

KEYWORD: Guideline F

DIGEST: At the time trhe case was submitted for decision, Applicant still had significant outstanding debts. The Judge reasonably explained why the mitigating evidence in the case was insufficient to overcome the Government’s trustworthiness concerns. Adverse decision affirmed.

CASENO: 12-09387.a1

DATE: 04/26/2016

DATE: April 26, 2016

In Re:	)	
	)	
-----	)	ADP Case No. 12-09387
	)	
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 January 12, 2015, DoD 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 decision on the written record. On February 17, 2016, after considering the record,

Administrative Judge Arthur E. Marshall, Jr. 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 argues that the Judge's adverse decision should be reversed because her unpaid debts were the result of a circumstance beyond her control (medical problems), and that they are not recent and are not likely to recur. In support of this argument, Applicant offers new evidence in the form of a narrative statement further describing her personal circumstances. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29. Applicant's argument does not demonstrate that the Judge's ultimate adverse decision is arbitrary, capricious, or contrary to law.

Applicant elected to have her case decided on the written record, and then did not respond to the government's File of Relevant Material (FORM). Based on the record that was before him, the Judge found that Applicant had 24 delinquent accounts totaling approximately \$69,000. Decision at 2. In reaching his adverse decision, the Judge noted that, although Applicant stated that four of the delinquent accounts related to a back surgery, ". . . there is no documentary evidence showing how she handled the debts once they were attributed to her, or how she has addressed them since." *Id.* at 4. In his findings, the Judge also noted that Applicant had not offered any evidence indicating that she was disputing any of the accounts, working with her creditors, or otherwise trying to resolve her financial problems. *Id.* at 2. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing.

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).

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had significant outstanding debts, and was still trying to resolve her financial problems. The Judge weighed the limited mitigating evidence offered by Applicant against the length and 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 Judge's unfavorable trustworthiness determination is sustainable. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination ". . . may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.,* ADP Case No. 14-03541

at 3 (App. Bd. Aug. 3, 2015). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board