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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 21, 2021 ) Case No.: PSH-21-0067  
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Issued: September 10, 2021

**Administrative Judge Decision**

Janet R. H. Fishman, 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.”<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’s access authorization should be restored.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the security clearance process, the Individual completed and signed a Questionnaire for National Security Positions (QNSP) on November 8, 2019, in which he disclosed the fact that he had failed to file state and federal income tax returns for tax years 2016, 2017, and 2018, citing “negligence” and “financial irresponsibility” as the cause for his delinquency. Ex. 7 at 35-37. He also acknowledged being “thousands of dollars” behind on a loan since May 2017, because he is unable to make the monthly payments. Ex. 7 at 38-40. The Local Security Office (LSO) also obtained a copy of the Individual’s credit report on November 26, 2019, which revealed outstanding debts in the amounts of \$34,505 and \$16,875. Ex. 6 at 3-4. The Individual subsequently underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel Management (OPM) investigator on January 2, 2020. Ex. 8. Based on the information provided, the LSO asked the Individual to complete a Letter of Interrogatory (LOI), which he submitted on July 16, 2020. Ex. 5. Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The

<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.

Notification Letter informed the Individual 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 administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of two other witnesses, along with eighteen exhibits, marked as Exhibits A through R (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0067 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted eight exhibits marked as Exhibits 1 through 8.

## II. Notification Letter and the Associated Security Concerns

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 that: 1) the Individual has unpaid collection accounts totaling \$51,380; and 2) the Individual failed to file federal and state income tax returns for tax years 2015, 2016, 2017, and 2018.<sup>2</sup> Ex. 1 at 1-2. Guideline F specifically states that an "inability to satisfy debts," "unwillingness to satisfy debts regardless of the ability to do so," "a history of not meeting financial obligations," and, "failure 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(a)–(c), (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).

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

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<sup>2</sup> During the ESI, the Individual admitted that he had not filed his 2015 tax returns either. Ex. 8 at 63. The OPM investigator noted the discrepancy from the Individual's QNSP. *Id.*

710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **IV. Findings of Fact**

During his January 2, 2020, ESI, the Individual stated to the OPM investigator that he had failed to file his state and federal income taxes for tax years 2015, 2016, 2017, and 2018, and that “because he likely did not owe anything[,] failing to file would not be an issue.” Ex. 8 at 63; Ex. 5 at 7. Prior to his 2014 divorce, the Individual’s ex-spouse managed household finances and filed their income taxes. Ex. 8 at 63. In 2019, the Individual retained the assistance of a professional service to resolve the matter of his unfiled income taxes. Ex. 8 at 63. The Individual submitted a copy of federal and state income taxes he filed for tax years 2015, 2016, 2017, and 2018, as well as a copy of the checks and electronic debits he made and checks he wrote to satisfy these obligations. Ex. B-O.

Regarding the debt totaling \$34,505, the Individual stated to the OPM investigator that he had obtained the personal loan to satisfy other debts, “so that he could find a new home.” Ex. 8 at 64. He was ultimately notified by the loan servicer that untimely payments would no longer be accepted, and that the account was being put in collections. *Id.* As a result, the Individual did not make any more payments. *Id.* The debt totaling \$16,875 was a personal loan that the Individual accessed with the intention of satisfying the loan totaling \$34,505. *Id.* As he was unable to satisfy the prior (\$34,505) loan as planned, he paid down other debts with this money, but this account ultimately was referred to collections in 2017. *Id.* As the Individual was also responsible for other financial obligations, such as rent payments and childcare, he became delinquent on the loan payments in 2017. *Id.* At the time the ESI was conducted, the Individual did not know the total amount owed on either debt. *Id.*

In his response to the LOI, the Individual explained that, in his haste to save money for a down payment to purchase a new home, he became delinquent on his other bills and obligations, including the above accounts. Ex. 5 at 3-5. Although he had not made any payments on these delinquent loans at the time he completed the LOI, he did provide assurances that he would satisfy these debts in full. Ex. 5 at 4-5.

#### **V. Hearing Testimony**

The Individual’s father testified that, although the Individual has not discussed his finances with him to any great extent, he feels his son is reliable, responsible, honest, and someone of good character. Tr. at 13-14, 16. Further, the Individual’s father stated that the Individual’s financial difficulties were related to the Individual’s efforts to assist his younger brother with rental payments for the Individual’s wife’s house. *Id.* at 13. The Individual’s current supervisor testified that he has never known the Individual to face any disciplinary actions, attendance issues, or any difficulties regarding his work performance. *Id.* at 18-20. He also explained that he feels the Individual has made good decisions in the context of carrying out his job functions, and stated his belief that the Individual is reliable, trustworthy, and honest. *Id.* at 22.

The Individual testified that, prior to the nonpayment of his income taxes, he had not experienced any financial difficulties. Tr. at 29. The Individual explained that he incurred the debt of \$34,505 in 2014 for the purpose of financially disentangling himself from his ex-wife. *Id.* at 35-37. Because the loan was unsecured, he only received a total of \$22,500 from the original \$32,000, as the remainder was retained by the loan provider.<sup>3</sup> *Id.* at 35, 42. The Individual incurred the \$16,875 debt in 2016, at a time when he voluntarily left his second employment as a hunting guide, and he was attempting to save money for a new home. *Id.* at 36. During this time, the Individual's brother was renting a home from the Individual's current wife. *Id.* at 36. The Individual began paying his brother's rent in addition to his other financial obligations when his brother experienced financial difficulties. *Id.* at 29-30. The Individual and his current wife moved back into her former home when his brother moved out, in 2017, and the Individual has been current on his mortgage payments since 2017. *Id.* at 34-35.

The Individual became delinquent on his loan payments in 2017, as he was only able to make incomplete payments, and his loans went into collection. Tr. at 39-40, 43. He sought out an acceptable way to resolve the issue in "late 2017, early 2018[,]" and contacted a debt relief service Tr. at 44. Initially, the Individual could not provide the debt relief service with the monthly payments they requested to resolve the matter, but after receiving an increase in his wages, he felt as though he could begin satisfying his outstanding financial obligations "at the end of 2018, early 2019." Tr. at 44-45. He testified that he attempted to contact the loan services (for the \$32,000 debt) and was told:

At that time they were in the process and that they considered it charged off for them. They told me that it was on the market for another company to take over, which another company did, but it was -- there was like in limbo. I couldn't do anything past that. And they didn't have a company that took over that debt. So I wasn't able to do anything with that account, to attempt to start paying something on it again to try to get it out of collection.

*Id.* at 45. The Individual testified that subsequently he was able to obtain a payment plan for this debt and that he is currently making payments on the debt totaling \$34,505, and that he has not experienced any difficulties satisfying the agreed-upon monthly payments made pursuant to a payment plan. Tr. at 46, 47, 51.<sup>4</sup> At the time of the hearing, the Individual stated that he had contacted the servicer of the loan totaling \$16,875 on or about August 11, 2021, and he was evaluating the repayment options offered by the debt holder. Tr. at 52-53.<sup>5</sup>

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<sup>3</sup> Although the original amount of the loan was \$32,000, by the time it was referred for collection it had risen to \$34,505.

<sup>4</sup> The Individual submitted a letter, dated January 6, 2021, indicating that he has engaged in a voluntary repayment program to resolve the outstanding debt. Ex. A. The Individual agreed to pay \$250 on January 14, 2021, to make 280 biweekly payments of \$125 from January 28, 2021, through October 19, 2031, and to make a final payment of \$57.14 on October 23, 2031. Ex. A

<sup>5</sup> The Individual expressed his intention to contact the loan servicer and commit to a payment plan immediately after the conclusion of the hearing. Tr. at 57. When asked if he could commit to an additional payment of \$300 every month, the Individual confirmed that he could commit himself accordingly. Tr. at 57-58. In support of this assertion, the

The Individual confirmed that he failed to file his federal and state income taxes for the first time in 2015. Tr. at 61. When asked why he repeatedly failed to file his taxes, the Individual testified that, because he usually received a tax refund, he thought he was not obligated to satisfy the yearly requirement of filing his taxes, and further, he did not become aware of how important it was to file his taxes until he attempted to purchase a home. Tr. at 62, 66-68, 71-72. This testimony confirms his statements in the LOI and during the EDI. Ex. 5 at 7; Ex. 8 at 63. Additionally, the Individual's ex-wife usually filed their income taxes prior to their divorce, although the Individual admitted he filed his income taxes on one occasion following his divorce. Tr. at 62-64, 67. The Individual filed all delinquent federal and state income tax returns in 2020, months after he submitted his LOI. Tr. at 70-71, 74. The Individual further stated that he "paid everything off right away" at the time he filed his delinquent income taxes. Tr. at 75-76.

## VI. Analysis

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline F if:

(d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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).

After evaluating the entire record of this proceeding, I find that the Individual has mitigated all Guideline F concerns. The Individual testified that his indebtedness was brought about by his divorce. His testimony was confirmed by his father. By his own credible testimony and the evidence submitted into the record, the Individual has appropriately filed and satisfied his tax obligations for tax years 2015, 2016, 2017, and 2018, thereby satisfying the mitigating factor in (g) above. Further, based upon the Individual's testimony, I am satisfied that the Individual now understands the importance of his ongoing obligation to file his federal and state income taxes on a yearly basis.

Regarding the unpaid collection accounts totaling \$51,380, the Individual submitted evidence that he first tried to resolve this debt in early 2019; however, because of various loan transfer issues making it impossible to negotiate a plan to resolve the debt, he wasn't able to arrange a payment plan until January 2021 to address the debt totaling \$34,505. Additionally, he also negotiated a payment plan for the \$16,875 debt. Ex. R. My confidence in the Individual's ability to meet his monthly debt obligations is bolstered by the accounting he provided of his monthly household

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Individual submitted his monthly expenses, including the ultimately agreed-upon \$305 payment, as well as a copy of his bi-weekly paycheck. Ex. P; Ex Q. In support of his testimony, the Individual submitted a letter stating that he agreed to a payment plan in which he would make biweekly payments of \$152.50 for a term of sixty months, with a final payment in the amount of \$91 in August 2026 to address the debt totaling \$16,875. Ex. R.

expenses, which was provided in conjunction with a copy of his bi-weekly paycheck. An examination of these items reveals that the Individual earns an amount sufficient to satisfy his debt repayment obligations, and in fact, the Individual is left with a reasonable surplus of funds after all his obligations are met. Taking this evidence into consideration, I find that mitigating factor (d) is also applicable to the Individual.

I especially note that the Individual has been fully engaged in these proceedings from the very beginning, and it is clear from his testimony and the evidence that he provided that he has committed a great deal of effort and time to resolving the concerns arising from his indebtedness. I am convinced as to the sincerity of his actions and his intention to faithfully fulfill his obligations pursuant to the payment agreements. The fact that the Individual filed his 2019 and 2020 state and federal income taxes, avoiding the same delinquency that resulted in these concerns, evidences his commitment to meeting his ongoing financial and future financial responsibility. Accordingly, based on the totality of the circumstances and taking the “whole-person” approach set out in the Adjudicative Guidelines, I find that the security concerns raised under Guideline F have been mitigated.

## **VII. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both 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, the Individual has demonstrated that restoring 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 be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals