

Date: August 29, 2022

In the matter of:	)	
	)	
	)	
-----	)	ADP Case No. 20-03282
	)	
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 August 18, 2021, 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 July 11, 2022, after the record closed, Administrative Judge Philip J. Katauskas 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 and a Chapter 7 bankruptcy that was filed in 2013 and discharged in 2014. In answering the SOR, Applicant admitted those allegations and reported that he filed another Chapter 7 in November 2021. He did not submit a response to Department Counsel’s File of Relevant Material. The Judge found against Applicant on all allegations, noting that “[t]he debts that raised trustworthiness concerns were delinquent when the SOR was issued in August 2021 and remained in arrears when the FORM was filed.”

Decision at 4. Finding that certain life events were beyond Applicant's control, the Judge concluded that Applicant had failed to offer proof of how he responded responsibly to the adverse circumstances. "Serial Chapter 7 bankruptcy filings are not responsible conduct when trying to resolve delinquent debts." *Id.*

Applicant does not challenge any of the Judge's findings of fact, but instead takes issue with the Judge's conclusion regarding bankruptcy, arguing that "filing bankruptcy shows that you are dealing with your debts." Appeal Brief at 1. Of note, the SOR alleged ten delinquent debts that Applicant amassed following the Chapter 7 discharge in 2014. In the record before the Judge, those debts remained in arrears, with "no evidence that Applicant made any payments, established any payment plans, or contacted his creditors." Decision at 2. Applicant made only a simple representation that he had filed another Chapter 7 bankruptcy following issuance of the SOR. In light of that record evidence, it was not unreasonable for the Judge to conclude that Applicant had failed to demonstrate financial reform and rehabilitation. *See, e.g.,* ISCR Case No. 02-21045 at 4 (App. Bd. Dec. 28, 2004). Moreover, it is well established that, even if debts are ultimately resolved through bankruptcy or by other means, a Judge may still consider the circumstances underlying the debts for what they may reveal about an applicant's trustworthiness eligibility. *See, e.g.,* ADP Case No. 17-00684 at 3 (App. Bd. Aug. 7, 2018).

Applicant's brief also contains financial details and assertions that were not previously presented to the Judge for consideration. The Appeal Board is prohibited from considering new evidence on appeal. Directive E3.1.29.

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. 19-01882 at 2 (App. Bd. Oct. 26, 2020). *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: Jennifer I. Goldstein

Jennifer I. Goldstein  
Administrative Judge  
Member, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Member, Appeal Board