

KEYWORD: Guideline F

DIGEST: In light of the Judge's findings of fact and the record as a whole, the Judge's adverse decision is affirmed.

CASENO: 06-16850.a1

DATE: 08/28/2007

DATE: August 28, 2007

In Re: ----- Applicant for ADP I/II/III Position)))))))	ADP Case No. 06-16850
--	---------------------------------	-----------------------

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 determination. On August 24, 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 19, 2007, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a trustworthiness determination. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30

Applicant raised the following issues on appeal: whether the Judge ignored record evidence as to Applicant’s efforts to pay off her debts; and whether the Judge’s adverse trustworthiness determination is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following findings: Between 1999 and 2006, Applicant accrued 15 delinquent debts in the approximate amount of \$11,600. When confronted by an investigator, Applicant stated that she was unable to pay her debts. In October 2006, she retained an attorney to file for Chapter 13 bankruptcy. Under the plan, she is to pay off her debts in monthly increments of \$220. Currently she has made three payments.

The Appeal Board may reverse the Judge’s decision to grant, deny, or revoke a trustworthiness determination if it is arbitrary, capricious, or contrary to law. *See* Directive ¶¶ E3.1.32.3 and E3.1.33.3. Once the government presents evidence raising trustworthiness concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions. *See* Directive ¶ E3.1.15. “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* ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

In this case, the Judge’s decision includes the following:

Applicant was aware that her financial delinquencies posed a trustworthiness concern as early as November 2005. She did not take any steps to resolve them until nearly 15 months later, when she retained an attorney to initiate her . . . bankruptcy filing. Her adherence to the . . . debt repayment plan for the past three months is commendable. However, it remains to be seen whether she can continue to adhere to it in light of her past statements that she could not make payments on her delinquencies while staying current on her routine, cost-of-living expenses. Decision at 5.

This demonstrates that the Judge did consider Applicant’s efforts at debt repayment. However, he weighed them against the negative aspects of Applicant’s financial history and concluded that she had not met her burden of persuasion. Applicant’s assertions on appeal that she is a loyal employee do not overcome the Judge’s trustworthiness concerns. An applicant with good or exemplary job performance may engage in conduct that has negative trustworthiness implications. *Cf.*, ISCR Case No. 99-0123 at 3 (App. Bd. Jan. 11, 2000). The Judge’s explanation for his conclusion that Applicant had not overcome the trustworthiness concerns raised by the Government’s evidence is reasonable. *See* ADP Case 04-08945 at 2 (App. Bd. Apr. 27, 2007). In light of the Judge’s findings of fact and the record as a whole, we conclude that his adverse trustworthiness determination is not arbitrary, capricious, or contrary to law.

Order

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board