

KEYWORD: Guideline F

DIGEST: Applicant's brief fails to establish the Judge committed any harmful error. Adverse decision affirmed.

CASENO: 17-00731.a1

DATE: 08/21/2018

DATE: August 21, 2018

In Re:

Applicant for Public Trust Position

ADP Case No. 17-00731

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 June 15, 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 hearing. On June 15, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant failed to file her Federal tax returns for 2013 and 2014 as required and that she had four delinquent debts. The Judge found against Applicant on the tax filing deficiencies and in her favor on the delinquent debts. At the hearing, “[w]hen asked whether she had filed her 2015 and 2016 income tax returns, Applicant stated: ‘I’m going to say yes. They should have been. I don’t know.’” Decision at 3. She acknowledged that she had no excuse for her tax filing deficiencies. The Judge noted that Applicant’s husband was diagnosed with a serious illness around the time she received the SOR and later passed away. The Judge left the record open after the hearing for Applicant to submit proof that she filed her 2013 through 2016 income tax returns. She submitted the second pages for two IRS Form 1040s that were unsigned and undated. Based on Applicant’s statements, the Judge concluded she filed her 2014 and 2016 income taxes in April 2018 but still had not filed her 2013 and 2015 income tax returns.

In her appeal brief, Applicant asks that the Judge’s decision be overturned. In claiming the decision is unfair, she discusses three of the alleged delinquent debts. These assignments of error warrant no relief because the Judge found in Applicant’s favor on those debts. In her brief, she also states: “Although I cannot enter into evidence, the 2013 and 2014 tax returns will be filed and paid by 31 July 2018.”

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.’” *See, e.g.*, ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26 2016). *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