

KEYWORD: Guideline F

DIGEST: The concern under Guideline F is that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant’s ability to protect sensitive information. Adverse decision affirmed.

CASENO: 15-06852.a1

DATE: 09/28/2017

DATE: September 28, 2017

In Re:  -----  Applicant for Public Trust Position	) ) ) ) ) ) )	ADP Case No. 15-06852
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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 May 18, 2016, 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 July 27, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Claude R. Heiny 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 concluding that his financial problems raised concerns under Guideline F 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**

Applicant has worked for a Defense contractor since 2013. His SOR alleges financial problems that he attributes to two periods of unemployment, four months in 2012 and five in 2013. Applicant's delinquent debts include a credit card account for nearly \$16,000, which he disputes, and other charged-off accounts. The Judge entered favorable findings for some of Applicant's debts, including one for \$13,000 that the creditor forgave. The total amount of debt that the Judge found against Applicant was about \$45,000. In his clearance interview, and later in his Response to the File of Relevant Material (FORM), Applicant stated that he had retained an attorney for the purpose of filing for bankruptcy protection.

Applicant provided no documentary evidence showing that he had resolved the debts other than those referenced above, although the Judge noted that one was addressed through debt cancellation rather than payment. Applicant did not provide corroboration for his claim that he was in the process of seeking bankruptcy protection or for his claim that he was trying to modify his mortgage payments. Neither did he provide evidence of his monthly income or expenses.

### **The Judge's Analysis**

The Judge concluded that Applicant's circumstances raised three concerns under Guideline F: Disqualifying Conditions 19(a) - (c).<sup>1</sup> In evaluating Applicant's case for mitigation, the Judge stated that Applicant failed to show that the circumstances underlying his debts were unlikely to recur. Though noting Applicant's unemployment, the Judge concluded that Applicant had not demonstrated responsible action in regard to his debts. He cited to evidence that Applicant has been employed for several years but provided little evidence of debt resolution. He concluded that there are no clear indications that Applicant's problems were being resolved.

In the whole-person analysis, the Judge reiterated his comments about a paucity of evidence to mitigate the concerns raised by Applicant's financial difficulties. He also stated that Applicant had failed to provide evidence of financial counseling. The Judge concluded that Applicant's evidence was "scant" and that he failed to mitigate the concerns raised in his SOR. Decision at 7.

### **Discussion**

Applicant's brief includes matters from outside the record which we cannot consider. Directive ¶ E3.1.29. Applicant denies that he has a history of delinquent debt or that he is unable to pay his debts. He also takes issue with the Judge's conclusion that his financial problems show that he is unwilling to pay his debts. Applicant argues that he has always paid his debts and that his financial difficulties resulted from circumstances outside his control, his periods of unemployment.

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<sup>1</sup>Directive, Encl. 2, App. A ¶¶ 19(a): "inability to satisfy debts;" (b): "unwillingness to satisfy debts regardless of the ability to do so;" and (c): "a history of not meeting financial obligations[.]"

We construe this as an argument that Applicant's debts do not raise trustworthiness concerns.

The concern under Guideline F is that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect sensitive information. Directive, Encl. 2, App. A ¶ 18. In this case, the Judge did not find that Applicant has been generally unwilling to pay his debts over the course of his adult life. Rather, his findings, and record evidence, that Applicant has not paid or resolved debts that originated in 2012 and 2013, despite consistent employment, support a conclusion that he has not been willing to address his financial problems responsibly.<sup>2</sup> Under the facts of this case, Applicant's failure to pay his debts raises a concern that he may fail to safeguard sensitive information. *See, e.g.*, ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015), to the effect that the circumstances underlying bad debts may impugn an applicant's judgment or reliability.

Applicant contends that the Judge failed to consider, or that he mis-weighed, favorable evidence, such as his work history and his good record for handling protected information. He also cites to his unemployment and his plan to file bankruptcy. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 15-06452 at 3 (App. Bd. Feb. 14, 2017); ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26, 2016). Under the Directive, it is an applicant's responsibility to mitigate concerns raised by his bad debts or other circumstances. Directive ¶ E3.1.15. The Judge's conclusion that Applicant had not provided enough evidence to meet his burden of persuasion is sustainable.

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*.

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<sup>2</sup>*See also* ADP Case No. 10-00354 at 2 (App. Bd. Feb. 9, 2012), in which the Judge concluded, among other things, that the applicant's debts, that had been unpaid for a period of years, constituted a history of not meeting financial obligations.

**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