

KEYWORD: Guideline F

DIGEST: The Judge found that Applicant had not presented any information about his wife’s income, despite the fact that contained in the record was a notification of deposit document appearing to reference salary deposited into her account. A Judge is presumed to consider every piece of evidence in the record. However, in the case before us, the Judge’s finding is sufficient to overcome the presumption that he considered the notification. Adverse decision remanded.

CASENO: 12-09373.a1

DATE: 07/17/2014

DATE: July 17, 2014

In Re:)	
)	
-----)	ADP Case No. 12-09373
)	
Applicant for Position of Trust)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On December 9, 2013, DoD 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 May 9, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone denied Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge failed to consider all of the evidence in the record and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the case to the Judge.

Applicant cites to the hearing, during which the Judge had questioned him about his household finances and, in particular, his wife's income:

Q: And you're saying you have no idea what she brings home every couple of weeks?

A: That is correct. I would imagine it's something in the neighborhood of a thousand to maybe \$1,800 a month. Or not a month, every two weeks. Tr. at 68.

The Judge held the record open for Applicant to provide additional evidence, including information about his wife's income. Tr. at 78. Hearing Exhibit 3 includes an e-mail from Applicant to Department Counsel. Attached to this e-mail are several documents, including "my wife's direct deposit slip[.]" Department Counsel forwarded the e-mail to the Judge, who advised that "[a]ll of [Applicant's] post-hearing submissions will be included in the record as Applicant's Exhibit (Ax.) C." Hearing Exhibit 3 at 3.

Ax. C includes a "notification of deposit" to the effect that \$1981.44 was deposited to the account of a woman bearing Applicant's last name, presumably his wife. This document appears to be in response to Applicant's colloquy with the Judge regarding his wife's salary. In his Findings of Fact, the Judge stated that Applicant's wife's income

has not been included in calculating their household income. She helps pay their utilities and some clothing costs occasionally, but Applicant was not able to provide information about her earnings. Decision at 3.

He repeated the point in the following paragraph, asserting that Applicant "did not present any information about his wife's income despite being afforded extra time after the hearing to do so." *Id.* The Judge did not address the "notification of deposit" in the context of Applicant's financial condition, nor did he provide a reason for believing that it was not responsive to the concerns described in his discussion with Applicant or explain why it should be assigned less weight than other evidence in the record. A Judge is presumed to have considered every piece of evidence in the record. *See, e.g.*, ADP Case No. 08-06284 at 2 (App. Bd. Dec. 10, 2009). However, in the case before us, the Judge's finding is sufficient to overcome the presumption that he considered the notification.

We conclude that the best resolution is to remand the case to the Judge for a new decision consistent with the above discussion. The other issues raised by Applicant are not ripe for consideration.

Order

The Decision is **REMANDED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board