

KEYWORD: Guideline F

DIGEST: Judge concluded that unpaid debts are a continuing course of conduct which precluded a finding that the debts occurred so long ago as to lack security significance. She also concluded that Applicant did not provide a nexus between her economic circumstances and her financial situation. These conclusions are sustainable on this record. Adverse decision affirmed.

CASENO: 13-01008.a1

DATE: 12/15/2014

DATE: December 15, 2014

In Re:	)	
	)	
-----	)	ADP Case No. 13-01008
	)	
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 November 7, 2013, 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 September 18, 2014, after considering the record,

Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 the Judge failed properly to apply the whole-person concept and 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 has been employed in her current position since late 2012 and has been gainfully employed since 2003. The record does not show whether she has previously held a position of trust.

Applicant's SOR alleges several delinquent debts totaling over \$79,000, for such things as state and federal tax liens and various collection accounts. Applicant stated that her problems resulted from an economic downturn and family medical bills. She did not provide any further information about these matters.

Applicant stated that from 2004 to 2008 her taxes were not withheld from her pay, as she was an independent contractor. She set up a payment plan of \$150 a month with the IRS. She is negotiating an Offer in Compromise and avers that the IRS has suspended her obligation to make payments in the meantime. The SOR alleged two other Federal tax delinquencies. Applicant stated that one of these is a repeat of the debt described above. She provided no corroboration for her claim that the third alleged Federal tax debt is in repayment status. She also had state tax delinquencies which, she stated, have been in repayment status for two years. She supported this claim with documentation.

Another debt is a judgment for nearly \$16,000. She stated that this debt had been in repayment status for three years and provided documentation showing monthly payments of \$150 for year 2014. She stated that this debt will be resolved by the end of the year. Regarding three other SOR debts, Applicant stated that they had been settled and charged off. She provided no corroboration for this claim.

The record contains no evidence as to Applicant's monthly income. She stated that she pays no rent and has no car loan. She traveled abroad for over a month in 2011.

Applicant enjoys an excellent reputation for trustworthiness, loyalty, and dependability. Her March 2014 performance appraisal showed that she consistently exceeded standards.

### **The Judge's Analysis**

The Judge concluded that Applicant's financial circumstance raised concerns under Guideline F.<sup>1</sup> The Judge resolved the allegation regarding the state tax debt in Applicant's favor. However, she resolved the remaining allegations against Applicant. The Judge noted that unpaid debts are a continuing course of conduct,<sup>2</sup> precluding a finding that the debts occurred so long ago as to lack security significance.<sup>3</sup> She also stated that Applicant did not provide a nexus between the economic circumstances that she discussed in her written presentation and her financial situation.<sup>4</sup> The Judge stated that there was insufficient information as to when Applicant began making payments on her debts, and Applicant provided no evidence that she had received financial counseling.<sup>5</sup>

In the whole-person analysis, the Judge cited to Applicant's favorable character evidence and to her payments on some of the debts. However, the Judge stated that payments to the IRS began in 2013, although the tax delinquencies go back to 2005. Accordingly, the Judge expressed doubts about Applicant's financial responsibility. She noted that the Directive requires her to resolve doubts in favor of national security.

### **Discussion**

Applicant's brief cites to her favorable evidence, such as her work performance and her efforts to pay off her debts. In doing so, she provides details that were not included in the record. We are not permitted to consider new evidence on appeal. Directive ¶ E3.1.29. The Judge made detailed findings about Applicant's character evidence and her debt payments. Applicant's argument on appeal is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record or to show that she weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 13-00584 at 3 (App. Bd. Apr. 24, 2014).

We conclude that the Judge addressed the totality of Applicant's circumstances and conduct in reaching her ultimate decision. Accordingly, we find no reason to disturb the Judge's whole-person analysis. *See, e.g.*, ADP Case 06-02549 at 2 (App. Bd. Jul. 3, 2007).

---

<sup>1</sup>*See* Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debt;" and 19(c): "a history of not meeting financial obligations[.]"

<sup>2</sup>*See, e.g.*, ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010).

<sup>3</sup>*See* Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

<sup>4</sup>*See* Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

<sup>5</sup>*See* Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

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 Administrative Judge’s 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