

## KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all the record evidence unless he or she states otherwise. Applicant has not overcome that presumption. Adverse decision affirmed.

CASENO: 08-07882.a1

DATE: 04/16/2010

DATE: April 16, 2010

## **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 8, 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 January 26, 2010, after the hearing, Administrative Judge LeRoy F. Foreman denied Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse trustworthiness decision is arbitrary, capricious, or contrary to law. Specifically, Applicant contends that the Judge did not fully consider the documentation and information she provided. Applicant also points out that there are differences between a past credit report and a more recent one and that debts occur more than once on each credit report. Finding no error, we affirm the Judge's trustworthiness decision.

The Judge made the following relevant findings of fact: Applicant is unmarried and has four children ages 11 through 18, all of whom live with her. Applicant receives no child support. Applicant occasionally contributes toward the expenses of her oldest son's child. Applicant admitted owing a significant number of the debts listed in the SOR. The debts Applicant has admitted total about \$13,000. Among the debts Applicant denied are seven judgments which she had satisfied. A few other SOR debts are duplicates. After receiving the SOR, Applicant sent a \$5 payment to five of her creditors. Three of the creditors accepted the payment, and two did not. Applicant's monthly take-home pay (including food stamps) is at least \$466 less than her expenses.

Applicant contends that the Judge did not fully consider the documentation and information she provided. A Judge is presumed to have considered all the evidence in the record unless he specifically states 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). In this case, the Judge specifically discussed Applicant's evidence, including documentation she submitted after the hearing, but before the close of the record. Applicant has not overcome the presumption.

Applicant points out that there are differences between a past credit report and a more recent one and that some debts appear more than once on each credit report. Applicant had the opportunity at the hearing to point out specific information in the credit reports which she wished the Judge to note, and she did call attention to her efforts to improve her financial situation. The Judge mentioned Applicant's efforts to improve her financial situation, and he concluded that some of the debts alleged in the SOR were duplicates.

In effect, Applicant is arguing that the Judge did not give adequate weight to her evidence of mitigation. The presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness determination. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. An applicant'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 that 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. 07-01610 at 2 (Mar. 7, 2008). Here, the Judge discussed Applicant's mitigating

evidence, although he concluded her efforts to improve her financial situation were not sufficient to mitigate the government's trustworthiness concerns. Applicant has not demonstrated error.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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)). The Judge's adverse trustworthiness decision is sustainable on this record.

### **Order**

The Judge's adverse trustworthiness decision 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