

KEYWORD: Guideline F

DIGEST: Applicant has not demonstrated any harmful error in the Judge's decision. Adverse decision affirmed.

CASENO: 14-00590.a1

DATE: 12/10/2014

DATE: December 10, 2014

In Re:)
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 -----) ADP Case No. 14-00590
)
)
 Applicant for a Public Trust Position)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant eligibility for a public trust position. On March 11, 2014, DOHA issued a statement of reasons (SOR) advising

Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a disposition on the written record. On September 4, 2014, after the close of the record, Administrative Judge Mark Harvey declined to grant Applicant eligibility for a public trust position. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s adverse trustworthiness determination is arbitrary, capricious, and contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable trustworthiness determination.

The Judge made the following findings of fact: Applicant is 54 years old. Applicant had 13 delinquent debts totaling \$64,109. She established that seven of the debts were paid in the aggregate amount of \$6,120. Another debt in the amount of \$1,242 is being paid. Applicant has three delinquent federal income tax debts totaling \$43,029. She failed to timely pay in full her federal income taxes for 2005, 2007, 2008, 2009, and 2010. She gave a variety of explanations for the arrearages, including lack of money, problems with using Turbo Tax, and not having a valid reason. Applicant paid the IRS \$900 in 2011 and \$1,800 in 2012 to address her 2005 and 2007 delinquent taxes. There is no evidence that Applicant paid the IRS anything in the past 18 months to address her delinquent tax obligations, even though she was employed during this period. In addition to the tax debts, there is a \$253 judgment from a medical debt that Applicant plans to resolve but she has provided no updated information on its disposition. There is also a \$13,465 student loan debt. Applicant claims the principal balance of \$2,300 was satisfied multiple times over the course of ten years to various collection agencies. Applicant paid \$540 on this account in 2014.

Applicant described three circumstances beyond her control that contributed to her financial problems. These were unemployment from 2011 to 2013, increases in real estate taxes that made her residence unaffordable, and substantial bills for home renovations and repairs. She also claimed her underpayments of her federal income taxes were largely due to errors using Turbo Tax software.

Applicant filed for Chapter 13 bankruptcy in 2001. The bankruptcy was dismissed in 2003. Applicant said she paid her creditors, and bankruptcy was no longer required. Another Chapter 13 filing was made in 2007, but was dismissed because it was filed in error.

The Judge reached the following conclusions: Applicant’s conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions. There were some circumstances beyond her control. However, her problems with Turbo tax software do not fully explain the magnitude of her delinquent tax bill. She did not provide enough details about her income and tax returns and what she did after becoming employed in January 2013 to address her delinquent debts to establish that she “acted responsibly under the circumstances.” In 2014, she paid \$540 to address her student loan collection debt after denying responsibility for it in her SOR response. Her student loan payments over the last 18 months are insufficient to fully mitigate this debt. Applicant did not act responsibly under the circumstances. She did not provide sufficient information about her finances to establish her inability to make greater progress on her debts after

becoming employed in early 2013. She did not establish that there are clear indications that her financial problems are being resolved or are under control, and will not occur in the future. More financial progress is necessary to fully mitigate trustworthiness concerns.

Applicant asserts that the Judge included her two bankruptcies as part of his decision to deny her eligibility for a public trust position. She states that there was really only one bankruptcy to consider since the second bankruptcy was filed by mistake. A review of the Judge's decision reveals that the Judge recognized the status of the second bankruptcy, and noted the error. Thus, Applicant was not held accountable for two bankruptcies. Moreover, in his formal findings, the Judge found in Applicant's favor on the allegations that cited the bankruptcies. Applicant has not established error on the part of the Judge.

Applicant argues that the rise in property taxes worked a financial hardship on her over which she had no control and that she has paid off a significant number of her debts despite the increase. She states that these factors should have resulted in a favorable outcome to her case. The presence of some mitigating evidence does not alone compel the Judge to make a favorable public trust decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ADP Case No. 09-04275 at 2 (App. Bd. Apr. 18, 2011). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. See, e.g., ADP Case No. 10-01100 at 2 (App. Bd. Jun. 13, 2011). The Judge's findings and conclusions regarding Applicant's unresolved financial delinquencies are supported by the record evidence and provide a sufficient basis for his adverse public trust determination. Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

Applicant argues that the Judge's inclusion of the federal tax liens taken out against her in his decision was error. She asserts that the liens "were not part of the debt", and she described a process, included in the record, wherein the tax liens will be removed. Her assertions do not establish error. A review of the Judge's decision indicates that his principal concern was the tax arrearages represented by the tax liens, not the liens themselves. Applicant does not maintain that she did not accrue the arrearages. The Judge's findings and conclusions concerning Applicant's tax debts are supported by the record and provide a sufficient basis for the Judge's ultimate adverse public trust decision.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

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