

KEYWORD: Guideline F

DIGEST: Many of Applicant's arguments constitute a challenge to the manner in which the Judge weighed the evidence. However, an ability to argue for an alternative interpretation of the record is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Neither has Applicant provided a reason to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 15-03696.al

DATE: 04/05/2019

DATE: April 5, 2019

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

PROSE

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On September 14, 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 30, 2019, after the hearing, 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 issues on appeal: whether the Judge's findings of fact contained errors and 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 has worked for her current employer, a Federal contractor, since November 2018. This is her first application for access to protected information. Applicant has worked for other Federal contractors since 2002. However, she experienced unemployment from June to November of 2011. Her previous jobs did not provide medical insurance, and she incurred some medical debts. In 2007, Applicant and her ex-husband filed for Chapter 7 bankruptcy protection because they could not afford to pay their mortgage. The bankruptcy action discharged about \$270,000 worth of debt. Subsequently, Applicant's husband left her, and the couple divorced. Applicant sold the marital home, purchased in 2010, in a short-sale. Applicant's current husband is retired military and has advised her on resolving her financial problems. She testified that she prepared a spreadsheet to demonstrate her efforts at debt resolution, but she did not submit it to the Judge as she had promised to do.

The Judge found that some of Applicant's SOR debts had been resolved. However, he entered adverse findings in regard to four debts. One was a delinquent automobile loan in the amount of over \$10,000, charged off in 2014. This was a debt jointly incurred between Applicant and her ex-husband. In her interview, Applicant stated that she would resolve this debt after she had taken care of smaller ones. She testified at the hearing that the creditor offered to settle the debt for \$8,000, but she could not afford to pay that amount. Applicant did not provide documentary evidence of this settlement offer. In her post-hearing submission, she asserted that the creditor told her that it would not seek to enforce this debt, as it was beyond the statute of limitations. She did not corroborate this matter.

The other debts that the Judge resolved adversely to Applicant were for medical expenses. One of these was for eye surgery in late 2014, the total amount of which was almost \$3,000. Although Applicant promised to make regular payments, she had made none as of the close of the record. Applicant settled and/or paid the remaining two medical debts after she received the SOR.

Applicant's annual salary is about \$96,000, and her husband's is about \$104,000 plus an unspecified amount in military retirement pay. Her husband makes child support payments from

an earlier marriage and is jointly liable for payments on a previous residence. Applicant stated that she did not contact her creditors until recently because she did not have enough income to make payments on her debts.

The Judge's Analysis

As noted, the Judge resolved some debts in Applicant's favor. As regards those underlying his adverse decision, he acknowledged circumstances outside Applicant's control that affected her financial problems. However, he concluded that Applicant had not demonstrated responsible action in regard to her debts. The Judge noted, for example, that Applicant had made payments for a while on the delinquent automobile loan but stopped doing so well before her period of unemployment. She did not corroborate her testimony about negotiations with the creditor, nor did she demonstrate expeditious resolution of her medical debts. The Judge stated that Applicant demonstrated no financial counseling other than that required for bankruptcy filing and concluded that her debts are not under control. The Judge found that Applicant submitted a plan for resolving the laser surgery debt but that she had made no payments by the close of the record. Overall, he concluded that Applicant had not demonstrated a track record of debt payment sufficient to mitigate all of the concerns alleged against her.

Discussion

Applicant's brief includes matters outside the record. These include documents that post-date the Judge's decision. We are not permitted to consider new evidence on appeal. Directive ¶ E3.1.29.¹ Applicant contends that the Judge's findings of fact contained errors, for example his findings about her purported reliance on the statute of limitations for resolution of the automobile loan, the extent to which her financial problems originated with her ex-husband, etc. We have examined the Judge's findings in light of the record as a whole. The Judge's material findings are supported by substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant's brief cites to no error in the Judge's findings that would likely have affected the outcome of the case. *See, e.g.*, ADP Case No. 17-00260 at 2 (App. Bd. Apr. 25, 2018). Furthermore, the non-collectability of a debt does not inhibit a Judge from considering the circumstances of an applicant's delinquencies. *See, e.g.*, ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008).

Many of Applicant's arguments constitute a challenge to the manner in which the Judge weighed the evidence. However, an ability to argue for an alternative interpretation of the record is not enough to show that the Judge weighed the evidence in a manner that was arbitrary,

¹The new evidence pertains to the resolution of debts after the Judge issued his decision. Even if this were evidence that we could consider, it would not refute a principal feature of the Judge's analysis regarding the timing of Applicant's efforts at debt payment. *See, e.g.*, ADP Case No. 16-03595 at 4 (App. Bd. Aug. 27, 2018). Access to protected information requires faithful adherence to the rules and regulations governing such activity. A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

capricious, or contrary to law. Neither has Applicant provided a reason to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 18-00166 at 2 (App. Bd. Nov. 29, 2018).

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. 17-03252 at 3 (App. Bd. Aug. 13, 2018). *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