

KEYWORD: Guideline F

DIGEST: The Judge’s material findings are based upon substantial record evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 12-01251.a1

DATE: 04/24/2014

DATE: April 24, 2014

In Re:)	
)	
-----)	ADP Case No. 12-01251
)	
Applicant for Trustworthiness Designation)	

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 July 30, 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 decision on the written record. On January 30, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 his findings of fact and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant seeks access to a sensitive position with a Defense contractor. She divorced her first husband in 1993. Her second marriage was from 2000 to 2004. Her SOR lists several delinquent debts, for medical treatment, student loans, etc. Applicant states that she has disputed errors in her credit reports. She also stated that the medical expenses were due to an emergency and that she was not aware of unpaid accounts. She advised that she had been laid off from her employment between 2004 and 2008. During her interview, she stated that she had not contacted her creditors or made arrangements to resolve her debts but promised to do so. In her answers to DOHA interrogatories, she again promised to begin resolving them. She presented corroborating evidence regarding three payments toward the satisfaction of one of the 26 debts alleged in the SOR.

The Judge's Analysis

The Judge concluded that Applicant's financial problems raised trustworthiness concerns. In evaluating her case for mitigation, the Judge considered factors that were beyond Applicant's control, such as her unemployment and medical issues. He concluded, however, that she had not demonstrated responsible action, in light of evidence that only one of her debts was being resolved. Moreover, he found that she had not initiated a good-faith effort to pay off her debts. In the whole-person analysis, the Judge made reference to a lack of evidence concerning debt resolution.

Discussion

Applicant contends that the Judge made errors in his findings of fact concerning her age and the date of her first marriage. Applicant's contention is correct. However, it is unlikely that these errors affected the Judge's overall decision. Accordingly, these errors are harmless. Viewed as a whole, the Judge's findings of fact are based upon substantial record evidence. *See, e.g.*, ADP Case No. 12-01023 at 3 (App. Bd. Jan. 17, 2014). Applicant cites to her evidence, such as her responses to the SOR and to the File of Relevant Material, in which she addresses her efforts to dispute certain debts and her efforts at resolution. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ADP 12-04343 at 2 (App. Bd. May 21, 2013). The Judge made findings about the evidence favorable to Applicant, including her claim that her credit reports contain errors. His adverse decision, however, appears to have rested in large measure on a paucity of evidence, including corroborating evidence, to show that Applicant has attempted to resolve her delinquent debts. This approach is consistent with the record that was before him, except for the harmless error noted above. Applicant has not demonstrated that the Judge failed to consider all of the evidence.

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), *cert. denied*.

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board