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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: March 7, 2019)	Case No.:	PSH-19-0013
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Issued: May 29, 2019

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 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) (the “Adjudicative Guidelines”), I conclude that the Individual’s access authorization should not be restored.

I. BACKGROUND

On February 11, 2019, the Local Security Office (LSO) sent a letter (“Notification Letter”) to the Individual advising her that it had reliable information that created a substantial doubt regarding her eligibility for access authorization. *See* 10 C.F.R. § 710.21. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines E and F of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing, the Individual presented the testimony of one witness and testified on her own behalf. The LSO submitted fourteen exhibits (Exs. 1-14) and the Individual submitted fifteen exhibits (Exs. A-O) into the record of this proceeding.² The hearing transcript will be cited as “Tr.” followed by the relevant page number.

¹ Under the regulations, “[a]ccess 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 Individual submitted Exhibit O after the hearing concluded.

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 Guidelines E and F of the Adjudicative Guidelines.

The LSO alleges that the Individual provided false and misleading information on a 2001 Financial Questionnaire, during a 2001 Personnel Security Interview (2001 PSI), and on a 2016 Questionnaire for National Security Positions (2016 QNSP). Ex. 2. Under Guideline E, “[c]onduct 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 or sensitive information.” Adjudicative Guidelines at ¶ 15. A concern may be raised by “[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . [or] determine national security eligibility or trustworthiness” *Id.* at ¶ 15(a). Furthermore, a concern may be raised by “[d]eliberately 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” *Id.* at ¶ 15(b). The Individual’s alleged omission of relevant information and submission of false and misleading information presents a concern under Guideline E.

The LSO also alleges that the Individual has a history of bankruptcies, foreclosures, and inability to satisfy her financial obligations. Under Guideline F, “[f]ailure 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.” *Id.* at ¶ 18. Concerning conditions include an “inability to satisfy debts . . . [or] a history of not meeting financial obligations. . . .” *Id.* at ¶ 19(a), (c). Accordingly, the Individual’s history of financial difficulties presents a concern under 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 the individual’s 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 provided context for her past conduct and testimony regarding her present circumstances and future intent.

First, a member of the Individual’s church’s leadership testified on the Individual’s behalf. The witness testified that the Individual has been entrusted with possession of the church’s bank card and the ability to make purchases for the church. Tr. at 19-20. The Individual is also entrusted with the ability to write and sign checks for the church. Tr. at 25. The witness testified that the Individual is honest and truthful and that she has never discovered any irregularities in the Individual’s handling of church money. Tr. at 20. The witness also testified that the church has given the Individual financial assistance a few times in the past. Tr. at 14, 16. On one occasion, the church helped the Individual pay her rent because she used her own money to help ensure her son “had a place to live.” Tr. at 15. The church also provided financial assistance to the Individual a few weeks prior to the hearing. Tr. at 15.

Turning to the Individual’s testimony, the Individual confirmed that she provided misleading information regarding the basis of her financial difficulties and that she intentionally omitted delinquent accounts from her 2016 QNSP. First, the Individual confirmed that she reported conflicting information regarding the basis for her 2000 bankruptcy. On a 2001 Financial Questionnaire, she stated that her financial trouble resulted from medical reasons. Ex. 14. However, during her 2001 PSI, she reported that her medical history had nothing to do with her financial difficulty. Ex. 12 at 12-15; Tr. at 33-34. At the hearing, the Individual stated that her response on the questionnaire was a partial answer. Tr. at 41. She testified that she failed to elaborate on the reason for the financial trouble that led to her bankruptcy because “sometimes when I read a question I’ll write an answer – if I – I don’t want to sound bad. If they don’t ask for more information then I just answer the question.” Tr. at 40-41. However, she later admitted that she did in fact provide false information when she asserted that her bankruptcy arose from a medical condition. Tr. at 154-55.

The Individual also confirmed that when she submitted her 2016 QNSP, she failed to report any of her delinquent accounts. Tr. at 48-49. She provided conflicting explanations for the omission. She initially stated that she did not list them because she did not know about them. Tr. at 49. However, she also testified that she knew at the time that she had some older bills in collection because she

recalled receiving collection notices on some of the accounts prior to filling out the 2016 QNSP. Tr. 49, 56-57. Then she stated that her omission resulted from her failure to carefully consider the questions because she was busy with school and she carelessly copied her responses from an older submission without reading all of the questions. Tr. at 58-61. Furthermore, she testified that she understood that the question required her to report the delinquent accounts, Tr. at 57, and despite that knowledge, she failed to report the accounts. Tr. at 62. Finally, she testified that in the future she will read more carefully, provide detail when needed, and ask for help or clarification before responding to a clearance-related question that she does not understand. Tr. at 149-151.

Next, the Individual testified regarding her history of failing to meet her financial obligations. She did not dispute the allegations contained in the Notification Letter. Thus, the record demonstrates that she had property repossessed in 1999; she filed for Chapter 7 bankruptcy in 2000; her wages were garnished in 2006; she filed for Chapter 13 bankruptcy in 2007; her residential property was foreclosed upon in 2015; she had eighteen separate accounts in collection in 2016; and in 2018, her budget had a \$700 shortfall each month. Ex. 2. The record also demonstrates that she confirmed, during her 2018 PSI, that there was never a period in which she had been able to pay all her bills. Ex. 5 at 10-12.

In her 2001 PSI, the Individual explained that her 2000 bankruptcy resulted from purchasing a car, maintaining the car, and falling behind on paying bills. Ex. 12 at 14-15. During the hearing, she testified that after the 2000 bankruptcy, she obtained financing to purchase a new vehicle to replace her unreliable vehicle. Tr. at 67. However, instead of disposing of the unreliable vehicle, she decided to keep it and the accompanying loan payment because she “kind of liked [it]” and thought she could afford to keep both.” Tr. at 68-69.

Then, at the time of her second bankruptcy in 2007, the Individual testified she had two different vehicles, again one inoperable and one functioning. Tr. at 70. When asked to explain what happened to the new vehicle she purchased after the 2000 bankruptcy, she was unable to provide much detail and stated that it may have been either repossessed or she “turned [it] in.” Tr. at 71-72.

She also testified that she failed to remain current on her mortgage payments around the time of her 2007 bankruptcy. Tr. at 43, 46. The Individual blamed her inability to make her mortgage payments on her son’s father’s failure to provide child support and her inability to earn overtime. Tr. at 38, 48. She testified that she purchased the house on the belief that her child’s father would continue paying child support. Tr. at 44-45. However, he later filed for bankruptcy and stopped sending child support, and she never involved the courts to enforce his obligation. Tr. at 38-39. As for overtime, she testified that her employer started cutting back on overtime hours, Tr. at 47-48, and that she had based a lot of her financial decisions on the availability of overtime pay. Tr. at 47. She stated that she consequently fell behind on her mortgage “because one month [she] would make a house payment, and then the next month [she] dealt with either [a] car payment or whatever [her] son needed at school.” Tr. at 46. At some point, she stopped making mortgage payments. Thereafter, from approximately 2012 to 2016, she lived in the home without having to pay her \$425 mortgage payment. Tr. at 43, 79. Notwithstanding, she was still unable to meet her other financial obligations. Tr. at 48. In the four years she lived rent-free and mortgage-free, she continued to accumulate delinquent accounts. Tr. at 84. She testified that, instead of paying off the accounts,

which included medical bills, she instead focused on “trying to get my son out of school,” which included having to pay for band trips, band equipment, and travel out of the state. Tr. at 81, 84. By 2016, she had accumulated eighteen delinquent accounts. Tr. at 86, 128.

As for the Individual’s current financial situation, she testified that she had either satisfied or made arrangements to satisfy all of the delinquent accounts identified in the Notification Letter. Tr. at 137-43. But she also provided a budget which demonstrates that her monthly expenses continue to exceed her income by roughly \$365. Ex. L; Tr. at 100. She testified that she is currently managing her bills by making payments toward some accounts while allowing others to become delinquent and then later making payments to bring the delinquent accounts current while letting the non-delinquent accounts become delinquent. *See* Tr. at 97.

As for her future plans, the Individual testified that she will attempt to increase her income by obtaining overtime hours and she is considering acquiring a part-time job. Tr. at 94. However, she does not yet intend to obtain a part-time job because she is hopeful that she will be able to retain her security clearance and thereafter be able to earn sufficient income from working overtime hours with her current employer. Tr. at 102-103. She also conceded that there is no guarantee that she will be able to earn significant overtime pay. Tr. at 104. Furthermore, she testified that she expects to accumulate future medical bills and she has approximately \$12,000 in student loans that, while presently in forbearance, she must repay—potentially starting as early as June 2019. Tr. at 91, 100, 113.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and her witness. 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’s access authorization should not be restored. I cannot find that granting the Individual a security clearance will not endanger the common defense and security, and that it is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this Decision are discussed below.

A. Guideline F: Financial Considerations

The following relevant conditions may mitigate Guideline F 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;
- (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;

...

- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

....

Administrative Guidelines at ¶ 20.

The Individual did not present sufficient evidence to mitigate the concerns generated by her financial behavior. As to the first mitigating condition, the Individual, by her own testimony, has consistently been unable to satisfy her debts or meet her financial obligations going back to 2000, and she presently falls short of earning enough income to cover her expense by approximately \$365 a month. Her financial situation can reasonably be expected to grow more acute considering that she will soon shoulder the burden of student loan repayment and additional medical bills. And she does not present a convincing strategy for addressing her monthly deficiency or to prevent going into further debt. Rather, she intends to engage in the same behavior as before: staggering payments between her various creditors in an attempt to stay financially afloat while hoping she will be able to work enough over-time hours to improve her situation. In other words, the record demonstrates that she is continuing to exhibit problematic financial behavior.

Similarly, the Individual did not present sufficient evidence to mitigate the security concerns under the second factor above. I do not find that the conditions that resulted in her financial problems were largely beyond her control. First, while she blamed her 2000 financial problems on a medical condition, she later retracted that explanation. She failed to provide sufficient evidence to demonstrate that her 2000 and 2007 financial problems resulted from circumstances largely beyond her control. As for her 2015 foreclosure, while the Individual blamed the situation on her child's father's failure to provide child support payments and her lack of ability to earn sufficient income, I remain unconvinced, given her financial history, that either situation led to her inability to meet her financial obligations. Furthermore, the Individual demonstrated questionable financial judgment to take on home-ownership in reliance upon another person's promise to provide child support and a hope that she would be able to earn sufficient overtime pay. Finally, I do not find sufficient evidence to conclude that her present financial situation is due to circumstances largely beyond her control. The evidence tends to demonstrate that in the past, as today, her financial conditions are the result of her own financial decisions.

Even if I were to find that the Individual's financial troubles arose from circumstances largely beyond her control, I do not find that she acted responsibly under the circumstances. Instead, the evidence demonstrates that she failed to improve her financial situation despite securing bankruptcies and living rent-free and mortgage-free in her house for the better part of four years, and she remains unable to satisfy her financial obligations.

Finally, as to the third mitigating condition, while the Individual either satisfied or made arrangements to satisfy her delinquent accounts by the date of the hearing, I cannot conclude that she has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. The Individual admitted that, given her monthly financial shortfall, she expects to

let some bills lapse while she satisfies others. Thus, she all but guarantees that she will be unable to adhere to her plans to repay her creditors.

I find, based on the information above, that the Individual has not demonstrated that she has mitigated the security concerns associated with Guideline F.

B. Guideline E: Personal Conduct

While Guideline E lists several conditions that may mitigate related security concerns, the only two relevant to the present case are whether:

- (c) 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;
- (d) 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;

....

Administrative Guidelines at ¶ 17.

As to the first mitigating condition, the evidence does not demonstrate that her behavior is unlikely to recur, and I therefore still have doubts regarding the Individual's reliability, trustworthiness, and judgment. During the hearing, when questioned as to why she provided incorrect information on her 2001 Financial Questionnaire and omitted information from her 2016 QNSP, she wavered between (1) stating that she partially or carelessly answered the questions and (2) stating that she intentionally provided inaccurate answers. Furthermore, when later asked to explain how she would complete clearance questionnaires in the future, she stated that she would read carefully, provide detail, and ask for assistance if she did not understand a question. Her equivocal testimony does not resolve my concern that she intentionally provided misleading information to the DOE. And it does not persuade me that her behavior is unlikely to reoccur. Thus, I have remaining doubts regarding her reliability, trustworthiness, and judgment.

Regarding the second mitigating condition, even if I accepted that the Individual acknowledged her behavior, she has not taken positive steps to alleviate the underlying circumstances that contributed to her concerning behavior. Not only does the Individual's financial situation still present a concern, but, as indicated in the preceding paragraph, it apparently continues to influence her ability to provide truthful answers. Thus, the same stressors, circumstances, or factors that contributed to her failure to provide complete and truthful answers to the DOE still remain. Therefore, I cannot conclude that the Individual has mitigated the Guideline E security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find the evidence 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 these concerns. Therefore, I cannot conclude that restoring 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 restore 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals