

KEYWORD: Guideline F

DIGEST: The application of the mitigating and disqualifying guideline requires the exercise of sound discretion in light of the record evidence as a whole. The presence of some mitigating evidence does not alone compel a favorable decision. Adverse decision affirmed.

CASENO: 06-13879.a1

DATE: 07/03/2007

DATE: July 3, 2007

In Re:	)	
	)	
-----	)	
SSN: -----	)	ADP Case No. 06-13879
	)	
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) proposed to deny or revoke access to automated information systems in ADP-I/II/III sensitivity positions for Applicant. On July 31, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security 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 December 29, 2006, after considering the record, Administrative Judge Michael H. Leonard 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 her history of financial difficulties had not been mitigated, because her indebtedness was due to separation, divorce, and the loss of a family member, and she is current on her recent debts and has no history of deceptive or illegal financial practices. Applicant's argument does not demonstrate that the Judge erred

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. 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.

Applicant requested that her case be decided upon the written record, and then did not respond to the government's file of relevant material. As a result, the Judge noted that ". . . the available information in support of Applicant is limited."<sup>1</sup> 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. Sept. 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. Thus, the Administrative Judge did not err in denying Applicant access to automated information systems in ADP-I/II/III sensitivity positions.

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<sup>1</sup>Decision at 3.

**Order**

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