

*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: October 31, 2019)	Case No.: PSH-20-0007
)	
_____)	

Issued: February 13, 2020

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and 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) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires her to hold a security clearance. The Individual completed a Questionnaire for National Security Positions (QNSP) on July 1, 2018, in connection with seeking access authorization. Exhibit (Ex.) 10 at 18. The Individual disclosed on the QNSP that a creditor had repossessed a vehicle she owned and that she was over one hundred twenty days delinquent on a credit card account of approximately \$600. *Id.* at 15. The Individual indicated that she had not experienced any other delinquencies involving routine financial accounts, and certified that her answers to the questions on the QNSP were true, complete, and correct to the best of her knowledge and belief. *Id.* at 1, 15.

The Office of Personnel Management (OPM) conducted a background investigation of the Individual, and, on July 20, 2018, obtained a credit report for the Individual (2018 Credit Report). Ex. 12 at 1. The 2018 Credit Report revealed ten delinquent accounts that the Individual was

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

required to disclose, but had omitted from the QNSP, totaling \$11,034 in undisclosed delinquent debts. *See id.* at 3–18. On August 21, 2018, an OPM investigator interviewed the Individual under oath. Ex. 11 at 63. When confronted with her undisclosed delinquent accounts, the Individual asserted that she was current on some of the accounts and that she could not remember incurring the other debts. *Id.* at 66–68. The Individual attributed her financial troubles to a major plumbing issue in her home, asserted that her financial position had stabilized, and represented that she was “able and willing” to repay debts and would pay future bills on time. *Id.* at 68.

On February 19, 2019, the local security office (LSO) obtained an updated credit report for the Individual (2019 Credit Report). Ex. 13. The 2019 Credit Report revealed that the Individual had not resolved all of her delinquent accounts, had allowed accounts previously in good standing to fall into delinquency, and still owed significant outstanding debts. *Id.* at 1–15.

On September 27, 2019, the LSO issued the Individual a letter in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. Ex. 2. In an attachment to the letter (Statement of Security Concerns), 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. 4 at 3–4.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 5. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted sixteen exhibits (Ex. 1–16) into the record. The Individual submitted seven exhibits (Ex. A–G). The Individual presented the testimony of two witnesses, including her own testimony, and the LSO did not offer any witnesses.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for denying the Individual a security clearance. Ex. 4 at 3.

Conduct involving questionable judgment, lack of candor, 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. *Id.* The Statement of Security Concerns listed as relevant facts the Individual’s omissions from the QNSP, statement to the OPM investigator that she was willing and able to repay her outstanding debts, and the contents of the 2019 Credit Report which indicated that the Individual had not satisfied her delinquent accounts. Ex. 4 at 3. The LSO’s allegations that the Individual provided misleading information on a personnel security questionnaire and to a personnel security investigator justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the other basis for denying the Individual a security clearance. Ex. 4 at 3–4.

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. Adjudicative Guidelines at ¶ 18. The Statement of Security Concerns listed as relevant facts: the Individual failed to resolve her delinquent accounts despite her representations to the OPM investigator that she was able and willing to do so; the 2018 Credit Report showed that the Individual was delinquent on ten accounts, on which she owed \$11,034, that she did not disclose on the QNSP; the 2019 Credit Report showed that the Individual had not resolved her financial issues and that she owed over \$25,000 on delinquent accounts; and the Individual had a history of not paying debts, as evidenced by her filing for bankruptcy under Chapter 7 of the Bankruptcy Code in 2001 and 2009. Ex. 4 at 3–4. The LSO's allegations that the Individual has demonstrated an inability or unwillingness to satisfy debts, a history of not meeting financial obligations, and consistent spending beyond her means justify the LSO's invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a)–(d).

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 completed a QNSP on July 1, 2018. Ex. 10 at 18. The Individual certified that the contents of the QNSP were true, complete, and correct to the best of her knowledge and belief. *Id.* at 1. In the section of the QNSP concerning delinquencies involving routine accounts, the Individual disclosed that a vehicle she owned had been repossessed and that she was “contacting [the lender] to arrange payments towards the balance” which she estimated at \$11,000. *Id.* at 15. The Individual also disclosed that she was over one hundred twenty days delinquent on a credit

card account on which she owed approximately \$600. *Id.* The Individual indicated that she was “making payments to pay off the balance” of the account. *Id.* The Individual answered “no” in response to a question on the QNSP asking whether there were any other instances in which the Individual was delinquent on routine accounts besides the two delinquencies she disclosed. *Id.*

The 2018 Credit Report obtained by OPM as part of its investigation of the Individual revealed that she had not fully disclosed her financial delinquencies on the QNSP. The 2018 Credit Report revealed ten delinquent accounts the Individual had not disclosed on the QNSP on which she owed \$11,034. Ex. 12 at 3–18. Including the delinquent auto loan and credit card account that the Individual disclosed on the QNSP, her total delinquent debts totaled \$22,956. *Id.* The 2018 Credit Report also indicated that the Individual had filed for bankruptcy under Chapter 7 of the Bankruptcy Code. *Id.* at 3.

During her interview with the OPM investigator on August 21, 2018, the Individual asserted that the credit card account she identified as delinquent on the QNSP was in good standing because she made a payment earlier that month. Ex. 11 at 66. With respect to the repossessed vehicle that she disclosed on the QNSP, the Individual represented that she was awaiting a call from the creditor that held the account to arrange to make payments. *Id.* at 67. The Individual asserted that six past-due accounts identified on the 2018 Credit Report were in good standing after she made payments in August 2018. *Id.* at 66. The Individual represented that she was not aware of four delinquent accounts reflected on the 2018 Credit Report, but told the OPM investigator that she would contact her creditors for further information and make arrangements to pay the debts in full if she could confirm that she owed the debts. *Id.* at 67.

The Individual attributed her financial troubles to a major plumbing issue in her home which required her to make unexpected, costly purchases of replacement appliances. *Id.* at 68. The Individual represented that her financial position had stabilized, and that she was “able and willing” to repay her debts. *Id.* The Individual told the OPM investigator that she would make payments on debts on time in the future to avoid financial difficulties. *Id.*

The 2019 Credit Report revealed that the Individual had not resolved her outstanding debts and that her financial position had not improved since her interview with the OPM investigator. The 2019 Credit Report showed that the Individual had not resolved the delinquent credit card account and auto loan that she had disclosed on the QNSP and that the Individual’s creditors had charged off both accounts. Ex. 13 at 4, 8. The 2019 Credit Report also revealed two newly delinquent accounts. *Compare* Ex. 12 at 8–9, *with* Ex. 13 at 2 (showing that two credit card accounts on which the Individual had been current as of the 2018 Credit Report were delinquent on the 2019 Credit Report because the Individual had not made payments on one account in over thirty days and the other account in over ninety days). According to the 2019 Credit Report, the Individual owed \$25,350 on seven delinquent debts. Ex. 13 at 2–14.

V. HEARING TESTIMONY

The Individual's husband testified at the hearing regarding the family's finances. According to the Individual's husband, he and the Individual maintain separate bank accounts and are responsible for paying different household expenses out of their respective earnings. Tr. at 12, 21. The Individual's husband testified that he and the Individual spoke about the importance of "buckling down" and the "need to take care immediately and prioritize," but that they had not established a household budget or utilized financial counseling services. *Id.* at 13–14. The Individual's husband estimated his monthly net pay as \$3,500, said that the family was not struggling financially, but admitted that he did not know the family's total monthly expenses. *Id.* at 14–15, 17.

The Individual's husband testified that he and the Individual had experienced financial difficulties in October 2018 when he was involved in an accident and was out of work for nearly two months. *Id.* at 17. However, he testified that "things [] have been caught up" and that the family was financially "in a great place right now." *Id.* at 24. When asked what would happen if the family incurred an unexpected \$400 expense, the Individual's husband testified that the family could "take care of it." *Id.* at 25.

The Individual testified concerning her financial history and efforts to resolve the financial delinquencies identified by the LSO. The Individual attributed her 2001 and 2009 bankruptcies to falling behind on bills for "car notes, [] rent[,] . . . cable, [and] childcare" while trying to make ends meet as a working single mother before she met her husband. *Id.* at 29–31. The Individual testified that, beginning in 2013, she was "doing well" financially and that she and her husband continued to maintain a stable financial situation into 2017. *Id.* at 32–35.

The Individual acknowledged that she took on too great of a financial burden when she purchased a car for her mother. *Id.* at 34–35. The Individual explained that her mother made payments on the car for some time, but that the car was repossessed after her mother stopped making payments and the Individual was unable to keep up on the payments. *Id.* The Individual asserted that she "had to wait until the vehicle was actually sold" to address the delinquency, and that she had resolved the debt through a payment to the creditor pursuant to a settlement agreement. *Id.* at 36–40; *see also* Ex. C (indicating that the creditor had received payment pursuant to a settlement agreement). The Individual admitted that the creditor notified her of the amount of her outstanding debt in September 2018 after the sale of the vehicle, and that she did not take action to resolve the debt until she came to realize that the debt "was one of the [security] concerns." *Id.* at 39–40; *see also* Ex. C (indicating that the Individual paid the creditor to settle the debt on October 30, 2019). The Individual reported that she had paid the creditor through an advance from her employer, which she is repaying through deductions from her paycheck. *Id.* at 44.

The Individual also explained that she had experienced financial burdens after flooding in the family home resulted in mold, and she and her husband paid a plumber in cash to address the problem. *Id.* at 45–47. The Individual explained that, in order to pay for the plumber, she "had to look at [her] accounts as a whole" and determined that she could not make the minimum payments on some of her credit cards. *Id.* at 46–49.² The Individual testified that she continued to experience difficulties making payments for some time, and began catching up on payments and making efforts to settle some of her debts in early 2019. *Id.* at 48–50, 53–55, 57–59; *see also* Ex. B

² The Individual estimated the minimum monthly payment on one of the delinquent accounts identified by the LSO as approximately \$65. Tr. at 51.

(reflecting a settlement agreement between the Individual and a creditor); Ex. E (reflecting that the Individual had paid a debt to a creditor in full). The Individual was still negotiating settlement agreements with creditors as of the date of the hearing. Tr. at 55–56; *see also* Ex. A (reflecting e-mail settlement negotiations between the Individual and a creditor).

The Individual did not contest the accuracy of the information set forth in the Statement of Security Concerns. Tr. at 63. However, the Individual asserted that she was not past due on payments towards any accounts as of the date of the hearing. *Id.* at 65. She also asserted that she had started working on a budget, but needed to collaborate with her husband to formalize the arrangement. *Id.* at 66. The Individual estimated that, as of the date of the hearing, the family had a net income of approximately \$500 each month after expenses, and said that she was saving her net income in a savings account. *Id.* at 66–67.

I authorized the Individual to submit an updated credit report after the hearing to substantiate her testimony concerning her efforts to resolve her delinquent accounts. *Id.* at 85–86. On January 14, 2020, the Individual submitted a credit report dated January 13, 2020 (2020 Credit Report). Ex. G. On January 22, 2020, the DOE Counsel submitted a one-page reply to the 2020 Credit Report in which he identified two accounts that were in good standing as of the date of the 2019 Credit Report but which were reported as past due on the 2020 Credit Report. *Compare* Ex. 13 at 12–13 with Ex. G at 39, 41. In addition, the DOE Counsel identified two lines of credit that the Individual opened after the date of the 2019 Credit Report which fell into delinquency as a result of the Individual not making timely payments. Ex. G at 5, 36 (reflecting one account on which the Individual failed to make timely payments for four consecutive months before making a timely payment in December 2019 and another account that the Individual opened in March 2019 which was closed and assigned to collections in November 2019 after the Individual failed to make payments in September or October).

VI. ANALYSIS

A. Guideline E

The 2018 Credit Report revealed that the Individual omitted numerous financial delinquencies from the QNSP that she was required to disclose. *See supra* p. 3–4. The Individual represented to the OPM investigator in August 2018 that she had made payments which brought her previously delinquent accounts into good standing, but the 2019 Credit Report revealed that the Individual had not made the payments in question. *See supra* p. 4. The Individual acknowledged during the hearing that her misstatement to the OPM investigator might raise a security concern, but asserted that she was in good standing on all of her accounts as of the date of the hearing and that “everything moving forward is on a straight path.” Tr. at 64–65. Two mitigating conditions under Guideline E are potentially applicable in this case.

An individual may mitigate security concerns related to omissions or misrepresentations under Guideline E if the Individual “made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Adjudicative Guidelines at ¶ 17(a). In this case, the LSO only learned of the scope of the Individual’s delinquencies, and that she had not brought her delinquent accounts into good standing, after obtaining credit reports which contradicted the information that the Individual provided during the investigative process.

Therefore, I find that the Individual did not make prompt, good-faith efforts to correct her omissions on the QNSP or statement to the OPM investigator.

An individual may also mitigate security concerns related to omissions or misrepresentations under Guideline E 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.” *Id.* at ¶ 17(c). In this case, the Individual made similar misstatements during the hearing concerning resolving delinquent debts as those she made to the OPM investigator. Despite testifying under oath at the hearing that she had no past due accounts, the 2020 Credit Report revealed that the Individual was delinquent on payments on several debts. Ex. G at 36, 41, 49. In light of the pattern of conduct displayed through the Individual’s omissions on the QNSP, misrepresentations to the OPM investigator, and failure to disclose her delinquent debts during the hearing, I find that the Individual’s misrepresentations of her financial position are neither infrequent nor unlikely to recur. Therefore, I conclude that the Individual has not satisfied this mitigating condition. Adjudicative Guidelines at ¶ 17(c).

Having concluded that the Individual has not satisfied any of the mitigating conditions under Guideline E, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline F

As described above, the Individual incurred significant indebtedness and allowed numerous debts to fall into delinquency over a period of several years. The Individual asserted that she was current on payments on all outstanding debts, had fully satisfied some of the delinquent debts identified by the LSO, and was arranging to pay her remaining outstanding creditors. An individual may mitigate security concerns under Guideline F if:

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

Adjudicative Guidelines at ¶ 20(a)–(d).³

³ The remaining three mitigating conditions under Guideline F, concerning disputed debts, unexplained affluence, and unpaid taxes, are not applicable to the facts of this case. Adjudicative Guidelines at ¶ 20(e)–(g).

The Individual has experienced numerous periods throughout her adult life in which she has been unable to meet her financial obligations, and has been delinquent in repaying some of her debts nearly continuously since the beginning of the security investigative process in July 2018. According to the 2020 Credit Report, the Individual remained delinquent on several accounts even after the hearing. The Individual's failure to resolve her debts, particularly in light of the Individual's testimony at the hearing that she has a monthly surplus of approximately \$500 after expenses, reflects unfavorably on her reliability and judgment. Accordingly, I find that the Individual's inability or unwillingness to satisfy her debts has been a frequent, recurring problem, is not unlikely to recur, and casts doubt on the Individual's reliability and judgment. Therefore, the first mitigating condition under Guideline F is not applicable to this matter. *Id.* at ¶ 20(a).

Although the Individual indicated that events outside of her control contributed to her financial problems, including flooding of her home and the accident that prevented her husband from working for nearly two months, I find that the Individual has not acted responsibly under the circumstances. The Individual did not adequately explain why she did not make the minimum payments on some accounts to prevent them from slipping into delinquency, or why she continued to miss payments long after the flooding of her home and her husband's accident. For instance, the 2020 Credit Report revealed that the Individual did not make payments on one account from September through November 2019; nearly one year after her husband's accident and long after the flooding of her home. Ex. G at 39. Furthermore, the Individual delayed taking action to resolve debts until shortly before the hearing. By way of example, the Individual waited for over one year after learning of her obligations on the repossessed vehicle listed on the QNSP before arranging a settlement with the creditor. The Individual's decisions to allow accounts to slip into delinquency without adequate justification, and her decision to defer trying to settle her debts until shortly before the hearing, lead me to conclude that the second mitigating condition under Guideline F is inapplicable in this case. Adjudicative Guidelines at ¶ 20(b).

The third mitigating condition under Guideline F is inapplicable because the Individual has not pursued financial counseling. *Id.* at ¶ 20(c). The fourth mitigating condition under Guideline F is also inapplicable because, although the Individual has paid some of her debts and has negotiated settlement agreements with other creditors, the 2020 Credit Report revealed that the Individual incurred additional delinquent debts and there is no evidence that the Individual has taken steps to resolve these new delinquencies. Moreover, since the Individual and her husband have not established a household budget and there is no objective evidence in the record demonstrating the household's spending as compared to monthly income, I am not convinced that the Individual will sustain the payment arrangements she has entered into and avoid new delinquencies. Thus, I find the fourth mitigating condition under Guideline F inapplicable. *Id.* at ¶ 20(d).

For the reasons set forth above, I find that none of the mitigating conditions under Guideline F are applicable in this case. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

VII. 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 Statement of Security Concerns. 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.

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