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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:	October 3, 2017)	Case No.: PSH-17-0070
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Issued: January 18, 2018

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines), I conclude that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization. In order to receive a security clearance, a clearance holder must complete a Questionnaire for Security Positions (QNSP). In order to maintain a clearance, an individual must complete a QNSP every five years.² Following his most recent five year reinvestigation which began in December 2015 with his completion of the QNSP, the local security office (LSO) found derogatory information regarding the individual’s financial situation. To address the concerns found, the LSO called the individual in for a Personnel Security Interview (PSI) in July 2016 and asked that he complete a Personal Financial Statement (PFS). *See* Exs. 7 and 8.

¹ 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.

² When the individual first completed a questionnaire to receive his security clearance, it was called a Personnel Security Questionnaire (PSQ). I will refer to his previous PSQs as a QNSP for ease of reference.

Since neither the PSI nor the PFS resolved the security concerns arising with respect to the individual's financial situation, the LSO informed the individual in a letter dated September 11, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 2. In the Notification Letter, the LSO explained that the derogatory information raised one or more security concerns under "Guideline E: Personal Conduct" and "Guideline F: Financial Considerations" of the Adjudicative Guidelines (Guideline E and Guideline F). See Ex. 2.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. See Initial Request dated September 26, 2017. See Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 16 numbered exhibits (Exhibits 1-16) into the record. The individual introduced 10 lettered exhibits (Exhibits A-J) into the record and presented the testimony of two witnesses, including himself. 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.³

II. Regulatory Standard

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 regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after 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). 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 (9th 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 restoring the individual's 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.

III. The Notification Letter and the Security Concerns at Issue

³ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

As previously noted, the LSO cited Guidelines E and F as the basis for suspending the individual's security clearance. Guideline E relates to security risks arising from personal conduct. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. *See* Adjudicative Guidelines at Guideline E ¶ 15. With respect to Guideline E, the LSO relied upon the individual's falsifications on his 1981 and 1986 QNSPs and the individual's failure to self-report his wife's bankruptcy.⁴ Ex. 1 at 4. Additionally, the LSO cited that during a July 2016 PSI, the individual admitted that he and his spouse filed for bankruptcy under her name because they were concerned about his clearance. *Id.*

Guideline F relates to security risks arising from a failure to live within one's means, satisfy debts, and meet financial obligations. Such conduct can indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, again raising questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. *See* Adjudicative Guidelines at Guideline F ¶ 18. With respect to Guideline F, the LSO relied upon the individual's failure to pay federal, state, and other taxes when required by law or ordinance. Ex. 1 at 5. Additionally, the LSO cited, *inter alia*, that: 1) the individual filed Chapter 13 bankruptcy in his spouse's name; 2) the individual indicated during the PSI that he has had issues paying his bills dating back to his early twenties; 3) the individual became delinquent on his 2015 property taxes after the bankruptcy; 4) the individual stated that, although he earns plenty of money and should be able to handle his expenses, he lacks control of his finances; 5) the individual should have had \$700 of his salary left over after paying expenses following the bankruptcy; and 6) the bankruptcy did not include a credit card that was closed by the creditor. *Id.* at 5-7.

In light of the information available to the LSO, the LSO properly invoked Guidelines E and F.

IV. Findings of Fact and Hearing Testimony

The individual does not dispute most of the facts alleged in the Notification Letter. The individual did, however, challenge the Notification Letter allegation that he spent \$25,000 to \$30,000 to improve a vacation trailer he owns; instead, the individual presented evidence that he paid \$6,900 to repair the roof on the trailer, not the amount alleged in the Notification Letter. Ex. D. At the hearing, DOE stipulated that the amount in the Letter was incorrect. Tr. at 73. Further, the individual presented evidence that the credit card that is alleged to have not been paid is, in fact, a part of the bankruptcy. Exs. E, F, G.

During a 1986 PSI, the individual admitted that he failed to list a 1977 arrest for possession of a controlled substance on his 1981 and 1986 QNSPs. He also admitted that he used marijuana until approximately two months prior to the 1986 PSI but failed to list that usage on his 1981 or 1986 QNSPs. Ex. 2 at 4; Ex. 13 at 3-5. At the July 2016 PSI, the individual admitted that he had not been truthful with the LSO about his illicit drug use and arrest prior to 1986. Ex. 7 at 12-14. However, the individual claimed that the LSO mitigated that concern in 1986.

⁴ In fact, the DOE requires all those applying for or holding a DOE access authorization must, within two business days following the event, verbally report "personal or business-related filing for bankruptcy." DOE Order 472.2.

At the hearing, the LSO stated that the 1981 and 1986 falsifications were raised to show a pattern of dishonesty. Tr. at 31. The DOE claimed that the pattern was continued by his failure to self-report his bankruptcy prior to completing the QNSP in December 2015. The individual claimed that he and his wife did not file bankruptcy in her name to deceive the DOE. Tr. at 31. He asserted that the bankruptcy attorney suggested that the bankruptcy be filed in his wife's name so one of them could maintain credit. Tr. at 31. As the individual was the "money earner" in the family, he had better credit at the time of the bankruptcy and could better maintain that credit rating. Tr. at 31-32.⁵

As for the bankruptcy and his other financial irregularities, the individual testified that he self-reported the bankruptcy during his interview with the Office of Personnel Management (OPM) investigator who interviewed him during his reinvestigation. Tr. at 76. The individual also testified that he and his wife filed for bankruptcy in order to prepare for retirement. Tr. at 42-43. He further testified that the reason for his delinquency on his taxes was two-fold. Tr. at 45. First, when he refinanced his mortgage, he decided not to have an escrow account to pay the taxes. Tr. at 45. Second, his previous employer withheld local taxes, and when his employer changed, the new employer did not withhold taxes. Tr. at 45-46. The individual had difficulty raising a lump sum to pay the taxes when both were due, having spent the money owed during the year. Tr. at 45, 46. The individual concluded his testimony by stating that, with all of his overdue financial obligations being covered by the bankruptcy, he is better able to handle his finances. Tr. at 79.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented 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)⁶ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that restoring the individual's 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.

⁵ The individual claimed that he did not list the bankruptcy on his QNSP because the question explicitly asked if he had filed for bankruptcy, and he had not. Tr. at 35. However, the record shows that the individual did, in fact, list the bankruptcy on the QNSP. Ex. 12 at 28. While he answered "no" to the specific question regarding bankruptcy, he stated later in the QNSP, "Filed Chapter 13 Bankruptcy in Wife's name to cover delinquent [debts]..." *Id.*

⁶ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

Administrative Judge's Evaluation of Evidence

As an initial matter, I note that legitimate security concerns exist as a result of the individual's falsifications and his financial irregularities. There are two considerations in this case: first, whether the individual exhibited questionable judgment, lack of candor, and dishonesty in failing to disclose his prior drug use and to self-report the bankruptcy; and second, whether the individual has sufficiently mitigated his previous overdue financial irregularities. As mentioned above, the individual disputed some of the facts alleged by the LSO in the Notification Letter; however, he does not dispute the remaining listed facts. He argues that he has sufficiently mitigated the Guidelines E and F security concerns raised by the LSO due to the individual's bankruptcy and current financial stability.

1. Guideline E Concerns

The individual testified that he did not fail to report his bankruptcy in an attempt to deceive DOE or conceal unfavorable information. In support, he explained that his bankruptcy attorney suggested that the bankruptcy be filed in his wife's name because he was the "money earner" in the family and could maintain his credit. Accordingly, he asserted that he had not, himself, filed for bankruptcy, and therefore did not fail to report that information. Yet, the individual attempts to mitigate the security concern by testifying that he "proudly disclosed" the bankruptcy during his interview with the OPM investigator, indicating that the individual was aware that the bankruptcy was his. The individual does not clarify why he believed the bankruptcy should be disclosed to the OPM investigator but did not need to be reported when it occurred.

Furthermore, during the hearing, the individual claimed that only his wife expressed concern about how the bankruptcy would affect his clearance, thus implying that he did not believe that the bankruptcy was his, and that he was not required to report it. However, the transcript of the 2016 PSI shows that the individual sent a document to the LSO stating that "filing under [the] wife's name was a conscious decision due to a concerns with [his] security clearance," reflecting that the individual was aware that it was, in fact, his bankruptcy.

Based on the foregoing, I find that the individual was aware that the bankruptcy should have been reported, but deliberately chose not to do so, in an effort to conceal unfavorable information. *See* Guideline E ¶ 16 (a). I find further that the bankruptcy was filed in the wife's name in an effort to avoid disclosure. When considered with the two falsifications listed by the LSO in the Notification Letter relating to the individual's failure to disclose marijuana use on his 1981 and 1986 QNSPs, these issues demonstrate "a pattern of dishonesty or rule violations" engaged in by the individual. *Id.* at ¶ 16 (d)(3).

None of the conditions that could mitigate such a security concern are evident in this case. *Id.* at ¶ 17. The falsification is recent, and it is not minor. *Id.* at ¶ 17 (c). Although the individual did self-report the bankruptcy to the OPM investigator, that report was not prompt, having taken place at least seven months following the bankruptcy. *Id.* at ¶ 17(a).⁷

⁷ Similarly, while the individual did reference the bankruptcy on his 2015 QNSP (*see* fn. 4), that disclosure was also not prompt, having taken place more than six months following the bankruptcy.

Accordingly, I conclude that the individual has not resolved the concerns raised by the LSO under Guideline E.

2. Guideline F Concerns

The individual testified that he presently has no current financial irregularities, and he is paying the bankruptcy as ordered. Although two accounts show on his current credit report, the individual provided evidence that both are being paid. Ex. A. The first account is his mortgage. The individual provided a worksheet that shows the mortgage is included in the bankruptcy. Ex. B. Further, the individual provided a letter from the bankruptcy attorney which stated that the mortgage is included in the bankruptcy. Ex. J. Second, the individual testified that he co-signed for his son's car loan. Ex. C. The son had been delinquent one month on the payment, which was reflected on the individual's credit report. Ex. A. The individual provided a copy of the most recent statement for the car loan showing that the loan was current. The individual testified that as a result of the bankruptcy, he and his wife have both attended financial counseling. In addition, they are restricting their spending. *Cf.* Guideline F ¶ 20 (c)-(e) (mitigation of financial irregularities possible where an individual is undergoing or has undergone financial counseling for the problem, has made a good-faith effort to repay overdue debts, and has a reasonable basis to dispute the legitimacy of the past-due debt and provided documented proof to he has taken action to resolve the issue). As such, the individual has resolved the concerns raised by the LSO under Guideline F.

For the reasons set forth above, I find that the individual has not resolved the security concerns associated with Guideline E, arising with respect to his falsifications and failure to report, but he has resolved the security concerns associated with Guideline F, arising with respect to his financial irregularities.

V. 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 Guidelines E and F. After considering all of 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 Guideline E. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals