

KEYWORD: Guideline F

DIGEST: Promises to pay off delinquent debt in the future are not a substitute for a track record of timely debt repayment. Adverse decision affirmed.

CASENO: 14-03300.a1

DATE: 07/10/2015

DATE: July 10, 2015

In Re:)
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)
 -----) ADP Case No. 14-03300
)
)
 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 August 5, 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 decision on the written record. On April 29, 2015, after considering the record, Administrative Judge Edward W. Loughran 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, she states that she is dependable, faithful and loyal, and has never been in trouble with the law. She also states that she has good judgment and that throughout her previous work history she has never been discharged from employment due to untrustworthy behavior. Additionally, she offers assurances that she will repay her outstanding debts in the future. Applicant’s argument does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law

Applicant elected to have her case decided upon the written record and filed a one-page response to the government’s File of Relevant Material (FORM), stating that she had paid off one of the debts and would work out repayment plans on the other debts in the future. Applicant’s submission on appeal contains multiple documents including a performance review, character references, and efforts to obtain credit counseling that were not part of the record before the Judge. The Board cannot consider this new evidence on appeal. Directive ¶ E3.1.29.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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*. 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. 14-00860 at 2 (App. Bd. Mar. 12, 2015). Moreover, promises to pay off delinquent debts in the future are not a substitute for a track record of timely debt repayment. *Id.*

In this case, the Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant had eight delinquent debts totaling about \$28,650, and the Judge noted that there was “a lack of evidence in the record about how and when Applicant will address her finances.” Decision at 2 and 4. In light of the foregoing, the Judge’s conclusion that Applicant’s financial problems were still ongoing and that she had not met her 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. 14-00860 *supra* at 2.

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. 14-00860 *supra* at 3. *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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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