

KEYWORD: Guideline F

DIGEST: Applicant contends that she filed her tax returns and submitted copies of her filings. A review of the record, however, supports the Judge’s findings that Applicant provided proof of filing her 2012 and 2013 Federal income tax returns, but did not submit documentation corroborating her claim that she filed the other tax returns in question. In Guideline F cases, it is reasonable for a Judge to expect applicants to present documentation corroborating the resolution of their financial problems. Adverse decision affirmed.

CASE NO: 15-00198.a1

DATE: 01/30/2017

DATE: January 30, 2017

In Re: ----- Applicant for Public Trust Position)))))))	ADP Case No. 15-00198
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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 November 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 October 20, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello

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, who is 36 years old, has been employed since 2011. She failed to file timely her 2009 through 2013 Federal and state income tax returns. In her public trust position application, she explained that her failure to file was due to "medical, car, helping out family." Decision at 2. During her background interview, she indicated that she advised her employer that she was exempt from having to file tax returns, when she knew that statement was not true. She provided documents showing her 2012 and 2013 Federal income tax returns were received by the IRS in January 2015. She did not provide proof that she filed her 2009-2011 Federal income tax returns or that she filed her state income tax returns for 2009-2013. In her response to Department Counsel's File of Relevant Material (FORM), she stated she filed all of her delinquent tax returns, she was working with the IRS to pay all taxes owed, but she did not disclose the amount owed. In her analysis, the Judge concluded that pertinent mitigating conditions did not apply because Applicant failed to provide proof that she had filed her Federal income tax returns for 2009-2011 or any of her state income tax returns, and she did not provide evidence to show why she was unable to file her tax returns in a timely manner.

Discussion

Applicant contends that she filed her tax returns and submitted copies of her filings. A review of the record, however, supports the Judge's findings that Applicant provided proof of filing her 2012 and 2013 Federal income tax returns, but did not submit documentation corroborating her claim that she filed the other tax returns in question. In Guideline F cases, it is reasonable for a Judge to expect applicants to present documentation corroborating the resolution of their financial problems. *Compare*, ADP Case No. 12-01251 at 2 (App. Bd. Apr. 24, 2014).

Applicant also contends that she had financial hardships, including medical issues, car problems, and family difficulties such as the death of her father,¹ but indicated that she was not using them as an excuse. Besides merely mentioning in her public trust position application and during her background interview that she encountered financial hardships, Applicant neither provided details about those hardships nor explained how they impacted her ability to file her tax returns in a timely manner. Under mitigating condition 20(b),² a nexus or connection between a condition beyond an applicant's control and the applicant's financial problem must be established for the first

¹ Applicant disclosed the death of her father in her public trust position application, but did not previously raise his death as a reason for her financial problems.

² Directive, Enclosure 2 ¶ 20(b) states, "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

prong of that mitigating condition to be applicable. *Compare*, ADP Case No. 10-04539 at 2 (App. Bd. Jul. 11, 2011) and ADP Case No. 06-19856 at 4 (App. Bd. Nov. 28, 2007). Moreover, the second prong of that mitigating condition requires that an applicant act responsibly under the circumstances. Based on the record evidence, we find no error in the Judge’s conclusion that Applicant did not present evidence to show why she was unable to file her tax returns in a timely manner and that mitigating condition 20(b) was not applicable in this case.

Applicant argues that she is a hard worker, a good person, and derives satisfaction from supporting the military in her job. In her response to the FORM, Applicant noted that she was a asset to her company and consistently received awards for the quality of her work. Even though the Judge did not make specific findings about such matters, Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See e.g.*, ADP Case No. 14-03541 at 3 (App. Bd. Aug. 3, 2015) and ADP Case No. 15-01270 at 2 (App. Bd. Jun. 16, 2016). Voluntary compliance with rules and regulations goes to the heart of the Government’s need to ensure each person in whom it reposes its trust is reliable and has the requisite good judgment. *Compare*, ADP Case No. 14-05409 at 2 (App. Bd. Feb. 12, 2016). Applicant’s failed to file her Federal and state income tax returns in a timely manner for five years supports the Judge’s ultimate conclusion.

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 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. 14-03541, *supra*, at 3. *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