



Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the LSO introduced nine numbered exhibits (Exhibits 1-9). The individual introduced eight lettered exhibits (Exhibits A-H) 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.

## **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 denial"); *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 restoring 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 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 mentioned, 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 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: nine accounts totaling \$3,051 and a charged-off account with a past due amount of \$4,598. The Notification Letter additionally cited the individual's failure to file his 2015 and 2016 Federal and state income tax returns. In addition, it cited the individual's admission, during his October 2017 PSI, that he failed to file extensions to file his returns in 2015 and 2016.

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

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

At the hearing, the individual did not dispute that, at the time the Notification Letter was issued, the facts therein were accurate. Tr. at 7. Rather, during the hearing, the individual addressed each delinquent account and the failure to file his taxes. He testified that seeing his credit report “really caught [his] attention.” *Id.* at 28. The individual stated that, prior to his PSI and during the summer of 2017, he began working to address his debt. *Id.* at 27. He stated that he “tackled” his student loan debt first by making payments every few weeks (more frequently than required), and that his student loan was paid off in September 2017. *Id.* at 20, 28. According to the individual, he then began to work on the smaller past due amounts on his credit report. *Id.* He testified that the outstanding delinquent debts cited in the Notification Letter were due in large part to his wife’s unstable employment history. *Id.* at 20, 21. The individual explained that his wife had a number of jobs and that there was a break for a couple of months between each job. *Id.* at 21. He testified that he had to carry the financial burden for the household when his wife was not working. *Id.* The individual also acknowledged that his money was sometimes directed to funding family hobbies as well as his son’s sports activities, rather than paying off his debt at the time. *Id.* Specifically, he testified that he spent money on his wife’s archery competitions and his son’s travel baseball team. *Id.*<sup>2</sup>

The individual testified that his son is no longer participating on a travel baseball team, nor is the individual’s wife engaging in archery activities. *Id.* at 21, 22. According to the individual, he has come to the realization that he needs to be “proactive” with the family’s bills, and has curbed his spending. *Id.* The individual acknowledged that he should have taken care of all of his delinquent debts, but reiterated that prior to his PSI, he was working on paying off his student loan and some of the smaller debts first. *Id.* at 19. He testified that he took the advice given during his PSI to combine smaller payments and establish a payment arrangement. *Id.*

The individual testified that, with respect to his charged-off account of \$4,598, he has an established payment arrangement with the company. *Id.* at 8; Ex. D. His current balance on this account is \$3,581. *Id.* at 11, Ex. E. He testified that he began this payment arrangement on October 9, 2017, and has made five monthly payments (\$188.48 a month) as of the date of the hearing. *Id.* at 8. With respect to the remaining collection accounts totaling \$3,051, the individual submitted evidence that he has paid all of these accounts in full, and that they have been removed from his most recent credit report.<sup>3</sup> *Id.* at 13-16; Ex. E.

With regard to the failure to file 2015 and 2016 tax returns, the individual explained that he was using a tax preparer from 2009 through 2014, but was not satisfied with her service. *Id.* at 17. He

---

<sup>2</sup> The individual stated that he had previously allowed the archery to continue because his son participated, and he saw it as an opportunity for his son and his wife to spend time together. *Id.* at 22.

<sup>3</sup> The individual testified that a \$1000 debt listed in the Notification Letter was removed from his credit report, and that this debt did not belong to him. *Id.* at 16; Ex. E. He further testified that when he called the company to request documentation, the company informed him that there would be no documentation and that it was simply removed from his credit report. *Id.*

stated that he was looking to find another tax preparer to prepare his 2015 and 2016 tax returns. *Id.* The individual readily acknowledged that it took him two years to find someone to complete his taxes, and that he did not take this obligation as seriously he should have. *Id.* at 18. He further admitted during the hearing that he was not as proactive as he should have been to find a tax preparer to complete his taxes. *Id.* The individual testified that he had communicated with a new tax preparer prior to his PSI, and was trying to schedule a time to meet with her when the PSI occurred. *Id.* at 32. He testified that he filed both his 2015 and 2016 taxes on October 23, 2017, after his October PSI.<sup>4</sup> *Id.* at 18. He further testified that his 2017 tax returns have been filed in a timely manner. *Id.*

The individual testified about his current financial situation, stating that he paid for his wife's training and job-related certification, and she is currently working. *Id.* at 22. He also reiterated that he is no longer spending money on hobbies or his son's extracurricular activities. *Id.* According to the individual, he and his wife currently have "a good budget," and have no new delinquencies. *Id.* He testified that he is now approaching his finances differently, stating that he is addressing his bills as they arise to prevent them from going to collections. *Id.* at 23. The individual stated that:

After October 30th -- that's when my clearance was suspended -- we both -- I sat her down, and we discussed, you know, where we're at in our marriage and -- and so, you know, do we love one another, do we, you know, want to continue a future together. And I told her, you know, my clearance and my job mean the world to me. I enjoy working here. I enjoy the people I work with. I love the duties that I have.

And really get it through to her that, hey, this is -- this is the only way we're going to have a future, and if we're going to do this, we need to do this together, and we need to communicate and -- and take a step back and really take a look at this. And we don't need to go out of town to all these archery competitions, we don't need to do these baseball tournaments and baseball events, you know. We need to buckle down, take care of everything, if we're going to have a future together, and any long-term goals.

And she agreed with me, and we really strengthened our marriage on that, and I feel we've done pretty good since this time.

*Id.* at 24. He stated that his wife now understands the importance of maintaining good finances. *Id.*

When asked how he would maintain his finances in the event his wife becomes unemployed again, the individual testified that he and his wife are setting aside money to be used in emergencies such as that.<sup>5</sup> *Id.* at 24, 31. He stated that, in the event his wife becomes unemployed again, all savings

---

<sup>4</sup> The record reflects that the individual received refunds for tax years 2015 and 2016. Exs. A, B.

<sup>5</sup> The individual referred to this as a "vacation fund", because he and his wife use this money to visit the wife's parents in a distant state twice a year. *Id.* at 24. However, he made clear that, in an emergency, the priority for such funds would be to cover expenses, and not to travel. *Id.* at 24-25.

will be used to cover bills and expenses. *Id.* at 24, 25. The individual submitted a monthly budget, which includes the \$188.48 per month owed on his payment arrangement, his rent, utilities and other bills. Ex. H. His budget also shows an excess of over \$2,000 a month which can be applied towards savings. *Id.*

## V. Analysis

I have thoroughly considered the record in 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)<sup>6</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. Based on the facts in this record, 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.

As stated earlier, the failure 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 or sensitive information. *See* Guideline F. Here, financial difficulties and the failure to file Federal and state income taxes form the basis of the LSO's Guideline F concerns. Guideline F ¶ 19 (a), (b) and (f).<sup>7</sup>

The Adjudicative Guidelines describe factors that could mitigate security concerns about financial considerations. *See* Guideline F at ¶ 20. In relevant part, the Guidelines provide that mitigating conditions include that "the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts." Guideline F at ¶ 20(d). Here, although the individual acknowledged that he should been more proactive in addressing his debt, he testified and provided documentary evidence that he has established a payment arrangement for his charged-off account and has made five payments as of the date of the hearing. In addition, the individual has paid his other outstanding debts (as listed in the Notification Letter) in full, and they have been removed from his most recent credit report.

The Guidelines also provide that mitigating conditions include that "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." Guideline F at ¶ 20(g). In the present case, the individual presented evidence that, as of October 23, 2017, he had filed his Federal and state tax returns for

---

<sup>6</sup> 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.

<sup>7</sup> Guideline F ¶ 19 states, in relevant part, "conditions that could raise a security concern and may be disqualifying include: (a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; [and] (f) failure to file...annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required...."

the tax years 2015 and 2016, thereby fulfilling his obligation to file tax returns for those years. The individual testified credibly that he now completely understands his obligation to file Federal and state tax returns in a timely fashion and will do so in the future. It is clear to me that the individual now comprehends the ramifications of any future failure to timely file his taxes, Federal or state, and that he is unlikely to do so. The record is also clear that the individual's failure to file his Federal and state tax returns stemmed from procrastination and negligence, and not from a willful disregard of the law, or an effort to avoid payment of taxes, as the individual credibly testified that he received a refund for both 2015 and 2016.

While the individual's behavior with respect to both his debts and his failure to file his taxes raised questions about his reliability and trustworthiness, I found him to be credible during the hearing regarding his intentions moving forward. Furthermore, I believe that this behavior is unlikely to recur in the future. I base this determination on the fact that: the individual had begun to address his debts prior to the PSI; he has made consistent payments on his charged-off debt; he has fully paid his other outstanding debts; he has credibly testified that he understands the need to prioritize his obligations, and has done so by eliminating family hobby expenses; and he has impressed upon his spouse the need for fiscal responsibility, and now appears to have her support.

For these reasons, I find that the individual has sufficiently resolved the DOE's security concerns under Guideline F.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline I. 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 find that the individual has brought forth convincing evidence to adequately resolve the security concerns associated with Guideline F. I therefore find that restoring the individual's access authorization would not endanger the common defense and security, and would be consistent with the national interest. Accordingly, I find 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals