

KEYWORD: Guideline F

DIGEST: Applicant states that the Judge gave her time after the hearing to submit documents corroborating her testimony about debt resolution and that she provided the documents, thereby doing what the Judge asked of her. She believes that it was improper for the Judge to have denied her a trustworthiness designation. A Judge has no authority to promise an applicant a favorable result or to advise an applicant on the quantum of evidence that would mitigate the concerns in his or her case. The Judge did give Applicant additional time to submit evidence. However, she said nothing that would have led a reasonable person to believe that submitting such evidence would necessarily result in a favorable decision. Adverse decision affirmed.

CASENO: 15-01017.a1

DATE: 11/18/2016

DATE: November 18, 2016

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In Re:)	
)	
-----)	ADP Case No. 15-01017
)	
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 August 1, 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 hearing. On August 24, 2016, after the hearing, 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

Applicant is 23 years old. She began her current job in 2014, before which she experienced six months of unemployment. She has financial problems that began when she was 20. She suffered from various illnesses and did not have medical insurance to cover the treatments. Her SOR alleges over \$39,000 in delinquent debts, all but one of which are for medical expenses. All of the medical debts are unresolved, including small ones for as little as \$13.

In addition to those debts alleged in the SOR, Applicant has other medical debts that have become delinquent. In May 2016, she met with a credit counseling service. In 2015, her annual salary was \$22,500. Her current monthly income is \$1,400, but her monthly expenses are a little over \$1,800. Post-hearing, she advised that she was going to file for bankruptcy protection. She had previously considered that course of action but decided against it.

The Judge’s Analysis

The Judge cleared Applicant regarding the single non-medical debt, an automobile loan. For the remainder of the allegations, however, she entered adverse findings. The Judge stated that Applicant did not produce evidence to show that she engaged in responsible action in regard to her debts, even the smaller ones. She noted that Applicant did not seek credit counseling until after the hearing. The Judge concluded that Applicant had not demonstrated a track record of debt resolution.

Discussion

Applicant cites to favorable evidence, such as her effort at debt resolution and her decision to file for bankruptcy. She also notes that she has worked in her current job for two years without incident or concern. In making her argument, Applicant cites to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant has not rebutted the presumption that

the Judge considered all of the evidence in the record, nor has she shown that the Judge mis-weighted the evidence. *See, e.g.*, ADP Case No. 14-03541 at 3 (App. Bd. Aug. 3, 2015).

Applicant states that the Judge gave her additional time after the hearing to submit documents corroborating her testimony about debt resolution. Applicant states that she provided the additional documents, thereby doing what the Judge asked of her. She believes that it was improper for the Judge to have denied her a trustworthiness designation. A Judge has no authority to promise an applicant a favorable result or to advise an applicant on the quantum of evidence that would mitigate the concerns in his or her case. *See, e.g.*, ISCR Case No. 14-02806 at 3, Note 1 (App. Bd. Sep. 9, 2015). In the case before us, the Judge did indeed give Applicant additional time to submit evidence. However, she said nothing that would have led a reasonable person to believe that submitting such evidence would necessarily result in a favorable decision. We resolve this assignment of error adversely to Applicant.

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 Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge

Member, Appeal Board