new evidence regarding his financial situation and his continuing efforts to reduce his debts. The Board cannot consider this new evidence. *See* Directive ¶ E3.1.29.

No. 04-08134 at 3 (App. Bd. May 16, 2005). Applicant admitted many of the SOR allegations against him. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by those allegations. The Judge concluded that Applicant did not present evidence sufficient to overcome the trustworthiness concerns raised. 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. *See, e.g.* ISCR Case No. 06-23384 at 3 (App. Bd. Nov. 23, 2007). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness 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*. 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 that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

Applicant points out that he held a security clearance in the Navy for 22 years without incident. However, a history of financial difficulties raises trustworthiness concerns that can form the basis of an unfavorable trustworthiness determination. *See e.g.*, ISCR Case No. 03-11627 at 3-4 (App. Bd. Mar. 18, 2005). Given the Judge's findings about Applicant's financial difficulties, the Judge had a rational and legally permissible basis for concluding that Applicant's financial circumstances raised trustworthiness concerns under Guideline F. Moreover, it was not arbitrary, capricious, or contrary to law for the Judge to conclude that Applicant had not presented evidence to extenuate or mitigate the trustworthiness concerns raised by his financial situation.

Applicant points out that an adverse determination will cause him to lose his job and his ability to continue to improve his financial situation. An applicant is not made more or less suitable for a favorable trustworthiness determination based on how the determination might affect the applicant. *See, e.g.*, ISCR Case No. 03-21012 at 4 (App. Bd. Aug. 31, 2005).

Order

The Judge's unfavorable trustworthiness determination 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