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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 29, 2021) Case No.: PSH-21-0044
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Issued: June 29, 2021

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. During a background investigation, derogatory information was discovered relating to the Individual’s financial situation. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his 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 April 29, 2021. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of one witness and testified on his own behalf. See Transcript of Hearing, Case No. PSH-21-0044 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8 (hereinafter cited as “Ex.”). The Individual submitted 20 exhibits, marked as Exhibits A through T.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

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.

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his 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 alleged that the Individual failed to file his state and federal taxes for 2018. The LSO further alleged that the Individual had outstanding balances for one credit card account, one service account, a child support account, and eight medical accounts, which totaled \$7,465.00. Ex. 1. 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 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.

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

The Individual testified that he had paid off his First Premier Bank account on June 7, 2021. Tr. at 18; Ex. A. He testified that his service account was settled for less than the full balance in October 2020. Tr. at 19; Ex. B. The Individual also testified that he had settled a collection agency account, which was not on the Summary of Security Concerns (SSC). Tr. at 30; Ex. J.

The Individual testified that his outstanding child support obligation had accrued while the Individual's child was living with him and he had a verbal agreement with the child's mother that he did not need to pay child support during that time. Tr. at 21. The Individual submitted into evidence a petition by the child's mother to forgive the past due amount and he testified that the petition was granted. Tr. at 22; Ex. C. As of the hearing date, the Individual's child still resided with him and he had an ongoing verbal agreement with the child's mother that he did not need to pay child support.² Tr. at 25. Due to the pandemic, it had been difficult to get a court date to change the official arrangement, but the Individual testified that the child's mother had agreed to petition to forgive any outstanding amounts. *Id.* at 26. He further testified that he and the child's mother were working on getting a court date. *Id.* at 25.

The Individual testified that his outstanding medical bills were related to ongoing medical issues as well as a significant medical event in 2017. Tr. at 28, 34. He had fully satisfied six accounts in 2019 and 2020. *Id.* at 26–30. One account had a remaining balance of several hundred dollars, but the Individual testified that he was on a payment plan and that payments were automatically debited from his bank account. Tr. at 27. He submitted into evidence a record of payments consistent with his description of his payment plan. Ex. E. He also submitted a letter from his doctor stating that the Individual had been unable to work after his significant medical event, and that he “had been working diligently to pay” his related medical debt. Ex. P. The Individual testified that the doctor wrote the letter based on information in his chart. Tr at 58–59.

The Individual testified that, after his significant medical event, he was unable to work and his employer did not provide short term disability coverage. Tr. at 34. His wife supported the family during that time, but they were unable to pay all of their bills. *Id.* The Individual began working to rebuild his finances when he got back to work. *Id.* at 35. He currently has outstanding medical debt that is in collections, but he is on a payment plan and is current on those payments. *Id.* at 35–36. That debt was not listed on the SSC, but the Individual wanted to address it and submitted documentation supporting his testimony that he is on a payment plan. *Id.* at 36; Ex. Q.

² After the hearing, the Individual submitted into evidence a document confirming that, as of June 23, 2021, he had no outstanding child support balance. Ex. T.

The Individual testified that, in 2020, he had tried to file his 2018 taxes through a tax preparation service,³ but never received any confirmation that they had been filed. Tr. at 31–32, 38; Ex. 2 at 13. He reached out to the IRS to confirm that his taxes had been filed and learned that they had not been filed. *Id.* at 32. In January 2021, the Individual filed his 2018 state and federal taxes through a different tax preparation service, and received confirmation of such, which he submitted into evidence. *Id.* at 31; Ex. L; Ex. M; Ex. N; Ex. S.

The Individual is now more attentive to his financial obligations. He testified that he checks his credit report often so that he can address any issues that may come up. Tr. at 37. He stated that he intends to file his taxes through the same tax preparation service in the future to ensure that they are filed on time. *Id.* at 41.

The Individual's wife testified that she had known the Individual for 13 years and had been married to him for six years. Tr. at 47. She was aware of the Individual's financial situation. *Id.* at 47–48. She testified that the Individual's doctor advised the Individual not to work after his significant medical event in 2017, and that the Individual was out of work for about six to eight months. *Id.* at 48–49. She did not recall the Individual receiving any kind of disability or unemployment income during that time. *Id.* at 49. She was aware during that time that some of the Individual's accounts were falling behind and she attributes the Individual's outstanding debts to that period. *Id.* at 49–50. She testified that the Individual is otherwise financially responsible and that he was current on all of his obligations as of the hearing date. *Id.* at 50. She testified that the Individual now saves for future bills and is dedicated to maintaining a good financial record. She did not have any concerns about the Individual's spending habits. *Id.* at 51.

The Individual's wife testified that they file their taxes separately and that she had no involvement in the filing of his taxes. Tr. at 52. She testified that she and the Individual are currently separated and live in separate homes. *Id.* at 51. She further testified that the Individual's child had been living with him for about five months and she believed that the Individual's child support obligations had been placed on hold. *Id.* at 53. She testified that the Individual's child lived with him for months at a time on several occasions over the previous several years. *Id.* at 55. She also testified that the Individual filed his taxes on time or shortly after the deadline for all of the years in which they were married except for the tax year on the SSC.⁴ *Id.* at 55–56.

The Individual submitted into evidence a credit report. Ex. R. The credit report shows three past due accounts—the medical debt that Ex. E indicates is on a payment plan, the medical account totaling \$3,127.00 that the Individual testified had recently appeared on his credit report, and an account totaling \$186.00 from the same creditor that was reported a month later. *Id.* It also shows that he is current on payments for several accounts. *Id.* The credit report lists the Individual's monthly credit card payments as only \$76.00 and shows a \$381 loan payment for which the Individual is jointly liable with another party. *Id.*

V. ANALYSIS

³ A receipt provided to the LSO shows that the Individual had his taxes prepared in July 2020. Ex. 2 at 3.

⁴ While the Individual's wife makes reference to filing shortly after the deadline in some years, the SSC does not reference untimeliness for any tax year other than 2018.

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 of the evidence, both favorable and unfavorable, in a commonsense 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 granting 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)); and
- (5) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements (*id.* at ¶ 20(g)).⁵

The Individual has mitigated the Guideline F concerns pursuant to mitigating factor 20(d) by demonstrating a good-faith effort to repay his overdue creditors. He has either resolved or set up a payment plan for all of the outstanding balances listed on the SSC. Moreover, he has identified and paid or set up a payment plan for debts that are not listed on the SSC.

⁵ Paragraphs 20(e) (reasonable basis to dispute) and (f) (unexplained affluence) of the mitigating factors are not applicable to these facts.

The Individual has also satisfied the mitigating factor under 20(b). His financial hardships stemmed from a medically necessary period of unemployment during which he was not receiving any income. He acted reasonably by taking that period of unemployment because it was recommended by his doctor and was part of his recovery from a significant medical event. He has diligently pursued resolution of outstanding balances.

Finally, the Individual has mitigated the concerns pursuant to mitigating factor 20(g) by filing his 2018 taxes and forming a plan to ensure that his taxes are timely filed in the future.

The Individual has met the mitigation conditions set forth in paragraphs 20(b), 20(d), and 20(g) of the Adjudicative Guidelines. He has developed a plan to prevent future financial security concerns and has put that plan into action. He also has no prior history of irresponsible spending, missed payments, or failure to file state or federal taxes. Accordingly, I find that he has resolved the Guideline F security 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 succeeded in fully resolving those concerns. Therefore, I conclude that granting 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 grant 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.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals