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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-21-0049
)	
_____)	

Issued: June 28, 2021

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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."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 be granted access authorization.

I. BACKGROUND

On October 29, 2019, the Individual completed a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 7 at 57. The Individual disclosed on the QNSP that he failed to file federal or state personal income tax returns for the 2015 tax year. *Id.* at 50.² The Individual attributed his failure to file the tax returns to misplacing paperwork, indicated that he intended to file the tax returns in the 2019 calendar year, and expressed that he expected to receive a tax refund. *Id.* The Individual also disclosed delinquent debts in collections: one for unpaid car insurance premiums in the amount of \$264 (the "Insurance Debt") and one for an unpaid medical copay in the amount of \$25 (the "Medical Debt"). *Id.* at 51–54. The Individual indicated that he had not paid the debts on the advice of a financial advisor who

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.

² The Individual disclosed on the QNSP that he "missed the filing date in 2016." Ex. 7 at 50. The tax returns the Individual was required to file in 2016 concerned the 2015 tax year. *See* Ex. 2 at 5 (clarifying that the Individual failed to file federal and state personal income tax returns for the 2015 tax year).

told him that doing so “would make [his] credit worse because it would update the most recent date of activity.” *Id.* at 53.

The Local Security Office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his financial circumstances to which he responded on April 29, 2020. Ex. 5 at 3. The Individual indicated that he had not yet filed federal and state tax returns for 2015 because he had found doing so “more complicated than expected” *Id.* at 2. The Individual expressed the intention to file the tax returns in 2020. *Id.* The Individual indicated that he incurred the Insurance Debt when he changed insurers and neglected to make the final payment on his previous insurance. *Id.* The Individual explained that he incurred the Medical Debt, which the LSO represented had increased to \$77, when an urgent care facility sent him a bill which he never received. *Id.* The Individual represented that he only learned of the debts years after they were incurred when he noticed that they had negatively impacted his credit score. *Id.* The Individual indicated that he did not intend to pay the debts because he believed that doing so would have a derogatory effect on his credit score. *Id.*

The LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. 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. Ex. 1.

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 (Exs. 1–8) into the record. The Individual submitted thirty-one exhibits (Exs. A–N).³ 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 access authorization. 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 two delinquent financial accounts on which he owed a cumulative \$341, his refusal to satisfy his debts because of his belief that doing so would adversely affect his credit score, and his failure to file federal or state personal income tax returns for the 2015 tax year. Ex. 1 at 1–2.⁴ The LSO’s

³ The Individual labeled related exhibits with a letter followed by sequential numbers. For example, exhibits reflecting the Individual’s IRS account transcripts for 2015 through 2020 are labeled exhibits K1–K6. Thus, the Individual’s exhibit labels do not reflect the total number of exhibits offered by the Individual.

⁴ The SSC asserts that the Individual “has not filed his 2016 personal income tax return” Ex. 1 at 1–2. At the hearing, the LSO stipulated that this was a typographical error and that the tax returns in question were for the 2015 tax year. Transcript at 7–8.

allegations that the Individual is unwilling to satisfy his financial obligations and failed to file federal and state personal income taxes justify the LSO's invocation of Guideline F. Adjudicative Guidelines at ¶ 16(b), (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. HEARING TESTIMONY

The Individual testified that he believed that he incurred the two delinquent debts in 2014 but was unaware of them until May 2018 when he reviewed his credit score and observed that it was much lower than he had expected. Transcript (Tr.) at 16, 31–32. The Individual subsequently reviewed his complete credit report and learned of the two debts in collections. *Id.* at 16–17. The Individual testified that he did not pay the debts, which were very small compared to his financial resources, because his online research led him to believe that repaying the debts could extend the period of time the collections would remain on his credit score and that these adverse credit entries would impair his ability to obtain a mortgage to purchase a home. *Id.* at 17–18.

The Individual testified that, after receiving the SSC, he conducted further research and learned that he could negotiate to pay the debts in exchange for their removal from his credit report. *Id.* at 19. The Individual testified that he successfully negotiated the removal of the Insurance Debt from his credit report in exchange for paying the debt. *Id.*; *see also* Ex. B1 (reflecting a creditor's receipt of the Individual's payment of \$264.51 in exchange for the removal of the collection account related to the Insurance Debt from the Individual's credit reports). The Individual testified that he paid the Medical Debt despite not being able to negotiate the removal of the collection from his credit report. Tr. at 20; *see also* Ex. L at 1 (reflecting the Medical Debt as "paid" on a May 2021 credit report). The Individual expressed that he had learned a great deal about financial matters as

a result of the review of his eligibility for a security clearance, had subscribed to credit reporting services to ensure that he became aware of all debts in a timely manner in the future, and intended to fully meet his financial obligations in a timely manner going forward. *Id.* at 22–23; *see also* Ex. H (showing that a credit report from one credit reporting agency did not reflect any collections accounts as of May 2021 and that the Individual’s credit score was “Very Good”).

The Individual explained that he failed to timely file federal and state personal income tax returns for the 2015 tax year because he earned income from employers in multiple states while attending graduate school and found preparing the tax returns more complicated than he anticipated. Tr. at 23–24. The Individual represented that he “kept putting it off” for many years due to other higher-priority concerns and his uncertainty as to how to file the tax returns. *Id.* at 24–25. The Individual expressed that he knew that he had adequately withheld income taxes from his 2015 earnings, and was in fact entitled to a refund, and therefore did not consider the matter to be as urgent as if he had owed unpaid taxes. *Id.* The Individual testified that he had filed the personal income tax returns for 2015 but was ineligible for a refund of his withholding due to missing the applicable filing deadlines. *Id.* at 25–26; *see also* Ex. J (reflecting the Individual’s completed state personal income tax return for 2015); Ex. K1 (demonstrating that the IRS received the Individual’s personal income tax return for 2015). The Individual characterized the loss of the refunds as “a hard lesson learned” and indicated that he had timely filed tax returns for each tax year since 2015. Tr. at 26–27.

The Individual testified that his current financial position was stable, and that he and his wife earned significantly more money than they spent. *Id.* at 30; *see also* Ex. N (calculating the household income of the Individual and his wife as significantly greater than their expenditures). The Individual testified that he was not under any financial stress and anticipated that he could easily meet his financial obligations going forward. Tr. at 30. The Individual attributed his previous failure to meet his financial obligations in part to his desire to frugally manage his finances himself, even when he lacked the subject-matter expertise to determine the proper course of action, and indicated that he had learned the importance of obtaining professional assistance when confronted with problems he did not know how to solve. *Id.* at 38. The Individual noted that this lesson was applicable to security protocols and regulations, and that he would seek guidance from his supervisor or the facility security officer rather than attempting to guess the correct action himself if he ever encountered an ambiguous or complicated security situation. *Id.* at 38–39.

V. FINDINGS OF FACT

The Insurance Debt was assigned to collections in July 2015 and the Medical Debt was assigned to collections in April 2017. Ex. 6 at 2. The Individual indicated that he did not intend to repay the debts in his response to the LOI in 2020. Ex. 5 at 2. However, the Individual subsequently repaid both debts in full. Ex. B1; Ex. L. The Individual has not become delinquent on any debts since the Medical Debt was referred to collections. *See* Ex. H (showing that the Individual has no collection accounts on his credit report, is current on all debts, has made a total of two late payments on open accounts, and has a “Very Good” credit score).

The Individual failed to timely file federal and state personal income tax returns for the 2015 tax year. Ex. 5 at 1. The Individual filed the tax returns in September 2020. Ex. E3. The tax returns were received by the IRS and applicable state taxing authority and the Individual does not owe

any unpaid personal income taxes for the 2015 tax year. Ex. J; Ex. K1. The Individual timely filed personal income tax returns for every tax year since 2015 and does not owe any unpaid income taxes. Exs. K2–K6.

VI. ANALYSIS

The Individual did not contest the allegations contained in the SSC but argued that he had mitigated the security concerns by repaying his debts, filing personal income tax returns for 2015, meeting all of his financial obligations since the Medical Debt was reported to collections, and using credit monitoring to ensure that he did not unknowingly allow debts to become delinquent in the future. 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).⁵

The first mitigating condition is applicable in this case because of the infrequency and age of the Individual's delinquent financial accounts. In reaching this conclusion, and as required by the Part 710 regulations, I have taken into account the "nature, extent, and seriousness of the conduct" identified by the LSO as raising security concerns. 10 C.F.R. § 710.7(c). The Individual's cumulative \$341 in delinquent debt, which he incurred many years ago as a graduate student, is of minimally serious concern. Taking into account the minimal severity of the Individual's financial delinquencies, the Individual's testimony as to the lessons he has learned and commitment to

⁵ The second, third, fifth, and sixth mitigating conditions under Guideline F are inapplicable in this case because the Individual has not asserted that his financial problems were attributable to matters outside of his control, he has not pursued financial counseling, he has not put forward evidence challenging the legitimacy of the delinquent debts, and the LSO has not asserted security concerns related to unexplained affluence. Adjudicative Guidelines at ¶ 20(b)–(c), (e)–(f).

financial responsibility, and the evidence from the Individual's 2021 credit report that he has met his financial obligations since incurring the Medical Debt, I find that the Individual's minor and infrequent financial delinquencies are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Adjudicative Guidelines at ¶ 20(a).

The fourth mitigating condition is also applicable to the Individual's delinquent financial accounts. The Individual demonstrated that he paid the Insurance Debt and the Medical Debt, and there is no indication that he has failed to timely meet his other financial obligations. Accordingly, I find that the Individual's minor financial delinquencies are mitigated by the Individual's actions to resolve the debts. *Id.* at ¶ 20(d).

The seventh mitigating condition is applicable in this case because the Individual has filed federal and state personal income tax returns for the 2015 tax year and does not owe any unpaid personal income taxes for those years. The Individual's failure to comply with state and federal laws requiring him to file tax returns because he found preparing the tax returns to be complicated raises concerns about his judgment. However, the Individual has timely filed personal income tax returns for every tax year since 2015 and testified that he now understands the importance of seeking assistance when faced with complicated problems he does not know how to solve himself rather than ignoring the problems. Under the circumstances, I find that by filing the 2015 personal income tax returns, demonstrating that he has timely filed all of his personal income tax returns for subsequent tax years, and committing to seek assistance when confronted with complicated matters in the future that the Individual has sufficiently resolved the security concerns related to his failure to timely file 2015 personal income tax returns. *Id.* at ¶ 20(g).

The Individual has paid the Insurance Debt and Medical Debt, filed his personal income tax returns for the 2015 tax year, demonstrated years of financial responsibility since the Medical Debt was referred to collections in 2017, and manifested the ability and willingness to meet his financial obligations going forward. For these reasons, I find that the Individual has 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 to raise 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 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 be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals