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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: January 16, 2020) Case No.: PSH-20-0029
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Issued: April 9, 2020

Administrative Judge Decision

Kimberly Jenkins-Chapman, 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 For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a federal agency in a position that requires her to hold a “Q” Level Clearance, which is a Department of Energy clearance. Derogatory information was discovered regarding the Individual’s finances. She had purchased a home in 2006 and tried to sell it in 2008 before being stationed in a U.S. territory away from the mainland. Her mortgage lender refused to allow a sale, short sale, or foreclosure mitigation program without the signature of the Individual’s ex-husband, who could not be located. The bank also refused to foreclose on the house because the Individual was an active duty service member. The house sat vacant for years and the mortgage remained unsatisfied through 2017, when the Local Security Office (LSO) became aware of the situation.

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to hold 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 March 16, 2020. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of five witnesses and

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.

testified on her own behalf. *See* Transcript of Hearing, Case No. PSH-20-0029 (hereinafter cited as “Tr.”). The LSO submitted 24 exhibits, marked as Exhibits 1 through 24 (hereinafter cited as “Ex.”). The Individual submitted 31 exhibits, marked as Exhibits A through P and Additional Exhibits A through O.

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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline F (Financial Considerations) addresses “[f]ailure to live within one's means, satisfy debts, and meet financial obligations.” Adjudicative Guidelines at ¶ 18. It is well established that failure or inability 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 information. *Id.* The conditions set forth in that guideline that could raise a disqualifying security concern are inability to satisfy debts or unwillingness to satisfy debts; a history of not meeting financial obligations; deceptive or illegal financial practice; consistent spending beyond one's means or frivolous or irresponsible spending; failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required; unexplained affluence; borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and concealing gambling losses, family conflict, or other problems caused by gambling. Adjudicative Guidelines at ¶ 19.

The LSO alleges that the Individual is delinquent on the mortgage for the property she purchased in 2006 and that no payment has been made on the account since January 15, 2010. Notification Letter at 5, 7. Accordingly, the LSO’s security concerns under Guideline F are justified.

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 entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 her 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 presented the testimony of two of her supervisors, two of her colleagues, and her foreclosure attorney, as well as testifying on her own behalf. Each of the witnesses knew about the Individual’s financial troubles and testified that the Individual is reliable and trustworthy and possesses excellent judgment. Tr. at 12–15, 23, 36, 46–47.

The Individual waived privilege before her foreclosure attorney testified. Tr. at 55. The Individual’s foreclosure attorney testified that he was representing the Individual for her foreclosure defense and short sale. *Id.* at 56. He testified that, in this case, the goal is to reach an agreement with the bank to resolve the issue. *Id.* at 57. He did not know why the bank had not foreclosed in the years since the last payment on the property, but he testified that, in his professional opinion, the Servicemembers Civil Relief Act did not prevent the bank from foreclosing. *Id.* at 60–62. He testified that he had advised the Individual to pursue a short sale, after which she would likely have no remaining obligation to the bank. *Id.* at 58. He testified that, should the bank decide to foreclose, he would attempt to negotiate down the Individual’s remaining obligations. *Id.* at 68. In his professional opinion, a foreclosure would not be an unwelcome development because it would allow him to open a direct dialogue with the bank’s attorney so the issue could be resolved. *Id.* at 70. He testified that bank policy, rather than law, was behind the bank’s requirement of the ex-husband’s signature and that the ex-husband had still not been located. *Id.* at 89. He also opined that he believed the Individual was trying to do the right thing, especially because the Individual was not trying to take advantage of the bank’s hesitation to foreclose, and that the Individual’s issue would hopefully be resolved in a matter of months. *Id.* at 88, 90.

The Individual testified that she had attempted to do what was expected of her with the property. Tr. at 94–96. The home inspection she had done when she purchased the house was deficient, and she was dropped from her homeowner’s insurance after damage from a serious rainstorm. *Id.* at 99–102. She was eventually contacted by a law office offering to assist her with negotiations with the bank. *Id.* at 96. She engaged the law office’s services, paying nearly \$1700 for them to resolve her issue. *Id.* The law office advised her to stop making mortgage payments, so she took what she would have paid to the mortgage and renovated the house, fixing the structural issues that prevented her from carrying homeowner’s insurance. *Id.* at 97. However, she later found out that the law

office was under criminal investigation by the U.S. Department of Justice for fraud. *Id.* at 108. She did not recover her retainer fee. *Id.* at 108.

By the time the Individual realized that the law office had not been resolving her issue, the Individual was far behind on her mortgage. Tr. at 97. She reached out to the bank and attempted to begin making mortgage payments again, but was told that she had to bring the mortgage current before returning to her original payment plan. *Id.* at 96–97. She attempted to negotiate a foreclosure mitigation plan with the bank, but because her ex-husband could not be located for his signature, the bank refused to allow any mitigation. *Id.* at 98. The bank informed her that it was foreclosing and she believed the issue was finished and that the bank would contact her for the next steps in repayment. *Id.* Her credit report reflected the foreclosure for a time, but the foreclosure was removed after seven years. *Id.* at 119. Once the foreclosure was removed from her credit report, the Individual believed she had no more obligation and did not pursue the matter further until the reinvestigation of her DOE security clearance. *Id.* at 123–24.

When the Individual realized the mortgage was still outstanding, she contacted the bank and began receiving bills. Tr. at 120. By the time of the hearing, the amount owed had more than doubled, topping \$275,000.00. *Id.* at 128. In 2019, the house was severely damaged in a hurricane after being vacant for nearly 10 years. *Id.* at 145–46. The bank is maintaining the property. *Id.* at 147. She hired her attorney in October 2019 to assist with disposing of the property. Ex. P. She has received an offer for a \$25,000.00 short sale and is waiting for bank approval. Tr. at 148. Should that fall through, she has a second potential buyer lined up. *Id.* at 150. If she is unable to mitigate the amount she owes, the Individual plans to look into bankruptcy or a civil action to resolve the issue. *Id.* at 153, 175. If she ends up with a remaining balance, she intends to make monthly payments toward a settlement. *Id.* at 178–79.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Failure to live within one's means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F provides that the following conditions may mitigate security concerns:

- (1) 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 (*id.* at ¶ 20(a));
- (2) 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 (*id.* at ¶ 20(b));
- (3) 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 (*id.* at ¶ 20(c));
- (4) the individual initiated and is adhering to a good-faith effort to repay overdue creditors (*id.* at ¶ 20(d)).²

At this time, I cannot say that the Individual's financial issues are mitigated. This is because there is not enough evidence to show that the Individual is reliable and trustworthy and possesses good judgment, rather than because there is evidence that her reliability, trustworthiness, and judgment are defective. I find the Individual to be honest, credible, and forthcoming, however, at this stage of the Individual's engagement with her mortgage lender, not enough evidence exists yet to indicate that the mortgage will be resolved soon. The Individual has taken extensive measures to try to resolve the situation and claims that she was given bad advice by a law firm she engaged to assist her in resolving the issue. However, she also had periods of inaction after the foreclosure was removed from her credit report and after the clearance process was started.

When the foreclosure was reported to her credit report, the Individual still had an obligation of tens of thousands of dollars to the bank. While it may be reasonable for an average layperson to assume that their obligation ends when a debt is removed from their credit report, the standard for clearance holders is higher than for the average layperson. Rather than assuming that the debt was no longer outstanding, the Individual could have sought confirmation of resolution or, if unable to obtain such confirmation, she could have continued her efforts to achieve a resolution.

Similarly, the Individual waited until October 2019 to hire her foreclosure attorney, despite being alerted to the status of her mortgage as early as 2015, when she reported its delinquent status on her Questionnaire for National Security Positions (QNSP). Ex. 24 at 56. Though her attorney expects to have her mortgage issue resolved within a few months, it is difficult to estimate the outcome because the bank has not agreed to anything yet. Indeed, until the process is substantially completed, the difficulty in predicting when the mortgage issue will be resolved critically impedes an assessment of whether the Guideline F concern has been mitigated. If the process could really be completed in under a year, as the foreclosure attorney implied, it would have been better for the Individual to start the process earlier so that it could have been resolved as of the hearing date. It

² Paragraphs 20(e) (reasonable basis to dispute), (f) (unexplained affluence), and (g) (payment arrangements with tax authority) of the mitigating factors are not applicable to these facts.

has been over four years since the Individual reported the mortgage on her QNSP; surely that should have been enough time to complete the process in which her attorney is now currently engaged.

Unfortunately, where there is incomplete information to remove all doubt about a person's eligibility to hold a security clearance, I am required to recommend against restoration. Such is the case here. Accordingly, I cannot find that the Individual has mitigated the Guideline F concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline F of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE 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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals