

KEYWORD: Guideline F

DIGEST: Applicant’s arguments are not sufficient to show that the Judge failed to consider all of the evidence, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 15-03377.a1

DATE: 03/09/2017

DATE: March 9, 2017

In Re: ----- Applicant for Public Trust Position)))))))	ADP Case No. 15-03377
--	---------------------------------	-----------------------

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 November 19, 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 hearing. On December 15, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe denied Applicant’s request for a

trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his findings and 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

39 years old, Applicant is married with three children. Her husband is disabled and has been receiving disability benefits for the past four years. Applicant receives child support payments. She has no savings, although she has a retirement account containing about \$4,000. Applicant lives rent-free in a house owned by her husband's parents.

Applicant has nearly \$20,000 in delinquent debts, for such things as medical expenses, a repossessed vehicle, utility bills, telephone services, and a credit card. In addition, she owes her state over \$6,000 in unemployment compensation that her employer had successfully contested, and she owes \$4,000 in medical debts not listed in the SOR. Applicant intends to file Chapter 7 bankruptcy after the hearing. As of the close of the record she still needed income tax records to establish her income for purposes of the bankruptcy filing. The status of the proposed bankruptcy filing is unknown.

None of Applicant's SOR debts are resolved. She states that she does not have the money to pay them and support her family at the same time. Due to work absences taken under the Family Medical Leave Act as well as to personal time off, Applicant went for a period of over 60 days in 2015 and over 40 days in 2016 in which she earned no income. In addition, she experienced several months of unemployment in 2012, 2013, and 2014. Applicant contended that Medicaid should have paid all of her medical bills.

Applicant has had no financial counseling save for that required for bankruptcy. Applicant's performance evaluation for 2014 rates her "satisfactory," while in 2016 her supervisor rated her as meeting or exceeding goals.

The Judge's Analysis

The Judge concluded that the circumstances under which Applicant's debts arose could be repeated and that her financial condition raises concerns about her reliability, trustworthiness, and good judgment. Though acknowledging that these circumstances were to an extent outside her control, the Judge concluded that Applicant had not demonstrated responsible action. He noted that she had taken no action to resolve or dispute her debts, despite an overall annual income of over \$50,000. He stated that a person should not spend beyond his or her means, especially when living rent-free, as Applicant is. The Judge stated that Applicant has not had financial counseling, nor has she made a good-faith effort to resolve her debts. In the whole-person analysis, the Judge reiterated much of the discussion summarized above. He further stated that Applicant had not shown that she was eligible for Medicaid and that the program should have paid her medical expenses. Moreover, she submitted no evidence that she has filed for bankruptcy.

Discussion

Applicant's appeal brief cites to various aspects of her case that she believes the Judge did not consider or that he misinterpreted. For example, she states that she has received the financial counseling that is required for bankruptcy, that she is current on her bills, that she is not living rent-free but makes some payments to her parents, etc. She also argues that bankruptcy is a time-consuming process, that she is not allowed to pay collection accounts, and that she cannot prove that she was entitled to Medicaid. Applicant's arguments are not sufficient to show that the Judge failed to consider all of the evidence, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. ADP Case No. 14-03541 at 3 (App. Bd. Aug. 3, 2015); ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26, 2016). The finding that Applicant lives rent-free is based upon her own explicit testimony: "[Q]: Do you have to pay rent, or are you able to live there rent free? [Applicant]: Rent free." Tr. at 31. The Judge's material findings are based upon substantial evidence. See Directive ¶ E3.1.32.1. See also ADP Case No. 15-02400 at 2-3 (App. Bd. Sep. 12, 2016).

The Judge examined the relevant data 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. 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board