

KEYWORD: Guideline F

DIGEST: The Judge's material findings of trustworthiness concern are based on substantial evidence or constitute characterizations or inferences that could be drawn from the record. Adverse decision affirmed.

CASENO: 08-10098.a1

DATE: 01/06/2012

DATE: January 6, 2012

In Re:)	
)	
-----)	ADP Case No. 08-10098
)	
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 October 15, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 27, 2011, after the hearing, Administrative Judge Juan J. Rivera 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 contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. He holds a bachelor’s degree in business marketing. He and his wife separated in 2010. His wife’s daughter from a previous marriage lives with Applicant. The wife provides limited financial support for her daughter.

Applicant worked for a law enforcement agency from 1989 until 2005, during which time he held a security clearance. He lost his job after his clearance was revoked. The revocation was the result of Applicant’s financial problems, criminal conduct, and personal conduct issues. The criminal conduct included bad checks and reckless driving. He also used a Government travel card to pay expenses for a family vacation and failed to reimburse the Government. Applicant was disciplined for having failed to report the criminal incidents to his Government employer. He also “disclosed that he had issued another bad check in June 2010 . . . Applicant admitted to issuing the three bad checks, but he claimed that he reviewed his bank account balance prior to issuing the checks.” Decision at 3.

Additionally, Applicant filed for Chapter 7 bankruptcy protection in 1998. He stated that he had done so because he wanted to discharge his own personal debts in order to be better able to assist his wife in paying off her own debts that she had brought to the marriage. He also had 19 delinquent debts, unpaid as of the close of the record. These debts included judgments against Applicant in favor of the creditors. In the Analysis, the Judge stated that Applicant accumulated these debts after his discharge in bankruptcy. Applicant attributed his financial problems to periods of unemployment.

In 2008, Applicant completed his application for a public trust position. He failed to disclose a 1998 bad check and subsequent criminal charge. He failed to disclose the judgement against him and denied having any debts that were more than 180 days delinquent.

In analyzing Applicant’s case for mitigation, the Judge stated that the repeated nature of Applicant’s Guideline E misconduct indicates that he is not learning from his mistakes and that the misconduct is likely to recur. Under Guideline F, he noted that Applicant’s debts were ongoing and concluded that Applicant had not acted responsibly in regard to them. In the whole-person analysis

the Judge credited Applicant for his evidence of good character. However, the Judge stated that Applicant's circumstances show a disregard for his legal obligation to pay his debts. The Judge ultimately concluded that Applicant had not mitigated the trustworthiness concerns alleged in the SOR.

Applicant contends that the Judge erred in some of his findings. For example, he claims that his false answers to his trustworthiness application were not intentional and that the Judge erred in finding that he had written three bad checks in 2010 rather than just one. On this last point, we read the challenged finding as referring to three instances over several years, which is consistent with the evidence, not three instances in 2010 as Applicant reads the finding. The Judge's material findings of trustworthiness concern are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ADP Case No. 10-01100 at 2 (App. Bd. Jun. 13, 2011). Applicant has submitted new evidence in support of his appeal, for example character references. We cannot consider new evidence. Directive ¶ E3.1.29. *See* ADP Case No. 08-09058 at 2 (App. Bd. Dec. 18, 2009).

The record supports a conclusion 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 decision not to grant Applicant a trustworthiness designation 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