

KEYWORD: Guideline F

DIGEST: Given the extent of Applicant's delinquent debts, the absence of a reasonable explanation for his financial problems, and a paucity of evidence of a track record of meaningful debt resolution, the Judge's ultimate decision is sustainable. Adverse decision affirmed.

CASENO: 14-03077.a1

DATE: 10/22/2015

DATE: October 22, 2015

In Re:	)	
	)	
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	)	ADP Case No. 14-03077
	)	
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 12, 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 August 11, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 employed by a Defense contractor. She began this job in 2013, following a period of employment in another state. Except for a month in 2013 during which she moved from her previous job to her current one, Applicant has been fully employed since 1999. She also works about 20 hours a week at a part-time job. She has a master’s degree. Applicant’s husband has a child from a previous relationship and pays child support.

In early 2009, Applicant filed for Chapter 13 bankruptcy protection. Upon her motion, the petition was dismissed because Applicant had been able to refinance a mortgage loan. Applicant’s SOR includes numerous delinquent debts, for such things as back taxes (evidenced by Federal tax liens), student loans, consumer debts, etc.

Applicant stated that she got behind on her taxes because she failed to ensure that sufficient funds were withheld from her income, resulting in her inability to pay when they became due. She acquired her student loans in order to fund her master’s degree. She took out additional student loans to pay for some on-line courses that did not lead to a degree. When Applicant heard nothing from the lenders, she assumed that the loans were in forbearance and did not pay them. Applicant’s student loan debts exceed \$200,000. Applicant acknowledged that, during the time she was receiving the additional student loans, she was working and used the loan money to pay expenses other than those associated with her course work.

Applicant has a payment agreement with the IRS to address the tax liens for 2009. She has an agreement regarding other tax years, but she has not started making payments. In the past she made monthly payments toward addressing her tax debts, but she has not consistently done so. For example, she stopped making payments during her bankruptcy proceeding because she did not have the money. Applicant made payments on rehabilitation plans for her student loans. One group of loans is now in forbearance until 2016 and another group is the subject of a rehabilitation program whereby Applicant will pay \$71 per month for nine months.

From July 2014 until the following September, Applicant received substantially less income due to medical issues. She has entered into a contract with a debt management company, which recommended a payment plan for her debts. Applicant meets the expectations of her employer and has received an award certificate. A witness, someone whom Applicant had supervised in the past, described her as a person who believes in following the rules. She characterized Applicant as trustworthy.

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

The Judge noted that Applicant had payment plans in place to address her delinquent taxes. She also cited to Applicant's rehabilitation plans for her student loans, to circumstances affecting her debts that were outside her control, such as her medical problems, and to evidence that she has consulted with a debt management company. However, the Judge also stated that Applicant had numerous consumer debts that she had not begun to pay. Looking at her financial circumstances as a whole, the Judge concluded that Applicant had not demonstrated responsible action in regard to her debts. She also concluded that, given Applicant's history, it is not clear that her financial problems will not recur. In the whole-person analysis, the Judge stated that Applicant had not presented a reasonable explanation for her poor financial condition and that she had not made sufficient efforts to resolve her debts. The Judge concluded that Applicant did not have a credible track record of debt payment to show that she has her problems under control.

### **Discussion**

Applicant cites to her favorable evidence, such as her agreement with the debt management company, her payment plans, and her good character evidence. These are matters that the Judge was required to consider, along with all the other evidence in the record. The Judge made findings about the evidence that Applicant addresses in her brief and discussed most of it in the Analysis.

Given the extent of Applicant's delinquent debts, the absence of a reasonable explanation for Applicant's financial problems, and a paucity of evidence of a track record of meaningful debt resolution, the Judge's ultimate decision is sustainable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 14-03541 at 3 (App. Bd. Aug. 3, 2015). Neither has she shown that the Judge 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). The concern under Guideline F is that delinquent debts may indicate that an applicant is lacking in judgment or self control, which can raise questions about the person's ability properly to guard protected information. *See* Directive, Enclosure 2 ¶ 18. *See also* ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015).

Applicant states that, due to the Judge's decision, she is not able to work at her job. However, the Directive does not permit us to consider the adverse impact of an unfavorable decision. *See, e.g.*, ADP Case No. 14-02496 at 3 (App. Bd. May 14, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *See, e.g.*, ADP Case No. 14-03300 at 2 (App. Bd. July 10, 2015). 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