

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge failed to consider significant record evidence, such as the circumstances underlying his financial problems, his efforts to resolve the debts, and his good security record. Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-01429.a1

DATE: 05/09/2018

DATE: May 9, 2018

In Re:)	
)	
-----)	ADP Case No. 17-01429
)	
Applicant for Public Trust Position)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Anthony J. Kuhn, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On May 19, 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 February 5, 2018, after the hearing, 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

Applicant filed for Chapter 13 bankruptcy protection in 1996, and his debts were discharged in 2001. In about 2009, Applicant’s in-laws moved in with him because of the father-in-law’s illness. The father-in-law died in 2011, and the mother-in-law bought a house of her own. Applicant spent over \$5,000 to assist his in-laws in 2011 and currently subsidizes the mother-in-law with about \$300 a month. Applicant’s SOR listed six delinquent debts, four of which the Judge resolved in his favor. The two debts that resulted in adverse findings were credit cards or lines of credit. Applicant made inconsistent statements about the nature of these debts, for example describing one of them (for about \$3,500) as a credit card in his prior security clearance application but denying any knowledge of it in his current interview. He told the investigator that the other debt (for about \$3,300) was a credit card but testified at the hearing that it was a signature loan. Both of these debts are unresolved. Applicant’s wife is an accountant, who makes about \$90,000 a year. Applicant earns about \$70,000 a year from his job as a Government contractor. Applicant has experienced no unemployment since 1988. He testified that he had contacted his creditors in 2017 and that they all wanted payment in full. He claimed to have been saving to pay his debts and intends to resolve them in the future. Applicant has about \$100,000 in a 401(k) plan and does not know if his wife has any investments. His wife is paying off student loans. Applicant does not know if his wife maintains a budget.

The Judge’s Analysis

The Judge noted that Applicant has resolved some of his debts, although he did not take action until after receipt of the SOR. Though noting his assistance to his in-laws, the Judge concluded that he had not demonstrated responsible action in regard to his debts. The Judge stated that the remaining debts are not large but that Applicant has not addressed them despite having had many years in which to do so. She concluded that Applicant has not established a track record of financial reliability.

Discussion

Applicant contends that the Judge failed to consider significant record evidence, such as the circumstances underlying his financial problems, his efforts to resolve the debts, and his good security record. Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 15-06452 at 3 (App. Bd. Feb. 14, 2017); ADP Case No. 12-09387 at 2 (App. Bd. Apr. 26, 2016). We conclude that the Judge considered the totality of the evidence in reaching her decision. *See* Directive ¶ 6.3.

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. 15-06452, *supra*. *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