

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

		Date: December 7, 2022
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In the matter of:)	
)	
)	
)	ADP Case No. 21-00031
)	
)	
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 December 15, 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 DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 20, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Benjamin R. Dorsey 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 failed to file his Federal income tax returns for 2013-2019 as required and that he owed approximately \$27,500 in delinquent Federal taxes. Applicant admitted the tax filing deficiencies in his SOR Response. Although he denied the tax delinquency, he acknowledged the debt by stating, "Thus far I have paid \$7525.00 towards my tax debt. I have an agreed pay plan with the IRS." SOR Response at 2. In the decision, the Judge noted that

Applicant has remedied the tax filing deficiencies and has been complying with a repayment plan. However, the Judge concluded the alleged security concerns were not mitigated, observing that Applicant's efforts to remedy his financial problems occurred after he was placed on notice his security clearance was in jeopardy due to them.

Applicant's appeal brief contains documents and assertions that were not presented to the Judge for consideration. Those matters constitute new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

Applicant contends that the Judge did not consider all the evidence. He also argues that he encountered conditions beyond his control contributing to his financial problems, that he acted responsibly under the circumstances, and that he is financially stable. None of his arguments, however, are enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 14-03077 at 3 (App. Bd. Oct. 22, 2015). Applicant also asserts that the loss of his trustworthiness designation will have a negative impact on him, but the negative consequence of an unfavorable decision is not a relevant consideration in making a trustworthiness determination. *See, e.g.*, ADP Case No. 17-01760 at 3 (App. Bd. Apr. 20, 2018).

Applicant failed to establish the Judge committed any harmful error. Based on our review of the record, we conclude the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), *i.e.*, a trustworthiness 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	Signed: Jennifer I. Goldstein	Signed: Moira Modzelewski
James F. Duffy	Jennifer I. Goldstein	Moira Modzelewski
Administrative Judge	Administrative Judge	Administrative Judge
Chairperson, Appeal Board	Member, Appeal Board	Member, Appeal Board