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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 10, 2021 ) Case No.: PSH-21-0052  
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Issued: August 10, 2021

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of 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."<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**

On July 23, 2019, the Individual submitted a Questionnaire for National Security Positions (QNSP) to a local security office (LSO). Ex. 9 at 43. This QNSP asked the Individual: "In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" *Id.* at 38. The Individual responded "no" to this question. *Id.* The QNSP also required the Individual to report if he had any accounts that were in collection status, had been "charged-off," or were over 120 days delinquent during the previous seven years. *Id.* at 39. The Individual reported only one delinquent debt. *Id.* at 39–40.

On August 7, 2019, the Office of Personnel Management (OPM) obtained a credit report (the Credit Report) for the Individual as part of its background investigation of his eligibility for access authorization. Ex. 8 at 1. The Credit Report indicated that the Individual had at least eight accounts in charge-off or collection status that had not been reported on the QNSP. *Id.* at 2–5.

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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.

The Credit Report further confirmed that the Individual owed at least \$73,490 in delinquent student loan debt. *Id.*

On January 14, 2020, the LSO issued the first of two Letters of Interrogatory (LOI) to the Individual. Ex.7 at 1. The Individual submitted his response to the first LOI on January 15, 2020. *Id.* at 6. The first LOI specifically required the Individual to report the status, current amount owed, and the reason for slow or non-payment of each of the delinquent debts identified in the Credit Report. *Id.* at 1–5. For each unresolved account, the Individual was required to report his “intent for resolution.” *Id.* The Individual denied liability for one of the debts identified in the Credit Report. *Id.* at 1. The Individual reported that three delinquent accounts were in collection status, one delinquent account was paid, and that he had entered into payment plans for two accounts. *Id.* at 1-4. The Individual claimed that he would satisfy one of the collection accounts on January 17, 2020, and that he planned to contact the creditors for the other two accounts in collections to set up automatic payment plans “by the end of the week.” *Id.* at 1–2.

The Individual also reported that he had initiated automatic payment plans for each of his four delinquent student loan accounts. *Id.* at 2-3. The Individual explained that these delinquencies resulted because he was having “a tough time financially.” *Id.* at 4. The first LOI asked the Individual why he failed to report the delinquent debts appearing on the Credit Report. *Id.* at 5. The Individual responded by stating that he “must have misread this question.” *Id.* The first LOI also asked the Individual if he was current on his Federal and State tax responsibilities. *Id.* at 4. The Individual responded by admitting: “I do have a few years of Federal and state taxes that were not filed due to problems with the accountant I was using. I have an appointment with [a Tax Attorney/CPA (the Tax Expert)] . . . to resolve these issues and to file any unfiled returns and arrange payment plans for anything owed.” *Id.*

On March 3, 2020, the LSO issued the second of two LOIs to the Individual, and the Individual submitted his response on the same day. Ex. 6 at 1, 4. In his response, the Individual admitted that had not filed his Federal or state tax returns for tax years 2014, 2015, 2016, 2017, and 2018. *Id.* at 1. The Individual explained his failure to file these returns by stating, “My CPA retired and the person doing my accounting didn’t know how. And I procrastinated. There is no excuse.” *Id.* The Individual explained that he had hired the Tax Expert “to complete and file all back taxes and set up payment arrangements.” *Id.* Because the Individual’s tax returns had not been completed, he did not know how much he owed the Internal Revenue Service (IRS) or the state tax authority. *Id.* at 2. The second LOI also asked the Individual to explain why he falsely claimed in his QNSP that he had not failed to file any Federal and state tax returns during the past seven years. *Id.* at 3. The Individual responded by stating: “I must have misread the question.” *Id.*

On August 8, 2020, the LSO began the present administrative review proceeding by issuing a Notification Letter informing the Individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve these substantial doubts. *See* 10 C.F.R. § 710.21. A Statement of Security Concerns (SSC) attached to the Notification Letter cited the Individual’s false statement in the QNSP that he had not failed to file any of his Federal and state tax returns during the previous seven years, his false statements in the QNSP that he had not had any accounts charged-off, referred for collection, or

over 120 days delinquent during the previous seven years, and his failure to file his Federal or state income and business taxes for tax years 2014 through 2018 as derogatory information under Guidelines E (Personal Conduct) and F (Financial Considerations).

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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from seven witnesses, including the Individual. *See* Transcript of Hearing, Case No. PSH-21-0052 at 3–4 (hereinafter cited as “Tr.”). The DOE Counsel submitted ten exhibits marked as Exhibits 1 through 10. 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 substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cited Guidelines E and F of the Adjudicative Guidelines.

Guideline E (Personal Conduct) provides that “[c]onduct involving questionable judgement, lack of candor, 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. In support of its invocation of Guideline E, the LSO cited the Individual’s repeated false statements and omissions of information from his QNSP that would have revealed the full extent of his delinquent financial accounts and his repeated failure to file his Federal and state taxes. *Id.* at ¶ 16 (a)–(d). This information adequately justifies the LSO’s invocation of Guideline E.

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.” *Id.* at ¶ 18. Under Guideline F, the LSO alleged that the Individual failed to file Federal or state income and business tax returns or to pay Federal or state income and business taxes for tax years 2014 through 2018. Guideline F specifically states that an Individual’s “[f]ailure to file . . . Federal, state, or local income tax returns or failure to pay [them] as required” constitute potentially disqualifying conditions. *Id.* at ¶ 19(f). 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 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) (strong presumption against the issuance of a security clearance).

An 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 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. The Hearing**

At the hearing, the Tax Expert testified that he had prepared and filed the Individual’s Federal and state tax returns for tax years 2014, 2015, 2016, 2017, 2018, and 2019. Tr. at 17; *see also* Ex. C (2014 tax returns); Ex. D (2015 tax returns); Ex. E (2016 tax returns); Ex. F (2017 IRS e-file signature authorization and invoice); Ex. G (2018 IRS e-file signature authorization and invoice). The Tax Expert calculated the Individual’s unpaid tax liability as \$113,000 for tax years 2014 through 2017, with no tax liability for 2018 or 2019. Tr. at 23, 26. The Tax Expert testified that the Individual had entered into a partial payment plan with the IRS to resolve his tax liability of \$25,000 for the 2017 tax year, pursuant to which he would pay \$100 monthly. Tr. at 18, 23–24. The Tax Expert explained that the IRS had only recently processed the Individual’s other tax returns, and that he would need to enter into additional payment plans to address his tax liability for the other tax years. *Id.* at 24–27. The Tax Expert opined that the statute of limitations for the collection of the unpaid taxes would expire before the Individual would satisfy his tax obligations unless the Individual’s financial circumstances changed, and he could make larger monthly payments. *Id.* at 27–28.

A business client of the Individual testified that the Individual demonstrated honesty, reliability, and trustworthiness in their business dealings. *Id.* at 41–42, 44–46. A witness who had known the Individual since childhood testified that she had always observed the Individual to be a positive member of the community and devoted father who she deemed trustworthy and reliable. *Id.* at 51–56.

The Individual testified that he started his own business in 2013 and travelled across the United States performing contracted work. *Id.* at 62. The Individual added that he performed a significant portion of the work himself and relied on a CPA to perform bookkeeping and tax preparation. *Id.* at 64. The Individual indicated that the CPA retired in early 2014 and that he hired a bookkeeper recommended to him through his church to replace the CPA. *Id.* at 64–65. However, the bookkeeper was not competent to manage tax preparation for the business and did not file quarterly or annual returns for the 2014 tax year. *Id.* at 65–66. The Individual testified that he was unaware that he was required to make quarterly estimated tax payments and believed that the bookkeeper had filed an extension for the annual returns. *Id.* at 66. The Individual said that he began “looking

into” the situation himself in early 2016, and that he retained a new bookkeeper in October 2020, and the Tax Expert in advance of the hearing, to resolve his tax problems. *Id.* at 67–68, 95, 97. The Individual reported that he closed his business in mid-2017. *Id.* at 68.

The Individual testified that he obtained a credit report to assist him in completing the QNSP and listed the information that he observed on the credit report. *Id.* at 72. Regarding his failure to disclose his unfiled and unpaid taxes, the Individual represented that he believed that he was only required to disclose failure to file or pay tax returns if he was “a tax protestor or something like that . . . .” *Id.* at 73. The Individual testified that he knew that there would be a background investigation of his eligibility for a security clearance and that he would not have intentionally failed to disclose the derogatory information regarding his taxes since it would have inevitably been discovered. *Id.* at 74.

The Individual indicated that he intended to update his payment plan with the IRS to address all the years for which he owed unpaid taxes and that he would pursue an offer and compromise arrangement to completely resolve the debts. *Id.* at 78–79. The Individual represented that he had resolved or entered into payment plans to resolve all of his delinquent debts but was unable to obtain documentation from his creditors documenting the payment arrangements. *Id.* at 85–86; *see also* Ex. H (reflecting the absence of most of the delinquent debts from the Individual’s Credit Report dated July 20, 2021). The Individual indicated that he had consolidated his student loan debt and entered into a payment plan on May 25, 2021, pursuant to which he would make monthly payments of \$359. *Id.* at 91–93; *see also* Ex. A (documenting the payment plan arrangement). The Individual estimated that his monthly income after taxes was between \$3,000 and \$4,000, that his expenses were “fairly close to that,” and that he had never prepared a monthly budget. Tr. at 98.

The Individual’s supervisor testified that he has observed the Individual to be honest, reliable, and diligent in performing his duties in the workplace. *Id.* at 110–13. A witness who interacted with the Individual at work when he was running his business and at the church they both attended testified that she had observed the Individual conduct himself with honesty and integrity. *Id.* at 118–21. Another former client of the Individual testified that the Individual had conducted himself in an honest and reliable manner in their dealings. *Id.* at 124–26.

## **V. Analysis**

### **Guideline E (Personal Conduct)**

The Individual did not contest the accuracy of any of the allegations under Guideline E contained in the SSC. *Id.* at 84–87. However, he asserted that his omissions were inadvertent errors which he had corrected as soon as he became aware of them. An individual may mitigate security concerns under Guideline E if:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning

- security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
  - (d) the 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;
  - (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
  - (f) the information was unsubstantiated or from a source of questionable reliability; and
  - (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17(a)–(g).

The first mitigating condition under Guideline E is inapplicable because the LSO confronted the Individual with the omission of his delinquent accounts from the QNSP in the first LOI before the Individual came forward with the derogatory information. Moreover, although the Individual volunteered that he had “a few years of Federal and state taxes that were not filed” in his response to the first LOI, this vague response was not fully responsive to the LSO's request for detailed information regarding his tax status and did not demonstrate sufficient candor for me to conclude that it was a good faith effort to resolve his failure to disclose his tax problems on the QNSP. It was not until the second LOI focused on his tax status, which was issued more than seven months after he submitted the QNSP, that the Individual provided the details of his tax situation. For these reasons, I find the first mitigating condition inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition under Guideline E is inapplicable because the Individual did not assert that his omissions from the QNSP were on the advice of counsel or another representative. *Id.* at ¶ 17(b).

The Individual's failure to disclose his significant delinquent debts and unsatisfied tax obligations on the QNSP was a significant omission, both because of the critical importance of honesty and transparency in determining eligibility for access authorization and because the Individual's financial issues have raised significant concerns about his eligibility for access authorization and the omissions were neither trivial nor inconsequential. The Individual argued that he was unaware of his consumer debts and misunderstood the question on the QNSP concerning his tax filing status. *Supra* p. 5. Therefore, the Individual argued that his omissions were unintentional and unlikely to recur. The Individual's claim that he misunderstood the QNSP's unambiguous question regarding whether he had failed to file tax returns as required by law in the prior seven years is simply not creditable. However, even if I could find this response to be believable, the Individual's self-serving and unreasonable interpretation of an unambiguous question, even if unintentional, would call into question his judgment and ability to comply with rules and regulations. The Individual's claims to have been unaware of his significant consumer debts are

likewise improbable and contradicted by the Individual's own response to the first LOI concerning the debts. *See* Ex. 7 at 1 (indicating that he had been "trying to get [one of the debts] removed for years" and thus that he likely knew of its presence on his credit report). For these reasons, the third mitigating condition under Guideline E is inapplicable. Adjudicative Guidelines at ¶ 17(c).

The fourth mitigating condition under Guideline E is inapplicable because the Individual has offered implausible excuses for his omissions rather than acknowledging them, and I am unconvinced that the Individual will fully disclose derogatory information when required to do so in the future. *Id.* at ¶ 17(d).

The fifth mitigating condition is inapplicable because the Individual's efforts to meet his financial obligations are incomplete and he has not demonstrated that his financial position is sufficiently secure that he will avoid accruing additional financial delinquencies in the future. Thus, the Individual has not demonstrated that he is unlikely to be vulnerable to manipulation or duress related to his finances in the future. *Id.* at ¶ 17(e).

The sixth mitigating condition is inapplicable because the LSO's allegations do not rely on unsubstantiated information or sources of questionable reliability. *Id.* at ¶ 17(f). The final mitigating condition is likewise not applicable because the LSO has not alleged that the Individual associated with persons engaged in criminal activity. *Id.* at ¶ 17(g).

The Individual's omissions from the QNSP raise serious concerns about his honesty, reliability, and judgment. The Individual's excuses for the omissions are unconvincing, and, for the reasons set forth above, I find that none of the mitigating conditions under Guideline E are applicable in this case. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

### **Guideline F (Financial Considerations)**

The Individual did not contest the accuracy of any of the allegations under Guideline F contained in the SSC. Tr. at 87–88. Instead, the Individual sought to mitigate the security concerns by showing that he had filed all required tax returns, entered into a payment plan with the IRS for the 2017 tax year, and intended to make arrangements to fully resolve his unpaid taxes. *Supra* pp. 4–5. 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 first mitigating condition under Guideline F is inapplicable because the Individual's tax non-compliance is persistent and ongoing. *Id.* at ¶ 20(a). He failed to file Federal or state tax returns or pay Federal or state taxes for many years and continues to owe unpaid taxes. Moreover, the Individual's testimony that he assumed that the bookkeeper he hired in 2014 was properly managing his tax obligations, despite the Individual not paying personal income taxes himself, and his failure to address the situation for approximately four years after he claims he discovered it in 2016, reflect a lack of reliability and judgment on his part. *Id.*

The second mitigating condition under Guideline F is inapplicable because the conditions that resulted in the financial problem were within his control. As the head of his company, the Individual could have replaced the bookkeeper the first year that the bookkeeper did not timely file tax returns rather than assuming the bookkeeper had obtained an extension. Even if the Individual's ignorance of his and his business' tax status was out of his control, and not the product of his own negligence, the Individual's failure to timely act to resolve the situation after learning of it in 2016 demonstrates that he did not act responsibly under the circumstances. *Id.* at ¶ 20(b).

The third mitigating condition under Guideline F is inapplicable because the Individual has not offered evidence showing that he is receiving financial counseling. *Id.* at ¶ 20(c). While the Individual obtained tax preparation services from the Tax Expert, he has not presented evidence that the Tax Expert provided him with financial tools and educational resources to develop a plan to resolve his debts and avoid returning to debt in the future. As the Individual obtained a discrete financial service from the Tax Expert, and not comprehensive financial counseling that will help him modify his behavior in the future, the third mitigating condition is inapplicable. *Id.*

The fourth mitigating condition under Guideline F is not applicable because the LSO did not identify the Individual's consumer debts as a security concern and mitigating condition (g) is the applicable mitigating condition for evaluating payment of unpaid taxes. *Id.* at ¶ 20(d). The fifth mitigating condition under Guideline F is inapplicable because the Individual has not contested that he owes the unpaid taxes. *Id.* at ¶ 20(e). The sixth mitigating condition under Guideline F is inapplicable because the LSO has not asserted unexplained affluence on the part of the Individual. *Id.* at ¶ 20(f).



The final mitigating condition under Guideline F is not applicable because, despite filing all required Federal and state tax returns, the Individual has not made arrangements with the appropriate taxing authorities to pay his unpaid taxes. The Individual only made a payment plan with the IRS to address his unpaid taxes for the 2017 tax year, not the other tax years that make up the majority of his tax obligations. In light of the Individual's documented failure to meet his tax obligations in the past, his stated intention to establish payment plans for the other tax years in the future is insufficient to mitigate the security concerns related to his unpaid taxes. Additionally, the Individual has provided insufficient evidence for me to conclude that he has paid, or arranged to pay, his unpaid state taxes. Moreover, even had the Individual made payment plans with respect to all of his tax obligations, I would still find this mitigating condition inapplicable until such time as he demonstrated consistent compliance with the payment plans. Considering the Individual's long history of failing to pay taxes, his testimony that his expenses are roughly equal to his income, and the lack of evidence as to his current financial position, it is far too early to conclude that the Individual can or will meet his obligations in the future. Thus, I find the final mitigating condition under Guideline F inapplicable. *Id.* at ¶ 20(g).

As the Individual has not entered into payment plans to resolve his unpaid taxes for each tax year, his unpaid tax liability remains substantial, and his ability and willingness to comply with payment plans consistently in the future is uncertain, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and F. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guidelines E and F. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals