

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge addressed Applicant’s debt payments, but his conclusion that they were minimal, with little impact on her overall debt situation, was consistent with the record that was before him. Adverse decision affirmed.

CASENO: 14-01255.a1

DATE: 01/07/2015

DATE: January 7, 2015

In Re:	)	
	)	
-----	)	ADP Case No. 14-01255
	)	
Applicant for Position of Trust	)	

**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 5, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 17, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant is seeking a trustworthiness designation pertinent to her job as a Defense contractor, a position she has held since late 2013. She shares living expenses with a boyfriend. Aside from about \$200 in cash, she has no assets.

Applicant's employment history consists of several different jobs and three periods of unemployment. One such period of unemployment occurred from June to October 2013, when she left her job to care for her mother. Another was when she left a job to relocate and yet another when she had a baby.

Applicant has a history of financial problems. This history includes a discharge in Chapter 7 bankruptcy; seven medical accounts; seven other past due accounts, including a vehicle repossession; and two collection accounts. Her bankruptcy "resulted from her youth and inexperience," in that she took on more debt than she could repay. Decision at 3. She has been in contact with creditors and has made small payments to a number of them in recent months. She intends to keep making small payments until she is able to file a second bankruptcy petition.

### **The Judge's Analysis**

The Judge resolved the Guideline E allegation in Applicant's favor. Regarding the allegations under Guideline F, he concluded that the seven medical debts did not raise security concerns. However, he found that Applicant's remaining debts did raise concerns, ones that she had failed to mitigate. He stated that she had done little to resolve these debts, making "what are essentially token payments that have no material impact on debt reduction." *Id.* at 4. He stated that her plan to file for a second bankruptcy, while legal, does not qualify as a good-faith effort to resolve her problems. He concluded that Applicant had not demonstrated a plan for debt resolution.

### **Discussion**

Applicant cites to her evidence of debt repayment and good job performance. Applicant's brief is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it sufficient to show that the Judge failed properly to weigh the evidence. *See, e.g.,* ADP Case No. 14-00700 at 2 (App. Bd. Sep. 24, 2014). The Judge addressed Applicant's payments, but his conclusion that they were minimal, with little impact on her overall debt situation, was consistent with the record that was before him. Failure to satisfy delinquent debts may indicate a lack of judgment, "which can raise questions about an individual's . . . ability to protect" sensitive information. Directive, Enclosure 2 ¶ 18. Applicant states that the Judge's adverse decision has resulted in the loss of her job, thereby working a substantial hardship on her. We are not able to

consider the effect that an unfavorable trustworthiness determination might have on an Applicant's employment. *See, e.g.*, ADP Case No. 08-07290 at 3 (App. Bd. Nov. 17, 2009).

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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board