

DATE: November 6, 2015

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In Re:)	
)	
-----)	ADP Case No. 14-06292
)	
)	
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 January 24, 2015, 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 decision on the written record. On August 20, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 Applicant was denied due process and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s

favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Government contractor, a job she has held since January 2013. From September 2010 through July 2012 she attended school and was unemployed. Applicant's SOR lists 15 delinquent debts, for such things as unpaid rent, telecommunication services, a credit card account, a student loan, etc. Three of the debts have been reduced to judgments. Applicant attributed her financial problems to her unemployment while going to school. She offered no evidence of financial counseling. None of the debts alleged in the SOR have been resolved.

The Judge's Analysis

The Judge found that Applicant's debts are recent, multiple, and cast doubt on her reliability and judgment. Although her unemployment may have affected her financial situation, the Judge concluded that she had not demonstrated responsible action in regard to her debts. She has not provided evidence of financial counseling or of debt payment.

Discussion

Applicant states the following: "I have never had to do anything dealing with legal documentation and did not understand the appeal process or what it was asking for." Appeal Brief at 1. We construe this as an argument that she did not understand her rights under the Directive and, therefore, was denied due process. We note that Department Counsel's File of Relevant Material (FORM) included the following:

Absent compelling documentary evidence, submitted in response to this FORM, that Applicant has acted responsibly and in good faith to repay her financial obligations, established a meaningful track record of repayment, or, otherwise, has a substantiated basis to dispute the legitimacy of her delinquent debts, the unmitigated SOR allegations establish a basis for disqualification under the Directive's Guideline F, paragraphs 19(a) and 19(c) . . . [Y]ou shall have 30 days from the receipt of this information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on this FORM.

Applicant was provided a copy of the FORM and the evidence which raised trustworthiness concerns. A cover letter, dated April 24, 2015, stated the following: "[Y]ou have an opportunity to review the attached copy of [the FORM] and submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file." DOHA also sent Applicant a copy of the Directive, which sets forth her right to provide a documentary response

to the FORM: “The applicant shall have 30 days from receipt of the information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” Directive ¶ E3.1.7.

Despite having received this information, Applicant submitted nothing in response to the FORM. Decision at 2. After considering the record as a whole, we conclude that Applicant received guidance that was sufficient to have placed a reasonable person on notice of her rights and obligations. *See, e.g.*, ADP Case No. 14-03541 at 2 (App. Bd. Aug. 3, 2015). We find no basis to conclude that Applicant was denied the due process afforded by the Directive.

Applicant states that, without a trustworthiness designation, she will not have a job. The Directive does not permit us to consider the impact of an adverse determination. *See, e.g.*, ADP Case No. 14-02496 at 3 (App. Bd. May 14, 2015). Applicant cites to evidence of the job she has held for the past several years, arguing that it shows her honesty and worthiness for a trustworthiness designation. Applicant’s brief is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 14-03541 at 3 (App. Bd. Aug. 3, 2015). Neither is it sufficient to show that the Judge mis-weighed the evidence. Applicant’s brief includes information from outside the record. We cannot consider 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. 12-04343 at 3 (App. Bd. May 21, 2013). *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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board