

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

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) addresses 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. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. *See* Adjudicative Guidelines ¶ 15. The LSO alleges that the Individual failed to disclose a vehicle repossession, several collection accounts, and a wage garnishment on his QNSP, and stated on his QNSP that he had set up a payment plan for his federal taxes even though he had never made any such arrangements. Accordingly, the LSO’s security concerns under Guideline E are justified.

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 collection accounts totaling \$14,255.00; owed, as of April 2018, \$1,900.00 in back child support; failed to file his 2015 federal or state taxes; had a federal tax lien totaling \$23,836.00 filed against him for tax years 2008 and 2014; had a federal tax lien totaling \$18,830.00 filed against him in 2010; currently owes a state tax entity about \$3,800.00 for tax year 2015; admitted he had never made payments toward his outstanding federal tax debt; admitted he did not know if he had ever made payments toward his outstanding state tax debt; did not follow through on promises to resolve outstanding debts; and admitted that he does not consider himself financially responsible and that he occasionally spends unnecessarily. Notification Letter at 2–3. 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

At the hearing, the Individual presented the testimony of two witnesses—a colleague and his supervisor. The colleague had known the Individual professionally for over three years and considered him honest and trustworthy. Tr. at 11, 17–18. The supervisor had also known the Individual for about three years. *Id.* at 22. He also considered the Individual honest and trustworthy. *Id.* at 24.

The Individual testified that he did not intentionally withhold, omit, or falsify information on his QNSP. Tr. at 49–50. He believed he had answered in the affirmative on his QNSP when asked whether he had ever had a repossession. *Id.* at 43. He submitted an archival copy of the QNSP, made several days before he submitted his final QNSP, showing that he had included the repossession. Ex. T; Tr. at 80. He was not able to explain how the DOE received a copy of the questionnaire with the question answered in the negative. Tr. at 43–44. The Individual testified that he failed to list several collection accounts on his QNSP because, as it was his first time completing the questionnaire and he had not asked for help, he did not know that he should obtain a credit report to ensure he had the correct information. *Id.* at 44–45. At the time he completed the questionnaire, the Individual was unaware that his child support payments constituted a garnishment. *Id.* at 46. The Individual testified that he indicated on the questionnaire that he had set up a payment plan for his federal taxes because, though he felt that he could not afford to make payments on his federal tax debt at that time and had not done so in the past, he intended to do so in the future. *Id.* at 48–49.

As of his hearing date, the Individual had resolved about \$2500.00 of the \$14,255.00 he had in collection accounts listed in the Notification Letter. Tr. at 59–61. About \$11,500.00 of collections debt remained outstanding. *Id.* at 51–52, 59. He had resolved his child support delinquency and was current with those payments. *Id.* at 61.

The Individual’s tax difficulties began in 2008 when he changed his withholding to “exempt” for the holiday season. Ex. 9 at 18. He “got used to having the money,” and “just never went back and changed it.” *Id.* at 19. The Individual explained that he failed to file his 2015 state and federal taxes because he did not have the money to pay the penalty he knew he would incur. Tr. at 62. His 2015 state and federal taxes have been filed now and he intends to file his taxes on time in the future. *Id.* at 62–63, 67. The Individual estimated that he owed about \$83,000.00 in federal tax debt and admitted that he has not yet made a payment or set up a payment plan. *Id.* at 64, 66. He estimated that he owed about \$8,000.00 in state tax debt and stated that he had set up a payment plan of \$155.00 per month until the balance is paid. *Id.* at 62–63. However, the first payment had not yet been made by the hearing date. *Id.* The Individual testified that he had attended an online credit counseling course and that he had worked to budget and reduce his spending. *Id.* at 86–87. He estimated that, barring changes in his living expenses or an emergency expenditure, he had about \$100.00 of disposable income each month. *Id.* at 84.

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 restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

A. Guideline E

Guideline E provides that the following conditions (in relevant part) may mitigate Personal Conduct security concerns: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) 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; (3) 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; and (4) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 17(a), (c), (d), (g).

The Individual admitted that he intentionally falsified his QNSP when he indicated that he had set up a payment plan for his federal taxes. His justification for such falsification was that he intended to set up a payment plan at some point in the future. Even if the Individual had set up a payment plan, there is no evidence that he made any effort to notify the LSO about his misleading answers on the QNSP. Further, the Individual did not take responsibility for his lack of candor, nor did he, in the intervening time between his PSI and the hearing, work to effectuate his intent by actually making a payment on his federal tax debt. The Individual's reasoning and actions continue to cast doubt on his reliability, trustworthiness, and good judgment. Accordingly, I find that, as of the date of the hearing, he has not resolved the Guideline E concerns.

B. Guideline F

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:

- (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 (*id.* at ¶ 20(a));
- (2) 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));
- (3) 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));
- (4) the individual initiated and is adhering to a good-faith effort to repay overdue creditors (*id.* at ¶ 20(d)); 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. (*id.* at ¶ 20(g)).²

Between his tax and collections debts, the Individual owed over \$100,000.00 in delinquent debt as of the date of his hearing. About \$8,000.00 of that delinquent debt is being resolved by a payment plan. The rest remains unresolved and outstanding; it continues to cast doubt on the Individual's reliability, trustworthiness, and good judgment. The Individual admitted in his PSI that he did not act responsibly in accruing tax debt and his testimony at the hearing that he intentionally failed to file his 2015 taxes to avoid penalties reinforces that admission. Though the Individual received financial counseling, there is no indication that his debt is resolved or under control, especially because he has only \$100.00 per month available, under the best of circumstances, for debt payments. The Individual has failed to initiate and adhere to good-faith efforts to repay some of his creditors and has no arrangements to pay his federal tax debts. Though he had a payment arrangement in place on his state tax debt, he had yet to complete

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

the first payment. I find that none of the mitigating factors are applicable in this case. Accordingly, I find that he has not yet resolved the Guideline F 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 Guidelines E and 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.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals