

KEYWORD: Guideline F

DIGEST: Applicant challenges a finding to the effect that there is no evidence that his tax liens have been removed, pointing to a tax transcript contained in the record showing that a lien had in fact been removed. Although the challenged finding is erroneous, the Judge’s analysis focused on the extent of Applicant’s tax delinquencies and on the recency of his efforts to address them. Accordingly, the error is harmless, in that it did not likely affect the overall decision. Adverse decision affirmed.

CASENO: 18-01875

DATE: 07/29/2019

DATE: July 29, 2019

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In Re:)	
-----)	ADP Case No. 18-01875
)	
Applicant for Public Trust Position)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On October 5, 2018, 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 May 17, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR, as amended at the hearing, alleged that Appellant had over \$40,000 in Federal tax liens, that he failed to file his Federal tax returns in a timely fashion for several years, and that he failed to pay Federal income taxes as owed for several years. The Judge found against Applicant on all of the SOR allegations. In addition, he found that Applicant has failed to file his 2002 Federal tax return, which was not alleged in the SOR. He considered this non-alleged conduct on the issues on mitigation, rehabilitation, credibility, and the whole-person factors. Decision at 3, n.4.

Applicant challenges a finding to the effect that there is no evidence that his tax liens have been removed, pointing to a tax transcript contained in the record showing that a lien had in fact been removed. Although the challenged finding is erroneous, the Judge’s analysis focused on the extent of Applicant’s tax delinquencies and on the recency of his efforts to address them. Accordingly, the error is harmless, in that it did not likely affect the overall decision. Applicant cites to his job history and good security record. He has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 18-00166 at 2 (App. Bd. Nov. 29, 2018) for the proposition that a Judge is presumed to have considered all of the evidence in the record.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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