

KEYWORD: Guideline F

DIGEST: Applicant failed to mitigate the trustworthiness concerns arising from her poor financial condition. She failed to demonstrate that she was denied due process. Applicant also failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASENO: 08-06284.a1

DATE: 12/10/2009

DATE: December 10, 2009

In Re:)	
)	
-----)	ADP Case No. 08-06284
)	
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 March 2, 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 decision on the written record. On September 29, 2009, after considering the record, Administrative Judge Wilford H. Ross 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.

The Judge found that Applicant has numerous delinquent debts, totaling over \$12,000. He stated that these debts had been "due and owing for several years." Decision at 5. While acknowledging that Applicant's financial problems were due at least in part to a period of unemployment, the Judge stated that Applicant had not demonstrated responsible action in regard to her debts. Specifically, the Judge noted that Applicant had not paid off any of them, even the smallest ones. 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 some of the evidence 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. Decision at 2. Her appeal brief does not specify which pieces of evidence she believes to have been erroneously included in the record. Applicant has failed to demonstrate that she was denied due process.

A Judge is presumed to have considered all the evidence in the record. 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). 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., 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: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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