

KEYWORD: Guideline F; Guideline E

DIGEST: The Board gives deference to a Judge’s credibility determinations. Adverse decision affirmed.

CASENO: 12-03437.a1

DATE: 08/18/2014

DATE: August 18, 2014

In Re:)	
)	
-----)	ADP Case No. 12-03437
)	
Applicant for a 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 December 13, 2013, DoD 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 that the case be decided on the written record. On June 18, 2014, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant's request for a trustworthiness designation. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable trustworthiness decision.

The Judge found: Applicant is 48 years old. In 1998 she was member of the military. At that time she was habitually late with rental payments and was counseled twice about her financial problems. By 2000, she owed 11 delinquent debts totaling \$7,171. Applicant left the military in 2007, after which she worked in various positions. She was unemployed for brief periods in 2010 and 2011. Her delinquent debt issues continued. By 2013, Applicant paid ten debts totaling \$1,338. Six other debts totaling \$3,996 were disputed and were eventually removed from her credit bureau report, and 21 debts totaling \$38,788 remained unresolved or unpaid.

In 2000, the military issued a Letter of Intent to Revoke Security Clearance (LOI) to Applicant. It alleged numerous delinquent debts. It also alleged that she failed to disclose delinquent debts on a 1997 security clearance application. In 1995 Applicant was convicted of malicious injury to real property and trespassing. The 2000 LOI also alleged that she omitted this conviction from her security clearance application. Early in 2001, the military issued a notice of final revocation of Applicant's security clearance. Applicant failed to disclose this security clearance revocation when she subsequently applied for a public trust position in 2011. In 2013, during the processing of her public trust position application, Applicant refused to complete a personal financial statement, stating, "I don't wish to release this personal information." Applicant denies that she intentionally failed to disclose her previous security clearance revocation, denying knowledge of same. Without more information regarding her answer to the allegation, her response is not credible.

The Judge concluded: Applicant's delinquent debts began accumulating in 2007, the bulk of which remain unresolved. She did not provide sufficient information to demonstrate that such problems are unlikely to continue or recur, calling into question her reliability and trustworthiness. She provided some evidence that her financial problems arose because of periods of unemployment. These may have been circumstances beyond her control, but she did not provide evidence that she attempted to responsibly address the debts as they were accumulating. Applicant did not provide evidence that she participated in credit or financial counseling. Applicant's explanation for omitting information from her public trust application, which states that she did not receive notice of a security clearance revocation while in military service, is not credible. Falsification of information requested in a public trust application is serious misconduct. Applicant did not provide evidence that would support the application of any mitigating conditions listed under Guideline E. Applicant has not met her burden to mitigate the trustworthiness concerns arising from her financial problems and personal conduct.

Applicant's brief is primarily made up of a lengthy narrative about her numerous debts, the circumstances under which the delinquent debts became outstanding, her disputing a number of the debts, and a lengthy explanation as to why she did not falsify her application for a public trust position. The Board interprets her various statements as an assertion that the Judge's adverse decision was arbitrary, capricious and contrary to law.

Many of Applicant's representations in her brief contain statements that were not part of the record below. As such, they constitute new evidence, which the Board cannot consider. Directive, ¶ E3.1.29. Applicant's assertions that the Judge's findings are incorrect lack merit. The Judge's findings concerning the status of Applicant's numerous delinquent debts are supported by two credit reports that are part of the record. It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). After a review of the record, the Board concludes that Applicant failed to provide evidence calling into question the accuracy of the credit reports.

Regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. The Judge found in favor of Applicant as to a number of the Guideline F allegations. However, the Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not fully mitigated. The Board concludes that the Judge appropriately weighed the Guideline F mitigating evidence against the seriousness of the disqualifying conduct.

Concerning Guideline E, the Judge did not find Applicant's explanations regarding her failure to disclose her earlier clearance revocation credible. The Board gives deference to a Judge's credibility determinations. Directive, ¶ E3.1.32.1. There is no basis in the record for questioning the Judge's assessment of Applicant's credibility in this case.

The Board does 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. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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 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 of the Judge is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Member, 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