

KEYWORD: Guideline F

DIGEST: It is appropriate for a Judge to assign diminished weight or no weight at all to an incomplete exhibit. Adverse decision affirmed

CASENO: 08-09058.a1

DATE: 12/18/2009

DATE: December 18, 2009

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In Re:)	
)	
-----)	ADP Case No. 08-09058
)	
)	
Applicant for 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 a trustworthiness designation. On May 8, 2009, 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 hearing. On September 30, 2009, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse trustworthiness determination is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following findings of fact: Applicant works for a federal contractor as an executive assistant. She has two children. Her husband is unemployed and has not worked since 2005. Applicant has numerous delinquent debts, totaling \$13,687. Although Applicant denied certain debts and claimed that others were paid (either in full or in part), she provided no corroboration for these statements.¹ The Judge considered pertinent mitigating conditions, but she concluded that Applicant had failed to meet her burden of persuasion. The Judge noted that, in addition to not corroborating her claims of payment, Applicant had not received financial counseling, had not provided a credible basis for disputing her debts, and had generally failed to demonstrate a track record of responsible action.

Applicant cites to a credit report she submitted to the Judge. The Judge noted that that credit report was incomplete, comprising only the first four pages of a 22-page document. It is appropriate for a Judge to assign diminished weight, or no weight at all, to such an exhibit.

In support of her appeal Applicant has submitted new matters not contained in the case record, which the Board cannot consider. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board.”). *See also* ADP Case No. 08-03721 at 2 (App. Bd. Oct. 28, 2009).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated 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)). In light of the entirety of the record evidence, the Judge’s adverse trustworthiness determination is sustainable.

¹The Judge found in Applicant’s favor for one debt, which Applicant demonstrated was not hers.

Order

The Judge's adverse trustworthiness determination 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