

KEYWORD: Guideline F

DIGEST: In his appeal, Applicant does not challenge any of the Judge’s specific findings of fact or conclusions. Instead, he provides explanations for his financial problems and argues that those problems were the result of conditions beyond his control and he is taking action to resolve them. His arguments, however, are not sufficient to show that the Judge’s conclusions are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Adverse decision affirmed.

CASE NO: 19-02756.a1

DATE: 11/04/2020

DATE: November 4, 2020

In Re:)	
)	
-----)	ADP Case No. 19-02756
)	
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 January 6, 2020, 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 August 12, 2020, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had ten delinquent debts totaling about \$34,300. In answering the SOR, Applicant admitted all of the SOR allegations. The Judge found:

In Applicant’s answer to the SOR, he attributed his delinquent debts to his ongoing divorce and lack of employment. He provided no information about the date on which the divorce proceedings began or the expenses incurred regarding them. He provided no information about his dates of unemployment. He provided no specific information about his income and expenses, and no evidence of financial counseling. . . . In his cover letter for his response to the FORM [File of Relevant Material], he stated, “I am trying to be debt free in about 20 months.” [Decision at 4].

The Judge concluded that Applicant failed to show that he acted responsibly under the circumstances. The Judge found in favor of Applicant on three debts and against him on the others.

In his appeal, Applicant does not challenge any of the Judge’s specific findings of fact or conclusions. Instead, he provides explanations for his financial problems and argues that those problems were the result of conditions beyond his control and he is taking action to resolve them. His arguments, however, are not sufficient to show that the Judge’s conclusions are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Applicant has failed to establish that the Judge committed any harmful error. 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 (App. Bd. Feb. 12, 2020). *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