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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing	)	
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Filing Date: February 9, 2017	)	Case No.: PSH-17-0008
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Issued: May 17, 2017

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should not grant the individual access authorization.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. During an ensuing personnel security interview (PSI) in August 2016 and a credit report and personal financial statement review, the Local Security Office (LSO) learned that the individual had a number of financial irresponsibility issues, including the failure to file his federal income taxes for 2015, a Chapter 7 bankruptcy, as well as two residential evictions. The LSO also learned that the individual had an established pattern of an unwillingness or inability to satisfy his debts.

In December 2016, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a

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<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one or more security concerns under Guideline F, Financial Considerations, of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005)(Adjudicative Guidelines).

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual presented the testimony of four witnesses and testified on his own behalf. The DOE Counsel did not present any witnesses. The LSO submitted 13 exhibits into the record; the individual tendered three exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>2</sup>

## **II. Regulatory Standard**

### **A. Individual’s Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Administrative Judge’s Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after

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<sup>2</sup> OHA decisions are available on the OHA website at [www.energy.gov](http://www.energy.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).

consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, there are various security concerns under Guideline F, Financial Considerations. To support its charges, the LSO alleges that the individual (1) admitted that he has not filed his federal income taxes for 2015; (2) acknowledged that his monthly net income is less than his financial obligations; (3) filed for a Chapter 7 bankruptcy in April 2015; and (4) was evicted from two residences in November 2012 and November 2015, respectively. In addition, regarding the individual's honesty, reliability and trustworthiness, the LSO alleges that the individual has an established pattern of an unwillingness or inability to satisfy his debts. Ex. 1.

The individual's failure to live within his means, to satisfy his debts and to meet his financial obligations raises a security concern under Guideline F because his actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information. *See* Guideline F of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. (Adjudicative Guidelines). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

### **IV. Findings of Fact**

The individual's financial irresponsibility include his unwillingness or inability to satisfy his debts and his failure to file federal income taxes. On November 29, 2012, the individual was evicted from his residence. A judgment was placed against him in the amount of \$2,165 in April 2013. On April 1, 2015, the individual filed for a Chapter 7 bankruptcy. Later, on November 18, 2015, he was evicted from another residence for failing to pay rent. During his August 2016 PSI, the individual admitted that he has not yet paid the unknown balance. He also acknowledged that his monthly net income is less than his financial obligations. Despite his negative cash flow, the individual further acknowledged that he spends money on entertainment and gambling. He admitted to spending \$30 to \$40 on gambling every other weekend. In addition to discussing his financial issues during his PSI, the individual admitted that he has not filed his federal income taxes for 2015, and that he did not file for an extension of the time to file his taxes. Ex. 3.

### **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony at the hearing. In resolving the question of the individual's

eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual access authorization should not be granted. I cannot find that granting the individual a DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

During the hearing, the individual explained the circumstances that led to his two evictions. He testified that with regard to his November 2012 eviction, his girlfriend lost her job and he became responsible for the entire monthly rent. Transcript of Hearing (Tr.) at 81. According to the individual, they were evicted from this residence. He testified that his grandmother loaned him \$400 to assist with the rental of another home. *Id.* at 83. In April 2015, the individual filed for a Chapter 7 bankruptcy which included the debt owed, approximately \$2,165, to the rental management company. *Id.* He explained that he filed for bankruptcy because he had extensive debt and did not have the money to pay his creditors. According to the individual, he viewed the bankruptcy as a means to start over. *Id.* Although, his debt was discharged in bankruptcy, the individual testified that he was evicted again in November 2015. *Id.* at 87. He stated that his girlfriend lost her job again, and that he did not have the money to cover the rent. *Id.* at 88. He testified that he lived with his mother for three months and acknowledged that he has not yet paid the balance related to his 2015 eviction, which is approximately \$5,500. *Id.* at 91. The individual asserted that he has never gambled a lot and denied that gambling has caused any financial issues for him. He further asserted that in the past he would only gamble approximately \$30 to \$40 a couple of times a month. *Id.* at 98.

The individual testified that he is “trying to do better” with his finances and testified that he plans to start making payments of \$60 to \$100 to pay off the debt related to his 2015 eviction. *Id.* at 93. He also testified that he is current on the rent of a new house he shares with his girlfriend, as well as the \$400 a month car payments on his 2008 car. He testified that he recently purchased another vehicle with a \$460 monthly payment, and has given his 2008 car to his girlfriend. *Id.* at 102. He acknowledged that the vehicle is still in his name but asserted that he will turn the 2008 car into the creditor, if his girlfriend is unable to pay for it. The individual also testified that he is current on his child support payments for his two children. Finally, with respect to his finances, the individual asserts that he is more focused now and is trying to stay out of debt. He stated that he is a “changed” man, is working hard to better himself and to take care of his family. He further asserted that he has about \$200 a month after paying his bills and has qualified for a credit card for the first time which will allow him to build his credit.

The individual also addressed the circumstances that led to him not filing his federal income taxes for 2015. He testified that he had no excuse for not filing his 2015 taxes. According to the individual, he was working and taking care of his family at the time and simply lost track of the filing deadline and was unaware that he could have filed for an extension. The individual stated that his 2015 taxes were filed on December 28, 2016. *Id.* at 115, Ex. A. He received a refund which he used to make a child support payment. He stated that he has no other delinquent tax filings. *Id.* at 116.

During the hearing, the individual presented the testimony of his mother, two friends and a collection company representative. The individual's mother testified that the individual seldom spoke about his finances but she was aware that he did not have enough money to pay his bills in the past, and that his girlfriend was not working. She testified that the individual lived with her when he got evicted in 2015. The individual's mother further testified that the individual is trying to better himself, and that he is an honest and trustworthy person. Both of the individual's friends testified that the individual is a hard-working, reliable person who takes care of his family. They also testified that the individual has never asked for financial help from them and that they have not observed the individual spending excessively. Finally, the collection company representative who works for the real estate company related to the individual's 2015 eviction, testified that the individual owes an outstanding balance of \$5,587.69. Tr. at 58. He testified that, as of the date of the hearing, the individual had not made arrangements to pay the outstanding balance. *Id.* The representative further testified that, on December 28, 2016, the individual promised to make a \$100 payment on the balance, but never made a payment. *Id.* at 63. He stated that the individual demanded that his company provide him with a receipt for payments, but stated that it is company policy to not provide payment plan letters. *Id.* at 61. However, the company will send a final statement letter when the balance is paid in full. *Id.* at 62.

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that his financial problems date back at least five years and are ongoing. Therefore, Adjudicative Guideline F, ¶20 (a) is inapplicable. To a certain extent, the individual's financial problems were beyond his control. The individual testified that when his girlfriend lost her job on several occasions, all financial obligations fell on him. He asserted that he was not making enough money to cover all of the household bills. Nevertheless, I cannot find mitigation under Guideline F, ¶ 20 (b) because the individual did not convince me that he acted responsibly under the circumstances. Although the individual is current on other bills, he has not yet made payment arrangements with the collection company to address his largest debt, \$5,587, which stems from his 2015 eviction. The record reflects that the collection company communicated with the individual on three separate occasions, in August 2016, December 2016 and January 2017. In December, 2016, the individual promised to make a \$100 payment toward the outstanding balance. However, he never made the payment. Although, the individual asserted that he did not want to pay without a receipt or a payment plan letter from the collection company, he has not made any effort, as of the date of the hearing, to address this outstanding balance. In the end, I am not convinced that the individual's financial problems are under control. I, therefore, find that his financial problems are not resolved under Guideline F, ¶ 20 (c). While the individual has made efforts to change his financial situation moving forward, including establishing and building credit, he has not yet established a pattern of repayment on his outstanding debt. Hence, Guideline F, ¶ 20 (d) is inapplicable. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns, at this time.

However, I find that the individual has provided sufficient evidence to resolve the Guideline F security concern related to his failure to file his 2015 taxes. The individual testified that he lost track of the filing deadline because he was working and taking care of his family. According to the individual, the "time slipped away." Tr. at 117. He further testified and presented documentary evidence that he filed his 2015 federal income taxes on December 28, 2016. The

record also reflects that the individual received a refund that was processed into his child support. I am convinced that the individual's behavior with respect to the non-filing of his taxes happened under such unique circumstances that it is unlikely to recur. Guideline F at ¶ 20 (a).

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline F. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with that guideline. I therefore cannot find that granting the individual access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should not grant the individual access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Office of Hearings and Appeals

Date: May 17, 2017