

KEYWORD: Guideline F

DIGEST: Even if a delinquent debt is no longer collectable, the Judge can consider the circumstances underlying the debt. Adverse decision affirmed.

CASENO: 14-02206.a1

DATE: 10/15/2015

DATE: October 15, 2015

In Re:	)	
	)	
-----	)	ADP Case No. 14-02206
	)	
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 November 10, 2014, 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 July 31, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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**

Applicant divorced his wife in 2008. In 2013, he began working for his current employer, a Defense contractor. Prior to that, Applicant experienced six months or more of unemployment. He attributed his delinquent debts to his divorce and his unemployment. Although the Judge found in Applicant's favor regarding five of the seven debts alleged in the SOR, she held against him regarding two: a charged-off second mortgage and an unpaid credit card. The mortgage, in the amount of over \$75,500, resulted from the foreclosure of a residence that Applicant had bought prior to his divorce. During his clearance interview, Applicant announced an intention to pay off this debt at some point in the future. At the hearing, he noted that it was no longer on his credit report. Applicant stated that the credit card was a debt belonging to his ex-wife and that he did not have the funds to pay it. In his interview, he promised to pay off some or all of this debt. At the hearing, he testified that the debt was slated to "fall off my credit" later in the year. Decision at 3.

Applicant's annual salary is \$80,000, and his monthly income is such that he has about \$280 after expenses. He has not received financial counseling. Applicant's most recent performance report rates him as "Meets Expectations." *Id.*

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

In concluding that Applicant had not mitigated concerns arising from his delinquent mortgage and credit card, the Judge cited to evidence that these debts were unresolved as of the close of the record. She stated that there is no evidence in the record that Applicant intends to resolve either debt. Though noting that Applicant's financial problems may have been affected by circumstances outside his control, such as his divorce and unemployment, she concluded that he had not demonstrated responsible action in regard to his debts. Neither did he provide evidence of having received financial counseling. In the whole-person analysis, the Judge cited to Applicant's promises to pay off his debts without subsequent follow-through. She stated that these debts remained Applicant's responsibility, regardless of whether they are still to be found on his credit report.

### **Discussion**

Applicant cites to record evidence that, he believes, the Judge either failed to consider or that she misinterpreted or mis-weighed. He notes his statement in Applicant Exhibit D that, under the law of his state, he does not owe any deficiency that may result from a foreclosure sale of a personal residence. He also contends that the Judge did not properly interpret his answers during his interview. He contends that he did not promise to pay all of the delinquent debts in his credit report, only those that he actually owed and was able to pay.

Considering the interview first, we find no reason to believe that the Judge misinterpreted Applicant's answers. Her findings that were based on this interview were consistent with the record that was before her. Concerning the anti-deficiency statute, the record does not contain a sufficient evidentiary foundation to support a conclusion that this debt is no longer collectable. *See, e.g.*, ISCR Case No. 12-04806 at 3-4 (App. Bd. Jul. 3, 2014). In any event, evidence that a debt is not legally collectable through operation of law does not preclude a Judge from considering whether the circumstances underlying the debt impugn an applicant's judgment or reliability. By the same token, evidence that an unresolved debt has dropped from an applicant's credit report does not preclude a Judge from considering its significance. *See, e.g.*, ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008). Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 13-00584 at 3 (App. Bd. Apr. 24, 2014). Neither are they sufficient to show that the Judge mis-weighed the evidence.

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: Jean E. Smallin  
Jean E. Smallin  
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