

KEYWORD: Guideline F

DIGEST: Applicant argues that she has not breached her position of trust, has not been disciplined in her current job, and is not someone who can be blackmailed. The presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness decision. Adverse decision affirmed.

CASENO: 15-02086.a1

DATE: 05/25/2017

DATE: May 25, 2017

In Re: ----- Applicant for Public Trust Position)))))))	ADP Case No. 15-02086
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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 October 10, 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 April 6, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Kilmartin 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is a 45-year-old employee of a Federal contractor. She is divorced and experienced periods of unemployment. The SOR alleges, in part, that she has five delinquent student loans. She asserted that she had an arrangement to pay \$134 per month on those loans. She provided one receipt showing a \$134 payment in 2015 and reflecting a total balance of over \$150,000. She presented no other evidence of payments on the student loans.

Applicant asserted four other debts have been settled with zero balance. She provided proof of payment on one debt, but provided no documentation substantiating the other delinquent accounts were settled.

In her security clearance application, Applicant disclosed that she was involved in an automobile accident and a settlement was pending that would be used to resolve delinquent medical debts. Although she received the settlement years ago, the medical debts still are not resolved.

The Judge's Analysis

Many of the delinquent debts are over five years old. She provided documentation showing one payment on her student loans, proof of paying another debt, and scribbling in the margin of a collection letter that may be indicative of a payment on a third debt. She produced no other documentation showing payments or progress on the alleged debts. While her divorce, periods of unemployment, and automobile accident are arguably conditions beyond her control, she has not acted responsibly under the circumstances. She provided no evidence of counseling, good-faith efforts to repay creditors, or that her financial problems are being resolved or under control.

Discussion

In the appeal brief, Applicant states that she has a repayment plan in which she pays \$5 per month on the student loans and that they are out of default. She also provided an explanation for why she did not use her automobile accident settlement to pay the medical debts. This information was not previously presented to the Judge and constitutes new evidence that the Appeal Board may not consider. Directive ¶ E3.1.29.

Applicant requests a temporary stay so she can locate creditors and take care of the debts. The Appeal Board does not have authority to grant an interim, conditional, or probationary trustworthiness determination. *See, e.g.*, ADP Case No. 14-00700 at 3 (App. Bd. Sep. 24, 2014).

Applicant argues that she has not breached her position of trust, has not been disciplined in her current job, and is not someone who can be blackmailed. The presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness 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. 15-01270 at 2 (App. Bd. Jun. 16, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. 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. 15-01270, *supra*, at 2. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

Order

The Decision is **AFFIRMED**.

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board