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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-21-0037
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Issued: June 24, 2021

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Procedures for Determining Eligibility for Access to Classified Matter of 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 should not be granted access authorization.

I. Background

The Individual is employed by a DOE Contractor in a position which requires that she hold a security clearance. To begin the process, the Individual completed, signed, and submitted a Questionnaire for National Security Positions (QNSP), dated May 7, 2018. Ex. 9. Based on the information provided therein, the Local Security Office (LSO) obtained the Individual’s credit report on August 16, 2018, and again on November 14, 2019. Ex. 7; Ex. 8. The LSO further requested that the Individual complete a Letter of Interrogatory (LOI), which she signed and submitted on January 10, 2020. Ex. 6. After reviewing this information, the LSO determined that unresolved derogatory information remained in the record which raised significant security concerns about the Individual. Accordingly, the LSO began the present administrative review proceedings on July 8, 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

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance

security clearance. The 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* 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual offered her own testimony and that of one witness. *See* Transcript of Hearing, Case No. PSH-21-0037 (hereinafter cited as "Tr."). The DOE counsel submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as "Ex."). The Individual submitted nine exhibits, marked as Exhibits A through I.

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 (Financial Concerns) 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) provides that an individual's 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." Guideline F at ¶ 18. Under Guideline F, the LSO alleged: (1) The Individual has an unpaid collection account in the amount of \$3,418; (2) the Individual has unpaid charge-off accounts in the amount of \$10,176; (3) the Individual failed to file personal income tax returns with the Internal Revenue Service (IRS) for tax years 2013 through 2017; and (4) the Individual failed to file state personal income tax returns for tax years 2013 through 2017. Ex. 1 at 1-2. Guideline F specifically states that an "[i]nability to satisfy debt, [u]nwilliness to satisfy debts regardless of the ability., [a] history of not meeting financial obligations, and [f]ailure to file...Federal, state, or local income tax returns or failure to pay [them] as required" are all potentially disqualifying conditions. Guideline F at ¶ 19. Accordingly, the LSO's security concerns under Guideline F are justified.

III. Regulatory Standards

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all of the relevant evidence, favorable or 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 personal 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

In her QNSP, the Individual acknowledged that she had failed to file or pay Federal or state taxes within the past seven years, specifically failing to file taxes for tax years 2013 through 2017. Ex. 9 at 41-43. She estimated that she owed approximately \$2,500 in Federal and state income taxes for each tax year. Ex. 9 at 42-43. The Individual clarified that she was in the process of “setting up the withholding” for each tax year. Ex. 9 at 42-43. The Individual also disclosed various other delinquencies totaling approximately \$15,800 and indicated that she had sought the assistance of a credit counseling service to pay or settle the debts. Ex. 9 at 45-50.

As part of the investigation, the Individual was interviewed by an OPM investigator on February 5, 2019. Ex. 10 at 69. The Individual was confronted with information that was incorrectly stated or omitted from her QNSP. Ex. 10 at 74-77. The Individual stated that she was unaware of some of the financial delinquencies that the investigator presented to her and was afforded the opportunity to provide additional documentation subsequent to their meeting. Ex. 10 at 77. She disclosed that from late 2018 to July 2019, her wages were garnished every pay period to satisfy her unpaid state income taxes for tax years 2013 through 2017. Ex. 10 at 77.

In her LOI, the Individual indicated that she failed to pay her Federal and state income taxes for tax years 2013 through 2018, because she knew she could not afford to satisfy the outstanding amounts owed. Ex. 6 at 1-3. She did, however, assert that the amount owed in state income taxes for tax years 2013 through 2017 has since been paid. Ex. 6 at 1-2. The Individual stated that she understood her responsibility to file federal and state income taxes, and clarified that “[g]oing forward, [she] will be filing federal and state tax returns each year and on time.” Ex. 6 at 4. She further stated that she had begun making payments on various other delinquent accounts and provided information indicating that although payments had not yet begun on several past due accounts, she had begun payments and even satisfied others in full. Ex. 6 at 4-12. The Individual attached several letters from creditors to her LOI, providing proof that she had satisfactorily discharged several delinquencies. Ex. 6 at 25-28.

Hearing Testimony

The hearing began with the testimony of the Individual’s witness, a former coworker and friend who has known the Individual since 2017 and has since remained in regular contact with the

Individual. Tr. at 9. The witness explained that the Individual first told her about her failure to file taxes in 2019, to which the witness responded with some advice on how to resolve the issue. Tr. at 10. She stated that the Individual expressed to her how overwhelmed she had become by the fact that she had repeatedly failed to file her income taxes. Tr. at 10-12.

The witness went on to testify as to her pride regarding the Individual for her efforts in resolving her financial issues. Tr. at 10-12. When asked if she feels the Individual “learned from this experience,” the witness responded, “Oh, absolutely, absolutely.” Tr. at 11. The witness also confirmed that she believes the Individual to be reliable and went on to state that she would trust the Individual “with anything,” as the Individual is “very, very trustworthy.” Tr. at 14-15. She went on to explain that the Individual moved in with her mother, reduced her shopping trips, and “buckl[ed] down” in an effort to become more fiscally responsible. Tr. at 17-18.

The Individual testified that she had no performance or disciplinary issues in her past and current positions. Tr. at 20-21. She attributed her financial issues to “living outside of [her] means and making bad decisions.” Tr. at 21. She also stated that after her father’s death, she wanted to make some financial contributions to her mother’s household. Tr. at 21, 23, 46-47. The Individual did indicate that she was initially able to make the regular minimum payments on the outstanding accounts but began falling behind on several of them within a few months of each other, which resulted in a “trickle [down] effect.” Tr. at 47-48.

When the issue of her duty to file income taxes was addressed at the hearing, the Individual stated that she had been filing her taxes annually and on time prior to 2013. Tr. at 22. She began spending more, contributing more to her mother’s finances, and ultimately began to claim dependents for tax withholding purposes to ensure she had more money in her paycheck. Tr. at 22. Although she asserted that she did not know that she was precluded from claiming dependents if she did not have any, this did result in an additional several hundred dollars in her regular paycheck. Tr. at 25. When it came time to file her taxes, she realized that she “was going to owe,” and that she “knew [she] didn’t have it.” Tr. at 22. At that point, the Individual became overwhelmed, “made bad choices,” and “avoided it,” because she “didn’t know how to handle it and fix it.” Tr. at 27. The Individual testified that she had given some thought to reducing the number of dependents she claimed on her deductions, but she ultimately decided against this course of action. Tr. at 28-29, 31-32. The Individual finally changed the deductions she was claiming when she began her current position in 2018. Tr. at 28. She also stated that the QNSP she completed in 2018 was the primary impetus for resolving her financial issues. Tr. at 36-38.

Regarding the matter of the Individual’s state income taxes, the Individual’s paycheck had been regularly garnished as a result of her failure to file her taxes. Tr. at 32-33. Once or twice, after she was notified of the amount she owed in delinquent state income taxes, the Individual made contact with the appropriate entity to establish a payment plan, which resulted in the agreed-upon amounts being deducted from her paycheck. Tr. at 34. According to the Individual, all of her tax returns have been accepted by the state, she has satisfied the outstanding amounts for tax years 2013 through 2016, and she is currently making payments pursuant to a payment plan to satisfy the outstanding amount for tax year 2017. Tr. at 57-58, 65-66.²

² See Ex. C, Ex. D, Ex. E, Ex. F, and Ex. G

The Individual began the process of resolving her federal tax delinquencies in 2020 by engaging the services of a Certified Public Accountant (CPA) and providing him with all relevant documents for tax years 2013 through 2017 in July 2020. Tr. at 55-56. The Individual mistakenly believed that once the CPA had completed the process of preparing the returns, which he did in August 2020, he would file them as well. Tr. at 78. However, the returns were not filed with the IRS until October 2020, after the Individual was informed that it was her responsibility to mail the returns. Tr. at 78. At the time of the hearing, the IRS had accepted and processed the tax returns for tax years 2013 and 2017. Tr. at 57.³ Her ultimate goal is to establish a payment plan with the IRS for all tax years, contemporaneously. Tr. at 59. Accordingly, she has not yet made any payments toward the satisfaction of her outstanding federal taxes, although she did acknowledge that she could begin making lump sum payments on these outstanding amounts. Tr. at 60, 64. In total, for tax years 2013 through 2017, the Individual owes approximately \$33,000. Tr. at 59, 61. The Individual confirmed that she filed federal income taxes for tax years 2018 and 2019 in 2020, but has not yet filed her federal income taxes for tax year 2020, despite the fact that the deadline to file had passed by the time of the hearing. Tr. at 67. The Individual did not file for an extension and felt that “if [she] file[d] within the [following] week, [it was] not going to be a problem.” Tr. at 75. The Individual also admitted that she waited to file for tax years 2018 and 2019, stating, “I guess I just felt like, if you’re going to file, you need to do all of it, not just the...the current ones.” Tr. at 70-71.

In an effort to resolve the delinquent charge-off and collection accounts, the Individual contacted a national debt consolidation company, which instructed her to provide them with a monthly cash deposit. Tr. 38. The company informed her that once they had collected enough money to offer a settlement, they would contact relevant creditors to begin negotiations. Tr. at 38-39. The Individual felt this process was not expeditious enough and began contacting creditors herself. Tr. at 39-40. Not only did the Individual resolve debts listed in the Summary of Security Concerns (SSC), but she also resolved debts that were not listed on the SSC. Tr. at 41.⁴ The Individual stated that she “kind of finished paying it all off so that [she] could have a letter for every single item in [the SSC] paid off when [she] sent in the request for a hearing.” Tr. at 48. At one point in 2015 or 2016, although it came with a high interest rate, the Individual took out a loan in an attempt to make payments on other outstanding debts. Tr. at 50-52. This loan was ultimately satisfied. Tr. at 53.⁵

Individual’s Evidence

The Individual submitted a credit report dated April 21, 2021. Ex. A. The credit report provided that the delinquent collection account and charge-off accounts totaling approximately \$13,594 were closed after being “paid satisfactorily” or “legally paid in full for less than the full balance.” Ex. A at 12-13, 19-20, 30.

³ See Ex. G and Ex. I.

⁴ See Ex. 6 and Ex. A. The Individual indicated that she worked with approximately four creditors to resolve her debts prior to receiving the SSC, as well as returning her student loan accounts to good standing. Tr. at 43-44. The Individual managed to satisfy three or four debts prior to seeing the special investigator in 2019. Tr. at 45.

⁵ See Ex. A.

The Individual also submitted copies of the tax returns she filed for tax years 2013, 2014, 2015, 2016, 2017, as well as a letter from the IRS indicating their receipt of the Individual's 2013 tax return, confirming the amount owed. Ex. C; Ex. D; Ex. E; Ex. F; Ex. G; Ex. I.⁶ The tax returns admitted into the record indicate that the Individual's delinquent federal taxes amount to approximately \$30,000. Ex. C at 2; Ex. D at 2; Ex. E at 2; Ex. F at 2; Ex. G at 2.

V. Analysis

The Adjudicative Guidelines provide that an Individual can 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 has made commendable strides in mitigating the listed Guideline F concerns. She provided testimony and evidence indicating that she satisfied the unpaid collection account amounting to \$3,418 as well as the unpaid charge-off accounts totaling \$10,176. Ex. A at 12-13,

⁶ The Individual also submitted certified mail receipts, indicating that documents had been sent and delivered to the tax board in the relevant State. Ex. B. As was consistent with her testimony, the Individual established a savings account and provided a budget accounting of her projected monthly bills and expenses, including the approximate monthly payments she will be making in an installment plan with the IRS. Ex. H.

19-20, 30. The Individual's efforts are commendable. However, although the Individual began the process of fulfilling the previously neglected tax obligations for tax years 2013 through 2017, some concerns remain. As an initial matter, the Individual freely and forthrightly acknowledged her tax obligations in her response to the LOI, thus evidencing that she understood her duty to file. Ex. 6 at 4. She further stated in her LOI that she would endeavor to file her taxes on time, as they became due. Ex. 6 at 4. However, her testimony reveals that she missed the May 17, 2021, deadline to file income taxes for the 2020 tax year. Tr. at 67.⁷ In explaining this oversight, the Individual qualified her decision by indicating she was preoccupied with resolving her past delinquent taxes, and further, that filing her 2020 taxes a few days late "[was] not going to be a problem." Tr. at 75." Unfortunately, this decision evidences poor judgement. Accordingly, despite the Individual's commendable efforts, I cannot conclude that the events that transpired are unlikely to recur, not only because the Individual acknowledged she was living outside her means for a number of years and failed to take action to change her circumstances, but because her statement concerning tax year 2020 evidences poor decision making continuing into the present. The Individual acknowledged her responsibility to satisfy her tax obligations, and yet, failed to take proper action for tax year 2020, which leads me to the conclusion that she did not act in good faith to discharge this ongoing obligation, and further, that her financial situation is not entirely under control. Accordingly, I cannot find the Individual has resolved the Guideline F concern under ¶ 20(a), (c), (d).

It is clear that the Individual's desire to provide financial assistance to her family contributed, in part, to her financial struggles. However, on more than one occasion, the Individual admitted that she should have changed her tax exemptions. Although she indicated that she felt as though she needed the extra income in her regular wages, the Individual could not provide an explanation as to why she failed to correct the exemptions. Tr. at 28-29, 31-32. Therefore, I cannot find that the Individual behaved responsibly under the circumstances to resolve Guideline F concerns pursuant to ¶ 20(b).

Additionally, although the Individual took the step of reaching out to a CPA and completed her tax returns, she did not provide any evidence that she has established a payment arrangement with the IRS. Accordingly, the mitigating factor at ¶ 20(g) is not present in this case.

I need not address the mitigating factors described in Guidelines F at 20(e) and (f), as the Individual did not dispute the fact that she is responsible for the debts and presented no evidence of any affluence.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline F. Therefore, I cannot conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is

⁷ The deadline for filing in 2021 was extended by the IRS.

clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I have determined that the Individual should not be granted access authorization. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals