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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: August 2, 2018)	Case No.:	PSH-18-0058
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Issued: December 13, 2018

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization 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.”¹ 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) (the “Adjudicative Guidelines”), I conclude that the Individual should not be granted a security clearance.

I. BACKGROUND

In early 2017, the Individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a security clearance. The QNSP and subsequent investigation by the Office of Personnel Management (OPM) revealed information that cast doubt on the Individual’s fitness to hold a security clearance. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual. During the PSI, the Individual revealed information that cast further doubt on his fitness to hold a security clearance.

On June 11, 2018, the LSO sent a letter (“Notification Letter”) to the Individual advising him that it had reliable information that created a substantial doubt regarding his eligibility for access authorization. *See* 10 C.F.R. § 710.21. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines E, F, and J of the Adjudicative Guidelines.

¹ Under the regulations, “[a]ccess authorization means 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 also be referred to in this Decision as a security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing, the Individual presented the testimony of four witnesses and testified on his own behalf. The LSO submitted eight exhibits (Exs. 1-8). The Individual submitted eight exhibits (Exs. A-H).² The hearing transcript 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, and J of the Adjudicative Guidelines.

The LSO alleges that the Individual failed to list three collection accounts on his QNSP. Ex. 1 at 1. Guideline E relates to conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations, which raises questions about an individual’s reliability, trustworthiness, and ability to protect classified information. *See* Adjudicative Guidelines at ¶ 15. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. *See id.*

The LSO also alleges that the Individual has outstanding state and local tax debts; has five collection accounts; failed to file and pay federal and state taxes for several years because he was “irresponsible”; failed to address five collection accounts after making assurances to OPM, over six months prior, that he would do so; and admitted that he had not paid anything toward his outstanding debts, despite having a surplus of over \$1,800.00 per month. Ex. 1 at 1-2. Guideline F relates to financial concerns. It is well established that “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.” Adjudicative Guideline F at ¶ 18. Among the conditions set forth in that guideline that could raise a disqualifying security concern are the inability to satisfy debts; a history of not meeting financial obligations; and failure to file annual federal, state, or local income tax returns or failure to pay annual income tax as required. *See id.* at ¶ 19(a), (c), (f).

Finally, the LSO alleges that the Individual admitted to using marijuana two or three times prior to 1999; was arrested and charged with Driving While Intoxicated (DWI) in 1990; was arrested and charged with, among other things, Driving Under the Influence (DUI) in 1999; was arrested and charged with DUI, Driving on a Suspended License, and Open Container in 2005; was cited for littering in 2005; was arrested on two active warrants for Failure to Appear in Court in 2005; fled the state in 2006 without resolving the charges and citations he accrued in 2005; and was arrested in 2008 and charged with DUI. Ex. 1 at 2–3. The Guidelines provide that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative

² The Individual submitted exhibits G and H after the hearing concluded. Exhibit G is comprised of the Individual’s various employment certificates. Exhibit H is a letter dated April 11, 2018, from the U.S. Department of Treasury.

Guidelines at ¶ 30. In addition to evidence of criminal conduct, one of the conditions set forth in the Guidelines that could raise a disqualifying security concern is, “a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness.” *Id.* at ¶ 31 at (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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual submitted written responses to the security concerns listed in the Notification Letter ahead of the hearing. Response to Security Concerns (July 6, 2018) (“Response”). He stated that his failure to list the three collection accounts on his QNSP was an oversight rather than an intentional omission. *Id.* at 2. In his QNSP, he reported two different collection accounts and that he owed unpaid taxes. Ex. 7 at 34-40. He also stated that he takes the QNSP seriously and that the unlisted accounts were paid or otherwise satisfied as soon as they were brought to his attention. Response at 2.

Regarding the Guideline F concerns, the Individual reported that “every bill is current.” *Id.* at 2. He stated that, through payments and refund offsets, he has put over \$1,400.00 toward his state tax debt. *Id.* He stated that he intends to satisfy the local tax debt within the next month or two and is currently working with the municipality to do so. *Id.* at 3. The Individual stated that the amount of

surplus money the Notification Letter said he had available monthly was incorrect because he had only been making that much money for one to two months. *Id.* at 3-4. The Individual asserted that getting behind on bills is not irresponsible, but conceded that failing to file taxes is. *Id.* at 3.

Regarding the Guideline J concerns, the Individual acknowledged that he had made mistakes in the past and stated that he has grown into a better person. *Id.* at 4. He stated that he does not drink alcohol as much or as often as he used to and that the change in his alcohol consumption habits occurred about five years ago. *Id.* at 4. The Individual stated that, shortly before his 2005 DUI in the second state, he received a \$300.00 citation for littering when a piece of paper flew out of the back of his truck. *Id.* at 5. He fled the state because what he “experienced in the [second state’s] jails . . . was no less than psychological terrorism,” and at one point while he was in custody, he believed he was going to be executed. *Id.* at 5.

At the hearing, the Individual presented testimony from his sister, his mother, his father, and a co-worker. All testified to his good character. *Id.* at 18-19, 37-38, 48-49, 53-55. His sister, mother, and father also testified that his judgment and reliability had improved over the years. *Id.* at 19, 37, 48. Only the Individual’s father had knowledge of his past due accounts and his overall financial difficulties. *Id.* at 42.

The Individual asserted in his testimony that his financial difficulties arose because his outstanding criminal issues prevented him from getting a lucrative job. *Tr.* at 61. He testified that he did not file his back taxes until recently because he was overwhelmed by the situation. *Id.* at 71. He stated that he had acted irresponsibly but now believes that he is capable of handling his finances. *Id.* at 71-72. However, he had yet to resolve his municipal tax debt, *id.* at 85, which he believes totals \$1,400.00. *Id.* at 166. Additionally, the Individual asserted that the state tax department prevented him from making payments on the debt or even finding out the amount he owed the state. *Id.* at 73-76. Though he repeated his assertions that, through various means, he had paid about \$1,400.00 toward his state tax debt, and that he believed he may have overpaid the state, he was unsure of his current outstanding balance or how to resolve the debt. *Id.* at 76, 78, 82. Finally, when asked whether he had read through the documents the state tax department had sent him, he answered that he “didn’t look through a hundred percent of them.” *Id.* at 77.

Turning to the collection accounts, the Individual testified that the two collection accounts, Verizon and Direct TV, went to collections because he felt the companies took advantage of him and he did not want to pay them. *Tr.* at 91-94, 98-100. He disputed the debts with Transunion, and they were removed from his credit report. *Id.* at 99-100. He testified that he has about \$4,000.00 in savings and that he budgets better now than he has in the past. *Id.* at 110-11. He also stated that he was “over and above paycheck to paycheck,” his credit score had improved, and he had increased his 401(k) contributions. *Id.* at 102-103. He also testified that he had been working with a friend to purchase real estate in the near future. *Id.* at 107. However, he later testified that he was unsure whether his income exceeds his financial obligations. *Id.* at 146.

Regarding the allegations of criminal conduct, the Individual testified that his first and second alcohol-related traffic offenses occurred in his home state in 1990 and 1999. *Id.* at 113-14. He was convicted of DWI and DUI. *Id.* at 114. For each conviction, he took court-ordered alcohol classes. *Id.* at 113-14.

The Individual testified that his third alcohol-related traffic offense, which took place in 2005, comprised being charged in a second state with driving with a suspended license, DUI, and driving with an open container of alcohol. *Id.* at 115-16. He testified that his license was only suspended because he could not afford to pay a previous ticket he received for littering. *Id.* at 117. He also confirmed he had been consuming alcohol before driving and that his driver's license was suspended at the time. *Id.* at 116-17. He disputed all of the charges except for the open container, and he testified that he recently resolved all charges by pleading guilty to driving with an open container. *Id.* at 116.

The Individual maintained that he fled the second state because he feared that the police would execute him. *Id.* at 123-25. He testified that he could not get a lawyer to help him resolve the matter because the way he spoke about police corruption in the second state scared them away. *Id.* at 128. However, once he needed a clearance, he changed his strategy and successfully obtained an attorney to assist him in resolving the charges. *Id.* at 128-29.

The Individual testified that he used a bondsman to get out of jail after the incident in the second state. He paid the bondsman about \$200.00, which was about 10% of his bond. *Id.* at 124-25, 154. When asked about what happened to the other 90% of the bond, he began speaking about how terrible his jail conditions had been and how he had gone into survival mode and fled. *Id.* at 155. He testified that he understood that the bondsman would have had to pay the bond when he missed his court date. *Id.* at 157. He testified that he "felt wronged. That entire—that entire experience down there was wrong." *Id.* at 157-58.

The Individual's fourth alcohol-related traffic offense involved an arrest for driving under the influence. *Id.* at 132. Again, he took alcohol classes and paid his fine. *Id.* at 133. The Individual testified that he now mostly abstains from alcohol. *Id.* at 135. He testified that he has not driven under the influence of alcohol for the past several years. *Id.* at 152-53.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and witnesses. 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 should not be granted access authorization at this time. I cannot find that granting the Individual a security clearance will not endanger the common defense and security, and that it 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 F (Financial Considerations)

Guideline F provides that the following conditions may mitigate security concerns:

- (1) the behavior happened so long ago, was so infrequent, 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;
- (2) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances;
- (3) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control;
- (4) the individual initiated and is adhering to a good-faith effort to repay overdue creditors; and
- (5) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.³

Id. at ¶ 20(a)-(d), (g). As an initial matter, the Individual has not resolved all of his outstanding financial obligations. While the Individual has taken some action on certain collection accounts, those debts had lingered for years and he had not taken any steps to resolve the debts until he sought a security clearance. Until very recently, the Individual had a history of failing to address his collection accounts and his tax debt. The Individual did not present evidence to persuade me that the circumstances under which he generated the collection account or tax debts are unlikely to recur. Thus, I do not find that he has mitigated the concerns regarding his financial behavior due to the passage of time, infrequency, or attendant circumstances.

Additionally, the Individual admits that his financial troubles are, at least in part, due to his own irresponsibility. His decision to avoid resolving his criminal charges in the second state likely affected his ability to secure gainful employment. Thus, I do not find he has mitigated the concerns based on the conditions creating his financial problems being beyond his control. Furthermore, he presented no evidence that he has received financial counseling. Thus, I do not find he has mitigated the concerns through the receipt of financial counseling.

Finally, the Individual could not identify how much he owed the state in back taxes, nor had he resolved his municipal tax debt. He could not articulate a specific plan to resolve either of those debts, nor had he read through all of the documents the state provided to him. Therefore, I do not find that he has made arrangements with the appropriate tax authority to pay the amount owed. The Individual submitted his QNSP in February 2017; he has therefore had ample time to make arrangements to address his debt. These circumstances are made the more troubling by the self-reported fact that he has significant savings that could more than satisfy his purported local tax debt. Instead, up until the hearing date, he had been making plans to invest in real estate, which would potentially take resources away from his ability to address his debt. For these reasons, I do not find he has initiated a good faith effort to repay his tax debt.

³ Paragraphs 20(e) (reasonable basis to dispute) and (f) (unexplained affluence) of the mitigating factors are not applicable to these facts.

I also note that at several points during his testimony, the Individual cited unfairness or an instance in which he had been personally wronged as a reason why he did not or should not have to pay an amount owed. For instance, in response to questions about his failure to complete his agreement with the bondsman in the second state, the Individual testified about how badly he was treated and how he felt wronged. He used the alleged corruption of the criminal justice system to justify not following through with his agreement to compensate a third-party who assisted him. That reasoning raises doubts regarding whether the Individual will satisfy debts or meet his financial obligations. The Individual's history presents a pattern of avoiding taking reasonable action to address looming financial issues. Consequently, I conclude the DOE's Guideline F concerns are not mitigated.

B. Guideline J (Criminal Conduct)

Mitigating factors for Guideline J include (1) the passage of so much time since the criminal activity that further criminal behavior is unlikely and (2) evidence of successful rehabilitation. Adjudicative Guidelines at ¶ 32(a), (d). Though the Individual states that he has not driven after consuming alcohol in years and, indeed, has given up regular alcohol consumption, he did not resolve his outstanding criminal matters in the second state until mere months ago, when he needed a security clearance. Until that point, the Individual had avoided resolving his criminal charges for over a decade. Though he recently resolved the charges in the second state by plea agreement, the Individual still places the blame for his predicament on the shoulders of what he alleges to be corrupt police and an unfair legal system. *See id.* For example, the Individual refused to admit that he was wrong to drive without a license because, in his view, the suspension was the result of an illegitimate citation and, therefore, the consequence of that citation was also illegitimate. Additionally, his testimony regarding his agreement with the bondsman in the second state, which he used to flee the state, is concerning. Both examples call into question his ability or willingness to comply with laws, rules, and regulations that he does not believe are valid. Therefore, a significant doubt remains regarding his judgment, reliability, and trustworthiness. For these reasons, I do not find that the Individual has mitigated the DOE's Guideline J concerns.

C. Guideline E (Personal Conduct)

Guideline E provides that the following conditions may mitigate security concerns: "the offense is so minor . . . or the behavior is so infrequent . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicative Guidelines at ¶ 17(c).

The LSO invoked Guideline E because the Individual failed to list three collection accounts on his QNSP. The Individual testified that he was unaware of the collection accounts, and that he would have listed them had he known of their existence. The credibility of the Individual, in this regard, is buttressed by the fact that he listed his significant outstanding tax obligations, collection accounts, and outstanding warrant. Additionally, the Individual only omitted the accounts one time and acknowledged his mistake. Accordingly, the individual's testimony that he was unaware of the collection accounts, and would have listed them if he had known of them, seems credible. However, the Individual has not therefore demonstrated that his failure to list collection accounts is unlikely to recur. As stated in previous sections, the Individual has demonstrated a concerning pattern of procrastination and avoidance. The implication that that behavior affected his ability to

provide correct information in his QNSP is difficult to ignore. Furthermore, the Individual's lack of awareness regarding his debts continues, as evinced by his purported inability to ascertain his state tax liability. Thus, a significant concern remains that he will continue to omit relevant information into the future. The Individual's conduct, therefore, continues to cast doubt on his reliability, trustworthiness, or good judgment. Consequently, I find that the Individual has not mitigated the Guideline E concern.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines E, F, and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving these concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals