

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On February 23, 2018, 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 September 21, 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 21 delinquent debts. These include a state tax lien for over \$13,000, a judgment for about \$9,000, a cellphone collection account for about \$1,300, medical bills and other debts in various amounts. She has been divorced twice, made moves to different locations including some with her second husband who served in the military, and experienced periods of unemployment.

Applicant provided proof that the state tax lien was paid in full. This debt was not from a state taxing authority but from another state agency. She stated that she made monthly payments between \$400 to \$500 on this debt.

The judgment is not resolved. Applicant claimed the cellphone collection account is fraudulent and provided a reference number for her claim. The Judge noted that the reference number was not sufficient to support her claim and that he was not authorized under the Directive to investigate her claim. Her other alleged debts are unresolved. The dates of last activity for eight of her alleged medical debts were in 2013 or 2014. She provided proof of one \$100 payment toward a medical debt.

The Judge’s Analysis

While Applicant experienced some conditions beyond her control, “[s]he has not established that the uninsured medical expenses were a condition beyond her control. She took no significant actions to resolve her medical debts until she realized that her job was in jeopardy and she provided evidence of only one \$100 payment that she made after receiving the SOR.” Decision at 6. Because Applicant requested a decision on the written record, the Judge noted he had no opportunity to evaluate her credibility based on her demeanor. The trustworthiness concerns raised by her delinquent debt remain unmitigated.

Discussion

Applicant contends the Judge erred in concluding that she did not start paying on her medical bills until her security clearance was in jeopardy. She argues that she had been paying all of her extra money towards the state debt and started making payments on her medical debts once the state debt was resolved. We note Applicant provided the Judge with a Satisfaction of Warrant showing the state debt was paid the day after the SOR was issued. File of Relevant Material (FORM) Item 2. In her security clearance application, she stated that she was paying \$400 to \$500 monthly on the state debt (FORM Item 3), but did not provide any documentation to corroborate that she was consistently making payments of that nature. From our review of the record, the Judge's material findings and conclusions of security concern are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge's findings or conclusions. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

In citing to the Judge's comment that he could not evaluate her credibility and demeanor because she chose a decision based on the written record, Applicant states that no one explained that consequence to her and argues that someone should be available to answer questions and stress how important it is to request a hearing. Applicant's contention merits no relief. Applicant was properly advised of her right to have a hearing. DOHA personnel have no authority to provide advice to applicants concerning what rights they should exercise and should refrain from going beyond the language of the Directive and, if applicable, the current Prehearing Guidance in their interactions with applicants. *See, e.g.*, ADP Case No. 14-01542 at 4, n.1 (App. Bd. May 12, 2015).

Applicant also states that she did not understand that she could "file an objection" to matters in the FORM and did not understand that she "needed to send in new information." Appeal Brief at 1. Applicant received a copy of the FORM on June 13, 2018. Both the FORM and its cover letter advised her that she had 30 days from its receipt to file objections or submit additional matters. She was also advised that, if she did not file objections or submit additional matters, her case would be assigned to a Judge "for a determination based **solely** on this file of relevant material." [Emphasis added.] FORM at 3. Similar language was also contained in the cover letter. Applicant was properly advised of her rights to object to matters in the FORM and her opportunity to submit additional matters to the Judge. She forfeited those rights by not submitting a response to the FORM.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. Those arguments are not sufficient 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. 16-01251 at 2 (App. Bd. Jun. 7, 2017).

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. 16-01251 at 2. *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