

KEYWORD: Guideline F

DIGEST: The Directive explained Applicant's right to choose the forum within which her case for mitigation would be evaluated. Also, she received a DOHA memo through which she was to make a choice of forum. She checked a decision on the written record. The File of Relevant Material (FORM) and the cover letter provided information regarding her right to submit a documentary response. Applicant submitted nothing in response to the FORM. It is the applicant's job to present evidence in mitigation of the concerns raised by her conduct or circumstances. There is nothing to suggest that Applicant's choice of an adjudication on the written record was other than knowing and intelligent. Nor was her failure to provide evidence attributable to a lack of clear guidance as to her rights. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. Adverse decision affirmed.

CASENO: 14-06631.a1

DATE: 02/12/2016

DATE: February 12, 2016

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In Re: )	
)	
----- )	ADP Case No. 14-06631
)	
)	
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 January 20, 2015, 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 November 21, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 works for a Government contractor. She was unemployed from August 2008 through October 2009. Her SOR alleges 12 delinquent debts totaling a little over \$15,000. There is no evidence that any of these debts have been paid, and they remain unresolved. In addition, the SOR alleges that Applicant was discharged in Chapter 7 bankruptcy in 2010.

In her answer to the SOR and in her interview, Applicant stated that her problems were caused by unemployment, a divorce, and medical expenses she incurred during a time in which she had no medical insurance. In addition, she has three adult children who still live at home. She plans to start paying her medical bills one at a time, although there is no evidence of agreements with creditors. Applicant has over \$700 each month in discretionary income. She has not had financial counseling.

**The Judge’s Analysis**

The Judge stated that Applicant’s debts are recent, multiple, and cast doubt upon her reliability, trustworthiness, and good judgment. He noted the circumstances outside Applicant’s control that affected her financial condition, but he concluded that she had not shown responsible action in regard to her debt. She presented no evidence of financial counseling or of debt resolution.

**Discussion**

Applicant states that, upon receipt of the SOR, she was not sure whether or not she needed a hearing. She states that two supervisors told her that a written statement, such as the one she presented in answering the SOR, would be enough. We construe this as an argument that Applicant

did not understand her rights and obligations under the Directive, impairing her receipt of due process.

We note that Applicant's SOR was accompanied by a copy of the Directive, which explained her right to choose the forum within which her case for mitigation would be evaluated. In addition, she received a memo, prepared by DOHA, through which she was to make a choice of forum, and Applicant checked a decision on the written record. Item 1, SOR Attachment. Moreover, the File of Relevant Material (FORM) provided information regarding her right to submit a documentary response, and she received similar guidance from the DOHA cover letter that accompanied it. Nevertheless, Applicant submitted nothing in response to the FORM. In a DOHA proceeding, it is the applicant's job to present evidence in mitigation of the concerns raised by her conduct or circumstances. Directive ¶ E3.1.15. There is nothing in the record to suggest that Applicant's choice of an adjudication on the written record was other than knowing and intelligent. Neither was her failure to provide evidence in response to the FORM attributable to a lack of clear guidance as to her rights. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). Applicant was not denied the due process that the Directive affords. *See, e.g.*, ADP Case No. 10-07047 at 2 (App. Bd. Oct. 12, 2011).

Applicant cites to evidence regarding the circumstances outside her control that affected her financial problems. Applicant's arguments are not enough to rebut 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). Her brief consists, in large measure, of a disagreement with the Judge's weighing of the evidence, which is not enough to show 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). Applicant notes that without a favorable decision she will lose her employment. The Directive does not permit us to consider the impact that an adverse decision might have on an applicant. *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 record supports the Judge's conclusion that Applicant did not provide sufficient evidence to mitigate the concerns arising from her financial difficulties, such as efforts at debt payment, financial counseling, etc. 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 Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan  
Michael Y. 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