

10 exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through E.

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 Guideline 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 F (Financial Considerations) addresses “[f]ailure to live within one's means, satisfy debts, and meet financial obligations.” Adjudicative Guidelines 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.* The conditions set forth in that guideline that could raise a disqualifying security concern are inability to satisfy debts or unwillingness to satisfy debts; a history of not meeting financial obligations; deceptive or illegal financial practice; consistent spending beyond one's means or frivolous or irresponsible spending; 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; unexplained affluence; borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and concealing gambling losses, family conflict, or other problems caused by gambling. Adjudicative Guidelines at ¶ 19. The LSO alleges that the Individual currently has charge-off accounts totaling \$1,600.00; currently has collection accounts totaling \$1,001.00; and failed to file state or federal taxes for tax years 2013 through 2017, as well as failed to file extensions for those years. Notification Letter at 1–2. Accordingly, the LSO’s security concerns under Guideline F are justified.

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 had, at the time of his PSI, two accounts in charge-off status and three accounts in collections. He submitted a receipt with his request for a hearing showing that one of the collection accounts, a medical account totaling \$119.00, had been paid in full. Ex. 2 at 2.

The Individual presented the testimony of his supervisor and testified on his own behalf. The supervisor testified that the Individual is trustworthy, reliable, and responsible. Tr. at 14. Part of the Individual's work is to ensure that work orders are within the budgeted amount and the supervisor has never had any problems with the Individual's work. *Id.*

During the hearing, the Individual testified that he failed to file his taxes because, in past years, his job required him to work in many states and the complexity of filing was overwhelming. Tr. 16–17. He admitted that he should have just hired a tax preparer to file his returns. *Id.* He was not aware at the time that he could file an extension, but he is aware of his duty to file taxes. *Id.* at 26–27. The Individual took full responsibility for his failure to file taxes. *Id.* at 17.

In October 2018, the Individual told an Investigator that he wanted to file all of his delinquent taxes at once. Tr. at 20. He initially contacted his tax preparer in January 2018 to begin resolving his tax issue. *Id.* at 27. In April 2018, he lost contact with the tax preparer but later resumed efforts to file his delinquent taxes. *Id.* at 22–23. Shortly before the hearing, the Individual submitted a letter from his tax preparer stating that he will have everything ready to file within the next two weeks and the Individual anticipates filing before the end of the year. Ex. B; Tr. at 20. He planned to pay the state taxes in lump sums and the federal taxes through a payment plan. Tr. at 20. There are some years for which he expected to owe and others for which he expected a refund. *Id.* at 21. The Individual expected that, in the end, he will owe some amount of money. *Id.* at 20–21. The Individual testified that he had been calling his tax preparer every day to ensure that she was working on his taxes. *Id.* at 23. He was still looking for one receipt, but planned to file without that deduction and just “take the hit” if he could not find the receipt in the next few days. *Id.* at 25–26. The Individual stated that he planned to file his taxes on time in the future. *Id.* at 49.

The Individual stated that his debts were his own fault and that, when he was traveling and moving often, he lost contact with several creditors. Tr. at 17. He had paid off two of his three collection accounts and had a settlement offer for the third that he hoped to have paid before the end of the year. Ex. C; Ex. D; Tr. at 30. The Individual planned to set up payment plans for his delinquent debts in the near future. Tr. at 30–31.

The Individual submitted a budget showing his previous expenses and his current expenses. Ex. A. In order to better pay his debts, the Individual worked to reduce his expenses. Tr. at 34–35. He

was able to reduce his expenses by over \$200 per month. Ex. A. Over the time since his security clearance process started, the Individual has paid off several debts. Tr. at 35–36. As of his hearing date, he had two personal loans, both of which were current. *Id.*

The Individual admitted that he had made many mistakes in his life, but stated that he was working to fix them and was learning to be more financially responsible. Tr. at 38. He has not consulted with a financial advisor or counselor, but was not opposed to the idea. *Id.* at 40. The Individual has been monitoring his credit through Equifax to ensure that he found all his past debts. *Id.* at 41. He has done research into debt consolidation programs and other debt solution programs. *Id.* at 43. In addition, he is working on refinancing his vehicles for lower payments. *Id.* at 45.

V. ANALYSIS

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines at ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting security clearances, I must deny granting if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Failure to live within one’s means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F provides that the following conditions may mitigate security concerns:

- (a) 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));
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances (*id.* at ¶ 20(b));
- (c) 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 (*id.* at ¶ 20(c));
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors (*id.* at ¶ 20(d)); and
 - (e) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. (*id.* at ¶ 20(g)).²

The Individual failed to file his taxes as recently as 2017, after his security clearance process had already been in progress for over a year. Though he had paid some creditors in recent weeks, the majority of his outstanding debts remained outstanding on the day of his hearing. This behavior was neither infrequent nor far in the past. Furthermore, the Individual has a long record of gainful employment and offered no explanation of why he was unable to pay his bills apart from his own poor decision-making. He has not undergone financial counseling and, as of the date of his hearing, had not initiated a payment plan for his remaining delinquencies. His taxes remained unaddressed as well. The Individual intended to file without the missing receipt if he could not find it soon, but he could have just as easily filed without the missing receipt before his hearing date. The Individual is to be commended for his efforts to resolve his financial missteps. However, the manner in which the Individual has attempted to resolve the DOE's security concerns does not demonstrate reliability and sound judgment. For the foregoing reasons, I find that the Individual has not mitigated the Guideline F security concerns.

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 Guideline F of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting 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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals

² Paragraphs 20(e) (reasonable basis to dispute) and (f) (unexplained affluence) of the mitigating factors are not applicable to these facts.