

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On November 20, 2017, 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 September 20, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand.

The Judge’s Findings of Fact and Analysis

The SOR alleged that Applicant has 18 delinquent debts totaling over \$37,000. She has been employed by a Federal contractor since 2016. In the past, she experienced periods of unemployment, including two periods after she left jobs by mutual agreement and a third period after she was fired for tardiness and absenteeism. She has never been married and has no children. She admitted all the debts, stated some were either paid, in payment plans, or in negotiations for settlements, but provided no documentary evidence of payments, payment plans, disputes, or other resolutions. She also provided no evidence regarding her income and expenses. She did provide documentation showing two non-alleged student loans were current. In his Analysis, the Judge concluded that none of the mitigating conditions were established, noting the absence of evidence of debt resolution.

Discussion

In her appeal brief, Applicant argues that she was unable to receive financial counseling under Mitigating Condition 20(c).¹ She also states that she is in the process of establishing repayment plans for her debts. These statements constitute new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29. Applicant also requests guidance on ways she could demonstrate her trustworthiness in financial matters. The Appeal Board cannot advise her about what action or actions she can or should take. *See, e.g.*, ISCR Case No. 03-01578 at 4 (App. Bd. May 27, 2004).

In her brief, Applicant further states that she provided court documents showing she was in the process of disputing some of her overdue bills. The record does not contain any court documents

¹ Directive, Encl 2, App. A ¶ 20(c) states, “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control[.]”

establishing disputes.² However, Applicant's response to Department Counsel's File of Relevant Material (FORM) does contain a document from a credit reporting agency that reflects a number of the alleged debts were "Currently Under Dispute." Applicant's Exhibit (AX) A. We also note that Applicant's response to the SOR includes a document dated January 25, 2018, that appears to reflect the student loans alleged in SOR ¶¶ 1.d and 1.i were not in a delinquent status. Therefore, documents in Applicant's SOR and FORM responses show the Judge erred in his findings about the absence of supporting documentation. Given those errors, we believe the best course of action is to remand the case to the Judge for correction of the errors and issuance of a new decision in accordance with the Directive.

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

² In her brief, Applicant also contends that she provided billing statement that show a decrease in her total debt. We cannot discern what billing statements Applicant is referencing.