

# PRIVACY ACT INFORMATION



**Department of Energy**  
Washington, DC 20585

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

In the Matter of Personnel Security Hearing )

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Filing Date: April 3, 2017 )

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Case No.: PSH-17-0020

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Issued: June 1, 2017

### Administrative Judge Decision

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Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the individual should not be granted a security clearance.<sup>2</sup>

#### I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf. During the ensuing investigation, the Local Security Office (LSO) obtained information about the individual’s finances that raised security concerns. In order to address these concerns, the LSO summoned the individual for an interview with a personnel security specialist in December 2016. After this Personnel Security Interview (PSI)

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<sup>1</sup>An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>.

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. § 552. Such material has been deleted from this copy and replaced with XXXXXX’s.

failed to resolve these concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced seven exhibits into the record of this proceeding. The individual introduced four exhibits and testified on his own behalf at the hearing.

## **II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a security clearance. This information pertains to Guidelines E and F of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 29, 2005) (Adjudicative Guidelines)*.

Guideline E relates to personal conduct, and it provides, in pertinent part, that the deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire or similar form used to conduct investigations could raise security concerns and may be disqualifying. As support for its invocation of this Guideline, the Letter cites discrepancies between information that the individual provided on a November 2015 Questionnaire for National Security Positions (QNSP) and statements that he made during his December 2016 PSI. Specifically, on his QNSP he indicated that within the last seven years, he had not had any debts turned over to a collection agency, had only one account that was charged off, and had not been over 120 days delinquent on any debt. However, during his PSI, the individual acknowledged that within this period, he had an unpaid collection account with the Social Security Administration (SSA) and two unpaid medical collection accounts, a second unpaid charged-off account, and a mortgage delinquency of over 120 days.

Guideline F, "Financial Considerations," states that inability or unwillingness to satisfy debts and a history of not meeting financial obligations are among the conditions that could raise a security concern and may be disqualifying. Under this Guideline, the Letter cites the individual's \$93,878 SSA collection account and the other admissions made during his PSI that are set forth in the preceding paragraph, his disclosure of a charged-off account for \$22,222, and his statements that he had not made any attempts to pay off these debts.

These allegations adequately support the invocation of Guidelines E and F, and they raise serious security concerns. Conduct involving a lack of candor or dishonesty can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Any failure to provide truthful and candid answers during the security clearance process is of special interest, and may be disqualifying. *Adjudicative Guidelines*, ¶ 15. Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of

judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. *Id.* at ¶ 18.

### III. REGULATORY STANDARDS

The procedures for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

### IV. FINDINGS OF FACT AND ANALYSIS

#### A. Guideline E

At the hearing, the individual testified that he was either not aware of the existence of the debts in question or not aware of their status at the time that he completed the QNSP. Specifically, he said that at that time, he did not know that the SSA debt had been referred to a collection agency, or that he owed money to a utility (the undisclosed charged-off account), to a local bank (the mortgage), or for medical services. Hearing Transcript (Tr.) at 10, 12, 18. As a general explanation for this lack of awareness, the individual testified that he did not receive any billing statements or dunning letters for these accounts because they were sent to a former address, and were not forwarded to him by his ex-wife. Tr. at 17, 19. With regard to the unpaid utility bill and the mortgage, the individual also said that his ex-wife was supposed to take over these payments after he moved out of their home, and he assumed that she had done so. Tr. at 12, 14, 18, 20. The medical bills, the individual claimed, were supposed to be completely covered by his insurance carrier and by Medicare, and he allegedly told his creditors to bill Medicare for that portion of

his expenses not covered by his insurance. Tr. at 40. He said that he did not find out that Medicare had not been billed until after he filled out the QNSP, and that he was therefore unaware of the existence of these debts at that time. Tr. at 10, 39.

I did not find the individual's testimony about his level of awareness at the time that he completed his QNSP to be credible, primarily because of inconsistencies in the individual's testimony and inconsistencies between that testimony and the individual's statements during his PSI. At the hearing, the individual initially testified that he was unaware of the mortgage delinquency at the time that he completed the QNSP in November 2015, and that he first found out about it in "early 2016." Tr. at 18, 20. He later said that he was not sure whether he discovered this delinquency before or after filling out the QNSP. Tr. at 21. Still later, he claimed that had he known about the delinquency at that time, he would have listed it. *Id.* However, during his December 2016 PSI, he stated that he found out that his ex-wife had not been making the payments, and that the mortgage was delinquent in "probably August" 2015. DOE Exhibit (DOE Ex.) 7 at 22. In fact, according to the individual's credit report, the mortgage became delinquent in February 2015. DOE Ex. 4 at 6. When asked during the PSI to explain his failure to list his mortgage debt on his QNSP as being over 120 days delinquent, the individual said that he "wasn't aware that everything got recorded like it did." DOE Ex. 7 at 80.

With regard to the charged-off utility account, the individual testified that he did not list it on his QNSP because he was unaware that the debt even existed at that time, Tr. at 12, and his initial response during the PSI on this issue was consistent with this explanation. DOE Ex. 7 at 24-29. However, when asked again later during the PSI about why he did not list the charged-off utility account on his QNSP, the individual indicated that he had learned about the account as of the date of the QNSP, but "forgot" to list it. *Id.* at 79. Given these inconsistencies and the individual's failure to submit any evidence in support of his claim that the bills and notices associated with these accounts were sent to a former address, I find that the individual has not adequately addressed the DOE's concerns about his honesty and reliability that were raised by his inaccurate and incomplete responses on the QNSP. Significant security concerns remain under Guideline E.<sup>3</sup>

## **B. Guideline F**

At the hearing, the individual attempted to demonstrate that his financial difficulties were due to factors that were largely beyond his control, that he has made an earnest attempt to pay his debts, and that he is now on sound financial footing. He said that his SSA debt, which totaled \$93,878, was incurred as a result of the individual's receipt of disability payments for which the SSA concluded that he was ineligible. He explained that, due to injury, he began receiving disability payments in 2002. The individual returned to work in 2008 without informing the SSA, and continued to receive disability payments during 2009 and part of 2010. Tr. at 24. He did not inform the SSA when he returned to work, and continued to receive the disability payments due,

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<sup>3</sup> Given the afore-mentioned Social Security debt, it also appears that on the QNSP, the individual incorrectly indicated that he was not delinquent on any Federal debt. DOE Ex. 6 at 35. However, because this issue was not raised in the Notification Letter, I will not address it in this decision.

he testified, to a misunderstanding regarding the SSA's return to work policy. The individual claimed that his then-wife told him that he could work a certain number of months while still receiving disability payments. Tr. at 25. The rationale underlying this belief was allegedly to make sure that the disability recipient was fully able to resume working before the payments stopped. He added that after he was notified of the overpayment in 2010, he went into the local SSA office to obtain an explanation of the debt that was satisfactory to him, but was unable to do so. Tr. at 23-24. The SSA also determined that the individual was ineligible for disability payments that he received in 2012-2014 due to another injury. Tr. at 36.

The individual's dispute with the SSA was not over whether he owed money to them, but rather over the amount of his debt. Tr. at 60-61. According to the individual, from August 2016 to January 2017, he went to the SSA's offices approximately twice per month in an unsuccessful attempt to resolve this dispute. Tr. at 30. In March 2017, approximately four weeks before the hearing, the SSA began garnishing his wages, taking out "10 [or] 11 percent," or \$150 to \$200 every week. Tr. at 35. The individual testified that the garnishment is a "financial strain," given his other expenses, but that he's "making it." *Id.*

The individual then testified about his charged-off credit card debt of \$22,222. He said that the amount of the debt was primarily due either to him transferring an unpaid balance from another credit card, or to legal expenses incurred during a custody dispute involving his eldest daughter. Tr. at 49-50. It is also possible that some of the charges were made by his ex-wife, and he has requested a complete billing history for the card to determine whether any part of the debt is attributable to her. Tr. at 64. He fell behind in making his payments, the individual continued, while he was on disability, because his monthly income was drastically reduced. Tr. at 50. His only contact with this creditor in recent years was to request the billing history, and consequently he has not worked out a plan for repaying this debt. Tr. at 64.

As previously indicated, according to the individual, the unpaid utility bill of \$54.67 was for service at his former residence, and his ex-wife was supposed to pay it, and the medical bills of \$1,234 and \$305 should have been paid by Medicare. The individual has paid both of these debts. Tr. at 45, 53; Individual's Exhibits (Ind. Ex.) A and D.

It is evident from the record in this proceeding that circumstances that were largely beyond the individual's control contributed to the individual's financial difficulties. His four divorces have generated substantial expenses, including, according to the individual, those relating to a custody battle involving his eldest daughter. His injuries have caused a substantial decrease in his income over extended periods of time, and have generated considerable medical bills.

However, the mitigating value of these factors is significantly decreased by my conclusion that the individual did not act responsibly under the circumstances. See *Adjudicative Guidelines*, ¶ 20(b). As an initial matter, I find it difficult to believe that the individual could be approved for SSA disability payments without being informed of the eligibility requirements for such payments, or of the requirement to notify the SSA if he returned to the workforce. Furthermore, the individual's alleged reliance on his ex-wife's beliefs as to SSA policy was not reasonable in the absence of any showing of expertise on her part in this area.

The individual also demonstrated financial irresponsibility by not being sufficiently diligent in paying his debts. In 2016, the individual purchased a second vehicle, rather than using that money to pay his creditors. He did so not out of necessity, but because he concluded that the vehicle he was driving was not sufficiently fuel efficient. DOE Ex. 7 at 63-65. The individual became delinquent on his credit card payments at some point between 2012 and 2014. Tr. at 50. However, because he stopped receiving billing statements from this creditor, he ignored the debt until mid-to-late November 2016, when he contacted them to request a billing history. DOE Ex. 7 at 15-16. As of the date of the hearing, the individual had not made any payments on this account. In June 2016, he told an OPM investigator that he would follow up with his medical creditors to see if they had successfully billed Medicare for the unpaid balance of his debts. However, after the interview he forgot about this commitment, and the medical debts were not paid until the day before the hearing, in April 2017. DOE Ex. 7 at 29-30; Ind. Ex. D.

I am also not convinced that the individual will be able to meet his financial obligations in the future. This is because two additional stressors are likely to be placed on finances that the individual admitted were already strained by the SSA garnishment. First, he will have to make some arrangement to pay his substantial credit card debt. Second, the state in which one of his ex-wives lives is alleging that the individual is in arrears on his child support payments. Tr. at 57-58. The individual denies this allegation, and claims that the state has no record of his payments because he made them directly to his ex-wife rather than to the state. *Id.* As of the date of the hearing, neither of these situations had been resolved, and the demands that they will place on the individual's finances are therefore uncertain. Accordingly, when asked whether he would be able to afford any type of payment plan regarding his credit card debt given his other obligations, the individual responded, "I honestly don't know." Tr. at 51. The individual has not successfully addressed the DOE's security concerns under Guideline F.

## V. CONCLUSION

For the reasons set forth above, I find that significant security concerns remain regarding *Adjudicative Guidelines* E and F. Consequently, I cannot conclude that granting the individual access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: June 1, 2017