

KEYWORD: Guideline F

DIGEST: Applicant's arguments are insufficient to rebut the presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 14-04479.a1

DATE: 03/04/2016

DATE: March 4, 2016

In Re:)
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-----) ADP Case No. 14-04479
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)
Applicant for Public Trust Position)
)
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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 March 31, 2015, 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 December 17, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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

In 2007, Applicant filed for Chapter 13 bankruptcy protection, completing payments in 2012. He discharged about \$200,000 in debt. His SOR alleges additional debts that arose from 2008 until 2014. Though Applicant contended that most of his debts were resolved, the Judge found that three of them had been paid. She entered favorable findings for these three but adverse findings for the remainder. The debts that the Judge resolved against Applicant were for student loans, medical treatments, and a vehicle loan. The student loans appear to be the subject of some sort of payment plan, the terms of which were not provided. Applicant attributed his problems to medical bills and to a period of self-employment in which he did not have enough income. There is no evidence in the record that Applicant received financial counseling, nor did he provide a budget or a plan to resolve his debts. He did not submit character references or job performance evaluations.

The Judge’s Analysis

The Judge stated that Applicant continued to accumulate delinquent debt during and after his bankruptcy discharge. She concluded that he had submitted insufficient information to show that his financial problems are unlikely to recur. Though noting circumstances outside Applicant’s control that affected his financial condition, such as medical problems and inadequate income, the Judge concluded that his circumstances did not permit the full application of Mitigating Condition 20(b), which requires evidence of responsible action in regard to debts.¹ Though she found that he had initiated good faith efforts to pay the three debts mentioned above, she stated that it is not clear when he began addressing his student loans. She also stated that there is no evidence of any successful dispute of Applicant’s delinquent debts. The Judge concluded that Applicant failed to submit sufficient evidence to show that his finances are being properly handled and that his problems are unlikely to recur.

Discussion

Much of Applicant’s appeal presentation consists of assertions and documents that are not found in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. He cites to

¹Directive, Enclosure 2 ¶ 20(b): “the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances[.]”

evidence regarding debts resolution. However, his arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record or to show that she misweighed the evidence. *See, e.g.*, ADP Case No. 14-03541 at 3 (App. Bd. Aug. 3, 2015). Applicant challenges the Judge’s finding that he had not received financial counseling. He states that such counseling is a requirement for a successful bankruptcy discharge. In point of fact, the Judge found that the record contained no evidence on this matter, which is correct. Even if one concludes that she should have inferred such counseling from Applicant’s bankruptcy, her failure to have done so did not likely affect her overall decision. Therefore, even if this was an error, it was harmless.

Applicant denies that he is at risk to commit illegal acts to resolve his debts. However, the concern under Guideline F is not simply that an applicant might be tempted to compromise classified information or engage in other illegality in order to pay his debts. It also addresses the extent to which an applicant’s circumstances cast doubt upon his judgment, self control, and other qualities essential to protecting classified information. *See, e.g.*, ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015). In this case, the Judge’s findings that Applicant had a significant amount of delinquent debt, much of which he acquired during the time he was undergoing Chapter 13 bankruptcy proceedings, along with her sustainable conclusion that Applicant had not submitted enough evidence to meet his burden of persuasion as to mitigation, support her adverse decision.

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

Signed: James E. Moody _____
James E. Moody
Administrative Judge
Member, Appeal Board