

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to pay income taxes for two years because she was influenced by a book her sister read that purported to establish a method to avoid paying taxes. Adverse decision affirmed.

CASENO: 14-05409.a1

DATE: 02/12/2016

DATE: Febraury 12, 2016

_____)	
In Re:)	
)	
-----)	ADP Case No. 14-05409
)	
)	
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 February 6, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for

that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 21, 2015, after the hearing, Administrative Judge Matthew E. Malone denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s adverse decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant is 52 years old. She did not file her federal income tax returns or pay any taxes due for tax years 2006 and 2007. She did not file her state income tax returns or pay any taxes due for tax years 2005, 2006, and 2007. In 2005 her sister told her about a book that purported to establish a legal way to avoid paying income tax. Although Applicant did not read the book, or only read parts of it, she decided to change her income tax withholding status to “exempt” and she stopped filing her state and federal returns. Applicant purportedly was persuaded of the propriety of her actions by a telephone conversation with an IRS representative, who referred to the need to close “that loophole,” when referring to the change in Applicant’s tax withholding status. Applicant did not present any corroboration for this claim.

In 2008, Applicant became alarmed by the fact that a famous movie star had been convicted and jailed for failing to timely file his income taxes. Subsequently, she retained the services of a tax debt resolution firm to help her prepare past-due tax returns and establish repayment plans for delinquent taxes. Payments were made on a regular basis from 2008 until sometime in 2010, when Applicant found out that the firm was no longer performing properly. She worked with another firm and was able to bring her income tax return filings current in 2010. She also re-established repayment plans for all of her past-due tax obligations.

The Judge reached the following conclusions: Applicant has resolved her tax delinquencies and brought her filing status current with both state and federal tax authorities. She is not likely to repeat her conduct in this regard. However, the fact that she would so recklessly decide that she could avoid her tax obligations and attempt to defraud the Government for personal gain creates doubt about her judgment and reliability that is not easily resolved. Her efforts to resolve her tax delinquencies were motivated by a fear of going to jail. In none of her explanations for her conduct did she express an understanding that she had shirked her tax paying obligations as a U.S. citizen. The “good faith” aspect of Applicant’s resolution efforts is shallow at best. Her acknowledgment of her taxpayer responsibilities is elusive and does not inspire confidence that she will continue to meet her responsibilities in the future. Her conduct goes to the heart of the Government’s need to ensure each person in whom it reposes its trust is reliable and has the requisite good judgment. On balance, Applicant did not mitigate the trustworthiness concerns resulting from her financial difficulties and her personal conduct.

Applicant asserts that the evidence supports a determination that she engaged in “continually diligent efforts” to correct the issues resulting from her errors in judgment, and her acceptance of responsibility for those errors. She also argues that she was not knowingly a willing party to tax fraud. She states that the record indicates seven years of continuous improvement in her satisfaction of financial obligations. Applicant asserts that she is learning budgeting strategies and how to scrutinize information to avoid future scams. Applicant’s arguments do not establish error on the part of the Judge.

Once the Government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Applicant’s efforts in filing her tax returns and addressing her tax arrearages was evidence that the judge was required to consider. However, such evidence does not mandate a favorable decision. 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.,* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case the Judge made sustainable findings that Applicant understood her obligations as a taxpayer as evidenced by the fact that she had paid her taxes for years before making a reckless decision to avoid those obligations. Central to the Judge’s analysis was his conclusion that Applicant mended her ways more as a result of her fear of prosecution than of true recognition of her errors in judgment. These findings and conclusions are supported by the record, as is the Judge’s conclusion that Applicant wilfully attempted to defraud the Government.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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