

KEYWORD: Guideline F

DIGEST: A party’s disagreement with a Judge’s weighing of the evidence or an ability to argue for a different interpretation of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Promises to pay off debts in the future are not a substitute for a track record of debt resolution. Adverse decision affirmed.

CASE NO: 14-00860.a1

DATE: 03/12/2015

DATE: March 12, 2015

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In Re:)	
)	
-----)	ADP Case No. 14-00860
)	
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 eligibility for a public trust position. On April 28, 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 hearing. On December 31, 2014, after the hearing, Administrative Judge Matthew E. Malone denied Applicant eligibility for a public trust position. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision is arbitrary, capricious or contrary to law.

Applicant contends that the Judge's adverse decision should be reversed because the Judge did not correctly weigh the evidence. Specifically, he argues that most of his indebtedness was due to a circumstance beyond his control, an extended period of unemployment, and that he planned to payoff his debts after he has secured a job and stabilized that job. In support of his contention, he notes that he had recently negotiated payment plans for his tax indebtedness with the Internal Revenue Service and the state tax authorities. He states that "[a]lthough on paper these may look bad, they were legitimate negotiations" and that he wants to payoff the tax indebtedness before addressing his other debts. Applicant's Brief at 1.

Applicant's argument does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law. The presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness determination. 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. 14-01564 at 2 (App. Bd. Jan. 28, 2014). 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. 14-00590 at 3 (App. Bd. Dec. 10, 2014). Moreover, promises to pay off delinquent debts in the future are not a substitute for a track record of timely debt repayment. See, e.g., ADP Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

In this case, the Judge found that Applicant's financial problems were recent and had been ongoing for a number of years. Applicant had incurred a tax liability in 2011 that he was unable to pay. The tax debt was enforced by a lien, and in 2012 Applicant withdrew \$384,000 from his pension fund to pay the lien. He also bought a house that same year for \$271,000, even though he did not have a job at the time. As a result of the pension fund withdrawal, Applicant incurred the federal tax liability of \$126,000 and the state tax liability of \$12,000, that became the subject of the repayment plan that he established at around the time of the hearing. He also still owed about \$106,000 for a number of other delinquent or past-due debts, several of which he disputed. Decision at 3-4. In reaching his adverse conclusion the Judge noted in particular that: "Despite having access in late 2011 to more than enough money to pay those debts, he chose instead to buy a house without first having a job. Applicant's poor judgment in this regard only exacerbated his financial problems and sustained the Government's concerns about his suitability for access to sensitive information." *Id.* at 6.

In light of the foregoing, the Judge's conclusion that Applicant's financial problems were still ongoing and that he had not met his burden of persuasion as to mitigation is sustainable. The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He reasonably explained why the mitigating evidence was insufficient to overcome the government's trustworthiness concerns. 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.*, ADP Case No. 14-00590 *supra* at 3.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the 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 interest of national security'." *See, e.g.*, ADP Case No. 14-00590 *supra* at 3. *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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board