

KEYWORD: Guideline F

DIGEST: Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-01264.a1

DATE: 07/11/2018

DATE: July 11, 2018

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 May 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 March 7, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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**

The SOR alleged that Applicant had 12 delinquent debts totaling about \$65,000. He admitted all of the SOR allegations. He attributed his financial problems to having to find another job after a base closure in 1996 and to maintaining two households while living apart from his wife and young child. In 2011, he hired a law firm to consolidate and resolve his debts. The law firm handled six of the SOR debts and reported that collection on two of those debts was barred by the statute of limitations. Two other alleged debts were consolidated into an alleged judgment that the law firm was unable to resolve. Four non-alleged debts were listed as settled. The law firm refunded over \$7,000 by placing the money in an escrow account. Recently, he hired a credit-repair firm, but did not submit any evidence regarding its actions.

Of the alleged debts, Applicant has a time-share mortgage loan in foreclosure that he has not taken any action to resolve. He claimed he resolved two other debts, but provided no supporting documentation. The credit-repair firm is investigating another debt, but he was unable to provide information about it. Three medical debts are unresolved because he was too busy and forgot about them, but he intends to pay them.

Applicant and his wife earn about \$80,000 annually and have a net monthly remainder of about \$400. His brother testified that Applicant is hardworking, dependable, and a devoted family man.

### **The Judge’s Analysis**

The Judge found in favor of Applicant on two duplicative allegations and against him on the remaining allegations. Two debts are time barred for collection; however, reliance on a statute of

limitations does not constitute a good faith effort to resolve a debt.<sup>1</sup> While he hired a credit-repair firm to challenge debts on his credit report, he provided no proof that debts have been challenged. There is no clear evidence his debts are under control.

## Discussion

In his appeal brief, Applicant submitted some documents, including letters from creditors, that post-date the Judge's decision. Those documents constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicant contends that the Judge did not give sufficient weight to his evidence. In doing so, he notes that he hired a law firm to resolve certain debts and that some debts reached the statute of limitations. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient 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. 06-14629 at 3 (App. Bd. Apr. 11, 2008).

Applicant has failed 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.’” 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

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<sup>1</sup> In discussing the statute of limitations, the Judge cited to ISCR Case No. 11-08274 (App. Bd. May 2, 2013), which states:

The reliance on the statutes of limitation fails on two grounds. First, the assertion is not supported by the record. Applicant did not submit any information regarding the specific terms of the credit agreements, which would have provided a reasoned determination as to which statute of limitation applied. Second, security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does [not] constitute a good-faith effort to resolve that debt within the meaning of the Directive. The federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. Applicant's decision not to pay his debts reflects poorly on his judgment, reliability, trustworthiness, and ability to protect classified information. Applicant's decision also shows an unwillingness to take responsibility for his actions.

*Id.* at 2.

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