

KEYWORD: Guideline F

DIGEST: The Judge’s ruling on Applicant’s 180-day request is not contained in the record. In the decision, the Judge noted that Applicant was granted the 30-day extension and “was given over 50 days to submit post-hearing documents.” The Judge’s comments in the decision are sufficient to establish that the 180-day extension request was denied. A challenge to a judge’s ruling denying a request to extend the deadline of a post-hearing submission is reviewed under the “abuse of discretion” standard. Applicant has not established that the Judge abused her discretion in denying his 180-day post-hearing submission extension request. Adverse decision affirmed.

CASENO: 16-01214.a1

DATE: 08/28/2018

DATE: August 28, 2018

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In Re:	)	
	)	
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	)	
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 a trustworthiness designation. On August 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). Department Counsel requested a hearing. On May 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR, as amended, alleged that Applicant failed to file, as required, Federal tax returns for 2009-2014, amended Federal tax returns for 2007 and 2008, State A tax returns for 2009-2014, State B tax return for 2014, and State C tax returns for 2009-2013. The SOR also alleged that he had three state tax liens filed against him between 2009-2011. The Judge found against Applicant on the tax filing deficiencies and in favor of him on the tax liens. For a time, Applicant owed or worked for a business that provided services in several states. In his security clearance application, he disclosed that he had tax filing deficiencies and noted that the tax returns were tied up in a divorce proceeding. At the hearing, he testified that he did not file his 2009-2014 Federal and state tax returns and estimated that he owed about \$116,000 in past-due taxes for 2009-2013. He stated he did not have access to tax documents after he moved out of the marital home. He acknowledged that he should have filed separately for the years in question. The Judge concluded that “Applicant’s continued delay in complying with his legal duty to file six years of tax returns casts doubt on his current trustworthiness.” Decision at 6.

A portion of Applicant’s appeal brief is devoted to discussing the tax liens. We need not address the tax liens because the Judge found in favor of Applicant on those debts.

In his appeal brief, Applicant also challenges the Judge’s denial of his request for a 180-day extension to submit post-hearing matters. At the hearing held on January 31, 2018, the Judge left the record open until February 23, 2018, for Applicant to submit additional matters. On February 23, 2018, Applicant submitted a document in which he requested a 30-day extension to submit documentation concerning the liens and requested a 180-day extension to present documentation concerning the filing of his tax returns. At some point after the hearing, a new department counsel was assigned to this case. The new department counsel did not object to the 30-day extension request but objected to the 180-day extension request. The Judge’s ruling on Applicant’s 180-day request is not contained in the record. In the decision, the Judge noted that Applicant was granted the 30-day extension and “was given over 50 days to submit post-hearing documents.” Decision at 2. The Judge’s comments in the decision are sufficient to establish that the 180-day extension request was denied. A challenge to a judge’s ruling denying a request to extend the deadline of a post-hearing submission is reviewed under the “abuse of discretion” standard. *See, e.g.*, ISCR Case No. 09-01175 at 3 (App. Bd. May 11, 2010). In this case, Applicant has not established that the Judge abused her discretion in denying his 180-day post-hearing submission extension request.

In his appeal brief, Applicant also contends the Judge’s decision is incorrect and highlights

that he has held a position of trust for over three and a half years without any incidents. This argument amounts to a disagreement with the Judge's weighing of the evidence and is not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 16-01251 at 2 (App. Bd. Jun. 7, 2017).

Applicant's brief fails to establish the Judge committed any harmful error. 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.'" *Id.* *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: Charles C. Hale

Charles C. Hale  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board