

KEYWORD: Guideline F

DIGEST: On appeal Applicant submitted her Bankruptcy discharge. The Board cannot consider new evidence. Adverse decision affirmed.

CASENO: 10-07047.a1

DATE: 10/12/2011

DATE: October 12, 2011

In Re:)	
)	
-----)	ADP Case No. 10-07047
)	
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 January 21, 2011, 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 June 30, 2011, after considering the record, Administrative Judge Roger C. Wesley 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 mis-weighed the record evidence; whether Applicant was denied due process; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a service representative for a Defense contractor. She has numerous delinquent debts, exceeding \$100,000 in total amount. These debts are for such things as mortgages that have resulted in foreclosure actions, utilities, medical costs, a student loan, etc.

Applicant has experienced unemployment. In addition, she purchased a house with her boyfriend. When she left him, she believed that he would make the mortgage payments. He failed to do so, and, as stated above, foreclosure action resulted. The extent to which she may be liable for deficiency judgments is not clear from the record. Although Applicant plans to resolve her problems through bankruptcy, as of the close of the record she had not provided evidence of an actual filing.

In his analysis, the Judge noted aspects of Applicant's circumstances that were outside her control, for example her periods of unemployment, evidence concerning her pregnancy, and her difficulties with her boyfriend. However, he concluded:

While recurrent unemployment problems, preparations for the birth of her child, and the absence of cooperation and assistance from her ex-boyfriend may have played a considerable role in her accumulation of so much debt exposure, her continuing failure to take any action on her admitted debts and real estate foreclosure is a source of continuing trustworthiness and judgment concerns . . . Overall, a trustworthiness eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgement and trust levels sufficient to overcome concerns arising out of her accumulation of delinquent debts. Decision at 7.

Applicant contends that the Judge did not extend sufficient weight to evidence concerning her intended bankruptcy. She has attached to her appeal a copy of her discharge in bankruptcy, which had not previously been submitted for inclusion in the record. We cannot consider new evidence on appeal. *See, e.g.*, ISCR Case No. 09-06306 at 2 (App. Bd. Jan. 31, 2011). We conclude that Applicant's appeal arguments, viewed in light of the record as a whole, do not demonstrate that the Judge mis-weighed the evidence that was before him.

The Judge noted a paucity of record evidence pertinent to a whole-person analysis, including evidence as to Applicant's job performance. Applicant states that she did not submit this kind of information because she was under the impression that she was not to talk with anyone about her

investigation. To the extent that she is raising a due process issue, we note that DOHA sent her a copy of the File of Relevant Material (FORM) and advised her, by letter dated March 7, 2011, of her right “to submit any material you wish the Administrative Judge to consider or to make any objections” she might have in regard to the information contained in the FORM. Applicant was on notice of her right to submit matters in her behalf. Accordingly, we conclude that she was not denied the due process afforded by the Directive.

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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