

KEYWORD: Guideline F

DIGEST: Applicant notes one harmless factual error regarding a date. Applicant’s appeal brief does not assert any other error on the part of the Judge. Rather, it contains a narrative statement about his efforts to resolve his financial problems and documents that constitute new evidence that the Appeal Board cannot consider. Adverse decision affirmed.

CASENO: 17-01590.a1

DATE: 08/13/2018

DATE: August 13, 2018

In Re: ----- Applicant for Public Trust Position)))))))	ADP Case No.17-01590
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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 26, 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 decision on the written record. On May 14, 2018, after considering the record, Administrative Judge Marc E. Curry denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge’s Findings and Conclusions

The SOR alleged that Applicant owes approximately \$28,000 in delinquent Federal taxes. He also owes about \$7,900 on a car loan deficiency. His financial troubles began when he became unemployed for about nine months in 2003 and withdrew money from a retirement account without planning for the tax consequences. When the IRS began garnishing his pay in 2009, he stopped making the car payments and the car was repossessed. In 2016, he hired a tax consultant to help develop an installment agreement to address the tax deficiency. An installment agreement was submitted, but there is no evidence whether the IRS granted the request or he has been making payments to resolve the tax deficiency. The car loan deficiency remains outstanding. Given the record evidence, it was too soon to conclude that Applicant’s financial problems are being resolved or are under control.

Discussion

In his appeal brief, Applicant notes that he hired the tax consultant in 2012, instead of 2016. The Judge’s finding about the date of the hiring of the tax consultant was a harmless error because it likely did not affect the outcome of the case. *See, e.g.*, ISCR Case No. 12-00678 at 2 (App. Bd. Jun. 13, 2014).

Applicant’s appeal brief does not assert any other error on the part of the Judge. Rather, it contains a narrative statement about his efforts to resolve his financial problems and documents that were not previously submitted to the Judge. Those documents constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.1.29. Applicant also provides a telephone number for the Appeal Board to contact the IRS to confirm the status of tax liens. The Appeal Board has no authority to interview witnesses, conduct investigations, or make findings of fact. *See, e.g.*, ISCR Case No 16-03072 at 2 (App. Bd. Mar. 7, 2018).

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 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. 16-01251 at 2 (App. Bd. Jun. 7, 2017). *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