

KEYWORD: Guideline F

DIGEST: Directive ¶ E3.1.7 provides that an applicant shall have 30 days from receipt of the FORM in which to submit a documentary response. A review of the entire record discloses no basis to conclude that Applicant was denied the rights afforded him under the Directive or that he was not provided an adequate opportunity to respond to the FORM. We resolve Applicant's denial of due process assertion adversely to him. Adverse decision is affirmed.

CASE NO: 19-01492.a1

DATE: 03/30/2020

DATE: March 30, 2020

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**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On May 20, 2019, 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 decision on the written record. On January 6, 2020, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine 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 he was denied due process and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant is married and has four minor children. The SOR alleges that he has four delinquent student loans totaling about \$54,000 and a delinquent credit card debt of about \$780. In his response to the SOR, he admitted the four student loan debts but denied the credit card debt. In his response to Department Counsel’s File of Relevant Material (FORM), he acknowledged the credit card debt remained delinquent, noted he set up a repayment plan for it in which he would make monthly payments of \$25, but failed to provide proof of those payments. His FORM response also indicated that he made numerous attempts to resolve his student loan debts but struggled making payments due to providing for a family of six.

In her analysis, the Judge stated:

Applicant has substantial delinquent debts that remain unresolved, including federal student loans, despite being steadily employed full time since April 2010. He failed to establish that his financial situation resulted from circumstances beyond his control or that he acted responsibly to address his delinquent debts. He did not provide proof that he made any of the alleged payments towards his debts. He is credited with negotiating a payment plan to resolve the credit-card debt alleged in SOR ¶ 1.e. However, he did not demonstrate that he initiated good-faith efforts to repay or otherwise resolve his student-loan debts. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time. [Decision at 5.]

### **Discussion**

In his appeal brief, Applicant submitted matters from outside the record. In general, we cannot consider new evidence on appeal. Directive ¶ E3.1.29. However, we have previously considered new evidence insofar as it bears upon the questions of due process and jurisdiction. *See, e.g.*, ADP Case No. 14-05412 at 2 (App. Bd. Oct. 15, 2015).

Applicant essentially asserts that he was denied due process because he was not granted adequate time to submit documentary evidence in response to the FORM. The record reflects that Applicant was sent a copy of the FORM on both September 17, 2019, and October 16, 2019, and was advised to make any objections and to submit any additional matters for the Judge's consideration within 30 days of receipt of that document. In his appeal brief, he states that the FORM was not given to him until December 19, 2019, and provides a signed receipt reflecting he received it on that date. The record, however, contains a receipt that Applicant signed reflecting he received the FORM on October 28, 2019. The record also contains Applicant's response to the FORM: an undated letter in which he submitted seven documents. One of those documents, the repayment plan for the credit card debt, is dated October, 29, 2019. His FORM response does not contain a request that he be granted additional time in order to submit more matters. On December 2, 2019, Department Counsel indicated that she had no objection to the matters Applicant submitted in his FORM response. In her Decision, the Judge noted that Applicant timely responded to the FORM and admitted into evidence the documents he submitted as Applicant Exhibits A through G.

Directive ¶ E3.1.7 provides that an applicant shall have 30 days from receipt of the FORM in which to submit a documentary response. A review of the entire record discloses no basis to conclude that Applicant was denied the rights afforded him under the Directive or that he was not provided an adequate opportunity to respond to the FORM. We resolve Applicant's denial of due process assertion adversely to him.

Applicant's remaining arguments amount to a disagreement with the Judge's weighing of the evidence. These arguments are largely based on new evidence that, as noted above, we cannot consider. He argues that, prior to his current financial problems, he actively addressed his debts and lived within his means. He contends that his alleged debts do not cast doubt on his current reliability and good judgment because they occurred so long ago and under circumstances that are unlikely to recur. Overall, his arguments are not sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 19-02087 at 3 (App. Bd. Feb. 12, 2020).

The Judge examined the relevant evidence 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. 19-02087 at 3. *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