

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: November 30, 2018) Case No.: PSH-18-0082
)
)
_____)

Issued: March 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

A Local Security Office (LSO), obtained derogatory information indicating that the Individual: (1) had 19 unpaid collection accounts totaling \$72,693; (2) failed to file Federal tax returns for tax years 2013, 2014, and 2015; (3) had her home foreclosed upon in 2014; and (4) had filed for Bankruptcy in 2005 and 1998. After a personnel security interview (PSI) of the Individual failed to resolve this derogatory information, the LSO began the present administrative review proceeding by issuing a Notification Letter informing the Individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her 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 in this matter on January 29, 2019.² I took testimony from the Individual at the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g). *See* Transcript of Hearing, Case No. PSH-18-0082 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8

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.

² The Director had previously appointed another Administrative Judge to preside over this hearing, on December 2, 2018; however, that Administrative Judge was ultimately unavailable.

(hereinafter cited as “Ex.”). The Individual submitted 13 exhibits, marked as Exhibits A through M.

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 her 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) 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: “Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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; an unwillingness to satisfy debts regardless of the ability to do so; a 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, or other negative financial indicators; or 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 her financial obligations, and failing to file her Federal tax returns. To this end, the LSO cites two credit reports indicating that the Individual has nine unpaid collection accounts totaling \$72,693. The LSO also cites the Individual's admissions that she failed to file her Federal income tax returns for tax years 2013 through 2015, her admission that her home was foreclosed upon in February 2014, and her admission that she had filed for bankruptcy in 1998 and 2005. 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 Credit Reports

During a routine background investigation, the LSO obtained a credit report on the Individual on November 19, 2016 (the 2016 Credit Report), which indicated that the Individual had a history of 23 accounts in collection status. Ex. 6 at 3-11. At least three of these collection accounts were still open as of the date of the 2016 Credit Report. Ex. 6 at 3-11. The 2016 Credit Report further indicated that the Individual’s home had been foreclosed upon in February 2014, and that the Individual was past due on at least three of her student loans. Ex. 6 at 11-16.

The LSO obtained a second credit report of the Individual on November 17, 2017 (the 2017 Credit Report). The 2017 Credit Report indicated that the Individual had 25 delinquent accounts at that time (and 20 previously delinquent accounts). Ex. 5 at 1. The 2017 Credit Report further indicated that the Individual had a history of 27 collection accounts, of which six were charged off. Ex. 5 at 1. Six student loan accounts were in collection status. Ex. 5 at 2-3.

The PSI

The LSO conducted a PSI of the Individual on May 2, 2018. During this PSI, The Individual admitted that she had not filed her Federal taxes for tax years 2013, 2014, and 2015;³ that her house had been foreclosed upon; and that she had filed for Bankruptcy in 1998 and in 2005.⁴ Ex. 8 at 57, 98,111-112, 118.

The Individual attributed her financial difficulties to a number of factors. She claimed that her recently-deceased husband had been ill for an extended period of time, causing her to expend considerable time and financial resources attending to him. Ex. 8 at 11, 121. In addition, she

³ She claimed that she had not filed her Federal taxes because she had been unable to find her documentation among her boxes of stored paperwork. Ex. 8 at 113.

⁴ The Individual indicated that she is unwilling to file for Bankruptcy again. Ex. 8 at 107.

claimed that she was supporting her son, who had become disabled.⁵ Ex. 8 at 11, 122. The Individual also attributed her past financial difficulties to her late husband, who she claimed did not work regularly and did not support her. Ex. 8 at 99, 101. The Individual claimed that she lost her husband's income (approximately \$400 a month) when he passed away. Ex. 8 at 14.

The Individual admitted that she was having difficulty paying her student loans, and that she had not made a payment towards her student loans since the previous October. Ex. 8 at 13, 20. She claimed she was behind on her student loans because she could not afford to pay them after she had paid her other obligations, which she characterized as more important. Ex. 8 at 19. She reported that she had entered into a payment program for her student loans, but had discontinued making the payments when they increased from \$35 to \$400 a month. Ex. 8 at 21, 27. She claimed that she had recently begun negotiating a payment plan for her student loans, and that her creditor had agreed to provide her with a "forbearance" until August 2018. Ex. 8 at 23-24. The Individual did not know the number of outstanding student loans she had, and stated that she planned to "find out what's going on with" her student loans. Ex. 8 at 44, 49, 70.

The Individual claimed that she was going to pay her outstanding debts, and that she was going to make arrangements to pay her creditors when she got home from work. Ex. 8 at 16-18. The Individual indicated that she has entered into payment plans with a number of her creditors. Ex. 8 at 80, 83-88. The Individual admitted that she opened some credit card accounts with the hope that she would be able to build her credit by establishing a pattern of making her payments, but found herself unable to make those payments. Ex. 8 at 88. The Individual indicated that she has never sought financial counseling or the services of a financial advisor. Ex. 8 at 104. The Individual initially admitted that her financial obligations exceeded her income; however she subsequently claimed that she is living within her means and that she is financially responsible. Ex. 8 at 13, 105, 108. The Individual stated that her monthly take home income is \$3,400. Ex. 8 at 106, 134-135. The Individual estimated that her monthly expenses were \$3,000. Ex. 8 at 135.

Request for Hearing

The Individual submitted her Request for Hearing on October 23, 2018, which included nine character references, none of which directly concern her financial circumstances. They appear in the Record as Ex. 2.

⁵According to the Individual, caring for her son and husband caused her to miss 30 days of work without pay. Ex. 8 at 11. She estimated that she lost \$4,000 of pay while caring for her husband and son. Ex. 8 at 12. She further claimed that she supports another one of her sons. Ex. 8 at 76.

The Hearing

At the Hearing, the Individual attempted to mitigate the security concerns raised by her financial issues and failure to file her tax returns by trying to establish that she is “a good person,” has “high morals, high values,” and “would not turn her back on the country.”⁶ Tr. at 8. The Individual attributed her Bankruptcy filing under Chapter 7 in 1998 to the failure of her husband’s business. Tr. at 45. The Individual acknowledged that she had filed for Bankruptcy under Chapter 13 in 2005. Tr. at 45. The Individual further explained that her husband had become terminally ill in 2001, and that her son had developed a chronically debilitating medical condition which forced him to move back into her home. Tr. at 47, 49-51. As a result, she was forced to care for and financially support both her husband and her son. Tr. at 47. Her husband passed away in 2015. Tr. at 49. The Individual attempted to provide mitigation of the security concerns raised by her financial circumstances by showing that she has begun to address her outstanding debts and has prepared a personnel budget.

The Individual testified that she has entered into repayment plans with several of her creditors. Tr. at 16-17, 27. She claimed to be in the process of consolidating her student loan debts and that her application to consolidate those debts had been accepted. Tr. at 20-21. The Individual estimated that her monthly payment for her consolidated student loan debt would be initially be \$200 per month, but would escalate after two years. Tr. at 24-25. The Individual further testified that she had paid some of the outstanding debts listed in the statement of charges. Tr. at 26-27, 29. However, when she was questioned about one debt, listed in the Statement of Charges in the amount of \$1,165, she claimed to be unaware of that debt.⁷ Tr. at 29. The Individual claimed that she had filed her tax returns from tax years 2013, 2014, and 2015, and specifically claimed that she had filed her 2013 returns in 2014. Tr. at 32. The Individual was unable to recall when she first became unable to repay her student loan debts. Tr. at 36

The Individual testified that she began preparing a budget in December 2018, which she submitted at the hearing as Ex. B. Tr. at 44. She testified that she has been successfully following this budget for two months. Tr. at 44. The Individual admitted that she does not have any savings. Tr. at 55. The Individual testified that her monthly expenses add up to \$3,465. Tr. at 41. The Individual admitted that this figure is based upon several estimates. Tr. at 43.

The Post-hearing Argument

After the Hearing, the Individual submitted a Post-hearing Argument and a number of additional exhibits into the Record, including revised Exhibits B and D. The Individual indicated that she had filed a request for a copy of her tax records that would show that she has filed her Federal tax returns for 2013, 2014, and 2015. The revised budget submitted by the Individual indicates that her monthly income, after taxes, is \$3,972, while her expected monthly expenses are \$3,465. Revised Ex. B. The Individual also claimed that she has resolved all of her outstanding debts, either by paying them in full or entering into repayment agreements, with the exception of two creditors. Revised Ex. D.

⁶ The Individual also asserted that the interviewer who conducted her PSI was rude to her. Tr. at 38.

⁷ The Individual later submitted documentation that she had entered into a payment plan with this creditor in June 2018. Ex. H.

V. ANALYSIS

As an initial matter, I note that the Individual has repeatedly contended that the investigator engaged in inappropriate conduct during the PSI. In her Request for Hearing, the Individual claimed that the investigator was “rude and intimidating accusing me and making attacks on my integrity.” Request for Hearing at 2. At the hearing, the Individual testified, without invitation and apparently unaware that her PSI had been recorded, that:

My interview with the background investigator, he was extremely rude, and he was constantly accusing me during the interview. It was not things like "would you sell out -- would you sell the plans? "He had his finger in my face as far as it going on to the screen, and he says "I know you. People like you, you sell out your country in no time." I said "No, I wouldn't." He said "Yeah. You'd sell out your country." And he said "I know your type." And he said -- he was just very rude, very rude.

Tr. at 61. In her Post-hearing Argument, the Individual, once again, claimed that the interviewer who conducted her PSI interviewer engaged in inappropriate conduct, claiming that:

Because of the interview with [the investigator] that conducted [her PSI], I was terrified to discuss anything about me or what I have been through. However, after speaking with [the DOE Counsel] and [an OHA Administrative Judge], my fear subsided to the point I could discuss my shortcomings without someone yelling at me or accusing me of being a threat. I never want to go through that experience again.

February 19, 2019, Post-hearing Submission at 2. I reviewed the transcript of the PSI carefully, and found that it offers absolutely no support to the Individual’s contentions. To the contrary, the transcript of the PSI indicates that interviewer conducted himself in a forthright, professional, friendly, and respectful manner throughout the PSI. The specific statements attributed to the interviewer by the Individual in her hearing testimony are completely absent from the transcript. The PSI Transcript does, however, show that the Individual felt sufficiently at ease to repeatedly address the interviewer by his first name on at least 17 occasions during the PSI. Ex. 8 at 13, 20, 25, 32, 37, 54, 58, 64, 68, 81, 82, 101, 104, 120, 125, 130, 133, 134, 142. The PSI Transcript further shows that the Individual spontaneously complimented the interviewer on his interviewing skill. Ex. 8 at 137-138. At the conclusion of the PSI, the interviewer asked “Do you feel you've been treated fairly during this interview?” The Individual responded by stating “Yes.” Ex. 8 at 143.

These misrepresentations by the Individual about the PSI interviewer raise grave doubts about her credibility, as well as her judgment, reliability and trustworthiness. As a result, I assign little weight to her testimony and question the veracity of the information she has provided during this proceeding, except when it is clearly corroborated by documentary evidence.

I turn first to the Individual’s failure to file her Federal tax returns for tax years 2013, 2014, and 2015. During her PSI, the Individual admitted that she had failed to file these tax returns. Ex. 8 at 111-112, 118. At the hearing, however, the Individual testified that she had filed her tax returns for each of these tax years, and specifically testified that she had filed her tax return for tax year

2013 in 2014. Tr. at 32. Under cross-examination, the Individual admitted that she had no proof that she had filed these returns, but testified that she had recently filed a request for records with the Internal Revenue Service (IRS) that she asserted would show that these returns had been filed. Tr. at 32-33. After the hearing, the Individual submitted Ex. E, the Individual's Request for Transcript of Tax Return, for tax years 2011, 2012, 2013, and 2014, dated February 4, 2019. The Individual also submitted Ex. F, a form from a website named "FreeTaxUSA.com" which states "Thank you for using FreeTaxUSA.com to prepare your 2015 income tax return," but does not contain any information indicating who the website was thanking, and does not confirm that the return was actually filed with the IRS.⁸ Accordingly, the only evidence in the record supporting the Individual's contention that she has resolved the security concerns raised by her failure to file her Federal tax returns is her own non-credible testimony and the non-specific thank-you form from FreeTaxUSA.com (which, at best, would only apply to one of the three tax years in question). Therefore, I find that the security concerns raised by the Individual's failure to file her Federal tax returns for tax years 2013, 2014, and 2015, under Guideline F remain unmitigated and unresolved.

I now turn to the matter of the 19 unpaid collection accounts cited in the Individual's Statement of Security Concerns. As an initial matter, I note that some of those collection accounts may be duplicative, reflecting the fact that the right to collect a debt may be transferred from the original creditor to a collection agency or government agency. However, other than her own unreliable statements and testimony, the only evidence supporting the Individual's claims that she has mitigated the security concerns raised by these unpaid collection accounts are several exhibits which document that the Individual: had entered into a payment plan with one of her creditors, Ex. H; had resolved two of her unpaid collection accounts by paying them in full, Ex. I, and Ex. J; and had submitted an application to consolidate her unpaid student loans (which account for the overwhelming majority of her unpaid debt) with the party servicing her student loan debt in the hope that she could enter into a payment plan to satisfy them.⁹ Ex. K. These exhibits show that the Individual has, belatedly, taken constructive and meaningful actions to address her unpaid collection accounts. These actions provide partial mitigation of the security concerns raised by her unpaid collection accounts.

However, the Record also shows that that Individual has a long-standing history of failing to meet her financial obligations, dating back to at least 1998, when she first filed for Bankruptcy. Since that time, she again filed for Bankruptcy in 2005, had her home foreclosed upon in 2014, and is clearly presently failing to meet her financial obligations. While the Individual has been faced with a number of serious financial challenges during this time period, including the illnesses of her son and husband, student loan debt, and a modest income, she has not exhibited the ability to live within her means, satisfy her debts, and meet her financial obligations over an extended period. The fact that she has recently begun to take action to address her financial issues does not provide sufficient mitigation of the security concerns raised by her financial history.

⁸ Even if this form would have resolved the concerns arising from her failure to file her Federal tax return for tax year 2015, she has still not submitted any evidence showing that she has filed her Federal tax returns for tax years 2013 and 2014.

⁹ Ex. K is a form letter from the Department of Education informing the Individual that her request for a Consolidation Loan had been accepted and was being reviewed in order to determine whether she was eligible.

Guideline F provides seven conditions that can mitigate security concerns, four of which apply to circumstances present in the instant case. Guideline F at § 20. The Individual has not shown that she has met any of these conditions 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 shown that she has filed her delinquent tax returns, and while she has taken substantive actions to resolve her unpaid collection accounts and prepared a budget, she has not convinced me of her ability to prevent her financial issues from recurring.

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 her debts resulted from her husband and son’s medical issues, the Individual failed to act responsibly to address these issue until the hearing was imminent. Moreover, the Individual’s claims concerning her family member’s illnesses do not excuse her failure to file her tax returns.

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.” The Individual, however, does not claim that she has received any legitimate financial counseling.

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.” While the Individual has initiated an effort to repay her overdue creditors or otherwise resolve her debts, she has not shown that she is able or willing to adhere to those efforts going forward.

Section 20(e) 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 has not shown that she has remedied her delinquent tax return filings by filing them or making arrangements with the IRS to file those returns at a later date.

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

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not mitigated the security concerns raised under Guideline F. Accordingly, the Individual has not demonstrated that restoring her 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