

KEYWORD: Guideline F

DIGEST: Absent a showing that an applicant was denied a reasonable opportunity to prepare for the hearing or present evidence, an applicant is not entitled to a new hearing just so that applicant can have another chance to present applicant's case. Adverse decision affirmed.

CASENO: 06-15508.a1

DATE: 09/21/2007

DATE: September 21, 2007

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In Re:	)	
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	)	ADP Case No. 06-15508
	)	
Applicant for Public Trust Position	)	
	)	

**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 October 11, 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 a hearing. On March 22, 2007, after the hearing, Administrative Judge Marc E. Curry denied Applicant's request for a trustworthiness designation. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

We construe Applicant's appeal as asserting that the Judge did not give appropriate consideration to record evidence concerning Applicant's efforts to resolve her financial difficulties and that as a consequence the Judge's adverse trustworthiness determination is arbitrary, capricious, and contrary to law.

The Judge found that, between 1998 and 2006, Applicant accrued nine delinquent debts totaling about \$18,000. Most of those debts related to car payments or repairs. By August 2006, Applicant's monthly expenditures exceeded her income. Applicant's financial problems have been exacerbated by her husband's job insecurity. Prior to the hearing, Applicant retained an attorney to file for bankruptcy protection on her behalf. As part of the bankruptcy process, she will receive debt management counseling.

In resolving her case, the Judge commended Applicant for her decision to take control of her financial situation through bankruptcy. However, he weighed this positive step against the length of time it took Applicant to begin resolving her debt problems. Furthermore, he concluded that the record provided little reason to believe that Applicant's financial problems will not recur after discharge in bankruptcy. Therefore, while the Judge considered Applicant's efforts to solve her problems, he did not find those efforts sufficient to meet Applicant's burden of persuasion. *See* ADP No. 06-02549 at 3 (App. Bd. Jul. 3, 2007) ("Mere disagreement with the weight assigned particular evidence by a Judge does not establish error.") *See also* Directive ¶ E3.1.15. ("The applicant . . . has the ultimate burden of persuasion as to obtaining a favorable . . . decision.")

Applicant asks in the alternative for a remand so that she may present additional evidence. Applicant is asking for a remedy not available to her. It is well settled that "absent a showing that an applicant was denied a reasonable opportunity to prepare for the hearing or was denied a reasonable opportunity to present evidence on his or her behalf, an applicant is not entitled to receive a new hearing just so the applicant can have another chance to present his or her case." ISCR Case No. 04-01047 at (App. Bd. Oct. 20, 2005). *Compare* ISCR Case 00-0250 at (App. Bd. Feb. 13, 2001) ("If the Board were to grant Applicant's request for a new hearing or allow her to submit new evidence in this case, then the Board would be giving her special treatment and denying other, similarly-situated applicants of their right to receive the fair, impartial, and even-handed application of Executive Order 10865 and the Directive.")

In light of the record as a whole, the Judge's decision is neither arbitrary, capricious, nor contrary to law.

**Order**

The Judge's adverse trustworthiness determination 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