



The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On October 29, 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 March 28, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 his findings of fact and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the decision.

### **The Judge’s Findings of Fact and Analysis**

Applicant has worked for a defense contractor since the mid 1990s. The SOR alleged that she failed to file her 2012 and 2013 Federal income tax returns in a timely manner and that she had nine delinquent debts totaling over \$8,000. She admitted the tax filing deficiencies and, except for three medical accounts totaling about \$1,100, the alleged debts.

In her Answer to the SOR, Applicant documented that she filed her 2012 and 2013 Federal income tax returns in April 2015, paid the IRS over \$7,000 for 2011, and paid five of the alleged debts in late 2016. She took no action on three debts that no longer appeared on a recent credit report.

Applicant attributed her financial problems to her husband’s unemployment in 2008, but provided no details of the impact that unemployment would have on her finances. She provided no explanation for her tax filing deficiencies. “[T]he record reflects she took no action to address her situation with the IRS until April 2015, when she was completing her trustworthiness application, and did not resolve [five] SOR debts . . . until after she received the SOR.” Decision at 3.

None of the mitigating conditions apply in this case. Applicant has not documented financial counseling. She provided no details of her husband’s unemployment and did not document that she took responsible action to address her tax deficiencies before submitting her trustworthiness application or to address her debts before receiving the SOR.

### **Discussion**

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs

contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ADP Case No. 06-12901 at 4 (App. Bd. Jul. 31, 2007).

In her appeal brief, Applicant contends the Judge erred in finding her husband's unemployment was in 2008. She states that her husband's unemployment was not in 2008, but in 2013, and highlights details about the impact of that unemployment on her financial situation.<sup>1</sup> We find Applicant's argument persuasive.

A review of Applicant's background interview reflects that she noted certain debts became delinquent in either 2008 or 2013 due to her husband's job losses in those respective years and that she became responsible for paying all of the bills. More specifically, the interview summary states that certain bills became delinquent between March and August 2013 due to her husband's unemployment, but it does not reflect the total length of that period of unemployment. In her appeal brief, she states, "We went from having an adjusted gross income of \$115,973.00 in 2012 with both of us working to having an adjusted gross income of \$41,269 in 2013 with only my income." Appeal Brief at 1. Federal income tax returns in the record corroborate her claim about the reduction in her and her husband's adjusted gross income between 2012 and 2013. Additionally, the 2012 Federal income tax return listed her husband's occupation, while the 2013 return listed his occupation as "unemployed." Item 3 of the File of Relevant Material. Based on an examination of the Federal tax returns and Applicant's pay stubs in the record, it could be reasonably be inferred that the reduction in adjusted gross income was due to the husband's unemployment in 2013.

In the decision, the Judge erred in failing to examine the husband's unemployment in 2013 and failing to analyze how such unemployment should be treated under mitigating condition 20(b).<sup>2</sup> Accordingly, we conclude that the best resolution of this case is to remand the case to the Judge for correction of these errors and for further processing consistent with the Directive. Other issues in the case are not ripe for consideration at this time.

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<sup>1</sup> Some of the details that Applicant provided about the impact of her husband's unemployment are not contained in the record and constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3. 1.29. Her appeal brief also contains new evidence we cannot consider about other issues she has raised. Additionally, Applicant made two submissions on appeal. The first was her brief, which was provided in a timely manner. The second arrived after close of the briefing process and, therefore, is untimely. Furthermore, the Directive only authorizes one brief for each party. *See, e.g.*, ISCR Case No. 12-09389 at 3, n.1 (App. Bd. Sep. 18, 2015). Consequently, Applicant's second brief was not considered.

<sup>2</sup> Directive, Encl. 2, App. A ¶ 20(b) states, "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]"

**Order**

The Decision is **REMANDED**.

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