

KEYWORD: Guideline f

DIGEST: Given Applicant’s delinquent debts, her dilatory efforts at remediation, and lack of corroboration for her claims. , the Judge’s analysis is sustainable. Adverse decision affirmed.

CASENO: 12-01023.a1

DATE: 01/17/2014

DATE: January 17, 2014

In Re:)	
)	
-----)	ADP Case No. 12-01023
)	
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 June 5, 2013, 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 hearing. On October 23, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O'Brien 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 made errors in her findings of fact; whether the Judge erred in her whole-person analysis; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Federal contractor. She has a bachelor's degree, her education financed with student loans. These loans became due upon Applicant's graduation. After college, she experienced some unemployment and under-employment. Fifteen of the debts alleged in the SOR are student loans and one is a medical debt.¹ The loans total \$168,800.

Applicant testified that, upon graduation, she had an agreement with the student loan creditors to pay whatever she could afford. However, during her trustworthiness interview, she stated that she had originally been required to pay \$900 a month toward satisfaction of these debts. In this interview, she stated that she negotiated a lower amount for her monthly payments and made them in a timely fashion until the end of 2010. At the hearing, however, she stated that she had not made payments since 2009.² She testified at the hearing that she may have been in error to have stated in her trustworthiness application that she had no debts that had been delinquent for more than 180 days.

Two weeks before the hearing, Applicant negotiated a new repayment plan, with monthly payments of \$200. After five months, this plan will be reevaluated, with a possibility for an adjustment in the required payments. Applicant made her first payment on September 21, 2013.³

Applicant has a negative monthly income remainder of \$33. Her financial statement does not show any payments on debts, including the \$200 payment recently negotiated. Neither does it list a home or checking or retirement accounts. She testified that she intended to reduce her monthly expenditures to enable her to make the \$200 payment toward her student loans.

¹The Judge resolved the medical debt in Applicant's favor.

²“[Q]: And do you recall when the last payment you made was before . . . your current arrangement was in place? [A]: At some point in 2009.” Tr. at 25. Compare with Interview Summary at 1-2, contained in Government Exhibit (GE) 2, Answers to Interrogatories: ““In 12/2009 (estimated), [Applicant] contacted Sallie Mae, via the telephone, in order to come up with a new monthly payment plan. The new payment plan called for [Applicant] to make \$400 monthly payments, which was a verbal agreement. From 12/2009 to 12/2010, [Applicant] made all of her payments on time, without any problems.”

³The hearing was conducted on September 24, 2013.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised trustworthiness concerns. In concluding that Applicant had not mitigated the concerns arising from her delinquent student loans, the Judge stated that the loans are recent insofar as they are unpaid and that Applicant's lack of "substantial efforts to meet her obligation casts doubt on her trustworthiness and reliability." Decision at 5. The Judge noted evidence that circumstances beyond Applicant's control affected her financial situation—her unemployment and her lack of full-time employment. On the other hand, the Judge stated that Applicant failed to corroborate her claim to have contacted her creditors regarding her limited financial circumstances. The Judge also stated that Applicant could have taken other steps, such as adjusting her monthly expenses, much earlier than she had done. The Judge concluded that Applicant's relatively recent efforts to address her debts were not sufficient to demonstrate a track record of debt resolution. Efforts to resolve debts motivated primarily by the pressure of qualifying for a public trust position are not sufficient to mitigate the trustworthiness concerns established in Applicant's case.

In the whole-person analysis, the Judge noted positive aspects of Applicant's record, including her educational attainments and her work experience. The Judge also noted that Applicant had made some efforts to resolve her debts. However, she found these efforts to have been "intermittent, and insufficient to bring [Applicant's] debts under control." *Id.* at 7. She stated that her Applicant's recent payment plan is too recent to enable a conclusion that it will succeed.

Discussion

Applicant challenges the Judge's finding about the extent of her debts. She argues that her student loans are not fifteen separate debts but are actually a single continuing obligation that was renewed each semester. She argues that the way in which these loans are listed creates a false impression as to the nature of her financial difficulties.

We examine a Judge's findings to see if they are supported by substantial record evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See also* ADP Case No. 08-06284 at 2 (App. Bd. Dec. 10, 2009). In the case before us, the SOR contained fifteen allegations regarding Applicant's student debts, and Applicant admitted each allegation in her reply. These debts are separately listed in Applicant's credit reports. In her trustworthiness interview, Applicant agreed that the information regarding her student loan debts appeared to be correct. The interviewer represented her as saying that "the reason there are so many account numbers is due to each one being for an individual semester in school." Interview Summary at p. 1, contained in Government Exhibit 2, Answers to Interrogatories. Applicant certified the accuracy of the interview summary.

Neither in her SOR reply or in her interview summary did Applicant state that the information unfairly magnified the extent of her financial problems. We note that the Judge made

appropriate findings about Applicant's delinquent debts having arisen in regard to her pursuit of a college education. There is nothing in the record to suggest that the Judge treated these debts as totally unrelated in purpose or that she unreasonably multiplied Applicant's trustworthiness concerns. Considering the record as a whole, we conclude that the Judge's findings about Applicant's student debts are based upon substantial evidence or constitute reasonable inferences from the evidence.

Applicant argues that the Judge did not take into account evidence that she is meeting other financial obligations. She cites to evidence that she has acquired no additional debt beyond those found against her, and she contends that she was honest in admitting the extent of her financial problems. Applicant also contends that the Judge erred in concluding that her efforts at debt resolution were intermittent and insufficient.

To the extent that Applicant is arguing that the Judge did not properly examine her conduct in light of the entire record, thereby impairing her whole-person analysis, we find no error by the Judge. A proper whole-person analysis requires a Judge to consider the totality of an applicant's conduct in reaching his or her decision. *See, e.g.*, ADP Case No. 09-02388 at 2 (App. Bd. Apr. 21, 2010).

The Judge made findings about Applicant's personal circumstances, those favorable to her and those that detracted from her case for mitigation, and discussed them in a reasonable manner in her analysis. We note her findings concerning inconsistent statements by Applicant. We also note that the Judge addressed Applicant's having failed to list her delinquent debts in her application and her failure to admit her delinquencies to the interviewer until confronted with them.⁴ Although the omissions were not alleged in the SOR, the Judge stated that she was considering them for their bearing on Applicant's credibility and case for mitigation, which was an appropriate manner in which to address the evidence. *See, e.g.*, ADP Case 09-06770 at 3(App. Bd. Nov. 8, 2010) ("[C]onduct not alleged may be relevant to evaluating an applicant's evidence for extenuation or mitigation and for assessing his credibility.") Given evidence of Applicant's delinquent debts, her relatively dilatory efforts at remediation, the absence of corroboration for her claims of debt resolution, and evidence that detracted from her credibility, the Judge articulated a sustainable rationale for her whole-person analysis. *See* ADP Case No. 07-13041 at 4-5 (App. Bd. Sep. 19, 2008). *See* Directive ¶ 2(a) for discussion of whole-person factors.

Applicant's citation to favorable evidence could be construed as an argument that the Judge did not consider the evidence or that she mis-weighed the evidence. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ADP Case No.09-04275 at 2 (App. Bd. Apr. 18, 2011). Given the matters addressed in the previous paragraph, we conclude that Applicant has not rebutted this presumption. A Judge cannot be expected to discuss every piece of evidence in the record, which would be impossible. Neither has Applicant shown that the Judge's ultimate adverse holding ran contrary to the weight of the record evidence.

⁴Interview Summary at 1, GE 2: "[Applicant] was given the opportunity to develop any accounts or loans that had become over 180 days delinquent, to which she did not reply with any."

Applicant takes issue with the Judge’s opinion that it is too soon to conclude that she has shown a track record of debt resolution. She asserts that there is no evidence to justify this statement. However, once the Government has presented trustworthiness concerns, the burden shifts to the applicant to demonstrate mitigation. *See, e.g.*, ADP Case No. 07-13041, *supra*, at 3. In this case, Applicant admitted the allegations in the SOR and the Government presented substantial evidence in support of those allegations. Insofar as the Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s trustworthiness eligibility (*see, e.g.*, ADP Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009)), the record was sufficient to shift to Applicant the burden of demonstrating that the concerns had been mitigated. The challenged comment, properly understood, means that Applicant presented insufficient evidence of a track record of debt resolution to meet her burden of persuasion, which was consistent with the record before the Judge. We find no error in the challenged comment.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination “may be granted only when ‘clearly consistent with the interests of the national security.’” *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013).

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