

KEYWORD: Guideline F

DIGEST: Applicant contends that she met her burden of proof by showing that only a few of her alleged debts were still listed on her most recent credit report. Citing to the Fair Credit Reporting Act, she argues that she did not need to explain whether she paid or disputed a debt because either one of those actions must have occurred for the debts to be deleted from her credit report. She also asserts that her more recent credit report was entitled to greater weight than the credit reports submitted by Department Counsel. As the Board has previously noted, the absence of debts from a credit report is not meaningful evidence of debt resolution for trustworthiness adjudication purposes. Adverse decision affirmed.

CASENO: 16-00203.a1

DATE: 10/12/2017

DATE: October 12, 2017

)	
In Re:)	
)	
-----)	ADP Case No. 16-00203
)	
Applicant for Public Trust Position)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Sperry, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On May 18, 2016, 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 June 27, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 Government failed to meet its burden of proof and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is 43 years old, has been an employee of a Federal contractor since 2014. She was unemployed from an unspecified month in 2006 to January 2008. The SOR alleges 16 delinquent debts totaling about \$23,000, which are confirmed in credit reports. In her SOR response, she admitted two of those debts totaling almost \$1,500 and denied the remaining debts because they were removed from her credit report. She provided no documentation of disputes or efforts to resolve the denied debts. She stated she was the victim of identity theft, did not recognize many of the debts, and would investigate them. In her response to the File of Relevant Material (FORM), she emphasized that she experienced complications with a pregnancy and her and her husband's unemployment took a toll on her credit. She filed Chapter 7 bankruptcy in March 2016 that was later dismissed because she either addressed or disputed the debts. She believed her current debt was about \$2,600. She did not present any evidence regarding her current salary, budget, or expenses and did not provide any character references.

The Judge's Analysis

The Government established disqualifying conditions 19(a) "inability to satisfy debts;" 19(b) "unwillingness to satisfy debts regardless of the ability to do so;" and 19(c) "a history of not meeting financial obligations[.]"¹ Applicant provided a document showing a phone account is current, but has not provided documentation for any other delinquent debts. She listed information about her and her husband's unemployment, medical issues, and identity theft and relied on the fact that delinquent accounts had been removed from her credit report.² It was unclear which debts resulted from events beyond her control. She did not establish that she acted responsibly. She provided a certificate of financial counseling, but did not establish that her financial problems are being resolved or are under control. She did not produce sufficient documentation or evidence to meet her burden of proof.

Discussion

Applicant contends that the Government failed to meet its burden of proof. She argues that the Judge should not have considered a credit report in the FORM from January 2016 because it was

¹ See Directive, Encl. 2, App. A ¶¶ 19(a)-(c).

² In her background interview, Applicant indicated the identity theft occurred while she was in high school. Item 6 of the FORM.

more than 120 days old. In responding to the FORM, she made that same argument, which the Judge acknowledged in the decision. It is well settled that adverse information in a credit report can normally meet the substantial evidence standard and the Government's obligation under Directive ¶ E3.1.14 for pertinent allegations. *See, e.g.*, ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009). For our purposes, there is no 120-day or other age limit pertaining to the admission of credit reports into evidence. The age of the credit report is generally a matter for the Judge to consider in determining how much weight should be given to that document. The Board will not disturb a Judge's weighing of the evidence unless there is a showing the Judge acted in a manner that is arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32. Applicant submitted and the Judge considered a more recent credit report from September 2016. The Board finds no error in the Judge's consideration of credit reports in the FORM. Those credit reports established the alleged debts by substantial evidence and were sufficient to shift the burden of production to Applicant to rebut, explain, extenuate, or mitigate the trustworthiness concerns arising from the alleged debts. *See* Directive ¶ E3.1.15.

Applicant also contends that she met her burden of proof to mitigate the trustworthiness concerns by showing that only a few of her alleged debts were still listed on her most recent credit report. Citing to the Fair Credit Reporting Act, she argues that she did not need to explain whether she paid or disputed a debt because either one of those actions must have occurred for the debts to be deleted from her credit report.³ She also asserts that her more recent credit report was entitled to greater weight than the credit reports submitted by Department Counsel. We do not find Applicant's arguments persuasive. As the Board has previously noted, the absence of debts from a credit report is not meaningful evidence of debt resolution for trustworthiness adjudication purposes. *See, e.g.*, 14-05803 at 3 (App. Bd. Jul. 7, 2016). Such an absence, by itself, does not establish that the debt was paid or that there was a reasonable basis for disputing the legitimacy of the debt. Frequently, as here, the reason why a debt is removed or deleted from a credit report is unknown to the Defense Department.⁴ Moreover, the absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate a history of financial difficulties or constitute evidence of financial reform or rehabilitation. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017). As noted earlier, the burden was on Applicant to mitigate the trustworthiness concerns arising from her debts. With the exception of showing that a number of debts were deleted from her credit report, Applicant presented little evidence that she successfully resolved the alleged debts or that her financial problems were under control. Additionally, her most recent credit report reflects a recent delinquent debt that was not alleged in the SOR. Given the record that was before her, the Judge did not err in concluding that Applicant had failed to meet her burden.

The balance of Applicant's argument amounts to a disagreement with the Judge's weighing

³ In her response to the SOR, Applicant provided documents from a credit repair agency that indicated a number of her debts were removed from her credit reports. Many of the removed debts involve collection agencies, and those debts cannot be correlated to the SOR debts. Additionally, the reasons for removal of the debts are not stated in the documents. One document does indicate that the credit repair agency's attorneys and paralegals will review a client's "credit reports and prepare and send appropriate legal challenges . . ."

⁴ In this case, the impact that Applicant's intervening Chapter 7 bankruptcy filing may have had on the creditors's willingness to validate any challenged debts is unknown.

of the evidence. Applicant cites to such matters as the periods of unemployment that she and her husband encountered, her complicated pregnancy, her utilization of a credit repair agency, her completion of credit counseling, and the deletion of the debts from her credit report. The Judge made finding about most of those matters. 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. 16-01251 at 2 (App. Bd. Jun. 7, 2017). Furthermore, we conclude the Judge complied with whole-person analysis requirements of the Directive by considering the entire record in reaching her decision.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that 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. 16-01251, *supra*, at 2. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board