

KEYWORD: Guideline G; Guideline E

DIGEST: A Judge is presumed to have considered all of the evidence in the record. Applicant's deliberate falsification of his application was relevant in evaluating his case for rehabilitation. Adverse decision affirmed.

CASE NO: 11-04085.a1

DATE: 05/13/2013

DATE: May 13, 2013

In Re:)	
)	
-----)	ADP Case No. 11-04085
)	
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 January 19, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 22, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 erred in her application of the mitigating conditions and whether the adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant in employed by a Defense contractor. He has used alcohol at times to excess and to the point of intoxication from about 1990 until 2010. He has been arrested and convicted four times for Driving Under the Influence (DUI), in 1990, 2006, and twice in 2009. In addition, while serving in the U.S. military, he reported for work while drunk. Also while in the military, he suffered a head injury that caused anxiety and depression. He was subsequently determined to be 60% disabled due to traumatic brain injury. After leaving the military, his drinking increased to the point that he would consume a 12-pack of beer daily.

As a result of his last DUI conviction, Applicant was required to attend Alcoholics Anonymous (AA) as well as an alcohol treatment program. In 2010 he began attending the AA meetings, and he has been sober since June of that year. He is also receiving psychiatric treatment for alcoholism and for the lingering results of his brain injury.

When completing his application for a trustworthiness designation, Applicant failed to disclose his second DUI arrest of 2009. This failure was intentional because he did not want to lose his job. Applicant enjoys an excellent reputation for the quality of his job performance.

The Judge's Analysis

The Judge found that Applicant's circumstances raised trustworthiness concerns under both Guidelines raised in the SOR. Given Applicant's extensive history with alcohol, she concluded that enough time had not elapsed since he stopped drinking to demonstrate mitigation. She also found his lack of candor on the application to be troubling. She stated that Applicant's circumstances, viewed as a whole, impugned his judgment and willingness to comply with rules and regulations.

Discussion

Applicant cites to several of his exhibits in contending that the Judge failed properly to apply the mitigating conditions. He draws our attention to evidence that he has been seeking psychiatric treatment in addressing his problems with alcohol. He notes that the date of his last DUI was three years from the date of his appeal and cites evidence of his attendance at AA and at the outpatient alcohol treatment program. He argues that he has demonstrated rehabilitation.

A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ADP Case No. 10-02010 at 3 (App. Bd. Dec. 15, 2011). The Judge made findings about the evidence Applicant has cited and acknowledged that he had undertaken serious efforts at controlling his drinking. However, she concluded that the totality of Applicant's circumstances militated against granting him a trustworthiness designation. *See, e.g.*, ADP Case 05-12037 at 3 (App. Bd. May 10,

2007) (A Judge is required to examine an applicant's circumstances in light of the record as a whole). In this case, we conclude that the Judge's adverse decision is supportable. Among other things, evidence that Applicant deliberately falsified his application is relevant not only in analyzing the Guideline E allegation but also in evaluating the extent to which he has demonstrate reliability and trustworthiness under Guideline G.

We do 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. 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)).

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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