



the derogatory information fell within the purview of Guideline F, concerning financial considerations.

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 LSO introduced 11 numbered exhibits (Exhibits 1-11) into the record.<sup>2</sup> The individual introduced 5 lettered exhibits (Exhibits A – E) into the record and testified on his own behalf. 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>3</sup>

## **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**

As previously noted, the LSO cited Guideline F as the basis for suspending the individual’s security clearance. Guideline F relates to security risks arising from a failure to live within one’s

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<sup>2</sup> Following the hearing, and with my consent, the LSO submitted a twelfth exhibit into the record, the individual’s updated credit report.

<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.energy.gov/oha](http://www.energy.gov/oha).

means, satisfy debts, and meet financial obligations. Guideline F ¶ 18. Such conduct can 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 or sensitive information. *Id.* In citing Guideline F, the LSO relied upon the individual's outstanding debts: five accounts totaling \$9,732. The Notification Letter additionally cited four concerns with regard to the individual's unwillingness or inability to satisfy his debts: (1) during the June 2017 PSI, the individual confirmed his intention to resolve the debt by December 2017, but had not yet made any effort to do so; (2) the individual made the decision to financially support his adult children, despite having a monthly budgetary shortfall of \$600; (3) during the June 2017 PSI, the individual admitted that he had a judgment placed against him and agreed to pay monthly installments, but ceased payment without notice to the creditor and maintains an outstanding balance; (4) despite acknowledging and understanding the security concerns associated with financial responsibility, the individual has outstanding debts of \$9,723.

In light of the information available to the LSO, the LSO properly invoked Guideline F.

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

At the hearing, the individual stipulated that, at the time the Notification Letter was issued, the facts therein were accurate. Tr. at 10. He testified that the debts cited in the Notification Letter were due in large part to a divorce and weather damage to his home. *Id.* at 25, 36. He further testified that he has negotiated settlements with his creditors and paid four of the outstanding debts per the settlement agreements. *Id.* at 13, 15, 16. With regard to the remaining debt, the individual submitted evidence that he paid it in full. *Id.* at 14. The individual additionally submitted payment receipts for each of these debts. Ex. A-E. Following the hearing, the LSO submitted the individual's updated credit report. Ex. 12. The credit report shows that all debts have been removed from the credit report with the exception of one. *Id.* However, as the individual has provided a receipt of payment with regard to this debt, Ex. D, and testified that the payment has cleared, Tr. at 16, I find that the debt has been resolved, but is not yet reflected on the updated credit report.

With regard to the remaining security concerns addressing the individual's unwillingness or inability to satisfy his debts, the individual testified that, as he committed to the LSO in the June 2017 PSI, he paid off his delinquent debts by December 2017. *Id.* at 31-32. He clarified that all of his debts were resolved by early September 2017. *Id.* at 13-16. He further testified that he is no longer supporting his adult children, and he has "a lot of money available to [him] now." Tr. at 33. In addressing his decision to cease payment on the judgment that was entered against him, he explained that he was "making payments off and on when [he] could." *Id.* at 36. However, he sustained weather damage to his home that was not covered by his homeowner's insurance and fell behind on his bill as the result of paying to repair his home. *Id.* The individual testified that, not only has this judgment been paid, but the remaining debts listed in the Notification Letter have also been resolved, and "all [his] bills are caught up." *Id.* at 13-16, 36, 39.

The individual explained his current financial situation, stating that his position is now unionized, allowing him to receive a raise every year. *Id.* at 39. He further noted that, although he took money out of his 401(k) in order to pay all of his financial obligations, he has already paid the associated penalty and taxes. *Id.* at 42.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should be restored. I 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.

Financial difficulties form the basis of the LSO's Guideline F concerns: \$9,723 in outstanding debt indicates a failure or inability to satisfy debts. Guideline F ¶ 19(a)(b). However, the individual explained that the conditions that led to his financial difficulties resulted from both a divorce and weather damage to his home, circumstances largely out of the individual's control. *See id.* at ¶ 20(b)(circumstance that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances). He also testified that he made payments on his debts when he was able to do so, indicating his efforts to responsibly manage his financial obligations. *Id.* Furthermore, the individual has resolved all of the debt detailed in the Notification Letter and paid these debts using a legal source of income, his 401k. *See* ¶ at 20(d)(the individual initiated a good-faith effort to repay overdue creditors), (f)(the affluence resulted from a legal source of income). Finally, the individual has ensured that all penalties and taxes associated with a withdrawal from his 401k have already been paid and satisfied.

For the reasons set forth above, I find that the individual 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 Guideline 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 brought forth sufficient evidence to resolve the security concerns associated with Guideline F. Accordingly, I have determined that the individual's access authorization should 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