

KEYWORD: Guideline F; Guideline E

DIGEST: The federal government need not wait until an applicant mishandles or fails to handle properly sensitive information before it can deny or revoke access to such information. An applicant's need for a trustworthiness designation is not material to her suitability. Adverse determination affirmed.

CASENO: 06-09293.a1

DATE: 06/06/2007

DATE: June 6, 2007

In Re:	)	
	)	
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SSN:-----	)	ADP Case No. 06-09293
	)	
Applicant for Trustworthiness Designation	)	
	)	

**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) declined to grant Applicant a trustworthiness designation. On June 14, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive

5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided upon the written record. On November 29, 2006, after considering the record, Administrative Judge Barry M. Sax 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's unfavorable trustworthiness determination under Guidelines F and E is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge's adverse trustworthiness determination should be reversed because she has been an outstanding employee for eight years and has never taken anything from her company. She also argues that there is no connection between her prior financial problems and her ability to perform her job, and that an adverse trustworthiness determination could cause her to lose her job. Applicant's arguments do not demonstrate that the Judge erred.

The federal government need not wait until an applicant actually mishandles or fails to properly handle sensitive information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F. 2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). An applicant with good or exemplary job performance may engage in conduct that has negative trustworthiness implications. *See, e.g.*, ISCR Case No. 99-0123 at 3 (App. Bd. Jan. 11, 2000). The Directive's Guidelines set forth a variety of examples of off-duty conduct and circumstances which are of trustworthiness concern to the government and mandate a whole person analysis to determine an applicant's trustworthiness eligibility. A whole person analysis is not confined to the workplace. *See ISCR Case No. 03-11231 at 3 (June 4, 2004).*

Similarly, an applicant's need for a trustworthiness designation to keep her job is not material to the evaluation of her trustworthiness suitability. The possibility that an unfavorable trustworthiness determination could have adverse consequences for an applicant's job situation is not relevant or material to an evaluation of the trustworthiness significance of that applicant's situation. *See, e.g.*, ISCR Case No. 01-21070 at 4 (App. Bd. Dec. 7, 2004). The trustworthiness significance of Applicant's history of financial difficulties is not diminished or reduced by the fact that an unfavorable trustworthiness determination could result in the loss of her job. *See, e.g.* ISCR Case No. 06-00799 at 2 (App. Bd. Apr. 16, 2007).

The application of disqualifying and mitigating conditions 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.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). 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 that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

The Applicant has not met her burden of demonstrating that the Judge erred in concluding that the financial considerations and personal conduct allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, she has not established that those

conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Judge found that Applicant had a history of not meeting financial obligations which extended over many years and had deliberately failed to disclose adverse information about her indebtedness on her Questionnaire for Public Trust Positions (SF-85P). At the time the case was submitted for determination she still had significant outstanding debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. 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.,* ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). The Board does not review a case *de novo*. Given the record that was before him, the Judge's ultimate unfavorable trustworthiness determination under Guidelines F and E is sustainable. Thus, the Judge did not err in denying Applicant a trustworthiness designation.

### **Order**

The decision of the Judge denying Applicant a trustworthiness designation is AFFIRMED.

Signed: Jean E. Smallin  
Jean E. Smallin  
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