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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: June 6, 2018	)	Case No.: PSH-18-0046
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Issued: August 14, 2018

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**Administrative Judge Decision**

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Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States 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."<sup>1</sup> 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), I conclude that the Individual's access authorization should not be granted.

**I. BACKGROUND**

The Individual is an applicant for a DOE security clearance. His background investigation revealed that the Individual failed to list numerous financial liabilities, several warrants and arrests, and a felony trespassing criminal complaint on his Questionnaire for National Security Positions (QNSP). *See* Ex. 1; Ex. 21. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual over two days in November 2017, after which a DOE-consultant psychologist (the Psychologist) conducted an evaluation of the Individual (Psychological Evaluation) in January 2018. Ex. 19; Ex. 22; Ex. 23.

As the QNSP, background investigation, PSI, and Psychological Evaluation raised unresolved security concerns, the LSO informed the Individual, in a letter dated April 19, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E

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<sup>1</sup> The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

(Personal Conduct), Guideline F (Financial Considerations), Guideline I (Psychological Conditions), and Guideline J (Criminal Conduct). Ex. 1.

Upon receiving the Notification Letter, the Individual requested an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. The LSO submitted 24 exhibits marked as Exhibits 1 through 24 (Ex. 1-24) into the record and presented the testimony of the Psychologist. The Individual did not introduce any exhibits<sup>2</sup>, but presented the testimony of three witnesses, including himself. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E, F, I, and J of the Adjudicative Guidelines. Ex. 1.

Guideline E concerns information that an Individual has engaged in “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [which] can raise questions about an individual’s reliability, trustworthiness and ability to protect classified or sensitive information.” Guideline E at ¶ 15. Of special interest under this guideline is an individual’s “failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* In invoking Guideline E, the LSO alleges that the Individual failed to disclose on his QNSP: (1) three bench warrants which were issued against him for his failure to pay fines; (2) an arrest based on an earlier bench warrant; (3) a charge for felony trespassing; (4) a summons issued against him for failure to appear at a traffic hearing; and (5) two outstanding accounts in collection and one charged-off account. Ex. 1 at 1-2. The Individual’s omission of this relevant criminal and financial history from his QNSP justifies the LSO’s invocation of Guideline E. Guideline E at ¶ 16(a).

The LSO also cited Guideline F as a basis for denying the Individual a security clearance. 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. Guideline F at ¶ 18. The Notification Letter indicated that the Individual failed to file state and federal tax returns for several years, owed tens of thousands of dollars in unpaid taxes to state and federal taxing authorities, had tens of thousands of dollars of debt in collection, had tens of thousands of dollars of debt charged-off, had an unpaid speeding ticket in another state, and stated during the PSI that he had no intention of satisfying his private debts until he resolved his tax liability. Ex. 1 at 2-5. In light of the information available, the LSO properly invoked Guideline F. Guideline F at ¶ 19(a)-(c), (f).

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<sup>2</sup> During the hearing, the Individual indicated that he had documentation to support his testimony, specifically regarding the payment of his tax debts and his 2008 through 2011 tax filings. Tr. at 145-146. I allowed the Individual until August 6, 2018, to present these documents, however, the Individual never submitted any additional documents.

Guideline I concerns certain emotional, mental, and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. The Notification Letter indicated that the Psychologist determined that the Individual's anger has resulted in the exercise of poor judgment, and that his anger and tendency to misrepresent his behaviors make him unreliable. Ex. 1 at 5. Based on this determination, the Psychologist found that the Individual has a condition that may impair his judgment, stability, reliability, and trustworthiness. This determination justifies the LSO's invocation of Guideline I in the Notification Letter. Guideline I at ¶ 28(b).

Lastly, the LSO cited Guideline J in denying the Individual a security clearance. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Guideline J at ¶ 30. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *Id.* The Notification Letter listed one felony charge and 11 non-felony charges against the Individual. Ex. 1 at 6-8. Additionally, it cited numerous bench warrants issued against the Individual for failure to pay fines, citations for traffic offenses, and alleged criminal conduct by the Individual that did not result in charges or his arrest, including animal abuse, child abuse, and several arguments in which third parties summoned law enforcement. *Id.* The LSO's assertion of a significant number of instances of criminal conduct, both alleged and proven, justifies the invocation of Guideline J. Guideline J at ¶ 31(a)-(b).

### **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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 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). 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.

### **IV. FINDINGS OF FACT**

The Individual has a significant history of unlawful conduct. In 2010, the police arrested the Individual and charged him with battery after an altercation with a security guard at his son's school. Ex. 21 at 37. The Individual later pled guilty to a petty misdemeanor, receiving a sentence of one year of unsupervised probation. *Id.* at 38-39. The Individual has also committed a litany of traffic infractions, including speeding and driving without proof of insurance, and numerous courts have issued bench warrants against him for failure to pay fines associated with these infractions. *See* Ex. 1 at 6-7; *see also* Ex. 24 at 179-184. In 2014, the Individual was charged with felony trespassing after he entered his ex-wife's home without permission to retrieve the keys to a vehicle his son had borrowed from him. Ex. 24 at 205. The court sentenced him to 364 days of unsupervised probation, but the Individual failed to pay the court-ordered fees associated with this matter. *Id.* After the court issued a bench warrant for his non-payment of the assessed fees, the Individual surrendered himself and agreed to perform community service in lieu of paying the fees. *Id.*

The Individual was also involved in a number of matters that did not result in his arrest, but which the LSO cited as security concerns under Guideline J. In November 2015, the Individual's neighbor called animal control because the Individual left his dog outdoors in cold weather. Ex. 23 at 136-137. During the PSI, the Individual also recounted two instances in which law enforcement was summoned in response to family arguments, including once when the Individual and his wife argued in a public location. *Id.* at 141-142.

The Individual also has a lengthy record of failing to meet his financial obligations. The Individual failed to file personal federal and state personal income tax returns for 2008 through 2011. Ex. 21 at 45-49. The Individual has also accrued tens of thousands of dollars in tax liability to federal and state taxing authorities for failure to pay his personal and business taxes for 2012 through 2016. Ex. 23 at 65-66; *see also* Exs. 8-18.

On the QNSP, the Individual claimed to have recently initiated the process for Chapter 7 bankruptcy, and reported at that time that he had approximately \$55,000 in outstanding debts. Ex. 21 at 44-45. The Individual listed on his QNSP 22 delinquencies involving routine accounts totaling \$44,547. *Id.* at 52-70. However, the Individual admitted during the PSI that he had not filed for bankruptcy, as he had claimed on his QNSP. Ex. 23 at 29, 102-103. The Individual further indicated during the PSI that he intended to address his unpaid taxes and "the smaller financial stuff," and that he would have to file for bankruptcy on his larger debts. Ex. 22 at 17. When describing his inability to pay outstanding fines for traffic infractions, the Individual noted that wage garnishments to meet his unpaid tax liability left him unable to "afford a whole lot . . . [and] at the brim [sic] of what [he] can spend because of this taxation stuff that's coming out of [his] check[s]." Ex. 23 at 48.

When he completed the QNSP, the Individual failed to disclose relevant information related to his prior unlawful conduct and financial history as described above. The Individual did not disclose a charged-off debt and two debts turned over to collections. *Compare* Ex. 21 at 52-70 *with* Ex. 6 at 4, 7 *and* Ex. 7 at 3. The Individual also failed to disclose the 2014 charge for felony trespassing, the numerous bench warrants issued against him by various courts for failure to pay fines, and a summons issued against him for failure to appear in court in another state concerning a traffic violation. Ex. 21 at 37-40.

In advance of the Psychological Evaluation, the Psychologist constructed a relevant history of the Individual based on the Individual's personnel file and the PSI. Relying upon this history, the Psychologist estimated that the Individual had 19 encounters with the legal system during his life and demonstrated a "tendency to [] place[] his own desires over the law." Ex. 19 at 2-4. Although he found that the Individual's "last antisocial behavior seems to have occurred in 2012 [in connection with extramarital affairs]," the Psychologist nevertheless concluded that the Individual's "anger appears to [] be readily triggered" when he perceives that a person is lying to him or disrespecting him. *Id.* at 8-9. The Psychologist also noted that the Individual displayed a "tendency to misrepresent his behaviors," citing numerous inconsistencies between the Individual's account of his prior unlawful conduct and the available documents, concluding that the Individual "is untrustworthy." *Id.* at 6, 9. Therefore, the Psychologist determined that the Individual demonstrated a condition that may impair his judgment, stability, reliability, and trustworthiness. *Id.* at 9.

At the hearing, the Individual presented the testimony of two witnesses and his own testimony. Tr. at 11, 19, 38. The Individual's supervisor testified that, to his knowledge, only the Individual's financial issues led to the denial of the Individual's security clearance. Tr. at 12-13. Although the supervisor does not interact with the Individual outside of work, based on their daily work interactions, he described the Individual as reliable, trustworthy, and a good employee. Tr. at 12, 14. The Individual's ex-wife also testified describing him as trustworthy and honest, although she acknowledged that there was infidelity during their 23-year marriage. Tr. at 31. She admitted that for several years during their marriage they did not file taxes when their business was not successful. *Id.* She testified that as a part of their divorce settlement, the Individual agreed to pay their tax debt in lieu of her seeking spousal support. Tr. at 27. To her knowledge, the Individual is paying on this tax debt. *Id.* The Individual's ex-wife testified that, after receiving advice from a friend, she called the police after the Individual left in relation to the 2014 felony trespassing incident in order to prove a point to the Individual that he needed to respect her privacy by letting her know when he would be coming to her house. Tr. at 22-23.

During the hearing, the Individual testified about his failure to report certain information on his QNSP, his financial irresponsibility as it pertains to his debts and tax obligations, his interactions with law enforcement, and the recommendations of the Psychologist. Tr. at 38-119. With regard to his response to the QNSP section regarding criminal proceedings in the last seven years, the Individual testified that he believed the question referred only to felony charges, but acknowledged that the question itself did not mention felonies at all. Tr. at 40-41. Similarly, when discussing another unreported warrant, the Individual testified that he believed listing it was unnecessary because he believed the charge had been quashed and would not show up on his record. Tr. at 43. In reference to other criminal information he failed to disclose on his QNSP, the Individual testified that he was not trying to be dishonest and that he did the best he could filling out the paperwork. Tr. at 45.

The Individual acknowledged during the hearing that he has not paid off any of the unpaid collection or charged-off accounts listed in the Notification Letter. Tr. at 70-71. He testified that, at this time, he does not have a "game plan" for repaying these debts because he is attempting to pay off his tax obligations first. Tr. at 56, 62. Regarding his tax debts, the Individual believes he

has paid his federal tax obligations down to about \$6,000 from the \$10,235 listed on the Notification letter via a payment plan requiring him to pay \$32 every paycheck, which he started doing in mid-2016. Tr. at 63-64, 109. The Individual also testified that he pays \$800 every paycheck towards his approximately \$35,000 in personal and business taxes owed to the state but had only made two payments at the time of the hearing. Tr. at 66-68. Although the Individual indicated at the hearing that he had filed his taxes for 2008 through 2011, he never provided any post-hearing documentation to support that claim. Tr. at 74-78.

The Individual acknowledged that the Psychologist recommended that he seek therapy for his anger and relationship issues, and he stated that he could see how that would be good for him. Tr. at 100. However, the Individual testified that he only recently completed an intake session with a psychiatrist after a medical issue left him feeling depressed. Tr. at 103-104.

The Psychologist testified last after hearing the testimony of the other witnesses. Tr. at 120-145. He stated that he still held the opinion that the Individual had anger issues that resulted in poor judgment and that the Individual had a tendency to misrepresent his behaviors, which makes him unreliable. Tr. at 121. The Psychologist testified that based on what he heard during the hearing, he does not believe anything has changed with the Individual because the Individual was still externalizing responsibility for his financial obligations. The Psychologist stated that he believed there was still a lot of chaos in the Individual's life that he has not begun to attempt to mitigate. Tr. at 123-124. The Psychologist acknowledged that there was no perfect diagnosis for the Individual in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition* (DSM-5), but that he believed the Individual fits subcomponents of several different character problems. Tr. at 129, 133. The Psychologist testified that he believed the Individual needed at least six to ten months of weekly therapy with a professional who is well-trained in character pathology. Tr. at 134.

## 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should not be granted. I cannot find that granting the Individual a 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.

### a. Guideline E

The Adjudicative Guidelines set forth a number of conditions that could mitigate security concerns raised pursuant to Guideline E, including when an individual makes prompt, good-faith efforts to correct omissions before confrontation. Guideline E at ¶ 17(a). In this case, the Individual did not make any efforts to correct the omissions on his QNSP, and when confronted with the omissions during his PSI, the Individual claimed to not have knowledge of some of the omitted criminal information. Ex. 22 at 138-139. During the hearing, when questioned about his omissions, the

Individual cited his misunderstanding of the questions, incorrect advice from other individuals, and his inability to recall certain information, as the reasons why he neglected to report certain information. *See* Tr. at 42, 44-45. Similarly, in regard to the financial information he neglected to include on his QNSP, the Individual testified that he did not include it because the debts did not appear on the credit report he used when completing his QNSP. Tr. at 51. The record reflects that the Individual did not attempt to correct the mistakes on his QNSP, and even when confronted with his omissions, the Individual shifted the blame off of himself.

The Adjudicative Guidelines also provide that mitigation under Guideline E may result when the “...omission...was caused or significantly contributed to by advice...of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes.” Guideline E at ¶ 17(b). In the present case, when discussing the omitted financial information, the Individual stated during his PSI that he reviewed his credit information with another individual who agreed that he had disclosed everything from his credit report. Ex. 22 at 144-145. Similarly, during the hearing, the Individual testified that he sought clarification from other people while completing his QNSP, thus seeking again to shift responsibility for his omissions to other people. I note, however, that the plain language of the criminal history questions did not allow for the Individual’s interpretation. Tr. at 40-41. For example, the Individual stated that he omitted some of his criminal history because he believed the question only referred to felony charges; however, the Individual failed to list the 2014 felony trespassing charge on his QNSP, despite the fact that it would have been responsive under his stated understanding of this question. Tr. at 40-41.

The Individual’s attempts to mitigate the Guideline E security concerns essentially amounted to shifting the responsibility for his omissions onto other people. He has not demonstrated, however, that these other people were individuals “with professional responsibilities for advising or instructing the individual specifically concerning security processes.” Guideline E at ¶ 17(b). Nor has he shown that his reliance on the interpretations allegedly provided by others was plausible. Accordingly, I find that the Individual has not resolved the security concerns arising from his omissions of several financial obligations and criminal conduct from his QNSP.

#### **b. Guideline F**

Under Guideline F, several conditions can mitigate security concerns including, but not limited to, that: (1) the behavior happened so long ago, was so infrequent, or is unlikely to recur; (2) the conditions that resulted in the financial problems were largely beyond the person’s control...and the individual acted responsibly under the circumstances; and (3) the individual initiated a good-faith effort to repay creditors and resolve debts. Guideline F at ¶ 20(a), (b), (d). The Individual presented no evidence that would allow me to conclude that he has mitigated the Guideline F security concerns under these, or any other, conditions. To the contrary, the Individual testified that he has not attempted to pay the majority of his creditors, choosing instead to focus on his tax obligations. Tr. at 70-71. A majority of the Individual’s financial issues stem from his failure to pay his personal and business taxes between 2012 and 2016, which was within his control. Additionally, the Individual provided no documentary evidence that he filed taxes between 2008 and 2011; therefore his tax obligations may actually be more substantial than currently known. The recency of the Individual’s failure to pay his tax obligations, the amount of his other debts,

and his lack of a path forward to settle these liabilities requires me to find that the Individual has not resolved the security concerns raised under Guideline F.

**c. Guideline I**

In January, the Psychologist recommended that the Individual seek therapy focused on his anger and need to control his relationships. Ex. 19 at 9. At the hearing, the Individual testified that he had only recently participated in an intake session with a psychiatrist. Tr. at 103-104; *see also* Guideline I ¶ 29(b). Furthermore, during the hearing, the Individual demonstrated the same characteristics that concerned the Psychologist during the Psychological Evaluation. Specifically, the Individual misrepresented his behaviors and externalized responsibilities for some of the issues in his life. This led the Psychologist to opine that the Individual still had a condition that causes or may impair his judgment. *See* Guideline I ¶ 29(c), (e). Because the Individual has received no meaningful treatment and the Psychologist has not changed his diagnosis, I cannot find that the Individual has mitigated the security concerns raised pursuant to Guideline I.

**d. Guideline J**

The Notification Letter outlined 22 criminal incidents or police interactions involving the Individual occurring since approximately 2006. Ex. 1 at 6-8. Although some of the security concerns raised by these incidents might be mitigated by the passage of time, the Individual's last criminal charge was in 2016, less than two years ago. Guideline J at ¶ 32(a). Additionally, several of the charges listed in the Notification Letter are for the Individual's failure to pay fines associated with his traffic offenses. Taking into consideration the Individual's current financial situation, I cannot find that this criminal behavior happened under such unusual circumstances that it is unlikely to recur. *Id.* During the hearing, the Individual testified that at least one of the bench warrants listed in the Notification Letter is currently outstanding. Tr. at 51. He has not addressed this criminal matter because he believes he will "sit in jail for a while" if he surrenders himself. *Id.* Based on the information available concerning the Individual's lengthy and recent criminal history, which includes at least one unresolved criminal matter, I cannot find that he has mitigated the security concerns raised under Guideline J.

**VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E, F, I, and J of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient



evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should not be granted. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Brooke A. DuBois  
Administrative Judge  
Office of Hearings and Appeals