

KEYWORD: Guideline F

DIGEST: Applicant argues that the Judge did not give him time to effectuate his plan. However, in 2015 Applicant committed to resolve his delinquent debts. Adverse decision affirmed.

CASENO: 17-01530.a1

DATE: 06/06/2018

DATE: June 6, 2018

In Re:)	
)	
-----)	ADP Case No. 17-01530
)	
Applicant for Public Trust Position)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Patrick Cox, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On June 16, 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 6, 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 and Analysis

Applicant’s SOR alleges numerous delinquent debts, including \$21,000 deficiency resulting from the repossession sale of a vehicle. Other debts, for accounts that have been charged off or are in collection, are for lesser amounts, generally a few hundred dollars. By the close of the record, Applicant had resolved only two of the SOR debts, valued at \$288 and \$130 respectively. Applicant testified that he is working on resolving them, although he does not have extra income that could be used for this purpose. In 2015, he advised his clearance investigator that he intended to contact his creditors and make payment arrangements. He also stated that he is current on all his monthly expenses. He bought automobiles in 2016 and 2017, with monthly payments of nearly \$600 and nearly \$900. Applicant attributes his financial problems to his inability to work in January 2014, due to knee surgery and to his wife’s unemployment for the two years preceding mid-2017.

Applicant has not shown responsible action in regard to his debts, despite the presence of circumstances beyond his control that affected his financial condition. The Judge noted his assurance to the interviewer that he would begin resolving his debts yet failed to follow through. Applicant did not provide evidence that would support his denial of certain debts. She stated that Applicant has been fully employed since late 2014 but has not addressed his financial delinquencies.

Discussion

Applicant’s brief includes evidence from outside the record, including documents that post-date the Judge’s decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant argues that the Judge did not give him time to effectuate his plan. However, in 2015 Applicant committed to resolve his delinquent debts. The balance of Applicant’s argument is a challenge to the Judge’s weighing of the evidence, which 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).

The Judge examined the relevant data 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. 12-04343 at 3 (App. Bd. May 21, 2013). *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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board