

KEYWORD: Guideline F

DIGEST: Applicant's history of not meeting financial obligations over many years and current debts outstanding support the Judge's conclusion that Applicant has ongoing financial problems. Adverse decision affirmed.

CASENO: 06-23881.a1

DATE: 11/02/2007

DATE: November 2, 2007

In Re:	)	
	)	
-----	)	ADP Case No. 06-23881
	)	
Applicant for a Position of Trust	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) proposed to deny or revoke access to automated information systems in ADP-I/II/III sensitivity positions for Applicant. On February 15,

2007, DOHA 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 hearing. On May 30, 2007, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s request for a trustworthiness designation. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred by concluding the trustworthiness concerns raised under Guideline F had not been mitigated.<sup>1</sup>

Applicant argues that the Judge erred in concluding that the trustworthiness concerns raised by her history of financial difficulties had not been mitigated because (a) her indebtedness was due to a circumstance beyond her control, a medical problem, (b) her unpaid debts are old and she is current on all debts accrued since December 2003, and (c) she has paid off, or is making payments on, a number of her debts. Applicant’s argument does not demonstrate that the Judge erred.

The application of disqualifying and mitigating conditions and whole person factors requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ADP Case No. 05-03939 at 2 (App. Bd. Sep. 1, 2006). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness determination. 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*. An applicant’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.

In this case, the Judge found that Applicant had a history of not meeting financial obligations which extended over many years. At the time the case was submitted for decision, Applicant still had significant outstanding debts, including an unpaid state tax lien of approximately \$1,808 and approximately \$45,907 in unpaid student loans. In light of the foregoing, the Judge could reasonably conclude that Applicant’s financial problems were still ongoing. *See, e.g.*, ADP Case No. 05-16601 at 2 (App. Bd. Jul. 2, 2007). The Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions and whole person factors. He found in favor of Applicant with respect to a number of the SOR allegations. However, the Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all of the government’s trustworthiness concerns. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 03-14873 at 2 (App. Bd. Sep. 28, 2006). The Board does not review a case *de novo*. The Board need not agree with a Judge’s decision in order to find it sustainable. Given the record that was before him, the Judge’s ultimate unfavorable trustworthiness determination in this case is

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<sup>1</sup>The Judge found in favor of Applicant with respect to SOR paragraphs 1.a, 1.c, 1.d, 1.e, 1.f, and 1.g. Those favorable findings are not at issue on appeal.

sustainable.

**Order**

The decision of the Judge denying Applicant access to automated information systems in ADP-I/II/III sensitivity positions is AFFIRMED.

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

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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