

KEYWORD: Guideline F; Guideline J

DIGEST: Applicant contends the Judge relied on outdated evidence. She did not object to the evidence nor did she respond to the File of Relevant Material. Adverse decision affirmed.

CASENO: 08-00826.a1

DATE: 03/19/2010

DATE: March 19, 2010

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In Re: )	
)	
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)	
)	
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 May 5, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On December 31, 2009, after considering the record, Administrative Judge David M. White 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’s findings of fact are supported by substantial record evidence; whether Applicant was denied due process of law; whether the Judge failed to consider all the record evidence; and whether the Judge’s adverse trustworthiness determination is arbitrary, capricious, or contrary to law. Finding no error, we affirm.<sup>1</sup>

The Judge found that Applicant has numerous delinquent debts, totaling over \$30,000. While acknowledging that Applicant’s claims that her financial problems were due at least in part to medical issues, the Judge noted that Applicant had not provided adequate corroboration nor had she demonstrated responsible action in regard to her debts. Specifically, the Judge noted that Applicant had paid off only one debt (as a result of a wage garnishment) in spite of evidence that she has income in excess of her expenses and had provided only sparse evidence of financial counseling. The Judge concluded that Applicant had failed to mitigate the trustworthiness concerns in her case.

After reviewing the record, the Board concludes that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. 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 trustworthiness concern are sustainable. *See* Directive ¶ E3.1.32.1 for the definition of “substantial evidence.”

Applicant contends that evidence regarding her husband’s income which the Judge considered is outdated or otherwise not relevant. The Board construes this as contending that the Judge denied Applicant the due process provided for in the Directive. The Judge noted in his decision that Applicant did not provide a response to the File of Relevant Material. She also did not object to consideration of the evidence submitted by Department Counsel. Decision at 2. Applicant has failed to demonstrate that she was denied due process.

Applicant contends that the Judge “misjudged” her by focusing on the negative aspects of her past conduct and not focusing much attention on the positive changes she made in her life since she became employed, *i.e.* not incurring other debts or engaging in similar criminal offenses. The Board construes this as contending that the Judge failed to give proper weight to the record evidence. A Judge is presumed to have considered all the evidence in the record. *Cf.* ISCR Case No. 07-00196

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<sup>1</sup>The Judge made a favorable formal finding under subparagraph 1.a. of the SOR involving a debt to a state agency and a subsequent judgment. That finding is not at issue in this appeal.

at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). Applicant's appeal brief is not sufficient to rebut this presumption. 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.*, ADP Case No. 08-06284 at 2 (App. Bd. Dec. 10, 2009).

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.

Finally, Applicant seeks a "probationary" trustworthiness determination if a reversal of the Judge's decision cannot be granted. The Board does not have authority to grant a conditional or probationary trustworthiness determination. *Cf.* ISCR Case No. 08-11222 at 2 (App. Bd. Sep. 9 2009).

#### **Order**

The Judge's adverse trustworthiness determination is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board