

KEYWORD: Guideline F

DIGEST: In his appeal brief, Applicant asserts that all of his tax returns are submitted and current. At the hearing, he testified that his Federal and state tax returns for 2015-2018 had not yet been filed.. In his post-hearing submission, he provided an email reflecting that he hired a tax service but submitted no proof that the delinquent tax returns were filed. Applicant’s appeal brief assertion about filing the delinquent tax returns constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. Adverse decision affirmed.

CASE NO: 19-01882.a1

DATE: 10/26/2020

DATE: October 26, 2020

)	
In Re:)	
-----)	ADP Case No. 19-01882
)	
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 July 19, 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 hearing. On July 14, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 19 delinquent debts totaling about \$106,900. Student loans constituted about 90% of his total alleged debt. In responding to the SOR, Applicant admitted all of the SOR allegations. The Judge summarized the case as follows:

Applicant became delinquent on numerous student loans and credit card accounts due to periods of unemployment, loss of other household income, and increased expenses. He is repaying his student loans through a rehabilitation program. Although he has received financial counseling, he has yet to begin repaying his past-due credit card accounts. Additionally, he has not yet filed his federal and state income tax returns for tax years 2015 and 2018. Applicant’s request for eligibility to occupy a position of trust is denied. [Decision at 1.]

In his appeal brief, Applicant asserts that all of his tax returns are submitted and current. At the hearing, he testified that his Federal and state tax returns for 2015-2018 had not yet been filed. Tr. at 65. In his post-hearing submission, he provided an email reflecting that he hired a tax service but submitted no proof that the delinquent tax returns were filed. Applicant’s Exhibit G. Applicant’s appeal brief assertion about filing the delinquent tax returns constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicant also contends that the Judge misapplied various mitigating conditions. His arguments regarding the application of the mitigating conditions amount to a disagreement with the Judge’s weighing of the evidence and 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