

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s conclusion that Applicant had failed to mitigate the trustworthiness concerns in her case is supportable. Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 10-04539.a1

DATE: 07/11/2011

DATE: July 11, 2011

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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a trustworthiness designation. On November 23, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 decision on the written record. On April 25, 2011, after considering the record, Administrative Judge Thomas M. Crean 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 failed to consider, or mis-

weighed, the record evidence and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a network administrator for a Defense contractor, employed in that capacity since 2007. Married and divorced three times, she has two grown children. Applicant has a monthly income of \$4,200 and, after expenses, has a remainder of \$1,160 in discretionary funds. She and one of her ex-husbands received financial counseling over ten years ago.

The SOR alleges numerous delinquent debts that Applicant owes, including a judgment, a tax lien, a past-due mortgage debt, and past-due accounts for utilities, medical services, and credit cards, among other things. In her OPM interview, Applicant acknowledged many years of financial problems. She attributed these problems to health issues, debts acquired by former husbands, expenses related to job relocation, and an economic downturn. She is undergoing treatment for cancer, and she does not believe that she can pay her delinquent debts because of it.

Applicant has paid seven of her delinquent debts since February 2011. She is making payments on the tax lien. She is attempting to settle other debts, including debts for medical expenses. Additionally, she avers that some of her debts are beyond the statute of limitations.

Applicant completed her application for a public trust position in 2009. Question 22b inquired about debts more than 180 days past due, and Applicant provided information about one debt, a repossession. In fact, at least 27 SOR debts were over 180 days past due at the time she completed the application. During her OPM interview, she acknowledged that her debts had been ongoing for many years.

Applicant enjoys an excellent reputation for her work ethic, integrity, and responsibility. Dedicated to her job, she has worked while undergoing treatment for cancer.

While the Judge acknowledged Applicant's ongoing illness, her marital problems, and other evidence, he concluded that she had not demonstrated mitigation. For example, he stated that she had failed to demonstrate how her former husbands' actions caused her financial problems. To the contrary, "it appears the debts were incurred by Applicant in the normal course of living." Decision at 6. Moreover, the financial counseling Applicant received over a decade ago does not pertain to her current circumstances. Most significantly, the Judge concluded that Applicant had not demonstrated a track record of debt repayment, despite an apparent financial ability to do so.

Applicant contends that the Judge did not consider record evidence favorable to her, including the impact her illness and marital problems had on her finances. The Judge discussed these matters, both in his findings and in his analysis, and he resolved several allegations in Applicant's favor. Nevertheless, he reasonably explained why they were not sufficient to mitigate the trustworthiness concerns in Applicant's case. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. May 16, 2011).

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)). In light of the entirety of the record evidence, the Judge’s decision not to grant Applicant a trustworthiness designation is sustainable.

**Order**

The Judge’s adverse trustworthiness determination 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