

Date: June 7, 2022

In the matter of:)
)
-----) ADP Case No. 19-00993
)
Applicant for Public Trust Position)
_____)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On October 4, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 22, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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 the Judge erred in her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Under Guideline F, the SOR alleged fifteen delinquent debts, for such things as a student loan, medical expenses, cell phone services, etc., totaling over \$26,000. In addition, the SOR alleged delinquent income tax obligations to both the IRS and Applicant's state of residence. Applicant admitted all of the debts in his Answer to the SOR. Applicant attributed his financial problems to a period of unemployment, lack of health insurance, a contentious personal relationship, and the Covid-19 pandemic. The Judge noted circumstances that were outside Applicant's control that affected his difficulties, and she resolved three allegations in his favor. For the remaining ones, however, she concluded that Applicant had not demonstrated responsible action in regard to his debts or otherwise presented evidence sufficient to mitigate the concerns which they raise.

The Guideline E allegations describe numerous instances of wrongful conduct, much of it apparently criminal. These allegations include an Other Than Honorable Discharge from the military due to absence without leave, resisting an officer, theft, multiple instances of domestic abuse, and ten arrests between 2000 and 2017 for driving without a license. Applicant admitted all but one of the Guideline E concerns. The Judge also noted evidence of misconduct that was not alleged: two instances of driving away without paying for gasoline, an instance of theft of about \$1,200 dating to the late 1990s, and an instance of bail jumping. The Judge noted evidence of seven additional arrests for driving without a license, the latest occurring in 2020. The Judge addressed the non-alleged conduct solely in evaluating Applicant's case for mitigation. She concluded that Applicant's misconduct, viewed as a cumulative whole, established a pattern of rule violations that, given its frequency and recency, precludes a conclusion that it is unlikely to recur. Though noting that Applicant has attended counseling for his problems, she held that he had not presented sufficient evidence that he has put his misconduct behind him.

Applicant contends that "[t]here is no record of [Applicant] admitting to the allegations under Guideline E, so they should be considered summarily denied[.]" Appeal Brief at 4. In fact, Applicant's SOR Answer includes admissions to all but one of these allegations, as the Judge found. On its face, this argument is without merit. To the extent that it implicitly challenges the sufficiency of the Judge's findings under Guideline E, we conclude that these findings are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

The balance of Applicant's brief constitutes, in effect, a disagreement with the Judge's weighing of the evidence. We have considered these arguments in light of the totality of the record. We note, among other things, his argument that his most recent Guideline E allegation pertained to conduct more than five years old. However, Applicant admitted at the hearing to more recent instances of misconduct, which the Judge properly took into account in performing her mitigation analysis. After considering the totality of Applicant's arguments, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record or demonstrated that she weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 18-00166 at 2 (App. Bd. Nov. 29, 2018). Moreover, we conclude that the Judge's whole person analysis complies with the requirements of Directive ¶ 6.3, in that she considered the totality of the evidence in reaching her decision. *Id.* Applicant has submitted some Hearing Office cases in support of his appeal. We give due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). These

cases do not persuade us that the Judge’s adverse decision was erroneous. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019). Given the extensive nature both of Applicant’s financial problems and of his misconduct, we find no reason to disturb the Judge’s ultimate conclusion that Applicant had failed to meet his burden of persuasion as to mitigation.

The Judge examined the relevant data 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. 17-03252 at 3 (App. Bd. Aug. 13, 2018). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

Order

The Decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board