

KEYWORD: Guideline F; Guideline E

DIGEST: Although the Judge acknowledged Applicant’s unemployment, she concluded Applicant had done little to address her debts once she became fully employed. The Judge concluded Applicant’s claim to have been unaware of the judgments against her lacked credibility. The Judge’s findings and conclusions are sustainable. Adverse decision affirmed.

CASE NO: 11-09060.a1

DATE: 05/16/2013

DATE: May 16, 2013

In Re:)	
)	
-----)	ADP Case No. 11-09060
)	
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 September 26, 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 March 4, 2013,

after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 her findings of fact and whether the Judge's adverse determination was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings

Applicant filed a petition for Chapter 7 bankruptcy protection, being discharged in January 2001. The SOR alleges 22 delinquent accounts, totaling over \$50,000, including three judgments entered against Applicant. In her answers to DOHA interrogatories, Applicant stated that she was going to resolve her debts by filing for bankruptcy, in the "middle of 2012." Decision at 2. There is nothing in the record to show that she followed up on that resolve. Although she stated that one of her debts had been resolved through garnishment, she provided no corroboration. In completing her application, Applicant denied having any judgments against her within the previous seven years. She also denied having any debts delinquent for more than 180 days. These denials were false. The Judge cited to evidence regarding collection notices, etc, to demonstrate that Applicant was aware of the age of her delinquent debts.

The Judge's Analysis

In the Analysis, the Judge concluded that Applicant's financial circumstances set forth security concerns under Guideline F. She concluded that Applicant had not mitigated those concerns, in that Applicant had not demonstrated responsible action in regard to her debts, which the Judge characterized as "recent and ongoing." *Id.* at 5. Although acknowledging that Applicant had experienced unemployment, the Judge concluded that Applicant had done little to address her debts once she became fully employed. The Judge repeated her finding that Applicant had not presented evidence of her proposed bankruptcy filing.

Regarding Guideline E, the Judge explained why she found Applicant's false answers to have been deliberate. She cited to evidence that Applicant had been aware of her delinquent debts for some time. She also concluded that Applicant's claim to have been unaware of the judgments against her lacked credibility.¹ She stated that Applicant's falsifications were not minor and that she did not seek to correct them until confronted by the interviewer.

Discussion

Applicant challenges the Judge's finding about the deliberate nature of her omissions. With regard to the adverse finding for SOR ¶ 2(b) as it pertains to SOR ¶ 1(w), she states that she failed to list her 2001 bankruptcy because it was not within the seven years preceding her application.

¹See Directive ¶ E3.1.32.1: In performing its review, the Appeal Board "shall give deference to the credibility determinations of the Administrative Judge."

Applicant's argument on this point has merit. SOR ¶ 2(b) alleged that Applicant omitted several debts that were over 180 days delinquent, including in a list of these debts Applicant's bankruptcy action. The Judge entered an adverse formal finding on this allegation without addressing the bankruptcy. Obviously, a bankruptcy discharge over a decade ago is not an example of a current delinquent debt. Applicant did not err in failing to list this discharge action in response to the question at issue here. However, the Judge's finding regarding the deliberate nature of Applicant's other omissions was consistent with the record that was before her. *See, e.g.*, ADP Case No. 06-07172 at 2 (App. Bd. Apr. 12, 2007). The Judge's formal finding regarding Applicant's omission of her bankruptcy is harmless error.

Applicant cites to record evidence she believes to be favorable to her, for example that she has a hardship forbearance on her student loans. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ADP Case No. 11-11592 at 2 (Ap. Bd. Aug. 23, 2012). Applicant has not rebutted this presumption. After reviewing the record, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for his 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)).

Order

The Decision is **AFFIRMED**.

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board