

KEYWORD: Guideline F

DIGEST: Applicant has not identified any harmful error in the Judge’s decision. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Adverse decision affirmed.

CASENO: 17-01760.a1

DATE: 04/20/2018

DATE: April 20, 2018

In Re:))	
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-----))	ADP Case No. 17-01760
))	
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 June 1, 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 January 22, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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

The SOR alleged that Applicant had eight delinquent debts totaling about \$21,700. In his response to the SOR, Applicant admitted all of the allegations with comments.

Applicant married in 1985, separated in 2014, and divorced in 2016. After his marital separation, he continued to support his wife and began living with and supporting his mother who suffered a stroke and had other medical problems, some of which continue. From 2005 to 2014, he earned over \$100,000 annually and had no difficulty in meeting his financial obligations. Upon being laid off from that job, he was unemployed until August 2016. Since starting his current job, he still lives with his mother, supports her, and assists in paying her past-due debts.

The alleged debts originated or became delinquent before Applicant was laid off. He testified that he contacted the creditors in an attempt to resolve his debts, claimed he was unable to obtain the information he needed, and most creditors informed him the debts were written off as business losses.¹ He has not resolved any of the alleged debts, but assists his mother in the resolution of her debts. He has a solid work performance record.

The Judge’s Analysis

Since starting his job in 2016, Applicant’s alleged debts have remain unresolved. His debts arose from circumstances beyond his control and he contacted the creditors, but he did not demonstrate that, despite having the means to resolve some of the smaller debts, he acted responsibly under the circumstances. He has not contacted any credit counseling, debt resolution, or other professional entity for assistance in resolving his debts. He has not established that his financial problems are under control. Although he has not incurred any new delinquent debts since

¹ Applicant testified that he did not contact the creditors of the two collection accounts. Tr. at 36.

2016, the alleged debts remain his responsibility, and he has not taken any tangible steps to resolve them.

Discussion

Applicant contends that the Judge did not consider all of the pertinent evidence. He argues that he had outstanding credit and lived within his means before experiencing circumstances beyond his control. He also cites to his efforts to assist his mother, his improving financial situation since starting his current employment, and his work performance in his current job. The Judge, however, discussed these matters in the decision. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the record evidence nor enough to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 06-14629 at 3 (App. Bd. Apr. 11, 2008).

In his appeal brief, Applicant also mentions that several debts are in payment arrangements and "[o]thers are being worked out." Appeal Brief at 1. Information about Applicant's effort to resolve debts after the hearing constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. He further indicated that denial of trustworthiness eligibility would cause him a hardship until he could obtain other employment. The impact of an unfavorable decision on an applicant is not a relevant consideration in determining his or her eligibility for a trustworthiness designation. *See, e.g.*, ADP Case No. 06-14629, *supra*, at 3.

Applicant has not identified any harmful error in the Judge's decision. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board