

KEYWORD: Guideline F

DIGEST: The favorable evidence cited by Applicant is not enough to demonstrate that the Judge erred. Adverse decision affirmed.

CASENO: 04-08945.a1

DATE: 04/27/2007

DATE: April 27, 2007

In Re:)	
)	
)	
-----)	ADP Case No. 04-08945
SSN: -----)	
)	
Applicant for Trustworthiness Determination)	
)	

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 June 6, 2005, 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 October 30, 2006, after the hearing, Administrative Judge LeRoy F. Foreman denied Applicant's request for a trustworthiness designation.¹ 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 that the trustworthiness concerns raised under Guideline F had not been mitigated.

Applicant argues that the Judge's adverse decision should be reversed because the Judge did not give adequate weight to Applicant's mitigating evidence and did not find in favor of Applicant with respect to debts that he had resolved after the hearing. Applicant's argument does not demonstrate error on the part of the Judge.

Applicant has not met his burden of demonstrating that the Judge erred in concluding that the government's trustworthiness concerns had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies to the particular facts of a case. Rather, their application 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. Sept. 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 lengthy and serious history of not meeting financial obligations. At the time the hearing, Applicant still had delinquent debts and was still in the process of resolving his financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. The Judge found in favor of Applicant with respect to many 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 Board does not review a case *de novo*. 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. Sept. 28, 2006). Given the record that was before him, the Judge's ultimate unfavorable trustworthiness decision under Guidelines F is sustainable. Thus, the Judge did not err in denying Applicant a trustworthiness designation.

¹The Judge found in favor of Applicant with respect to SOR paragraphs 1.a, 1.b, 1.e, 1.h, 1.i, 1.j, and 1.k. Those favorable findings are not at issue on appeal.

Order

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, 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