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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: May 8, 2019) Case No.: PSH-19-0028
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Issued: August 8, 2019

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” 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) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In January 2017, the Individual completed a Questionnaire for National Security Positions (QNSP). Ex 7. In responding to the questions regarding his financial record, the Individual indicated that he was over 120 days delinquent on his debt to a medical creditor; however, he did not indicate that he had any additional financial problems over the previous seven years. Ex 7 at 31-32. Subsequently, an Investigator with the Office of Personnel Management (OPM) conducted an Enhanced Subject Interview (ESI) in July of 2018. Ex. 8 at 50. Due to unresolved security concerns, the Local Security Office (LSO) informed the Individual, in a Notification Letter dated April 12, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct). Ex. 1.

¹ Access authorization is defined as “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 be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eight numbered exhibits (Exhibits 1–8) into the record. The Individual chose not to tender any exhibits; however, he presented three witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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.

III. Notification Letter and Associated Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline E of the Adjudicative Guidelines. Guideline E concerns “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations.” Guideline E at ¶ 15. This conduct can call into question an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* Among the conditions that could raise a disqualifying security concern is the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.” *Id.* at ¶ 16(a). In support of its reliance upon Guideline E, the LSO cited three instances in which the Individual failed to disclose on his QNSP that in the previous seven years, he had: (1) eleven medical accounts, a car insurance account, and an additional account that were all submitted to a collections agency, (2) five charge-off accounts, and (3) a collections account that was over 120 days past due. Ex. 1. The LSO additionally relied upon the Individual’s admission

in the ESI that he “intentionally falsified his security form by not listing all of his financial delinquencies because he was afraid he would lose his security clearance and job if they were known.” *Id.*

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

At the hearing, the Individual presented three witnesses: a friend and colleague, his wife, and the Individual himself. The Individual testified that throughout his employment with DOE, he has completed multiple QNSP forms. Tr. at 12-13. The Individual stated that he completed the 2017 QNSP with the help of his wife and prepared for it by obtaining a credit report from Experian. *Id.* at 28. He admitted that he does not have a clear understanding of his financial situation as his wife manages the finances in their household. *Id.* at 45. Nonetheless, he attested that he reported everything that appeared on the Experian credit report, which he believed encompassed his complete financial situation. *Id.* at 29.

Addressing the Summary of Security Concerns, the Individual first addressed the LSO’s allegation that he failed to list thirteen collections accounts. The Individual explained that eleven of these accounts were medical accounts that he believed were appropriately listed on the QNSP. *Id.* at 18-19. The Individual reported that he owed a hospital \$760 and was unaware that the bill was unpaid. Ex. 7 at 31. At the hearing, the Individual clarified that although there were actually eleven distinct medical accounts, all were due to the same hospital creditor and amounted to a total of \$760. Tr. at 19-20, 86. As such, the Individual explained that although he failed to itemize the eleven accounts on the QNSP, he accurately disclosed the total amount sent to collections for that particular creditor. *Id.* at 20. With regard to the car insurance account and the third collection account, the Individual stated that he addressed these accounts in a previously submitted QNSP. *Id.* at 21, 23. The Individual indicated that he did not feel that those items needed to be brought to the DOE’s attention again on the 2017 QNSP as they had already been “dealt with.” *Id.* at 23. He noted, however, that he now understands that even though the two collection accounts were previously “reported,” they needed to be reported again on the 2017 QNSP as they fell within the seven year reporting timeframe.² *Id.* at 24.

Turning to the second item in the Summary of Security Concerns, the five charge off accounts, the Individual again explained that “some of [the] items were...addressed in previous reportings to [the] DOE” and “some of the other items have since been charged off and...[he] can’t deal with those if they’re already gone.” *Id.* at 24-25. However, he recognized that if they fell within the seven year reporting timeframe, they should have been reported again. *Id.* at 24. With regard to the allegation that the Individual failed to list an account on which he was 120 days delinquent, the Individual explained that this debt was sold to a new creditor without his knowledge, and he did not know that his payments were past due. *Id.* at 27-28. Ultimately the Individual acknowledged that he failed to list all of the financial obligations required by the QNSP. *Id.* at 68, 87-90.

² It should be noted that this is not the first time that the Individual has failed to list outstanding financial obligations on his QNSP. See Ex. 8 at 134. Further, the car insurance account was never reported on the previous QNSP, but it was brought to the Individual’s attention by an OPM investigator during an investigation following the completion of the prior QNSP. Ex. 8 at 122-134, 134.

The Individual also addressed the LSO's allegation that he admitted to intentionally falsifying his QNSP out of fear of losing his security clearance or employment. The Individual asserted that when he met with the OPM Investigator (Investigator) for the ESI, he assured the Investigator, repeatedly, that he completed the QNSP truthfully and honestly. *Id.* at 33. However, the Investigator, who was recording the interview, stopped the recording on numerous occasions and became "very aggressive." *Id.* at 33-34. The Individual testified that, upon feeling pressure from the Investigator, he admitted to intentionally falsifying the QNSP out of fear of losing his security clearance. *Id.* at 52, 92. The Individual elaborated, stating that he was coerced into admitting that he deliberately omitted his financial information from the QNSP. *Id.* at 54, 80-81. The Individual specifically testified that he told the Investigator that he lied on the QNSP because the Investigator "kept badgering and badgering over it so many times that...I was just done with it. I was like 'Fine. If that's what you want to hear.'" *Id.* at 93. The Individual stated that he "just wanted [the Investigator] to end his investigation." *Id.* at 96. The Individual recognized that given this version of facts, he lied to the Investigator in stating that he deliberately omitted information from the QNSP. *Id.* at 93-94. Although he felt that the Investigator's behavior was coercive and inappropriate, he did not report the Investigator. *Id.* at 57-58.

The Individual's wife testified that she and the Individual had been married for 20 years. *Id.* at 115. She indicated that in their household, she is the person who is responsible for managing the finances and paying the bills. *Id.* at 102. She stated that since the Individual has maintained a security clearance, there have been "a couple of times" that they have encountered financial challenges and been overdue on certain bills. *Id.* She testified that at the time the Individual completed the QNSP in January of 2017, she helped him determine the financial information that needed to be listed by obtaining an Experian credit report. *Id.* at 105. She indicated that she was not aware of any accounts that were not contained within the Experian credit report. *Id.* at 106. The wife recounted that following the Individual's ESI with OPM, the Individual showed her a document containing a list of accounts that were not disclosed on the QNSP. *Id.* at 104. She elaborated, stating that she was surprised to see those accounts as she thought they had been properly resolved and because they did not appear on the credit report. *Id.* at 111-112, 116-117. She added that she believes her husband to be honest and truthful and that he did not deliberately omit information from the QNSP. *Id.* at 117, 120. She clarified that she thought he "felt pressured [by the Investigator] and was put up against the wall and just gave the answer that he thought he had to give at the time." *Id.* at 117-118.

Finally, the Individual's friend of 15 years testified on his behalf. *Id.* at 137. The friend testified that he became acquainted with the Individual as the result of a job assignment and currently sees him on a daily basis. *Id.* at 137, 144. The friend stated that he did not know any details of the Individual's financial situation, but he does not find the Individual to be a deceitful person and has known him to be "very truthful." *Id.* at 137-138, 140. He additionally noted that he would find it to be out of character for the Individual to admit to something he did not do. *Id.* at 140. The friend described the Individual as a rule follower and capable of following guidelines and procedures. *Id.* at 141.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony presented at the hearing. 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 has not sufficiently mitigated the security concerns noted by the LSO. I cannot find that restoring the Individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns exist pursuant to Guideline E. Conduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See* Guideline E at ¶ 15. Deliberately omitting, concealing, or falsifying relevant facts from any personnel security questionnaire can disqualify an individual from holding access authorization. *Id.* at ¶ 16(a). Under Guideline E, conditions that may mitigate security concerns include that "the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," or "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." *Id.* at ¶ 17(a)(c).

Here, the Individual admitted that he failed to list the five charge off accounts, the account that was over 120 days overdue, and the non-medical collection accounts because he felt that DOE was already aware of them based upon a previously completed QNSP. He further acknowledged that he now understands that he should have disclosed this information on his QNSP. Finally, he admitted that he allowed the Investigator to coerce him into admitting that he deliberately omitted information from the QNSP in order to save his security clearance and his job.

I cannot conclude that the Individual's failure to itemize the medical collection accounts raise a concern with regard to the Individual's reliability or trustworthiness as the Individual was not attempting to hide this financial concern. He clearly listed the creditor and the entire amount due to the hospital. However, the Individual's failure to list the five charge off accounts, the overdue account, and the non-medical collection accounts raise a concern with regard to his reliability. This was not the first time that the Individual had been investigated and questioned with regard to his failure to disclose the entirety of his financial situation on a QNSP. Furthermore, the Individual admitted that he allowed himself to be coerced into giving a dishonest answer to the Investigator while under oath. Not only does this establish a pattern of failing to disclose required information on a QNSP, but it also gives rise to a concern that the Individual displays questionable judgment and may not have the ability to protect classified information when in a stressful situation or under duress. As such, I cannot find that the offense was so minor, so much time has passed, the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur. *See* Guideline E at ¶ 17(c). I find that the Individual's judgment, reliability, and trustworthiness remains a concern. As such, I find that the Individual has not mitigated the security concerns under Guideline E.

VI. CONCLUSION

After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concern associated with Guidelines E. Accordingly, I have determined that the Individual's access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals