

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all of the evidence. The Appeal Board cannot consider new evidence on appeal. A party’s disagreement with the Judge’s weighing of the evidence is not enough to show that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 14-01564.a1

DATE: 01/28/2015

DATE: January 28, 2015

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In Re:)	
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-----)	ADP Case No. 14-01564
)	
Applicant for a 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 eligibility for a public trust position. On June 13, 2014, DOHA 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 disposition on the written record. On November 20, 2014, after the close of the record, Administrative Judge John Grattan Metz, Jr. declined to grant Applicant eligibility for a public trust position. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

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

The Judge made the following findings of fact: Applicant is 42 years old and is married. She has been continuously employed since 2003. The SOR alleges, and Government exhibits substantiate, 12 delinquent debts totaling over \$15,000. Applicant admits six debts for nearly \$15,000. Six disputed debts total \$471. Applicant attributes her debts to her husband's surgery and subsequent disability. Applicant claimed, without corroboration, to be making monthly payments on four of her debts. She provided no budget or personal financial statement indicating her family's financial situation. She has not documented any credit or financial counseling. She provided no work or character references.

The Judge reached the following conclusions: The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While some of Applicant's financial difficulties may be reasonably attributable to her husband's surgery and subsequent disability, she has not provided a chronology that establishes that claim and she submitted insufficient information to determine she acted responsibly under the circumstances. She documented little efforts to resolve her debts, and did not provide a proposed plan to address them. In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control. There is little evidence of any good-faith effort to satisfy the debts listed in the SOR. There is nothing in the record to suggest that Applicant will put her financial problems behind her. Guideline F is concluded against Applicant.

Applicant asserts that she is not disputing the facts of the case, but that she and her husband are trying their best to get their finances back on track. She indicates that they have disputed a number of small debts on their credit report and that these have been removed from the report. The Board construes this argument as an assertion that the Judge did not properly consider Applicant's evidence in mitigation. Applicant's assertions do not establish error on the part of the Judge.

Applicant's assertion that disputed debts have been removed from her credit report is not established by the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ADP Case No. 08-00826 at 2 (App. Bd. Mar. 19, 2010). Applicant has not overcome the presumption. The Judge's ultimate conclusion that the mitigating evidence presented was insufficient to overcome the government's concern over Applicant's eligibility for a position of trust is sustainable. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ADP Case No. 09-04275 at 2 (App. Bd. Apr. 18, 2011). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or

reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 10-01100 at 2 (App. Bd. Jun. 13, 2011).

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). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 Ra'anan

Michael 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