

KEYWORD: Guideline F; Guideline E

DIGEST: The record as a whole undermines Applicant’s claim on appeal that he had simply forgotten about a judgment and delinquent debts when completing his PTQ. The record supports the Judge’s finding that Applicant’s omissions were deliberate. The Judge also reasonably explained why the record was not sufficient to mitigate the trustworthiness concerns raised by the SOR, principally the absence of corroboration and the ongoing nature of Applicant’s financial problems. Adverse decision affirmed.

CASE NO: 11-06549.a1

DATE: 09/18/2013

DATE: September 18, 2013

In Re:)	
)	
-----)	ADP Case No. 11-06549
)	
Applicant for Public Trust Position)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On August 24, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and

Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On July 25, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider denied Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in concluding that he had deliberately omitted information from his public trust questionnaire (PTQ), whether the Judge failed properly to consider the whole-person factors, and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been employed by a Defense contractor since 2003. He received an associate's degree from an on-line university. He is married and has three adult sons. Applicant entered the U.S. military in 1978, retiring in 2001. There is no further information in the File of Relevant Material (FORM) about Applicant's military service. His PTQ indicates that he answered "yes" when asked if his clearance or access authorization had ever been denied, suspended, revoked, or whether he had ever been debarred from Government employment. The PTQ does not state what action was taken, although whatever it was occurred in 2005. The record contains no further information about Applicant's security history.

The SOR alleges 23 debts, totaling \$72,545. These include a judgment, utility bills, consumer debts, and student loans. Applicant admitted seven of these debts, although his explanations for the remaining ones were not sufficient to mitigate them. He provided no documentation to support his claims of debt resolution or dispute, except for one settlement agreement regarding a credit card. Even then, however, he did not provide evidence of actual payment.

Applicant has been receiving military retired pay since 2001 and has been steadily employed since early 2003. He states that his wife's unemployment affected his debts, although he provided no details of when her unemployment began or ended. He also stated that none of his debts arose from circumstances outside his control and avers that his current financial situation is manageable. Applicant has not sought financial counseling or other professional assistance in resolving his debts. The FORM contains no documentation that any of the SOR debts have been resolved.

In addition to the Guideline F concerns, the SOR alleged that Applicant deliberately omitted information from his PTQ. He did not disclose a December 2009 judgment against him. Neither did he divulge his delinquent debts.¹ Applicant admitted these two allegations and provided no explanation for the omissions.

The Judge's Analysis

¹SOR ¶ 2(a) alleged that Applicant deliberately failed to disclose the judgment. SOR ¶ 2(b) alleged that Applicant deliberately failed to disclose any debts that had been delinquent over 180 days.

The Judge concluded that Applicant's many delinquent debts raised trustworthiness concerns under Guideline F that Applicant failed to mitigate. He noted that Applicant did not corroborate his claims of debt repayment and that his debts continue to be listed on his credit reports. Regarding Guideline E, the Judge stated that Applicant had admitted the allegations of deliberate falsification and that he had provided no explanation for the misconduct. The Judge cited to evidence that Applicant was aware of his financial problems at the time he completed the PTQ. In the whole-person analysis, the Judge noted Applicant's 23 years of military service, his having raised three sons to adulthood, his having held a job with a Defense contractor for 10 years, and his having held a clearance while in the military. However, he went on to say that Applicant's financial problems and his false answers evidence a pattern of behavior that the Judge found troubling and that raised questions about Applicant's ability and willingness to comply with laws, rules, and regulations.

Discussion

Applicant denies that his omissions were deliberate. He claims that they were due to forgetfulness or inadvertence. In analyzing the deliberate nature of an applicant's omissions or false statements, a Judge must consider the applicant's answers in light of the record as a whole. *See, e.g.*, ADP Case No. 11-09060 at 2-3 (App. Bd. May 16, 2013). In this case, Applicant admitted these allegations in his response to the SOR. In addition, we note the clarity of the questions as well as Applicant's answers during his interview with the OPM investigator. In this interview he discussed in some detail the matters covered by the questions, never raising an issue of forgetfulness, etc. The record as a whole undermines Applicant's claim on appeal on appeal that he had simply forgotten about the judgment and his delinquent debts when completing his PTQ. The record supports the Judge's finding.

Applicant cites to evidence that he had served in the military for many years and that he had held a job with a contractor since 2003. He also cites to his claim during his interview that some of his son's debts had been included in Applicant's credit report. The Judge discussed much of the evidence that Applicant has cited. He acknowledged Applicant's attribution of some of his debts to someone else. However, the Judge reasonably explained why the record was not sufficient to mitigate the trustworthiness concerns raised by the SOR, principally the absence of corroboration and the ongoing nature of Applicant's financial problems. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 12-04343 at 2 (App. Bd. May 21, 2013).

Regarding the Judge's whole-person analysis, we conclude that he complied with the requirements of Directive, Enclosure 2 ¶ 2(a), in that he considered the totality of Applicant's conduct and circumstances in reaching his decision. *See, e.g.*, ADP Case No. 06-02549 at 2 (App. Bd. Jul. 3, 2007).

Applicant's appeal brief includes information not contained in the record concerning perceived inefficiencies in the processing of his application. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See* ADP Case 11-11592 at 2 (App. Bd. Aug. 23, 2012). As a general matter, we have no jurisdiction to rule on OPM's or DOHA's pre-hearing interactions with an applicant. The record does not support a conclusion that the manner in which Applicant's case was processed prejudiced his ability to present evidence in mitigation. To the extent that Applicant is

raising an issue of due process, we find no reason to conclude that he was denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 11-08063 at 3 (App. Bd. Jul. 19, 2013); ADP Case No. 07-00966 at 2 (App. Bd. Aug. 24, 2009) (Absent circumstances that raise an issue on a denial of due process, how the Government develops a case is not relevant on appeal).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record.

Order

The Decision 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