

KEYWORD: Guideline F

DIGEST: The Judge’s material findings are sustainable. Adverse decision affirmed.

CASENO: 08-00801.a1

DATE: 11/06/2009

DATE: November 6, 2009

In Re:	)	
	)	
-----	)	ADP Case No. 08-00801
	)	
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 April 10, 2009, 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 August 31, 2009, after the hearing, Administrative

Judge Rita C. O'Brien 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 certain of the Judge's findings of fact are erroneous and whether the Judge's adverse trustworthiness determination is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant was discharged in Chapter 7 bankruptcy in 2002. Subsequently, Applicant acquired significant delinquent debts for such things as consumer purchases, credit cards, utility bills, child care, and medical expenses. Applicant was treated for cancer in 2006. Her child also had medical problems beginning at birth, with treatment lasting until 2002. Applicant was not able to pay the medical bills for that treatment.

Applicant has been arrested twice on charges of credit card fraud. On one occasion, the charge was dismissed. On the other, Applicant entered into a plea agreement, with the result that the felony charge was reduced to a misdemeanor.

The Judge acknowledged that Applicant had experienced both medical problems and unemployment, which contributed to her financial difficulties. However, she also stated that "Applicant has not contacted creditors, reported perceived duplicate debts to credit reporting agencies, or established a plan to resolve her many remaining debts." Decision at 9. Accordingly, the Judge concluded that Applicant had not acted responsibly with regard to her debts.

Applicant contends that the Judge's findings concerning her plea agreement contain errors. Specifically, she challenges the Judge's finding that she pled guilty to credit card fraud pursuant to the plea agreement. She states that she never admitted that she was guilty and entered her plea of "no contest" only to avoid the hazards of trial. However, the Judge's finding is supported by Government Exhibit 8, State Case Information, which characterizes Applicant's plea as one of "guilty." Even if the Judge's finding were in error, it would be harmless. *See* ISCR Case No. 01-23362 (App. Bd. Jun. 5, 2006); ISCR Case No. 03-09915 (App. Bd. Dec. 16, 2004); ISCR Case No. 01-11192 (App. Bd. Aug. 26, 2002). Applicant challenges the Judge's statement that her discharge in bankruptcy provided her with a "clean slate." The Board concludes that the Judge's comment is a reasonable characterization of the legal consequences of bankruptcy. Applicant also disagrees with the Judge's conclusion that she does not have a plan to pay off her debts. However, the Judge's conclusion, viewed in light of the record as a whole, is sustainable. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Applicant contends that the Judge did not give appropriate weight to evidence favorable to her, for example her good work performance. A Judge is presumed to have considered all the evidence unless the record demonstrates otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). A party'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. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). In light of the entirety of the record evidence, the Judge’s adverse trustworthiness determination is sustainable.

**Order**

The Judge’s adverse trustworthiness determination 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