

KEYWORD: Guideline F

DIGEST: Applicant also asserts that he did not provide information about his financial situation “because it was not asked of to provide any of that information.” and “[he] can provide that information.” A review of the record indicates that Applicant received a copy of the FORM, accompanied by a DOHA cover letter. The cover letter in particular stated that Applicant could submit “any material you wish the Administrative Judge to consider [.]” The FORM itself advised Applicant that his response could set forth “objections, rebuttal, extenuation, mitigation, or explanation as appropriate.” Accordingly, Applicant received the due process afforded by the Directive and his failure to make a response to the FORM cannot fairly be attributed to inadequate notice of his right to do so. Adverse decision affirmed.

CASENO: 15-07882.a1

DATE: 12/7/2017

DATE: December 7, 2017

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In Re:)	
)	
-----)	ADP Case No. 15-07882
)	
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 eligibility for a public trust position. On June 9, 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 October 6, 2017, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Robert E. Coacher denied Applicant

eligibility for a public trust position. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant requested that his case be decided on the written record and then did not file a response to the government's File of Relevant Material (FORM). The Judge based his adverse decision in the case in large measure on the fact that the record contained no documentary evidence supporting Applicant's assertions that he filed his 2013-2014 Federal and state tax returns, or otherwise describing arrangements or contacts he may have had with the IRS concerning his tax issues. Decision at 5. On appeal, Applicant offers new evidence in the form of a narrative statement describing his financial situation and the status of his tax issues. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

Applicant also asserts that he did not provide information about his financial situation "because it was not asked of me to provide any of that information" and "[he] can provide that information." A review of the record indicates that Applicant received a copy of the FORM, accompanied by a DOHA cover letter, in November 2016. The cover letter in particular stated that Applicant could submit "any material you wish the Administrative Judge to consider[.]" Cover Letter, dated November 3, 2016. The FORM itself advised Applicant that his response could set forth "objections, rebuttal, extenuation, mitigation, or explanation as appropriate." Accordingly, Applicant received the due process afforded by the Directive and his failure to make a response to the FORM cannot fairly be attributed to inadequate notice of his right to do so. *See, e.g.*, ISCR Case No. 14-05094 at 2, n.1 (App. Bd. Nov. 22, 2016).

Finally, Applicant challenges some of the Judge's findings of fact relating to the debt for a medical bill alleged in SOR ¶ 1.b. The Judge found in Applicant's favor as to that allegation, so it is not at issue on appeal.

The Board does not review a case *de novo*. Applicant has not established any harmful error on the part of the Judge. Therefore, the decision of the Judge is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: William S. Fields _____

William S. Fields

Administrative Judge

Member, Appeal Board