

cause a security breach. Applicant also notes that he will not be able to improve his financial situation if he loses his job due to denial of a trustworthiness designation. Finding no error, we affirm the Judge's decision.

The Judge made the following relevant findings of fact: Applicant is 30 years old and provides technical support to a Defense contractor. The SOR in Applicant's case lists seven overdue debts (primarily credit card balances and a car repossession). In his answer to the SOR, Applicant admits all of the debts, but disputes the amounts owed to two of the creditors. Applicant's credit was good until he lost a job in 2003. Applicant states that he lost that job because his employer found out that he was seeking another job. Applicant was out of work for approximately a month and then began working at a job that paid about half his former salary. After about a year, Applicant began working for his current employer at approximately the salary he was earning before he lost his job in 2003 and now earns more than he did at the job he lost. Applicant has made no payments on the overdue debts since 2003, although he had indicated that he would begin doing so in 2007. A supervisory witness from Applicant's job testified that he is a good person and a conscientious and dependable worker.

A Judge is required to "examine the relevant data and articulate a satisfactory explanation for" the 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)).

Applicant contends that there is no evidence that he is a security risk or would commit any type of crime because of his financial situation. Applicant admitted the alleged overdue debts listed in the SOR, even if he disputed some of the amounts. The Directive presumes there is a nexus, or rational connection, between proven conduct under any of its Guidelines and an applicant's trustworthiness eligibility. *See, e.g.*, ADP Case No. 07-07799 at 2 (App. Bd. Dec. 5, 2008). Therefore, Department Counsel is not required to present evidence that shows a direct or objective nexus between an applicant's conduct and circumstances and their trustworthiness eligibility. The federal government need not wait until an applicant actually mishandles or fails to properly handle sensitive information before it can deny or revoke access to such information. *See, e.g.*, ADP Case No. 06-09293 at 2 (App. Bd. Jun. 6, 2007). Trustworthiness determinations are not limited to consideration of an applicant's job performance or conduct during duty hours, and off-duty conduct can be relevant in assessing an applicant's trustworthiness eligibility. *See, e.g.*, ADP Case No. 06-07581 at 2 (App. Bd. May 17, 2007). An applicant with good or exemplary job performance may engage in conduct that has negative trustworthiness implications. *See, e.g.*, ADP Case No. 06-09293 *supra* at 2. The Directive's Guidelines set forth a variety of examples of off-duty conduct and circumstances which are of trustworthiness concern to the government.

In his response to the government's SOR, Applicant admitted the alleged overdue debts. His admissions established the government's *prima facie* case. The burden then shifted to Applicant to rebut, explain, extenuate, or mitigate the facts he admitted. The ultimate burden of persuasion to obtain a favorable trustworthiness determination rests with Applicant. *See* Directive ¶ E3.1.15. 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*. 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. 06-13629 at 3 (App. Bd. Sep. 4, 2007).

Applicant testified that his financial situation was due to events beyond his control in his work history and that he planned to begin paying his overdue debts soon. 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. He reasonably explained why the evidence Applicant had presented in mitigation was insufficient to overcome the government's trustworthiness concerns. The Board does not review a case *de novo*. Given the record that was before him, the Judge's ultimate unfavorable trustworthiness determination under Guideline F is sustainable. Thus, the Judge did not err in denying Applicant a trustworthiness designation.

Applicant contends that an negative trustworthiness determination will cause him to lose his job and therefore his ability to repay his overdue debts. The adverse effect that an unfavorable trustworthiness determination might have on Applicant's employment is not a factor that can be considered in evaluating an applicant's trustworthiness eligibility. *See, e.g.*, ADP Case No. 07-09114 at 2 (App. Bd. Jan. 28, 2009).

Order

The decision of the Judge denying Applicant a trustworthiness designation is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board