

KEYWORD: Guideline F

DIGEST: Applicant argues that he has shown responsible action in regard to his debts and notes that his wife is responsible for a portion of this liability. On this last point, the Judge acknowledged Applicant's wife's contribution to his tax liability but concluded that it did not outweigh the significance of Applicant's current lack of a payment plan. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor do they show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 16-01389.a1

DATE: 03/13/2018

DATE: March 13, 2018

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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**

Gary Barthel, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On November 16, 2016, DoD 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 November 30, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant served on active duty in the military from 1990 to 1992 and again from 1997 to 2000. He is currently in the Reserves. Applicant and his first wife divorced in 2007, which caused him financial problems. For example, he used credit cards to pay living expenses. Moreover, that same year, Applicant was audited by the IRS for tax years 2004 through 2006, as a result of which he incurred additional tax liability resulting from his ex-wife’s business.

Applicant hired a tax representative to negotiate a payment plan, and he made payments of about \$150 to \$200 in accordance with the plan. However, he incurred additional tax liability resulting from forgiveness of a debt and, in 2012, was “no longer in installment agreement status.” Decision at 3. His representative attempted to negotiate a new plan. He eventually hired a new company to assist him, but it was not successful. Applicant’s tax debts were placed in “not collectable” status in early 2015 and remained there until mid-2017.

Applicant hired another person to assist him with his tax problems. This person filed amended returns, and, by early November 2017, he had succeeded in reducing Applicant’s tax debt from the nearly \$72,000 that it was at the time of the hearing to a little over \$55,000. Applicant has timely filed all of his Federal and state tax returns, and he is not indebted to his state taxation authority. He is current on all of his accounts.

Applicant’s supervisor considers him a trusted employee, and Applicant’s performance report shows that he regularly exceeds job requirements. A fellow military Reservist states that Applicant is trustworthy.

### **The Judge’s Analysis**

The Judge made favorable findings regarding some of the SOR allegations—consumer debts, child support/alimony payments, and a tax debt arising from 2010. However, she concluded that Applicant had not mitigated concerns arising from his remaining delinquent Federal tax liability.

She stated that he failed to explain why he stopped making payments under his installment agreement and that Applicant's effort to resolve his tax problem between 2012 and 2017 were "minimal." *Id.* at 7. She stated that Applicant's renewed effort in 2017 to address his tax delinquency was spurred by a concern over his background investigation, which she concluded detracted from the "good-faith" nature of his proposed actions. She stated that he had not presented evidence of a payment plan for his remaining \$55,000 in tax liability, nor was she confident that he had the financial resources to pay his debt.

### **Discussion**

Applicant cites to the impact that his divorce and ongoing litigation over child support and alimony have had on his tax debt. He argues that he has shown responsible action in regard to his debts and notes that his wife is responsible for a portion of this liability. On this last point, the Judge acknowledged Applicant's wife's contribution to his tax liability but concluded that it did not outweigh the significance of Applicant's current lack of a payment plan. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor do they show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 15-06452 at 3 (App. Bd. Feb. 14, 2017); ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26, 2016).

Similarly, Applicant's arguments that he acted responsibly under the circumstances are not adequate to show that the judge erred. A party's ability to argue for a different interpretation of the evidence is not sufficient to demonstrate that the Judge reached conclusions in a manner that is arbitrary, capricious or contrary to law. *See, e.g.*, ADP Case No. 15-07979 at 4 (App. Bd. May 30, 2017).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board