

DATE: February 21, 2007

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In Re:

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SSN:-----

Applicant for Trustworthiness Determination

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ADP Case No. 04-11112

## 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) proposed to deny or revoke access to automated information systems in ADP-I/II/III sensitivity positions for Applicant. On August 11, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security 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 June 30, 2006, after the hearing, Administrative Judge Erin C. Hogan denied Applicant's request for a trustworthiness designation. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse trustworthiness determination under Guideline F is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge's adverse trustworthiness determination should be reversed because her unpaid debts are not recent. In support of this argument Applicant offers new evidence which explains the circumstances relating to her indebtedness, and establishes that she created a budget, continued to make monthly payments on seven of the debts, and received a satisfactory performance appraisal from her employer. Applicant also states that her position no longer requires her to be in contact with sensitive or secured information. The Board does not find Applicant's argument persuasive.

The Board cannot consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. And such evidence does not demonstrate error on the part of the Judge. *See, e.g.* ISCR Case No. 05-00609 at 2 (App. Bd. Nov. 24, 2006). The Board has previously noted that the level of clearance being sought is not a relevant or material issue in DOHA proceedings. *See, e.g.*, ADP Case No. 04-12331 at 2 (App. Bd. Nov. 17, 2006).

The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ADP Case No. 05-03939 at 2 (App. Bd. Sept.1, 2006). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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*. An applicant'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.

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant had recently made small payments toward several of the debts. However, Applicant still had approximately \$23,717 in outstanding debts and had not corrected the underlying factors that had contributed to her financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See* ISCR Case No. 03-26213 at 2 (App. Bd. Aug. 23, 2006). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. She articulated a rational basis for not applying the mitigating conditions in this case, and reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's trustworthiness concerns. Such concerns were not necessarily mitigated by Applicant's favorable professional and work record, or by the fact that she is current on her new debts and has shown some improvement in her financial situation. *See, e.g.*, ADP Case No. 05-03939 at 2 (App. Bd. Sept. 1, 2006). The Board does not review a case *de novo*. The favorable record 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. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before her, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable.

### Order

The decision of the Administrative Judge denying Applicant access to automated information systems in ADP I/II/II sensitivity positions is AFFIRMED.

Sign: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairmna, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board