

KEYWORD: Guideline F

DIGEST: The Board's review of a Judge's findings is limited to determining if they are supported by substantial evidence such evidence as a reasonable mind might accept to support such a conclusion in light of all the contrary record evidence. In this case the Judge found that Applicant had a history of not meet financial obligation which extended over many years. Adverse decision affirmed.

CASENO: 06-00375.a1

DATE: 10/24/2007

DATE: October 24, 2007

In Re: ----- Applicant for ADP I/II/III Position)))))))	ADP Case No. 06-00375
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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 August 31, 2006, 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 the case be decided on the written record. On May 23, 2007, after considering the record, Administrative Judge Joseph Testan 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 under Guideline F had not been mitigated.

Applicant argues that the Judge erred in concluding that the trustworthiness concerns raised by his history of financial difficulties had not been mitigated because his indebtedness was due to a circumstance beyond his control, loss of employment. He also argues that the Judge erred with respect to several of his findings.¹ The Board does not find Applicant’s arguments persuasive.

The Board’s review of a Judge’s findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620, (1966).

We have considered the challenged findings in light of the record and conclude that they are based on substantial evidence. To the extent that there is error in the Judge’s findings we conclude that it is harmless. Applicant has not met his burden of demonstrating that the Judge’s material findings with respect to his conduct of trustworthiness concern do not reflect a reasonable or plausible interpretation of the record evidence. Considering the record evidence as a whole, the Judge’s material findings of trustworthiness concern are sustainable.

The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply 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. 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. In light of the foregoing, the Judge could reasonably conclude that

¹Applicant argues that the debts listed in SOR paragraphs 1.b and 1.c were charged off in September 2002 rather than in September 2001. He also argues that in his response the government’s File of Relevant Material, he explained the conflict between statements made in his Public Trust Position Application and his Answer to the SOR.

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 factors. He reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome 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*. Given the record that was before him, the Judge's ultimate unfavorable trustworthiness determination is sustainable.

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