



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

KEYWORD: Guideline F

DIGEST: 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.’” And Directive, Encl. 2 ¶ E. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*. Adverse Decision is Affirmed.

CASE NO: 20-02637.a1

DATE: 10/26/2021

Date: October 26, 2021

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Public Trust Position</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ADP Case No. 20-02637</p>
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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 December 16, 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 without a hearing. On August 10, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 11 delinquent debts totaling about \$24,500. In responding to the SOR, Applicant admitted each of the allegations with comments. The Judge found in favor of Applicant on three of the allegations totaling about \$1,700 and found against her on the remaining allegations. The Judge concluded that, while Applicant has begun making progress in addressing her delinquent debts, she has not established a sufficient track record of payments to mitigate the alleged security concerns.

Applicant’s appeal brief contains documents that were not presented to the Judge for consideration, including one that postdates the Judge’s decision. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

In her brief, Applicant challenges the Judge’s findings regarding two SOR debts, one was a medical debt of \$152 and the other a medical debt of \$498. Her challenge regarding the latter debt need not be addressed because the Judge found in favor of her on that debt.

Regarding her other challenge, Applicant correctly points out the Judge erred in finding she presented no documentary evidence of making payments towards the \$152 debt. In her response to Department Counsel’s File of Relevant Material, Applicant presented documentation confirming she was making regular payments towards this debt. Considering the small amount of this debt, the Judge’s error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ADP Case No. 13-01074 at 3 (App. Bd. Aug. 25, 2014).

Applicant asks the Board to reconsider the Judge’s decision. The Board does not review a case *de novo*. The scope of our review is limited to addressing material issues raised by the parties to determine whether harmful error occurred. Directive ¶ E3.1.32.

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) and Directive, Encl. 2 ¶ E. *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