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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: September 12, 2018) Case No.: PSH-18-0067
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Issued: January 8, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor. On June 30, 2016, the Individual electronically signed and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) form to the Local Security Office (LSO). Derogatory information subsequently obtained by the LSO indicated that the Individual’s e-QIP contained a number of false statements and omissions, and that the Individual had failed to file federal and state tax returns for a number of years, owed the Internal Revenue Service (IRS) approximately \$25,000, and owed his state revenue authority \$786. Additional derogatory information indicated that the Individual had seven unpaid collection accounts totaling \$20,310, and three charge-off accounts totaling \$23,185. After two personnel security interviews (PSI) of the Individual conducted by the LSO failed to resolve the derogatory information obtained by the LSO concerning the Individual, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. See 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge

¹ Under the regulations, “Access 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.

in this matter on September 13, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-18-0067 (hereinafter cited as “Tr.”). The LSO submitted 16 exhibits, marked as Exhibits 1 through 16 (hereinafter cited as “Ex.”). The Individual did not submit any exhibits.

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, and F of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Guideline E (Personal Conduct) provides: “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 cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Guideline E at § 15. Guideline E sets forth seven conditions that “could raise a security concern and may be disqualifying.” Guideline E at § 16. Guideline E identifies a “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . determine national security eligibility or trustworthiness,” as among those conditions. . . Guideline E at § 16(a). Guideline E also provides that information indicating that an individual had been “deliberately providing false or misleading information; or concealing or omitting information concerning relevant facts to an . . . investigator [or] security official . . . involved in making a recommendation relevant to a national security eligibility determination,” could raise a disqualifying security concern. Guideline E at § 16(b).

The LSO alleges, under Guideline E, that the Individual failed to provide truthful and candid information to the LSO when he failed to report: (1) two judgments entered against him in the previous seven years; (2) that his wages had been garnished during the previous seven years, (3) that he had failed to pay federal and state taxes for tax years 2010 through 2016; and (4) that he had 10 accounts totaling \$43,495 in outstanding collections and charge-off accounts. These allegations adequately justify the LSO’s invocation of Guideline E.

Guideline F (Financial Considerations) provides: “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.” Guideline F at § 18. Guideline F further provides: “An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.” Guideline F at § 18. Guideline F sets forth nine conditions that “could raise a security concern and may be disqualifying.” Guideline F at § 19. Among these conditions that can raise security concerns under Guideline F are an individual’s inability to satisfy debts; unwillingness to satisfy debts regardless of the ability to do so; history of not meeting financial obligations; consistent spending beyond one's means or frivolous or irresponsible spending, a significant negative cash flow, a history of late payments or non-payment, other negative financial indicators; failure to file annual Federal or

state income tax returns, or failure to pay annual Federal, or state income tax. Guideline F at § 19(a), (b), (c), (e), and (f).

In the present case, the LSO alleges that the Individual has a history of failing to meet his financial obligations, failing to file his Federal and State tax returns, and failing to pay his personal income taxes in a timely manner. To this end, the LSO cites two credit reports indicating that the Individual has seven unpaid collection accounts totaling \$20,310 and three outstanding charge-off accounts totaling \$23,185; the Individual's admissions that three plaintiffs have obtained judgments against him for failing to meet his financial obligations; his admission that his wages have been garnished; his failure to file his Federal and state income tax returns for tax years 2010 through 2016; his admission that he owes the IRS approximately \$25,000 and an additional \$776 in state income taxes; and his admission that, despite the fact that he has approximately \$1,185 in disposable income each month, he has taken no action to repay these debts and has no intention of satisfying these debts. These allegations adequately justify the LSO's invocation of Guideline F.

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. Ex. A at Paragraph IV.B.

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 e-QIP

On June 30, 2016, as part of a routine background reinvestigation, the Individual submitted an e-QIP to the LSO. Ex. 13 at 1. In this e-QIP, the Individual initially reported that he had a judgment entered against him for financial issues, and that he had a lien placed on his property for “failing to pay taxes or other debts.”² Ex. 13 at 28. In response to a question in the e-QIP asking whether he had “failed to file *or* pay Federal, state, or other taxes when required by law or ordinance,” the Individual answered “yes,” further indicating that he failed to file and pay his Federal and state taxes for tax year 2016.³ Ex. 13 at 27. The Individual, however, subsequently certified that, during the previous seven years, he was not delinquent on any Federal debt, had not had his wages garnished, had not had any bills or debt turned over to a collection agency, had not had any accounts charged off, and had not been a party to any public record civil court action. Ex. 13 at 28-30

The Credit Reports

On July 19, 2016, the LSO obtained a credit report on the Individual which indicated that an additional creditor had sought a judgment in the amount of \$11,311 against the Individual on October 13, 2013. Ex. 7 at 3. The July 19, 2016, Credit Report further indicated that 11 of the Individual’s credit accounts were in collection status. Ex. 7 at 4-7.

The LSO obtained a second credit report on the Individual on February 9, 2018. This Credit Report indicated that six of the Individual’s credit accounts were in collection status, while two credit accounts were in charge off-status. Ex. 6 at 2-3.

The First PSI

On February 20, 2018, the LSO conducted a PSI of the Individual. During this PSI, the Individual admitted that additional derogatory information concerning his financial problems that he had not included in his e-QIP existed. The Individual admitted that he had not filed his tax returns for tax years 2012 through 2016. Ex. 15 at 32, 34. When he was asked why he had not filed his tax returns, he initially stated that he wished to avoid filing for bankruptcy, and subsequently attributed his failure to file his tax returns to “procrastination.” Ex. 15 at 33, 37. The Individual stated that he intended to start working with a tax advisor to resolve his tax issues. Ex. 15 at 35, 38. The Individual acknowledged that he realized that failing to file his taxes was against the law. Ex. 15 at 38.

The Individual further admitted that two creditors who had not been identified in his e-QIP obtained judgments against him, two of his creditors had garnished his checking account in 2010 or 2011, his wages had been garnished “a few times,” and that he “surrendered” his home after falling at least a year behind in his payments. Ex. 15 at 10, 12, 14, 22-24, 26. The Individual also admitted that he was delinquent on some student loans, and claimed he was now paying them. Ex. 15 at 20-21. The Individual also denied knowledge of several of the outstanding debts he was questioned about. Ex. 15 at 48-50.

² The Individual further reported: “All liens cleared up. Still working on my house loan.” Ex. 13 at 28.

³ The Individual further reported in his e-QIP that he was “Still working on a pay schedule” in order to resolve these tax issues, and that he owed approximately \$6,000 in back taxes. Ex. 13 at 27.

The Individual claimed that his omission of some of his failures to file or pay federal or state taxes from his e-QIP was an “oversight.” Ex. 15 at 73. Although the Individual was unable to explain why he failed to report at least two outstanding judgments against him in the previous seven years, he denied trying to deceive the LSO about them. Ex. 15 at 73-74. The Individual then claimed that he had never failed to provide full, frank, and truthful answers on any other forms for his employment, or any forms submitted for his security clearance. Ex. 15 at 76. Despite the foregoing, the Individual described himself as financially responsible. Ex. 15 at 39-40.

The Individual claimed that several of his debts were incurred by his son, who allegedly became involved with illegal drugs, and began making unauthorized charges on the Individual’s credit cards.⁴ Ex. 15 at 9-14, 18-19, 22. He further claimed that his son had impersonated him in order to make \$5,000 in unauthorized charges at a jewelry store. Ex. 15 at 62. The Individual claimed that, although he had informed one of his creditors that his son had made charges to his account without permission, that creditor subsequently obtained a judgement against the Individual. Ex. 15 at 28. The Individual stated: “Now, on all of these, if I would have filed charges on my son, a lot of these, they were willing to let it go, because my son would have to be incarcerated on it. But I did not file charges on my son.” Ex. 15 at 19.

The Individual indicated that he does not plan to settle or pay back his outstanding accounts since his creditors, in his words, “wanted their balance, they weren't willing to work.” Ex. 15 at 25. The Individual admitted that, in one instance, he had received a court date notice, but did not attend the hearing, which resulted in a default judgment on behalf of the creditor. Ex. 15 at 26. He explained his decision against attending this court hearing: stating “Because I figured they were due something, you know?” Ex. 15 at 26. The Individual reported that three or four of his debts “went through the courts.” Ex. 15 at 27.

The Individual reported that his net monthly income is \$4,000, and that his monthly expenses total approximately \$1,585. Ex. 15 at 42-44. The Individual agreed that he has approximately \$2,000 a month left over after paying his monthly expenses. Ex. 15 at 46. When asked how he spends this \$2000 a month, the Individual indicated that he helps his adult children and his grandchildren, and then saves the rest. Ex. 15 at 46. The Individual admitted that he also buys his grandson “collectables.” Ex. 15 at 50-51.

The Tax Records

On February 23, 2018, the LSO obtained a copy of the Individual’s state tax records. These records indicated that the Individual had not filed his state tax returns for tax years 2011, 2012, 2013, 2014, 2015, 2016, and 2017, and owed the state \$786 in unpaid taxes. Ex.8 at 2, 9-10. In March 2018, the LSO received tax records from the IRS indicating that the Individual had not filed his Federal tax returns for tax years 2014, 2015, 2016, and 2017. Ex. 9; Ex. 10; Ex. 11; Ex. 12.

⁴ When the Individual was questioned about a garnishment obtained by a medical contractor, he claimed that he had been unaware of it, and had not received any medical services from the creditor. Ex. 15 at 24. He contended that his adult son, who he claimed had worked at the medical creditor, was responsible for this debt. Ex. 15 at 24. The Individual further claimed that several overdue medical accounts were incurred by his son, and that he did not consider himself to be responsible for them. Ex. 15 at 21. The Individual claimed that he has not incurred any medical bills during “the last ten, 15 years.” Ex. 15 at 25.

The Second PSI

On April 27, 2018, the LSO conducted a second PSI of the Individual. During this PSI, the Individual denied that he ever had his wages garnished. Ex. 14 at 14. The Individual further claimed that the medical debts attributed to him were his adult son's debts rather than his. Ex. 14 at 15-16. The Individual repeated his claim that his outstanding debts were due to his son's misuse of the Individual's credit cards and credit accounts. Ex. 14 at 17-19. The Individual claimed that at least one of his credit card creditors was willing to dismiss their claim against him, if he were to press charges against his son, but he did not do so because he was unwilling to report his son to the police. Ex. 14 at 17. The Individual asserted that he feels no obligation to repay the debts incurred by his son in the Individual's name. Ex. 14 at 34. The Individual also acknowledged that his house had been foreclosed upon in 2016. Ex. 14 at 20. When the Individual was asked whether he had taken any action to address his delinquent taxes, he claimed that he had hired a tax relief firm to help him address his delinquent tax filings and debts. Ex. 14 at 26-27. After discussing the Individual's monthly finances, the Individual agreed that he has approximately \$1,185 left over each month after paying his monthly expenses.⁵ Ex. 14 at 40-46. The Individual also indicated that he planned to use some of his 401K account to address his outstanding debts. Ex. 14 at 46-47. The Individual estimated that he owes the IRS about \$25,000. Ex. 14 at 47.

The Hearing

The only evidence offered by the Individual in support of his eligibility to maintain a DOE Security clearance was his testimony at the hearing. At the hearing, the Individual testified about his e-QIP omissions. When asked why he omitted the first judgment from his e-QIP, the Individual stated "I was hoping I could get it corrected before -- truthfully, before my clearance interviews came up." Tr. at 10-11. The Individual admitted that this first judgment resulted in his wages being garnished. Tr. at 13. Upon further cross-examination he admitted that he omitted the first judgment from the e-QIP because he knew it would affect his clearance. Tr. at 14. He explained that this debt was incurred when his son stole his credit card and used it without permission. Tr. at 11-12. The Individual testified that he had not paid this creditor or made arrangements with the creditor to settle this debt. Tr. at 14-15.

When asked why he omitted a second judgment from his e-QIP, the Individual stated that that debt was incurred by his son and that he was unaware of the debt and the judgment at the time he completed the e-QIP. Tr. at 15. However, the Individual subsequently acknowledged that he was aware of this judgment. Tr. at 15. When asked again why he omitted this judgment from the e-QIP, the Individual stated: "Well, in -- that should have been under [his son's] name, not mine, and that's what I was trying to get [the creditor] to do." Tr. at 16. The Individual indicated that he had informed this creditor that he had no intention of paying this debt because it had been incurred by his son. Tr. at 16.

When the Individual was asked about a wage garnishment that had appeared in his credit report, the Individual reported that he was not aware of it until DOE brought it to his attention and that his

⁵ The Individual did not explain why he reported significantly less disposable income in April 2018 than he had reported two months earlier in February 2018.

wages had not been garnished by that creditor. Tr. at 17. The Individual reported that he had never received medical services from the creditor and had never been contacted by a collection agency concerning the debt that led to this alleged garnishment. Tr. at 17-19. According to the Individual, even the creditor has no knowledge of this debt. Tr. at 18.

The Individual admitted that he had failed to file his Federal Taxes since 2009. Tr. at 20. When the Individual was asked about his failure to report his tax delinquencies in his e-QIP, the Individual responded by stating “I was just trying to get through some of this other stuff at the time, sir. So I did -- I did that. I just told them I had [filed his taxes].” Tr. at 20. Upon further examination, the Individual stated: “I just thought I'd get it worked out before things became an issue.” Tr. at 20.

The Individual was asked why he failed to report 10 collection accounts in his e-QIP. The Individual responded by stating: “On the ones that filed against me, the way I looked at it -- the ones that belonged to me are mine, but those were my sons, and like he was responsible for those, not me.” Tr. at 22. When asked if he intended to resolve these accounts, the Individual stated: “The ones that belong to my son, no, I will not.” Tr. at 23. The Individual testified that he has never filed a criminal complaint against his son, even though his creditors encouraged him to do so. Tr. at 24.

When the Individual was asked to explain his failure to file his tax returns he stated: “[A]s the years were going by, I was just getting caught up in all this stuff, and I -- I should have filed, but I did not. And there was years that I would not -- probably maybe could not even afford to pay it.” Tr. at 48. The Individual testified that he has not yet filed any of his delinquent tax returns. Tr. at 38-40. The Individual admitted that his approach to handling his debts was flawed. Tr. at 48

V. ANALYSIS

Guideline E Concerns

The Individual clearly exhibited questionable judgment, a lack of candor, and dishonesty when he intentionally attempted to conceal both his failure to comply with his tax obligations and the full extent of his financial difficulties during his background investigation. These omissions raise serious doubts about his reliability and trustworthiness, which are magnified by their occurrence during his background investigation. *See* Guideline E at § 15 (“of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes). Moreover, the Individual’s lack of candor continued during the two PSIs.

Guideline E sets forth a number of conditions that could mitigate security concerns. Section 17(a) provides that mitigation may result when “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification *before being confronted with the facts*” (emphasis added). In the present case it is clear that the Individual did not correct his omission, concealment, or falsification until after he was confronted during the PSI. Section 17(c) provides that mitigation may result when “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.” The Individual’s deliberate concealment of his financial problems and failure to comply with his tax obligations clearly does not constitute a minor offense. Nor can it be said that so much time has passed that it

is unlikely to recur and does not cast doubt upon the Individual's reliability, trustworthiness, or good judgment, since it has been less than three years since the Individual submitted his incomplete e-QIP, and I have found that his lack of candor continued through his PSIs. Section 17(d) provides that mitigation may result when “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” The Individual has acknowledged his behaviors. However, he has not begun counseling, and has not taken any further action to address these behaviors.

The Individual has offered no evidence mitigating the serious security concerns raised by his omissions. Accordingly, I am not convinced that the Individual has sufficiently mitigated the significant security concerns, arising under Guideline E, from his relatively recent omissions from the e-QIP.

Guideline F

The Individual has attempted to resolve or mitigate the security concerns raised under Guideline F by claiming that some of his debts were not actually incurred by him, but rather by his adult son who used his credit cards and credit accounts without his permission. The Individual has not, however, provided any evidence, other than his own testimony, providing factual support for this claim. Since, the Individual's history of deliberate omissions from his e-QIP has greatly diminished his credibility, I find his claims that these debts were not actually incurred by him to be unsupported in the record. Moreover, even if those debts did, in fact, result from the son's unauthorized use of the Individual's credit accounts, serious questions about the Individual's financial conduct would remain, as evidenced by the Individual's recent history of having his home foreclosed upon, as well as his outstanding tax debt.

Guideline F provides seven conditions that could mitigate security concerns, six of which apply to circumstances where an Individual has failed to meet their financial obligations. Guideline F at § 20. None of these conditions are present in the instant case. Section 20(a) provides that mitigation could occur if: “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.” As of the date of the hearing, the Individual had not filed any of his delinquent tax returns, and had not taken any substantive actions to resolve his outstanding tax deficiencies, even after DOE's concerns about his tax problems were made evident to him during his February 20, 2018, PSI. The fact that the Individual has still not taken any significant actions to address his tax problems indicates they continue to occur and continues to cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Section 20(b) provides that mitigation could occur if: “the conditions that resulted in the financial problem were largely beyond the person's control (e.g. . . . clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.” While the Individual has claimed that his debts resulted from his son's theft of his identity (and the subsequent unwillingness of his creditors to settle his outstanding debts or accept his claim that he was the victim of identity theft without his willingness to provide a copy of a police report), that

claim is unsupported in the record. Moreover, the Individual's claim that he was the victim of identity theft would not provide any excuse for his failure to file his tax returns and pay his taxes.

Section 20(c) provides that mitigation could occur if: "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control." While the Individual has repeatedly claimed that he has been consulting with a tax specialist, he has provided no evidence corroborating this assertion and there is no evidence in the record that any progress has been made towards resolving the Individual's tax and financial issues.

Section 20(d) provides that mitigation could occur if: "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." The Individual has repeatedly stated that he has no intention of repaying many of his creditors, nor has the Individual made any substantive effort to repay or otherwise resolve his outstanding tax debt.

Section 20(e) provides that mitigation could occur if: "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." However, the Individual has provided absolutely no documented proof to substantiate his claims that some of the debts were not incurred by him and has not provided any evidence of actions to resolve the issue.

Section 20(g) provides that mitigation could occur if: "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." However, the Individual admits that he has not made arrangements with the appropriate tax authority to file his delinquent tax returns or pay the amount owed.

Accordingly, I am not convinced that the Individual has sufficiently mitigated the significant security concerns, arising under Guideline F, from his unresolved debts, his failure to file his Federal and State tax returns for several years, and his outstanding tax debts to the Federal and State Governments.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and F. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not mitigated the security concerns raised under Guidelines E and F. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest.

Therefore, the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals