

Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently convened a hearing pursuant to 10 C.F.R. § 710.25(d), (e), and (g). Before the hearing, the LSO submitted eleven numbered exhibits (Ex. 1-11) into the record, and the Individual submitted one lettered exhibit (Ex. A). The LSO did not present any testimony, while the Individual presented the testimony of four witnesses, including her own testimony. *See* Transcript of Hearing, Case No. PSH-19-0019 (hereinafter cited as “Tr.”).

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guidelines E and F of the Adjudicative Guidelines. Ex. 1.

The LSO cited Guideline E as a basis for denying the Individual a security clearance. Conduct involving questionable judgement, 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. In invoking Guideline E, the Notification Letter cited the Individual’s failure to list the following adverse information on the QNSP: (1) the Individual was cited for speeding in 2015; (2) the Individual was suspended from work for disciplinary reasons on three occasions; (3) a judgement was entered against the Individual ordering the garnishment of her wages to satisfy a debt; and (4) twelve of the Individual’s delinquent debts were assigned to collections from 2011 to 2016. DOE Ex. 1 at 1–3. The Individual’s omission of relevant facts from the QNSP and in an interview with an OPM investigator justifies the LSO’s invocation of Guideline E in the Notification Letter. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO referred to Guideline F as the second basis for denying the Individual a security clearance. Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations. Adjudicative Guidelines at ¶ 18. In invoking Guideline F, the Notification Letter indicated that the Individual: (1) had four unpaid collections totaling \$4,053; (2) owed approximately \$17,500 in unpaid U.S. personal income taxes; and (3) failed to file a U.S. personal income tax return for the 2016 and 2017 tax years. DOE Ex. 1 at 3–4. The Individual’s unwillingness to satisfy debts regardless of the ability to do so and failure to file federal tax returns or pay taxes justify the LSO’s invocation of Guideline F in the Notification Letter. Adjudicative Guidelines at ¶ 19(b), (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.

IV. FINDINGS OF FACT

The Individual signed the QNSP in October 2016, and certified that its contents were true, complete, and correct to the best of her knowledge and belief. *Id.* at 43. In response to a question on the QNSP concerning written warnings, official reprimands, suspensions, and discipline for misconduct within the seven years prior to the date that she completed the QNSP, the Individual identified one occasion in which she was "given time off for an incident . . ." Ex. 9 at 11. The Individual checked a box to indicate that she had no further workplace discipline to report. *Id.* With respect to taxes, the Individual disclosed that she had failed to file or pay federal income taxes for 2015, and checked a box indicating that she had no other instances of failing to file or pay taxes to report. *Id.* at 33. In response to a question concerning delinquencies involving routine accounts within the seven years prior to the date on which she completed the QNSP, the Individual listed six delinquencies and indicated that each of them was paid in full, in good standing, or otherwise resolved. *Id.* at 34–39. The Individual checked a box on the QNSP indicating that she had no other delinquencies involving routine accounts to report. *Id.* at 40.

OPM's background investigation into the Individual revealed derogatory information that the Individual had not disclosed on the QNSP. OPM obtained a credit report (2016 Credit Report) for the Individual in November 2016 which revealed numerous financial delinquencies that the Individual had failed to disclose on the QNSP, including debts in collections as of the date of the 2016 Credit Report. Ex. 8. In August 2017, an OPM investigator conducted an interview with the Individual and asked the Individual to provide information related to twenty-one of the financial delinquencies listed on the 2016 Credit Report. Ex. 11 at 61–62. The Individual indicated that she had disputed two of the entries on the report related to a second mortgage on her home, which the Individual claimed that she had settled with the lender. *Id.* The Individual could not provide details for the other nineteen entries on the 2016 Credit Report, and indicated that she had fallen behind on most of her bills due to medical and financial challenges. *Id.* at 61. The Individual also admitted

to having failed to list a garnishment against her wages related to a payday loan on the QNSP and asserted that she had forgotten about the garnishment. *Id.* at 63.

During the interview with the OPM investigator, the Individual admitted that she and her husband failed to timely file their federal income tax returns for 2014 and 2015 because her husband did not believe that they should have to file or pay federal income taxes. *Id.* The Individual stated that she and her husband had filed an extension for 2016, but that they had not made any payments toward back taxes or arranged a payment plan with the IRS. *Id.*

The Individual reported an additional work-related disciplinary incident to the OPM investigator in which she was suspended from work for one day for failing to report a traffic ticket to her employer. *Id.* at 60. The Individual asserted that she had tried to inform her employer of the traffic ticket, but made mistakes when filing the paperwork. *Id.* When asked by the OPM investigator if she had any additional disciplinary actions to report, the Individual responded that she did not. *Id.*

After this interview with the Individual, OPM's background investigation revealed numerous instances in which the Individual was disciplined at work, which she had failed to disclose on the QNSP or in the August 2017 OPM interview, including several multi-week suspensions from work. *Id.* at 64–67. An OPM investigator conducted a second interview with the Individual in January 2018 to address these discrepancies. *Id.* at 64. The Individual asserted that she had forgotten each of the incidents when previously asked to disclose workplace discipline. *Id.* at 64–67. When asked for an update on the status of her federal income taxes, the Individual responded that she had not taken any action with respect to her unpaid 2014, 2015, or 2016 taxes, and indicated that she and her husband owed an additional two thousand dollars in federal income taxes for 2017. *Id.* at 68.

In March 2018, the LSO obtained another credit report for the Individual (2018 Credit Report). Ex. 7. The 2018 Credit Report showed that six of the Individual's medical debts were in collections, and that the Individual was late in making payments on several other debts. *Id.* at 2–3.

During the June 2018 PSI, the Individual revealed that she and her husband had not filed their federal income tax return for 2017, and asserted that the IRS had provided them an extension until July 2018 to do so. Ex. 10 at 14. The Individual reported to the LSO that she and her husband were “basically starting from scratch to get these things done” and reported that the remodeling of their home had impeded their ability to complete and file their taxes. *Id.* The Individual estimated that she and her husband owed approximately \$4,500 in taxes for 2016 and 2017, and between \$5,000 and \$8,000 in taxes for 2014 and 2015. *Id.* at 19, 23. The Individual asserted that preparing and filing the family's tax return was her husband's “domain,” and attributed her tax problems to her husband's prior belief that he was not required to file and pay federal income taxes. *Id.* at 27.

The Individual asserted during the PSI that her medical debts in collections should have been paid by her medical insurance, and that she did not know how she had incurred the debts. *Id.* at 34. The Individual expressed that she had no intention of paying the debts unless the collections agencies holding the debts provided her with documentation of the services associated with the debts. *Id.* at 37. The Individual opined that she was financially responsible because she paid her current bills

on time and was “makin[g] an honest effort to get all of [her older obligations] taken care of” *Id.* at 53.

The Individual provided a summary of what she believed to be her family’s monthly income and expenditures, and estimated that she and her husband had a monthly surplus of \$8,242 after expenses. *Id.* at 61. The Individual expressed shock after calculating the monthly surplus, observing that she and her husband did not have substantial savings and that she did not know how they spent their excess income each month. *Id.* at 62.

With respect to her work-related discipline, the Individual represented that she did not remember the majority of the suspensions discovered by OPM during the background investigation. *Id.* at 71–74. The Individual attributed several of the disciplinary actions to her ignorance of work-related requirements and to being blamed for mistakes by another employee. *Id.* at 75–80.

During the hearing, the Individual offered the testimony of three co-workers as character witnesses, all of whom had known the Individual for six years or more. Tr. at 9, 18, 26. None of the witnesses reported detailed knowledge of the security concerns asserted by the LSO, but each of them testified as to the Individual’s reliable and trustworthy character. *Id.* at 9–12, 19, 23, 26–27.

The Individual testified that, at the time that she completed the QNSP, she believed that her discipline was behind her and that she “did not think that [she] had anything, let alone that much, happen within [the reportable] time frame.” *Id.* at 41. With respect to the financial delinquencies that she failed to list on the QNSP, the Individual testified that she “did not do [her] due diligence [or] pay enough attention to [the questions].” *Id.* at 49. The Individual also expressed that she thought that she was doing better financially than in the past, and that, since nothing had changed for the worse, she had thought that she had nothing to report. *Id.* at 50. The Individual testified that, in the future, she would pay more attention to detail when completing any security-related form and conduct the necessary research to provide complete answers to all questions. *Id.* at 72.

The Individual described her progress towards resolving the adverse entries on the 2018 Credit Report, but stated that she had not obtained an updated credit report reflecting her progress towards satisfying her financial obligations. *Id.* at 43–46. With respect to her federal income taxes, the Individual explained that she and her husband had paid the amounts due for the 2014 and 2015 tax years, and that they had entered into a payment plan with the IRS for the 2016 and 2017 tax years. *Id.* at 65, 70. According to the Individual, she and her husband ensured that they could meet their tax obligations by over-withholding taxes from their paychecks and setting aside \$400 per month pursuant to the payment plan with the IRS. *Id.* at 70, 77. During the hearing, I advised the Individual that I would hold the record open until I received the hearing transcript to allow her to submit an updated credit report and documentation of her actions to meet her federal income tax obligations. *Id.* at 54, 78. The Individual did not submit any additional documents.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors set forth at 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should not be restored. I find that restoring the Individual's DOE security clearance would endanger the common defense and security, and is not clearly consistent with the national interest. 10 C.F.R. § 710.27(a). My specific findings in support of this decision are discussed below.

A. Guideline E

An individual may mitigate security concerns under Guideline E if the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; or if 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. Guideline E at ¶ 17(a), (c).²

In this case, the Individual did not disclose her omissions on the QNSP until confronted with evidence that she had not been forthcoming about her disciplinary history and financial delinquencies. Furthermore, the Individual continued to underreport her disciplinary history and the extent of her financial delinquencies during her first interview with an OPM investigator. Although the Individual claimed that her omissions were the result of carelessness rather than an intent to deceive, the volume of information that the Individual omitted, and the nature of the discipline which she failed to disclose, which included several multi-week suspensions from work, cast significant doubt on the Individual's trustworthiness and judgement and cause me to conclude that she did not act in good faith. Even if the Individual's omissions were truly the product of carelessness, the sheer number of discrepancies casts doubt on the Individual's reliability and willingness to follow rules. Therefore, I find that the Individual does not satisfy any of the mitigating conditions under Guideline E.

B. Guideline F

An Individual may mitigate security concerns under Guideline F 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; the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances; the individual has received or is receiving financial counseling; the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; the individual has a reasonable basis to dispute the legitimacy

² The other mitigating conditions under Guideline E, relating to following the advice of counsel, obtaining counseling to change concerning behavior, taking steps to resolve vulnerability to exploitation, manipulation, or duress, demonstrating that security concerns were unsubstantiated, and disassociating from persons involved in criminal activities, are clearly not applicable to this matter. Adjudicative Guidelines at ¶ 17(b), (d)–(g).

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; unexplained affluence resulted from a legal source of income; or the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. Guideline F at ¶ 20(a)–(g).

I find that the Individual has not met any of the mitigating conditions under Guideline F in this case. Although the Individual claims that she has satisfied her 2014 and 2015 federal income tax obligations, is making payments pursuant to a payment plan for the 2016 and 2017 tax years, and has made significant progress towards resolving her delinquent debts, the Individual failed to provide any documentary evidence of these claims. In light of the Individual's long history of failing to meet her financial obligations, and her incomplete accounts of her financial status throughout the investigative process, the Individual's testimony alone is not adequate evidence to prove that she has resolved the security concerns asserted by the LSO under Guideline F.

Furthermore, although the Individual attributed some of her financial difficulties to family medical issues beyond her control, the Individual has not established an inability to meet her financial obligations. Rather, the Individual asserted that she and her husband earn significantly more income than they require to meet their expenses but cannot account for how their income is spent. Under these circumstances, the Individual's long history of failing to meet her financial obligations reflects poor judgement and an unwillingness to abide by rules and regulations.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E and F of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Brooke A. DuBois
Administrative Judge
Office of Hearings and Appeals