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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: April 2, 2021	)	Case No.: PSH-21-0032
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Issued: June 21, 2021

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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."<sup>1</sup> 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 should not be granted access authorization.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold access authorization. In 2010 the Individual terminated a personnel security interview (PSI) conducted by the local security office (LSO) related to his eligibility for a security clearance after being asked questions related to his finances. Exhibit (Ex.) 7 at 39–53.<sup>2</sup> On June 8, 2018, the Individual electronically signed a Questionnaire for National Security Positions (QNSP) and certified that the contents of the QNSP were true, complete, and correct to the best of his knowledge and belief. Ex. 8 at 48. In a section of the QNSP related to his financial record, the Individual denied failing to file or pay federal, state, or local taxes in the prior seven years and denied any delinquencies involving routine financial accounts in the prior seven years. *Id.* at 43–45. However, a credit report

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<sup>1</sup> 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.

<sup>2</sup> The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibit. For example, the internal pagination of Exhibit 7 does not begin until the third page and thus the cited material beginning on the 39<sup>th</sup> page of the exhibit is numbered page 37 in the exhibit. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

for the Individual obtained by the Office of Personnel Management (OPM) as part of its background investigation revealed nine delinquent debts owed by the Individual. Ex. 6 at 2–5.

During an interview with an OPM investigator on October 4, 2018, the Individual denied knowledge of most of the debts reflected on the credit report and attributed the omission of the debts on the QNSP to a lack of information and completing the QNSP quickly. Ex. 8 at 54, 57–60. The Individual represented that he would pay some of the debts in full no later than December 2018. *Id.* at 59. The Individual also admitted that he had not filed federal personal income tax returns for the 2010, 2011, or 2012 tax years and estimated that he owed \$15,000 in unpaid taxes. *Id.* at 57. On or about June 5, 2019, the local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his financial circumstances. Ex. 5. In his response to the LOI, the Individual indicated that he had filed a personal income tax return for 2010, but had not filed the other two outstanding returns or made any payment arrangements with the Internal Revenue Service (IRS). *Id.* at 1–8. The Individual indicated that he had not resolved any of the outstanding debts, but was in the process of paying or disputing several of them. *Id.* at 8–20.

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. 1. In a summary of security concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. *Id.*

The Individual exercised his 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 conducted an administrative hearing. The LSO submitted eight exhibits (Ex. 1–8) into the record. The Individual submitted three exhibits (Ex. A–C). The Individual testified on his own behalf and neither party called additional witnesses.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for its determination that the Individual was ineligible for a security clearance. Ex. 1 at 1–2. “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 SSC cited the Individual’s failure to file federal income tax returns for the 2011 and 2012 tax years, the Individual’s failure to pay outstanding federal income taxes, nine delinquent financial accounts on which the Individual owed a cumulative \$25,106, the Individual’s failure to resolve outstanding debts by December 2018 as he represented he would during his interview with the OPM investigator, and the Individual’s refusal to answer questions related to his financial situation in connection with the 2010 evaluation of his eligibility for a security clearance. Ex. 1 at 1–2. The LSO’s allegations that the Individual is unable or unwilling to satisfy his financial obligations, demonstrated a history of failing to meet financial obligations, consistently spent beyond his means, and failed to file or pay federal taxes justify the LSO’s invocation of Guideline F. Adjudicative Guidelines at ¶ 16(a)–(c), (e)–(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

On January 11, 2010, the LSO interviewed the Individual in connection with determining his eligibility for a security clearance. Ex. 7 at 1. The interviewer indicated that the LSO was aware of several state tax liens against the Individual, which the Individual estimated amounted to \$6,000 in back taxes and penalties, and requested that the Individual provide information on the current status of his tax obligations. *Id.* at 26–38. Rather than answer the interviewer's questions, the Individual terminated the interview. *Id.* at 39–53.

On June 8, 2018, the Individual electronically signed a QNSP and certified that its contents were true, complete, and correct to the best of his knowledge and belief. Ex. 8 at 48. In a section of the QNSP related to his financial record, the Individual checked a box marked “No” in answer to questions regarding whether he failed to file or pay federal, state, or other taxes in the seven years prior to completing the QNSP and whether he had experienced delinquencies involving routine financial accounts in the seven years prior to completing the QNSP. *Id.* at 43–45.

As part of its background investigation, OPM obtained a credit report for the Individual dated July 3, 2018. Ex. 6 at 1. The credit report revealed seven delinquent accounts, on which the Individual owed a cumulative \$6,735, which had been referred to collections by the Individual's creditors. *Id.* at 2–5.<sup>3</sup> The credit report indicated that the Individual had disputed two of the debts – one in the amount of \$237 owed to a rental car company and another in the amount of \$104 owed to an

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<sup>3</sup> The SSC calculated the Individual's outstanding debts in collections as \$9,287, which appears to be a mathematical error. Ex. 1 at 1.

insurance company. *Id.* at 2–3. The credit report also showed that a lender had charged off an unpaid balance of \$3,092 related to an auto loan to the Individual and that an automobile with an unpaid balance of \$12,289 was repossessed from the Individual in 2012. *Id.* at 5.

On October 4, 2018, an OPM investigator interviewed the Individual. Ex. 8 at 54. The Individual volunteered to the OPM investigator that he failed to file personal income tax returns with the IRS for the 2010, 2011, or 2012 tax years and that he owed an estimated \$15,000 in income taxes. *Id.* at 57. The Individual did not offer any reason for his failure to pay income taxes, but indicated that he intended to hire a tax attorney by the end of the month to assist him in resolving his tax obligations. *Id.* The Individual indicated that he did not disclose his failure to file or pay federal income taxes on the QNSP due to a lack of information and feeling rushed to complete the QNSP. *Id.*

The Individual denied any other financial issues until confronted with the contents of the credit report. *Id.* at 58. The Individual denied knowledge of the charged off account and five of the accounts sent to collections. *Id.* at 58–59. The Individual represented that he had not paid a \$224 debt for pest control because of the poor quality of the services and that a debt of \$317 for insurance was attributable to his daughter. *Id.* at 59. The Individual expressed the intention to pay the two debts no later than December 2018 and to research the others. *Id.* at 59–60. The Individual did not dispute the information related to the repossession of a vehicle, and attributed the repossession to living beyond his means. *Id.* at 58.

The LSO issued the Individual the LOI concerning his financial status, and the Individual responded on October 21, 2019. Ex. 5 at 21. The Individual represented that he filed his federal personal income tax return for 2010 on October 21<sup>st</sup>, the same day as he submitted his response to the LOI, and that he owed \$7,405 in unpaid taxes for the 2010 tax year. *Id.* at 1–2. The Individual indicated that he had not filed federal personal income tax returns for the 2011 or 2012 tax years and that he had “no excuse for not filing them yet.” *Id.* at 3–5. *Id.* The Individual indicated that he was making payments on an *ad hoc* basis on some of his outstanding debts but had not resolved any of the debts identified in the credit report obtained by OPM. *Id.* at 8–16. The Individual indicated that he was disputing the pest control debt and a \$4,973 debt owed to another lender. *Id.* at 10–11, 13.

## **V. HEARING TESTIMONY**

The Individual testified that he terminated the 2010 PSI when asked about his finances because he and his wife were separated and contemplating divorce, and he “was not in a good state of mind.” Tr. at 10–11. The Individual testified that he and his wife reconciled after approximately six months. *Id.* at 60–61. The Individual attributed his failure to timely file a federal personal income tax return for 2010 to his tumultuous relationship with his wife. *Id.* at 12–13. The Individual admitted that he would not have been able to pay his 2010 federal personal income taxes at that time even had he filed a tax return, but represented that his inability to pay was not a motivating factor in his decision not to file his federal personal income tax return. *Id.* at 13. The Individual indicated that he did not have a reason for failing to file federal personal income tax returns for 2011 and 2012. *Id.* at 20–21.

The Individual testified that he had filed personal income tax returns with the IRS for 2010, 2011, and 2012. *Id.* at 17, 21–22. The Individual indicated that he was motivated to file the tax returns because his failure to do so was negatively affecting his eligibility for a security clearance. *Id.* at 15. The Individual testified that he believed that he owed approximately \$8,000 in personal income taxes for the 2010 tax year, \$10,000 in personal income taxes for the 2011 tax year, and \$10,000 in personal income taxes for the 2012 tax year. *Id.* at 18. The Individual indicated that he had not yet entered into a payment plan with the IRS. *Id.* The Individual represented that the only information he had received from the IRS was a document related to his 2011 personal income tax return and that he was awaiting further information from the IRS before entering into a payment plan. *Id.* at 21; *see also* Ex. B (identifying corrections made by the IRS to the Individual’s personal income tax return for 2011 to increase the amount owed and assess penalties).

The Individual indicated that he incurred his unpaid tax liability after he stopped withholding taxes from his paychecks in 2010 due to his wife “not making much money” and wanting “a little more in my check” and forgot to resume withholding. *Tr.* at 24–25. The Individual testified that he had intended to act to address his unpaid taxes earlier but “forgot about it.” *Id.* at 58–59. He indicated that he resumed his efforts to resolve the issue after receiving the SSC. *Id.* The Individual asserted that his wife had taken over filing tax returns in 2013. *Id.* at 23. He further testified that he believed that his wife had filed personal income tax returns for 2013 through 2020 and that they did not owe unpaid taxes for any of those tax years. *Id.* at 23–24.

The Individual testified that he intends to resolve his delinquent debts, but that his wife is currently unemployed, and he will pay the debts listed in the SSC as soon as his financial situation allows. *Id.* at 30–32. The Individual estimated that his wife will receive \$17,000 in unemployment benefits after the state in which he resides processes her application, and that he could easily address his unpaid debts after his wife receives unemployment payments. *Id.* at 32. The Individual expressed that he could pay some of his smaller debts by the end of June 2021 whether or not his wife receives unemployment benefits. *Id.* at 31–32, 35; *see also* Ex. C (reflecting that the Individual made three payments to debt collectors following the hearing and that a debt collector requested that credit reporting agencies remove derogatory information related to his car insurance debt as a result of one of the payments). The Individual represented that he had resolved two debts owed to a cable company reflected on the SSC. *Tr.* at 39, 41–42; *see also* Ex. A (purporting to show that the Individual had no past due balances with the cable provider).

The Individual denied knowledge of the source of a debt in the amount of \$4,973 and testified that he had not taken any steps to identify the source of the debt or resolve the matter. *Tr.* at 40–41. When asked why he had not taken any action to investigate and resolve the debt, the Individual responded that he “[did not] have a good reason.” *Id.* 41. Regarding the repossessed vehicle, the Individual testified that he and his wife neglected to make payments on a jointly-owned vehicle during their separation and that this resulted in the repossession of the vehicle. *Id.* at 43–44. The Individual testified that he believed that the unpaid balance of the vehicle was charged off after it was sold. *Id.* at 44.

The Individual expressed the opinion that he was financially stable, but was not able to identify his net monthly income or how much he could afford to pay each month towards a payment plan to the IRS or his creditors. *Id.* at 47–49. The Individual indicated that he had approximately \$500 in savings as an emergency fund. *Id.* at 48. The Individual testified that he would make whatever

payment arrangement the IRS offered work and said that his wife had filed for disability benefits that he hoped to begin receiving within the next month so that he could contribute the benefits towards his debts. *Id.* at 49–51.

## VI. ANALYSIS

The Individual did not contest the allegations contained in the SSC but argued that he was making strides in resolving his financial deficiencies despite setbacks he attributed to his prior separation from his wife and his wife's current unemployment. 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy 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;
- (f) the affluence resulted from a legal source of income; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20(a)–(g).

The Individual exercised poor judgment and demonstrated irresponsibility with respect to financial matters over a period of many years and there is insufficient evidence in the record for me to conclude that the Individual's irresponsible behavior is not ongoing. The Individual did not submit an updated credit report showing that he has not incurred additional delinquencies since those identified in the 2018 credit report, tax documents showing that he filed his 2012 personal income tax return and timely filed subsequent returns, or detailed banking and financial records sufficient for me to conclude that he has responsibly managed his finances. Instead, the Individual testified that he has only \$500 in savings and was unaware of his net income, displayed a lack of knowledge of the extent of his existing debts, and did not demonstrate that he had made any payments towards the back taxes that he owes. As the Individual's irresponsibility persisted for many years, he still owes substantial debts and back taxes many times greater than his savings, and there is no evidence as to the stability of his current financial position, I cannot conclude that his irresponsibility and

poor judgment with respect to finances is unlikely to recur. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 20(a).

The Individual asserted that his termination of the PSI with the LSO, failure to file federal personal income taxes in 2010, and repossession of his vehicle were attributable to the emotional and financial consequences of separating from his wife in 2010. While separation from a spouse can mitigate derogatory financial information if it leads to financial struggles beyond a person's control, the Individual's six-month separation from his wife does not provide a basis for his failure to timely file federal personal income tax returns for 2011 and 2012, the financial delinquencies the Individual incurred after he reconciled with his wife, or his failure to remedy his financial situation in the many years that passed between his reconciliation with his wife and the hearing concerning this matter. As the derogatory information under Guideline F is only partially related to the Individual's temporary separation from his wife, I find that the second mitigating condition does not mitigate the security concerns asserted by the LSO. *Id.* at ¶ 20(b).

The Individual has not pursued financial counseling and therefore the third mitigating condition is inapplicable. *Id.* at ¶ 20(c). The fourth mitigating condition is applicable with respect to the Individual's two debts to a cable company and his debt to an insurance company, which the Individual has repaid, but not with respect to his other delinquent accounts for which he has made small payments on an *ad hoc* basis and has not established a payment plan or definitive timeline within which he will have fully resolved the debts. *Id.* at ¶ 20(d). The fifth mitigating condition is inapplicable as the Individual has only challenged two debts – one related to a late-returned rental car and the other for unsatisfactory pest control services – for which he provided no evidence of the status of his challenges or justification for his challenges other than his belief that he was unfairly charged by the service providers. *Id.* at ¶ 20(e).

The sixth mitigating condition is inapplicable because there are no allegations of unexplained affluence on the part of the Individual in this case. *Id.* at ¶ 20(f). The seventh mitigating condition is inapplicable because the Individual has not provided evidence that he filed his federal personal income tax return for the 2012 tax year or entered into a payment plan with the IRS to resolve his unpaid tax liability. Moreover, the Individual's self-reported tax liability increased significantly from the \$15,000 that he estimated that he owed during his interview with the OPM investigator to the \$28,000 that he estimated that he owed during the hearing. The Individual has not demonstrated awareness of the full extent of his tax liability or ability to satisfy his obligations. *Id.* at ¶ 20(g).

The Individual accrued substantial debts and tax liabilities through years of irresponsibility and negligence in the management of his finances. Despite promises to an OPM investigator that he would resolve his debts and tax liabilities, he has made minimal progress and owes significantly more than he has demonstrated the ability to repay. For these reasons, I find that 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 Guideline 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 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