

KEYWORD: Guideline F

DIGEST: Applicant was subject to two tax liens totaling about \$106,000. These tax liens cover seven tax years between 1999 and 2015. He owes a landlord due to a broken lease and has other delinquent accounts. In addition, Applicant failed to file Federal income tax returns for 2009, 2010, and 2013. Adverse decision affirmed.

CASENO: 17-00260.a1

DATE: 04/25/2018

DATE: April 25, 2018

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In Re:

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Applicant for Public Trust Position

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) ADP Case No. 17-00260  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Tokay T. Hackett, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On July 13, 2017, 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 January 11, 2018, 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant’s SOR alleges several delinquent debts. These include two tax liens totaling about \$106,000, the earlier of which was subsequently released due to Applicant’s inability to pay. These tax liens cover seven tax years between 1999 and 2015. He owes a landlord due to a broken lease and has other delinquent accounts. In addition, Applicant failed to file Federal income tax returns for 2009, 2010, and 2013. Applicant stated that his “tax situation . . . got out of hand due to my frustration in dealing with the IRS.” Decision at 3, quoting Applicant’s Response to the SOR. Applicant provided a copy of a letter from a tax professional to the effect that his taxes are in a non-collectable status. He did not submit documents from the IRS regarding his tax problems. Neither did Applicant corroborate his claims to have resolved some of his debts, to have payment plans, or to have disputed at least one of the debts.

In the Analysis, the Judge stated that Applicant had provided no explanation for his tax problems and that the non-collectable status of his tax debts does not relieve him of his duty to pay. She concluded that Applicant has not established a track record of debt payment. In the whole-person analysis, the Judge noted Applicant’s steady employment since 2009. She stated that even if the IRS is not actively pursuing collection, he remains liable for his delinquent taxes. Moreover, she noted that Applicant undertook debt resolution only after having received the SOR. She concluded that he had failed to mitigate the concerns raised in the SOR.

### **Discussion**

Applicant argues that the Judge’s findings are not supported by substantial evidence. However, the gist of his argument is effectively a challenge to the Judge’s weighing of the evidence. An ability to argue for a different interpretation of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26, 2016). Applicant has cited to no harmful error in the Decision. The Judge’s material findings are supported by substantial evidence. *See, e.g.*, ADP Case No. 15-03377 at 3 (App. Bd. Mar. 9, 2017).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. Failure to file tax returns and pay taxes when due suggests that an applicant has a problem with complying with well-

established government rules and regulations, voluntary compliance with which is essential for protecting classified information. *See, e.g.*, ADP Case No. 15-00198 at 3 (App. Bd. Jan. 30, 2017). 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. 15-00198, *supra*, at 3. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*. In light of the above, the Judge’s adverse decision is sustainable on this record.

### 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