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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 6, 2020)	Case No.: PSH-20-0058
)	
_____)	

Issued: September 11, 2020

Administrative Judge Decision

Kimberly Jenkins-Chapman, 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 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) (Adjudicative Guidelines), I have concluded that the Individual's access authorization should not be granted.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires her to hold a security clearance. The Individual completed and submitted a Questionnaire for National Security Positions (QNSP) on June 13, 2018. Ex. 9. The Office of Personnel Management Investigations Service conducted a Triggered Enhanced Subject Interview (TESI) of the Individual on November 26, 2018. Ex. 12 at 74. Based on the answers provided, the local security office (LSO) obtained the Individual's credit report on August 21, 2019, and requested that the Individual complete a Letter of Interrogatory (LOI). Ex. 11; Ex. 10. The Individual signed and submitted the LOI on September 10, 2019. Ex. 10. The Individual's response did not resolve the LSO's security concerns. Accordingly, the LSO began the present administrative review proceeding on April 20, 2020, by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. Ex. 3. The

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.

Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge in order to resolve these substantial doubts. *See* C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded her request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on May 7, 2020. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), (g), the Individual presented the testimony of four witnesses, including her own. *See* Transcript of Hearing, Case No. PSH-20-0058. (hereinafter cited as “Tr.”). The DOE counsel submitted twelve exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex”). The Individual submitted five exhibits, marked as Exhibits A through E.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guidelines E (Personal Conduct), F (Financial Considerations), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct) of the Adjudicative Guidelines as the bases for denying the Individual a security clearance. Ex. 1.

Under Guideline E, the Individual’s 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. The Summary of Security Concerns listed as relevant facts: the Individual failed to list a 2014 citation in her QNSP, for which her license was suspended; the Individual twice received citations in connection with operating a motor vehicle during 2015 and once in 2017; the Individual ignored a 2016 warrant for her arrest until April 2018; the Individual misled a law enforcement officer and failed to follow his directions after a traffic stop in 2017; and the Individual’s driver’s license had not been reinstated as of September 19, 2019. Ex. 1 at 2-3. The LSO’s allegations that the Individual engaged in a pattern of traffic violations justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(d).

Pursuant to Guideline F, the Individual’s failure to satisfy debts and meet other financial obligations may raise questions about the Individual’s “reliability trustworthiness, and ability to protect classified information.” Adjudicative Guidelines at ¶ 18. The Summary of Security Concerns states that the Individual listed six different delinquent accounts on her QNSP, but that a contemporaneous credit report revealed eight different delinquent accounts for which the Individual had not made payment arrangements, and that the Individual had properly deferred payment for only one of several student loans. Ex. 1 at 3-4. The LSO’s allegations regarding the Individual’s failure to satisfy debts and a history of not meeting financial obligations justify the LSO’s invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a) and (c).

Pursuant to Guideline H, conduct involving drugs and the illegal use of controlled substances raises concerns regarding reliability and trustworthiness, as it “may lead to physical or psychological impairment” and brings into question the Individual’s “willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 24. The Summary of Security Concerns states that, in her QNSP, the Individual admitted to marijuana use from June 2015 to December 2015, and receiving a citation for Operating a Vehicle while Intoxicated (OVI) in July 2015. Ex. 1 at 4. The Individual also stated in the QNSP that she was ordered to attend a 72-hour program in connection

with the OVI citation. *Id.* The LSO's allegations regarding the Individual's substance misuse justify the LSO's invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a).

Pursuant to Guideline J, criminal activity "calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. The Summary of Security Concerns indicates that the Individual's license was suspended in 2014, and that she was charged with offenses related to the operation of a motor vehicle twice in 2015 and once in 2017. Ex. 1 at 4-5. Further, a warrant was issued for the Individual's arrest in 2015. *Id.* at 5. The LSO's allegation that the Individual engaged in a pattern of minor offenses that raise concerns with regard to the Individual's judgement, reliability, or trustworthiness justifies the LSO's invocation of Guideline J. Administrative Guidelines at ¶ 31(a).

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

During the TESI, the Individual stated to the investigator that she was stopped and cited for speeding and failure to provide proof of insurance in 2014. Ex. 12 at 80. Although she paid the associated fines, her license was suspended because she could not produce proof of insurance. *Id.*

The Individual submitted her QNSP on June 13, 2018, and disclosed that in July 2015, she was cited for Operating a Vehicle Under the Influence (OVI) and other related charges after striking a mailbox with her vehicle. Ex. 9 at 19. After she pled guilty to the OVI, she was ordered to complete a "72-hour...drug and alcohol education program" as a result of her marijuana use. Ex. 12 at 79-80. The Individual stated in her QNSP that she used marijuana from June 2015 through December 2015 in social situations, but stated in her LOI that she no longer uses marijuana and does not

associate with individuals who use marijuana. Ex. 9 at 22; Ex. 10 at 1. Also in July 2015, the Individual was stopped for speeding and possessing an expired registration while driving with a suspended license.² Ex. 12 at 78. The criminal matter that resulted was set for a state court outside her state of residence, and the Individual asked that the matter be rescheduled after reporting to the incorrect courthouse. *Id.* The Individual stated that she was not able to secure transportation to attend the rescheduled court date. *Id.* As a result, on an unrecalled date, she was notified a warrant was issued for her arrest in the fall of 2016, and the matter was not resolved until April 2018, when she applied for her current position of employment. *Id.* at 78-79.

In September 2017, the Individual was issued another citation for speeding and driving with a suspended license. Ex. 12 at 77. The law enforcement officer instructed the Individual to contact a licensed driver and followed her to the location where the Individual was supposed to meet the driver. *Id.* at 77-78. Although the Individual was not able to secure transportation, she represented to the officer that she was waiting for a driver. *Id.* at 78. Once the officer departed, the Individual waited approximately twenty more minutes at the same location before driving away. *Id.* at 78. The Individual paid a number of fines in conjunction with these charges but failed to get her license reinstated. *Id.* During the TESI, the Individual admitted that her license had not yet been reinstated and that she continued to drive on a suspended license when she was not able to otherwise secure transportation. Ex. 12 at 77.

A credit report from August 2019 indicates the Individual has eight delinquent accounts. Ex. 11. In the LOI, the Individual explained that after she graduated, she deferred one of her student loans while the others remain delinquent. Ex. 10 at 3. The Individual did not provide any indication or documentation from any creditor or court that there are payment plans in place for the delinquent accounts. *Id.* at 3. The Individual also stated that one of the delinquent accounts was opened by her mother in her name, and that she has asked her mother to resolve this matter. *Id.*

V. HEARING TESTIMONY

The first witness to testify has been close friends with the Individual since college. Tr. at 15. The witness testified that financial difficulties and issues with obtaining reliable transportation were the Individual's primary hurdles in resolving legal matters in another state. *Id.* at 18. When the Individual attempted to appear in court for the first appearance date, she experienced difficulties locating the correct courthouse, and when she attempted to reach out to court personnel, she was given "the run-around." *Id.* at 19. The witness attributed the Individual's financial struggles to the fact that the Individual became a single mother while she was working two jobs, and was a full-time college student and collegiate athlete. *Id.* at 20. The Individual also does not have a lot of outside financial support for her children, and her partial scholarship failed to provide for all of her needs. *Id.* at 20-21. The witness stated that, when the Individual was a college student, it was difficult for her to avoid peer pressure and marijuana use, but that she has not had any issues related to marijuana use since 2015, and has passed several drug tests since then. *Id.* at 24. The Individual is no longer surrounded by the same group of friends. *Id.* at 32. The witness further stated that she believes that the Individual has learned from her mistakes and is a trustworthy and reliable person. *Id.* at 25-28.

² During the TESI, the Individual reported that this incident occurred in 2016. Ex. 12 at 78-79.

The Individual's mother testified that the Individual experienced difficulties in resolving the issues pertaining to her driver's license, as she was a full-time college student, had a child, was on scholarship for track and field, and had financial difficulties. *Id.* at 38. She confirmed that the Individual appeared at the incorrect state courthouse for her first appearance regarding the 2015 citations, and was unable to make it to the state court for the rescheduled hearing. *Id.* at 38-39. The Individual's mother stated that, after the Individual's license was suspended, she was securing rides from family members. *Id.* at 43. When asked about the 2017 citations, the Individual's mother could only theorize that family members were unable to provide the Individual with necessary transportation because they were working at the time. *Id.* at 42. She acknowledged her own shortcomings with regard to financial literacy and stated that, as a result, the Individual was left to navigate financial matters on her own. *Id.* at 44. The Individual's mother confirmed that the Individual is determined to resolve these ongoing issues, financial or otherwise. *Id.* at 51.

The third witness, the Individual's cousin, testified that she assisted the Individual with the task of getting her driver's license reinstated. *Id.* at 54-55. She is aware of the Individual's past financial struggles, and knows that the Individual is working to resolve those delinquent debts. *Id.* at 58-59. She described the Individual as trustworthy, and noted that the Individual tries to make the right decisions and avoids repeating past mistakes. *Id.* at 60-61.

The Individual testified that when she received the speeding citation in 2014, she paid the ticket, but was unaware that she had to produce proof of insurance. *Id.* at 67. She subsequently received a letter in the mail informing her that her license had been suspended. *Id.* at 68. She acknowledged that her OVI in 2015 was the result of an irresponsible decision, and she did not understand the requirements for reinstating her driver's license. *Id.* at 69. When she could not schedule transportation from a licensed driver, she would drive herself places. *Id.* at 70. The Individual unsuccessfully attempted to arrange transportation for the rescheduled appearance in the state court after she reported to the incorrect courthouse for her first appearance. *Id.* She felt greater resolve to address the matter and get her license reinstated after she secured her current employment. *Id.* at 71. Although the Individual did resolve matters and obtain her driver's license in August 2020, she did admit that, prior to the reinstatement of her license, when she was unable to secure transportation through colleagues, she would drive herself to work. Ex. A at 1; Tr. at 33. With regard to the 2017 citations, although the Individual contacted several people in an attempt to obtain a ride pursuant to the law enforcement officer's instructions, no one was available. Tr. at 73-74. Accordingly, after waiting some time, she made the decision to drive herself. *Id.* at 74.

The Individual confirmed that she has only one of her student loans in deferment. She stated that, at the time she completed the appropriate paperwork, she believed all of her loans were going into deferment. *Id.* at 75-76. By August 2020, a payment plan had been established for the delinquent student loans, and the Individual had satisfied two other delinquent debts in full. Ex. D at 1; Ex. C at 1; Ex. E at 1; Tr. at 97-98. Further, by the time of the hearing, the Individual had established payment plans or had begun negotiating payments for two other debts. Tr. at 96-97, 99. However, one of the debts listed in the QNSP potentially remains unresolved without any plan to resolve the debt. *Id.* at 98.³

³ The Summary of Security Concerns states that the Individual indicated that she owes approximately \$520 to a creditor. Ex. 1 at 3. However, the Summary of Security Concerns does not list this debt as a delinquent debt on the Individual's credit report. *Id.* The credit report obtained by the LSO shows that this debt was paid and that the account

The Individual denied any ongoing marijuana use, and stated that she completed the 72-hour alcohol and drug education course. *Id.* at 83. When asked why she did not list the 2014 citations that resulted in the suspension of her license, the Individual indicated that she used her online driving record to list all past citations on the QNSP, and that she forgot about the citations. *Id.* at 65-66, 87.

VI. ANALYSIS

A. Guideline E

The Adjudicative Guidelines provide, in relevant part, that an individual may mitigate security concerns under Guideline E if “[t]he 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.” Adjudicative Guidelines at ¶ 17(d).

At first glance, the primary nexus between the incidents cited under guideline E was the Individual’s suspended driver’s license. The Individual did the labor intensive work of resolving the legal issues in the state court that were preventing the reinstatement of her driver’s license, and her license was reinstated in August 2020. Tr. at 91. However, the concerns expressed in the Summary of Security Concerns pertaining to the Individual’s judgment remain. More recently, in 2017, the Individual was pulled over by a police officer, and although she made phone calls to secure transportation from a licensed driver as instructed, she was unsuccessful. *Id.* at 90. When the officer ultimately left the area, the Individual made the decision to continue driving despite being instructed not to by the responding officer. *Id.* The difficulty securing transportation is understandable, but the manner in which the Individual handled the situation shows a lack of good judgement. Further, the fact that the Individual continued to operate a motor vehicle with a suspended license suggests consistently poor judgement and unreliable behavior. *Id.* at 74. In the same vein, a warrant for the Individual’s arrest was issued in 2016, of which she was notified on an unrecalled date. Ex. 12 at 78. The matter of the warrant went unresolved until approximately April 2018, when she applied to her current position of employment. *Id.* The fact that the Individual did not feel any sense of urgency to immediately attend to this matter upon first learning about the warrant evidences the Individual’s failure to exercise good judgment in the recent past.

For these reasons, I find that the Individual has not resolved the Guideline E concerns raised by the derogatory information listed in the Summary of Security Concerns.

B. Guideline F Concerns

The Adjudicative Guidelines provide, in relevant part, that an individual may mitigate security concerns under Guideline F if “[t]he individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Adjudicative Guidelines at ¶ 20(d).

has a current balance of \$0. Ex. 11 at 5. When the Individual was asked about this account at the hearing, she testified that she was not sure about who to contact regarding the debt, because when she contacted the creditor regarding the matter, she was informed that “they sent it elsewhere.” Tr. at 99. Accordingly, she had not pursued the matter further. *Id.*

The Individual has made commendable efforts to mitigate security concerns under Guideline F. It is notable that the Individual acknowledged her shortcomings in terms of her financial literacy and endeavored to resolve these matters. An examination of the record reveals that the Individual fully satisfied two of the listed delinquent debts, and took appropriate measures to establish repayment schedules with other creditors. Ex. D at 1; Tr. at 96-97, 99. Although the aforementioned payment plans have been established, and while I do not doubt the Individual's good intentions, there is no evidence before me to confirm that the Individual is making good faith efforts to adhere to those payment plans. Specifically, the record does not contain evidence of a history of regular payments made pursuant to the established payment plans. *Id.* at 96-98.

Additionally, when asked if she had sought out assistance through the Employee Assistance Program, the Individual stated that she was not aware of the program. *Id.* at 103. While the Individual testified that she reached out to her aunt for assistance with her finances, her aunt was not very forthcoming with the sort of help the Individual needed. *Id.* at 83. The fact that the Individual has not obtained professional help or any other assistance with resolving her delinquent debt only deepens my reservations with regard to whether the Individual will adhere to good-faith efforts to repay creditors.

For these reasons, I find that the Individual has not resolved the Guideline F concerns raised by the derogatory information listed in the Summary of Security Concerns.

C. Guideline H

The Adjudicative Guidelines provide, in relevant part, that an individual may mitigate security concerns under Guideline H if “[t]he behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.” Adjudicative Guidelines at ¶ 26(a).

There is no indication from the record that the Individual has continued to use marijuana since 2015, approximately five years ago. The Individual credibly testified that she had not used marijuana since 2015, and the record does not contain any evidence of positive drug test results since her employment. Tr. at 104. Further, the Individual confirmed that she was a college student during the period of her use, June 2015 through December 2015. *Id.* The record strongly suggests that the Individual succumbed to peer pressure from fellow students during this period, and that she no longer associates with the same individuals. *Id.* at 24, 32, 104.

In light of the fact that the Individual's last use occurred years ago and under entirely different life circumstances, I find that the Individual has mitigated and resolved the security concerns arising under Guideline H, as it is unlikely that these events will recur.

D. Guideline J

The Adjudicative Guidelines provide, in relevant part, that an individual may mitigate security concerns under Guideline J if “[t]here is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with

the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement. Adjudicative Guidelines at ¶ 32(d).

The record indicates that the Individual completed her college education in 2016, and admirably did so while being the primary caregiver to her children. Tr. at 104. She paid costs and fees associated with past citations, and completed a 72-hour drug and alcohol education course. *Id.* at 68, 84, 112. However, the Individual failed to resolve the matter of the outstanding warrant for her arrest for approximately two years. Ex. 12 at 78. Even more concerning is the fact that the Individual's license was not reinstated until August 2020. As a result, the Individual drove herself to work when she was unable to secure transportation from an appropriately licensed coworker. Tr. at 73. Accordingly, the Individual's criminal conduct continued until August 2020.

For the reasons set forth above, I conclude that the Individual has not mitigated the security concerns raised in the Notification Letter under Guideline J.

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, F, H, and J of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve all of the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals