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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	January 29, 2017)	Case No.: PSH-18-0012
)	
_____)

Issued: April 5, 2018

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines or Guidelines), I conclude that the individual’s access authorization should be granted.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. The individual’s initial background investigation raised potentially derogatory information regarding the individual’s financial indebtedness. Ex. 1 at 1-2. Therefore, in response, the Local Security Office (LSO) called the individual in for a Personnel Security Interview (PSI) in August 2017. Ex. 8.

Because the PSI did not resolve the security concerns, the LSO informed the individual in a Notification Letter dated December 22, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised

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.

security concerns under “Guideline F: Financial Considerations” of the Adjudicative Guidelines (Guideline F). Ex. 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. 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 nine numbered exhibits (Exhibits 1-9) into the record. The individual submitted twenty lettered exhibits (Exhibits A-T) into the record and presented his own testimony. 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 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 or 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.

III. The Notification Letter and the Security Concerns at Issue

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guideline F of the Adjudicative Guidelines. Guideline F relates to security risks arising from an individual’s failure to live within his means, satisfy debts, and meet financial obligations, which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Guideline F at ¶ 18. In citing Guideline F, the LSO stated that it relied upon the individual’s unpaid debts, including a \$12,000 debt owed to the Internal Revenue Service (IRS) and \$14,670 in other unpaid debts. Ex. 1 at 1-2. Additionally, the LSO cited, *inter alia*, that the individual: (1) claimed that two of the credit card debts were his ex-

wife's responsibility under their divorce decree, which proved incorrect when he supplied the decree; and (2) admitted that he has approximately \$2,400 of disposable income monthly after having paid his current financial obligations, yet he is still delinquent to the IRS and other creditors. *Id.* at 1-2.

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

IV. Findings of Fact and Hearing Testimony

The individual does not dispute the facts alleged in the Notification Letter. Tr. at 9. As such, I adopt the factual allegations in the Notification Letter as my factual findings in this case.

The individual testified that in 2013, in an attempt to repair his marriage, he quit his employment. Tr. at 6, 54. He claimed that his frequent, work-related travel was causing a strain on his marriage. *Id.* The individual continued that, three weeks later, he and his ex-wife separated. *Id.* at 54. In addition to the expenses surrounding the divorce, the individual claimed that he encountered difficulty finding new employment. *Id.* at 54-55. He also claimed that his attempt to stay in the city where his family was located was prohibitively expensive, causing a number of his outstanding debts. *Id.* at 57. The individual asserted that, in the midst of his divorce and his attempt to recover financially, he contracted a medical illness that required considerable medical treatment. *Id.* at 38, 39.

The individual testified that he only determined that he had an outstanding tax debt in May 2017, because the letter informing him of his outstanding balance was sent to an old address. Tr. at 15. He asserted that he utilized his tax preparer to understand what caused the tax underpayment and to get the penalties and interest removed. *Id.* at 15-16. The individual claimed that the underpayment stemmed from his requirement to sell a portion of his retirement during his 2013 divorce. *Id.* at 17-18. He testified that his payment plan with the IRS begins May 1, 2018. *Id.* at 12. The individual stated that the payment plan will initially start at \$100, but when he completes paying other outstanding debts in July, the payment to the IRS will increase to \$500 in August. *Id.* He further explained that his 2016 tax refund went to pay some of the outstanding taxes. *Id.* at 17.

Finally, as to the other delinquent debts, the individual explained that he has started paying a portion of the outstanding amounts, consisting \$1,000 a month since March 2017. *Id.* at 42. He claimed that he enrolled with a financial advisor who recommended first paying off the bills which have higher interest rates or are smaller amounts, and when the first bill is paid off, "rolling over" that amount into another bill. *Id.* at 14. The individual testified that he has been following that formula, which explains how he will increase his IRS payments in August. *Id.* at 50. He also explained that a number of the outstanding amounts are in dispute. *Id.* at 26, 30, 32, 34. In addition, he testified that some of the debts listed in the Notification Letter have been paid in full. *Id.* at 39, 40-41. The fact that some debts are paid is reflected on his current credit report. Ex. A.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness 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 granted. I find that granting 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.

I note that legitimate security concerns exist as a result of the individual's financial indebtedness. Failure to live within one's means, satisfy debts, and meet financial obligations can raise questions about an individual's reliability and trustworthiness. Guideline F at ¶ 18. Here, the individual admitted that he had outstanding debts totaling over \$23,000. Guideline F at ¶ 19(a), (c).

Guideline F provides that the following conditions (in relevant part) may mitigate security concerns:

- (1) the behavior happened so long ago or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment (Guideline F at ¶ 20(a));
- (2) the conditions that resulted in the financial problem were largely beyond the individual's control (*i.e.*, divorce and unexpected medical emergency)(*id.* at ¶ 20(b));
- (3) the individual has received financial counseling for the problem and there are clear indications that the problem is being resolved (*id.* at ¶ 20(c));
- (4) the individual initiated and is adhering to a good-faith effort to repay overdue creditors (*id.* at ¶ 20(d));
- (5) the individual has a reasonable basis to dispute the legitimacy of the past-due debts (*id.* at ¶ 20(e)); and
- (6) the individual has made arrangements with the appropriate tax authority to pay the amount owed (*id.* at ¶ 20(g)).

The individual has admitted that he has significant unpaid debts. He testified that he incurred these debts in the midst of his marriage dissolution in 2013. In addition, the individual stated that he contracted a medical disease that required significant medical treatment. Accordingly, the individual has demonstrated mitigation of the concerns pursuant to Guideline F at ¶ 20(a) and (b). Also, the individual testified that he has received financial counseling and is following the plan suggested by that counseling, which satisfies Guideline F at ¶ 20(c). To that end, he has initiated and is adhering to his financial plan, begun on the advice of the financial counseling plan. Thus, the individual has established mitigation of the concerns pursuant to Guideline F at ¶ 20(d). The individual testified that a number of the debts are currently in dispute. Additionally, he explained,

in depth, the reason for each of the disputes and expressed his intention to satisfy those debts when the disputes are resolved, whether in his favor or not. Therefore, he has also established mitigation of the concerns pursuant to Guideline F at ¶ 20(e). Finally, the individual testified that he has a payment plan in place with the IRS for his outstanding tax debt, which demonstrates mitigation of the concerns pursuant to Guideline F at ¶ 20(g).

For these reasons, I find that the individual has resolved the 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 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 of 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 under Guideline F. Accordingly, I have determined that the individual's access authorization should be granted. Either party 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