

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant admitted all the SOR allegations. The Judge’s findings are based upon substantial record evidence. Applicant has not demonstrated that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 10-01100.a1

DATE: 06/13/2011

DATE: June 13, 2011

In Re:)	
)	
-----)	ADP Case No. 10-01100
)	
Applicant for Public Trust Position)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Arash D. Zarei, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a trustworthiness designation. On February 23, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 25, 2011, after the hearing, Administrative Judge Juan J. Rivera denied Applicant’s request for a trustworthiness designation. Applicant 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 decision is arbitrary, capricious, or contrary to law.

Applicant contends that the Judge's adverse decision should be reversed or remanded because the Judge erred in some of his findings and mis-weighted the evidence. With respect to the Guideline C allegations he argues that even though he possessed and renewed an Iranian passport for many years, he only used it two times in thirty-three years to travel to Iran and surrendered it prior to the hearing. As to the Guideline B allegations he argues that the trustworthiness concerns presented by the fact that he speaks to his parents in Iran by telephone once a week and sends them three to four thousand dollars a year are outweighed by his significant ties to the United States and his favorable character evidence. Applicant has not demonstrated that the Judge's ultimate adverse decision is arbitrary, capricious, or contrary to law.

In this case, Applicant admitted to all the factual allegations in the SOR. After reviewing the record, the Board concludes that the Judge's material findings of trustworthiness concern are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See* Directive ¶ E3.1.32.1. Applicant has not identified any harmful error likely to change the outcome of the case.

Once the government presents evidence raising trustworthiness concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness 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*. 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. 07-06039 at 4 (App. Bd. Jul. 8, 2008).

A review of the decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He reasonably explained why the mitigating evidence was insufficient to overcome the government's trustworthiness concerns. The Board does not review a case *de novo*. After reviewing the record, the Board concludes 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)). The Judge's unfavorable trustworthiness determination is sustainable.

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 S. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board