

KEYWORD: Guideline F

DIGEST: Applicant’s unresolved financial problems support the Judge’s adverse conclusions, despite her good record. The Board has no authority to grant a trustworthiness designation on a conditional or probationary basis. Adverse decision affirmed.

CASENO: 14-00700.a1

DATE: 09/24/2014

DATE: September 24, 2014

In Re:)	
)	
-----)	ADP Case No. 14-00700
)	
Applicant for Position of Trust)	

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 April 2, 2014, 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 17, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied

Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Defense contractor. She holds both a bachelor's and master's degrees. Applicant has numerous delinquent debts, for student loans, back taxes owed the IRS and her state, a defaulted timeshare loan, a defaulted car loan, and other delinquent debts. She attributes her financial problems to multiple causes. She purchased a home in 2005, and the payments turned out to be greater than she could afford. She eventually lost the house to foreclosure. Applicant experienced unemployment when she left a job in order to attend to family members with medical problems. She was unemployed from January 2010 until February 2011.

She has entered into installment agreements to pay her Federal taxes. Her state placed liens against her income for her tax debts, and these liens have subsequently been released. However, as of the close of the record, she still owed state taxes for tax year 2012. Applicant offered to make installment payments in satisfaction of her state tax debt. She offered to settle a debt resulting from her timeshare foreclosure as well as the one resulting from the voluntary repossession of her car. These settlement offers were made in June and July 2014. She has also paid or settled other SOR debts, and she has offered to settle two collection debts. Moreover, she promised to contact the collection company holding a \$5,000 medical debt. Applicant has attended a 13-week financial counseling course and obtain additional counseling through another provider.

The Judge's Analysis

The Judge concluded that Applicant's financial problems raised concerns under Guideline F. He found that she had mitigated some of the debts. However, for others, including the student loans, the tax debts, the timeshare, the car loan, and the medical debt, he concluded that she had not demonstrated mitigation. Though acknowledging that, to a certain extent, her problems may have resulted from circumstances outside her control, he concluded that she had not demonstrated responsible action in regard to her debts, nor had she shown that she had made a good-faith effort to resolve them. He stated that Applicant's on-going financial problems continue to cast doubt on her fitness for a trustworthiness designation.

Discussion

Applicant cites to evidence that she has paid off some of her debts. She argues that the Judge devoted an unreasonable measure of attention to her remaining delinquencies and did not properly weigh her efforts to resolve her problems. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 13-00584 at 3 (App. Bd. Apr. 24, 2014). Neither has Applicant demonstrated that the Judge

weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. The Judge's conclusion that Applicant's delinquencies raised unresolved doubts about her fitness for a trustworthiness designation was consistent with the record that was before him. We note, for example, his findings about the recency of her settlement offers regarding her tax debts, timeshare, and car loan. Timing of settlement offers and debt payments is relevant in evaluating an applicant's case for mitigation. *See, e.g.*, ISCR Case No. 12-00723 at 4 (App. Bd. Feb. 4, 2014).

Applicant states that she has never misused protected information. She also states that her current duties do not require "access to any code for any systems." Appeal Brief at 1. Concerning the first contention, the Government need not wait until an applicant actually mishandles protected information before it can revoke access. *See, e.g.*, ADP Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009). Applicant's unresolved financial problems support the Judge's adverse conclusions, despite her good record. Even those with good work or disciplinary histories may undergo circumstances that raise questions about their reliability or judgment. Regarding the second contention, our jurisdiction is limited to those issues described in Directive ¶ E3.1.32. We have no authority to rule on the extent to which an applicant may or may not actually have access to sensitive information in the ordinary course of duty. Applicant requests that we grant her a trustworthiness designation with the proviso that she be reinvestigated in a year in order to demonstrate resolution of her financial problems. We have no authority to grant a trustworthiness designation on a conditional or probationary basis. *See, e.g.*, ADP Case No. 06-11792 at 3 (App. Bd. Jun. 15, 2007).

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board