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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-18-0060
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Issued: November 21, 2018

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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), I conclude that the Individual’s access authorization should not be granted.

I. Background

The Individual is employed by a DOE contractor that requested a security clearance on his behalf. In applying for his clearance, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) in May 2015. Ex 7. In response to one of the financial questions, the Individual stated that, in the last seven years, he had failed to “file or pay Federal, state, or other taxes when required by law or ordinance.” Ex. 7 at 53. The Individual additionally acknowledged that he was over 120 days delinquent on certain financial obligations. *Id.* at 55. Subsequently, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in December of 2017. Ex. 8. Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated April 27, 2018 (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 security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Ex. 1.

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.

Upon 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 DOE Counsel submitted nine numbered exhibits (Exhibits 1–9) into the record. The Individual tendered three exhibits (Exhibits A–C) and testified on his own behalf. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric 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 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.

III. Notification Letter and Associated Concerns

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 Guidelines E and F of the Adjudicative Guidelines. Guideline E concerns “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations.” Guideline E at ¶ 15. This conduct can call into question an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* Among the conditions that could raise a disqualifying security concern is the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.” *Id.* at ¶ 16(a). In support of its reliance upon Guideline E, the LSO cited seventeen instances in which the Individual failed to disclose on his e-QIP: (1) citations, received in the last seven years, with a fine of at least \$300, and (2) bills or debts turned over to collections agencies in the past seven years. Ex. 1 at 1-2.

Guideline F addresses one's "[f]ailure to live within one's means, satisfy debts, and meet financial obligations." Guideline F at ¶ 18. It is well established that 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. *Id.* 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 or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required. Guideline F at ¶ 19(a), (c), (f). In citing Guideline F, the LSO relied upon the Individual admission during his PSI that that he had not filed Federal or state income taxes for the years of 2013-2016. Ex. 1 at 3-4. It further cited that the Individual had twelve collection accounts totaling \$10,080.71. *Id.* at 4-5.

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

At the hearing, the Individual presented only his own testimony. He admitted that when he completed the e-QIP, he failed to list four traffic related citations, received in the last seven years, with fines over \$300. Ex. 8 at 346-348; Tr. at 8-9. The Individual acknowledged that these fines should have been listed on the e-QIP, but at the time he completed it, he believed that the "citations were not finalized so...[he] didn't know if it was a \$300 fine or if they were being dismissed." Ex. 8 at 346-348; Tr. at 8-9, 15. However, the Individual admitted that he did not rely on any official documentation indicating that the fines would be less than \$300; he solely relied on his "personal assumption." Tr. at 11. He elaborated stating that the omissions were not intentional. *Id.* at 13.

Turning to the thirteen collection accounts that the LSO alleged the Individual failed to list on his e-QIP, the Individual acknowledged that all of the accounts were turned over to collection agencies within seven years of his completion the e-QIP. *See id.* at 15. The Individual explained that he did not list the accounts because he did not "have a clear understanding of [his] credit," and due to a divorce, he was not sure if he was responsible for the debts or if the debts were "valid." *Id.* at 15-16. The Individual further claimed that he was not fully aware of all of his debts because he was not receiving mail at the appropriate address; however, he confirmed that he was "definitely not stating that [he] had zero knowledge of any of those 13 accounts." *Id.* at 18. He clarified that he knew "there were potential debts out there that [he] had unpaid. [He] just didn't have the exact person that was owed and the amounts and...a complete record of that information." *Id.* The Individual acknowledged that he should have obtained a credit report prior to completing the e-QIP. *Id.* at 18-19. The Individual stated that in hindsight he "guess[es]" the e-QIP is "far more serious than [he]...took it," and he affirmed that he was not trying to hide information or avoid disclosing information. *Id.* at 20-21.

When confronted with the fact that he did not merely omit one or two collection accounts from the e-QIP, but thirteen separate accounts, the Individual explained that there were circumstances occurring in his personal life that he did not have control over; however, he acknowledged that his failure to list these accounts, whether or not it was inadvertent, raises a serious reliability concern. *See id.* at 23. When questioned about his reliability in light of his claims that he does not have an

understanding of his financial situation and thousands of dollars of outstanding debts, the Individual responded that he did not have “a clear answer.” *Id.* at 28-29.

During the hearing, the Individual was questioned regarding his failure to file four years of Federal and state taxes. *Id.* at 30. He stated that he did not have a “direct answer” to the question, but “guess[ed]” that some of the tax years had been “self-filed by IRS and [state].” *Id.* He clarified that he had not personally filed his taxes for the tax years at issue in the Summary of Security Concerns and reiterated that he did not “have a clear understanding” of his tax situation.² *Id.* at 30-31. The Individual testified that after filing for legal separation in 2012 and for divorce in 2013, he had difficulty obtaining tax information from his ex-wife, and he was trying to gain an understanding of his tax situation through divorce proceedings. *Id.* at 31-32. When asked why he did not file his taxes separately, the Individual responded that there are “financial issues that are involved that are more than the information” he had. *Id.* at 33.

The Individual believes that his current tax liability is around \$30,000; however, he is not aware whether the \$30,000 is the outstanding tax liability for one tax year or for multiple years. *Id.* at 41-42. He confirmed that he has had “some contact with the IRS” and has set up a payment plan that was revoked, but he failed to provide any credible evidence of any contact with the IRS or his efforts to create a payment plan. *Id.* at 31, 35. The Individual also stated that he could not provide “accurate answers of each year and what is involved and what is still open.” *Id.* at 32.

With regard to the remaining security concerns of the twelve collection accounts listed on the Summary of Security Concerns, the Individual stated that he had not paid any of the accounts. *Id.* 42-44. He explained that it is his understanding that most of the accounts are charge-offs, and he has no method of resolving them. *Id.* at 44. The Individual asserted that two of the collection accounts have not been charged off and remain open; however, an examination of Exhibit C indicated that one of these accounts has in fact been charged off. *Id.* at 44; Ex. C at 20. With regard to the remaining open account, the Individual testified that he did not “know the details of it,” but he understands it to be his ex-wife’s debt. *Id.* at 44. He explained that he does not think it should be his responsibility. *Id.* at 44-45. The Individual acknowledged that the fact that some of the accounts were charged-off does not demonstrate that he paid the debts. *Id.* at 49. When asked if these charged-off accounts indicated an inability or unwillingness to satisfy his debts, the Individual replied, “yes.” *Id.* at 49.

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 has not sufficiently mitigated the security concerns noted by the LSO with regard to Guidelines E and F. I cannot 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). Therefore, I have determined that the Individual’s security

² For the tax years prior to 2014, the Individual made reference to having signed the necessary tax forms but alleges that his ex-wife did not submit the tax forms to be filed. Tr. at 30-31.

clearance should not be granted. The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns exist as a result of the Individual's completed e-QIP, the PSI, and his financial situation.

A. Guideline E

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See* Guideline E at ¶ 15. Deliberately omitting, concealing, or falsifying relevant facts from any personnel security questionnaire can disqualify an individual from holding access authorization. *Id.* at ¶ 16(a). Under Guideline E, conditions that may mitigate security concerns include that "the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," or "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." *Id.* at ¶ 17(a)(c).

Here, the Individual admitted that he failed to list his four traffic related citations and his thirteen collection accounts. He further acknowledged that he should have disclosed all of the citations on his e-QIP. With regard to the collection accounts, the Individual noted that he should have examined a credit report prior to submitting his e-QIP, and his failure to list the accounts raises a concern with regard to his reliability. The Individual has not submitted any evidence showing that he made any effort to correct the omissions on his e-QIP. *Contra id.* at ¶ 17(a). In fact, at the time of the hearing, the Individual was still unsure of the details of his citations, and he stated that he did not obtain a credit report to examine his collection accounts until the day prior to the hearing. *See* Tr. 11, 26. Further, given that the Individual omitted seventeen separate items from the e-QIP and still is uncertain of his current financial situation, I cannot find that the offense was so minor, so much time has passed, the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur. *See* Guideline E at ¶ 17(c). I find that the Individual's judgment, reliability, and trustworthiness remains a concern, and as such, I find that the Individual has not mitigated the security concerns under Guideline E.

B. Guideline F

An inability to satisfy one's debts or an individual's unwillingness to do so regardless of his or her ability may raise a security concern that could serve as a disqualifier to receiving a security clearance. Guideline F at ¶ 19(a)(b). Furthermore, a failure to file Federal or state income tax returns or failure to pay Federal or state income tax may also serve as a disqualifier. *Id.* at ¶ 19(f). An individual may be able to mitigate the security concerns by demonstrating that 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. *Id.* at ¶ 20(a). Additionally, an individual may be able to mitigate the security concerns if the conditions that resulted in the financial problem were largely beyond the person's control and

the person acted responsibly under the circumstances. *Id.* at ¶ 20(b). Further, if an individual has initiated and is adhering to a good-faith effort to repay overdue creditors, an individual may be able to mitigate a security concern. *Id.* at ¶ 20(d).

The Individual readily acknowledged that he has not personally filed either Federal or state taxes for the tax years at issue in the Summary of Security Concern. *Id.* at ¶ 19(f). Additionally, he stated that he has not paid any of the twelve collection accounts listed on the Summary of Security Concerns. Although it appears that the Individual's financial situation may have been complicated by his divorce, a situation largely beyond his control, he has failed to provide any credible evidence, aside from his vague assertions, that he has made any efforts to resolve his tax situation. Further, the Individual admitted that a charge-off indicated his inability or unwillingness to satisfy his debts. *See id.* at ¶ 19(a)(b). As such, I cannot find that I cannot find that the Individual has acted responsibly under the circumstances. *See id.* at ¶ 20(b).

For the foregoing reasons, I cannot find that the Individual has mitigated the DOE's security concerns under Guidelines E or F.

VI. CONCLUSION

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 not brought forth sufficient evidence to resolve the security concern associated with Guidelines E and F. Accordingly, I have determined that the Individual's access authorization should not be granted.

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

Katie Quintana
Administrative Judge
Office of Hearings and Appeals