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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: February 4, 2022 ) Case No.: PSH-22-0052  
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Issued: April 27, 2022

**Administrative Judge Decision**

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 not be restored.

**I. BACKGROUND**

The DOE employs the Individual in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) discovered information regarding the Individual’s failure to meet financial obligations and his history of omitting relevant facts from personnel security questionnaires. The LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F and Guideline E of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as 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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual testified on his own behalf. The LSO submitted fourteen exhibits, marked Exhibits (Ex.) 1 through 14.<sup>2</sup> The Individual also submitted fourteen exhibits, marked as the Individual's Exhibits (Ind. Ex.) 1 through 14.<sup>3</sup>

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO first cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as a basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1. Guideline F provides that that an individual's "[f]ailure 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. Conditions that could raise a security concern include an individual's "history of not meeting financial obligations" and "[f]ailure to file . . . federal, state, or local income tax returns or failure to pay [income tax] as required[.]" *Id.* at ¶ 19(c) and (f). In the SSC, the LSO cited the following information: in 2020, the Individual had two past due account balances; the Individual was reprimanded in 2014 for using his company card for personal expenses and not paying the bill on time; his wages were previously garnished due to a tax lien; he failed to file federal and state tax returns for several years between 2007 and 2020; and he has a history of failing to pay his state taxes timely. Ex. 2 at 4-5. The above information justifies the LSO's invocation of Guideline F.

The LSO also cited Guideline E (Personal Conduct) as a basis for concern. Ex. 2 at 5. Guideline E provides that "[c]onduct involving questionable judgment, lack of candor, dishonesty, 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." Adjudicative Guidelines at ¶ 15. Conditions that could raise a security concern include "[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations [or] . . . determine national security eligibility or trustworthiness[.]" *Id.* at ¶ 16(a). The SSC cited that the Individual failed to report the following information on personnel security questionnaires: a past due pest control bill that went to collection in 2017, seven delinquent accounts, several state tax liens, and wage garnishments stemming from tax liens. Ex. 2 at 5-6. The cited information justifies the LSO's invocation of Guideline E.

## 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

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<sup>2</sup> The LSO's exhibits were combined and submitted in a single, 288-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

<sup>3</sup> The Individual's exhibits were submitted as two separate, multi-page PDF workbooks and several post-hearing exhibits. The second workbook provides supplemental exhibits that are related to the exhibits in the first workbook. The post-hearing exhibits are marked together as Individual's Exhibit 14. Citations to the Individual's exhibits will follow the same style as to the LSO's exhibits.

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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *Id.* at § 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**

##### Failure to File Tax Returns and Timely Pay Income Taxes

The Individual reported that he failed to timely file tax returns for tax years 2007, 2008, 2009, 2010, and 2011. Ex. 4 at 37-39. During an interview conducted by an investigator from the Office of Personnel Management (OPM), the Individual stated that he filed the returns for these years in 2014. Ex. 7 at 95. At the hearing, the Individual testified that he completed these returns with the assistance of an accountant.<sup>4</sup> Tr. at 36. However, the record includes an email dated 2021 from a different Certified Public Accountant (CPA) that reports the Individual had not filed tax returns for 2010, 2011, or 2012. Ex. 14 at 287.

The Individual also failed to timely file tax returns for 2014, 2015, 2016, 2017, 2018, 2019, and 2020. Ex. 10 at 228; Ex. 13 at 267. At the hearing, the Individual explained his failure by stating that the process of preparing his tax returns had been overwhelming, including two unsuccessful attempts to work with different CPA firms. Tr. at 36, 59; *see also* Ex. 13 at 267. He testified the first CPA firm did "absolutely nothing" to help him resolve his issues. Tr. at 36. The issues continued to mount until the Individual's clearance was suspended in December 2020. *Id.* at 37. The Individual hired another CPA that same month who "didn't do anything either," which prompted the Individual to hire a third and final CPA in December 2021. *Id.* at 37, 39. In a 2021 response letter to the LSO's Letter of Interrogatory, which preceded the present hearing, the Individual stated that he failed to "follow up and complete the process" with the first two CPA firms. Ex. 13 at 267.

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<sup>4</sup> The record includes an email from a Certified Public Account firm confirming only that the firm prepared the Individual's returns from 2004 through 2008. Ind. Ex. 14 at 2.

The Individual testified that the final CPA helped him successfully complete his federal and state returns for 2014 through 2020. Tr. at 28. He explained that he started working with the CPA in early December 2021, and the CPA took about two weeks to complete the returns. *Id.* at 28-29, 38; Ind. Ex. 1a at 6. The Individual testified that he finished the process by mailing the completed federal and state returns. Tr. at 34. He received notice from his state tax authority confirming its receipt of his 2014, 2015, 2016 and 2017 state tax returns. *Id.* at 31-32; Ind. Ex. 2a at 19; Ind. Ex. 3a at 32; Ex. 4a at 45; Ex. 5a at 57. The Individual testified that, as of the hearing date, he had not been able to address any federal penalties or fees associate with filing late because the U.S. Internal Revenue Service (IRS) had not yet supplied him with any information to act upon despite his several requests.<sup>5</sup> Tr. at 35.

The Individual testified that he exercised poor judgment in filing his tax returns late and hiring the ineffective CPA firms. *Id.* at 42. He testified that it became a “daunting task” that “was easier to ignore” than to “try to find a way to fix it.” *Id.* at 59. He explained that he finally found the right CPA after he “swallowed a huge amount of pride[.]” *Id.* at 44. He testified that he is motivated to meet his obligations going forward because he now understands that he cannot afford the consequences of failing to timely file his tax returns. *Id.* at 40.

The record establishes that the Individual had a history of incurring tax liens. He was required to satisfy state tax liens for tax years 2007, 2009, 2013, and 2017. Ex. 8 at 101-04. He told the OPM investigator that, generally, these liens resulted from his failure to pay state taxes. Ex. 5 at 48-50; Ex. 7 at 95-96. He resolved these liens several years before the present hearing and typically within two years of their original filing date. Ex. 8 at 101-04; Ex. 9(a) at 179; Tr. at 62. At the hearing, he testified that the liens resulted from property taxes accruing on land he inherited from his parents. Tr. at 62.

#### Failure to Satisfy Debts

The SSC cited two unresolved past due debts and the Individual’s disclosure that he had been disciplined in 2014 for failure to timely pay a debt he incurred on his employer’s credit card.

The first unresolved debt stemmed from work performed by a pest control company. During a September 2020 interview, an OPM investigator informed the Individual that this debt had been turned over to collections. Ex. 10 at 245. The Individual told the OPM investigator that he would take care of the bill “right away.” *Id.* Six months later, the Individual reported in an email that he would contact the company to rectify the issue. Ex. 11b at 262. Then, in August 2021, the Individual reported that he would begin paying off the balance with monthly installments. Ex. 13 at 268. At the hearing, the Individual testified that he finally satisfied the debt in December 2021. Tr. at 17. He provided a payment receipt indicating the same. Ind. Ex. 12 at 112. He testified that the debt resulted from services performed without his authorization and that he disputed the amount with the provider. Tr. at 17.

The second unresolved debt stemmed from a purchase made on credit. *Id.* at 18. During the September 2020 OPM interview, the investigator confronted the Individual with the report that the

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<sup>5</sup> He testified that he submitted two checks to the IRS as part of his 2018 and 2019 returns, and he provided two IRS account transcripts that demonstrate the funds were credited to his account. Tr. at 32; Ind. Ex. 6 at 67; Ind. Ex. 6(a) at 72; Ind. Ex. 7 at 83; Ind. Ex. 7(a) at 88.

bank debt was 90 days past due. Ex. 7 at 96. The Individual responded by stating that he would “look into it right away” and that he was in “a good financial situation.” *Id.* At the hearing, the Individual testified that the account was closed in July 2020. Tr. at 18-19. He submitted a letter indicating that the account had been closed with a zero balance. Ind. Ex. 11. He testified that it became delinquent because his wife failed to address it, and he indicated that he and his wife have improved their communication regarding bills. Tr. at 18, 44.

Regarding his failure to timely pay the balance on his employer’s credit card in 2014, the record includes the Individual’s statement that he used the credit card for personal expenses despite it being only appropriate for him to use it for work expenses. Ex. 5 at 47. The record includes his statement to an OPM investigator that the delinquency was due to his wages being garnished to pay off tax liens. *Id.* He told the OPM investigator that he satisfied the debt back in 2014. *Id.* At the hearing, the Individual could not recall why he used the employer’s credit card for personal expenses. Tr. at 21. He also testified that, despite his previous statements to the OPM investigator, he did not recall the debt becoming delinquent. *Id.* at 21-22.

### Failure to Report

The Individual’s 2020 Questionnaire for National Security Positions (QNSP) and credit report in the record demonstrate that the Individual failed to list his 2017 pest control collection account. Ex. 10 at 230, 253. The 2020 QNSP demonstrates that he failed to list a state tax lien recorded in 2017. *Id.* at 230; Ex. 8 at 101. The 2020 and 2014 QNSPs demonstrate that he failed to list a 2013 lien-related garnishment.<sup>6</sup> Ex. 10 at 230, 244; Ex. 4 at 40. Additionally, the 2014 QNSP demonstrates that he failed to report seven delinquent accounts listed in a 2014 credit report. Ex. 4 at 40; Ex. 9a 181-84. Finally, he failed to disclose three tax liens that the record demonstrates were filed prior to him completing the 2014 QNSP. *Compare* Ex. 4 at 39-30 *with* Ex. 8 at 102-04.

At the hearing, the Individual testified that the omissions cited in the SSC resulted from his failure to read carefully. Tr. at 69-70. For example, he testified that he did not recall the QNSPs specifically requesting that he disclose wage garnishments. *Id.* at 67-68. He testified that “all kinds of stuff comes across your desk that you sign[,]” and he provided the example of an annual “computer access form” containing “really small print” that you “sign and date” and “continue with your computer access.” *Id.* at 67. He then confirmed that he answered “no” to the question in the QNSP regarding whether he had wage garnishments to report. *Id.* at 71. He testified that, in retrospect, he was “in error for not reading the question completely[,]” and he did not “intend[] to mislead the Government on the questionnaire[.]” Tr. at 68-70.

## **V. ANALYSIS**

### **A. Guideline F Considerations**

Based on the record in this case, the following conditions may apply to mitigate the Guideline F security concerns:

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<sup>6</sup> The Individual disclosed the garnishment during a 2020 OPM interview. Ex. 7 at 95.

- (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;

...

- (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.

After reviewing the record, I find that neither mitigating condition applies to resolve the Guideline F concerns. First, I conclude that the Individual failed to demonstrate that he filed his tax returns for 2010, 2011, and 2012 because his testimony is undermined by a recent letter from a CPA firm indicating that there is no record that he filed these returns.

Second, the Individual's delay and poor judgment in addressing his obligation to file tax returns also prevent me from concluding that he has resolved the Guideline F security concerns. The record establishes a pattern of the Individual continuing to engage in this concerning conduct despite being directly notified that his conduct jeopardizes his security clearance. There is no dispute the Individual failed to timely file more than a decade's worth of tax returns over two separate, multi-year spans. He reported his initial, multi-year failure in a QNSP, and he discussed the issue with an OPM investigator. The Individual thereby knew that his failure to file tax returns presented a concern. After allegedly filing his first batch of past-due returns with the help of an accountant in 2014, he immediately failed to file federal and state tax returns year after year until the DOE suspended his security clearance. The Individual's own pattern of conduct provides little assurance that he is unlikely to engage in the same behavior again.

Furthermore, I find it concerning that the Individual blamed the CPA firms' alleged ineffectiveness for delaying the resolution of his tax issues. Perhaps it would mitigate some of the concern, if true, but he admitted that he failed to adequately assist the CPA firms, which I find to be the more likely reason for their ineffectiveness and consistent with his failure to timely file his tax returns. Even if I were to find the CPA firms to blame for their part, I would still find concerning the fact that he ignored the issue year after year before finding an effective CPA. His delay in doing so is more troubling given his previous success working with a CPA to file his first batch of delinquent tax returns in 2014. Furthermore, his most recent conduct again evinces delay and poor judgment: he waited a full year after his clearance was suspended in December 2020 to locate and work with his current CPA, who prepared his delinquent returns in a matter of weeks in December 2021.

The above findings establish that the Individual's behavior did not happen so long ago, it was not so infrequent, nor did it occur under such circumstances that it is unlikely to recur or cast doubt on the individual's current reliability, trustworthiness, or good judgment. It has been a consistent pattern. Accordingly, I have significant doubt regarding the Individual's present reliability, trustworthiness, or good judgment.

In reaching my above findings, I duly considered the evidence that the Individual had resolved the outstanding pest control and bank collection accounts before the hearing date. The Individual's delay in resolving the pest control bill is another example of concerning conduct. Despite stating he would address the issue in September 2020, the Individual waited until December 2021 to resolve the debt.

I have also considered the fact that the state-tax liens cited in the SSC were released within two years of being filed. However, for the reasons stated above, I still have significant concern regarding the Individual's present reliability, trustworthiness, or good judgment. Accordingly, I conclude that the Individual has not resolved the Guideline F security concerns.

### **B. Guideline E Considerations**

Based on the record, the Individual may mitigate the Guideline E security concerns if:

- (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[.]

Adjudicative Guidelines at ¶ 17.

I conclude that neither of the above mitigating conditions apply to resolve the Guideline E concerns. In short, the Individual has not demonstrated that his behavior is unlikely to recur.

First, I find concerning the Individual's testimony that he did not adequately read the QNSPs and his comparing them to "all kinds of stuff" that comes across his desk to sign. The latter characterization demonstrates his continuing failure to appreciate the importance of his obligation to report accurate information on security questionnaires. I also find concerning the Individual's testimony that he did not recall having to report wage garnishments. He needed only to look through the LSO's exhibits to clarify his understanding, but his testimony demonstrates that on the hearing date he still doubted his obligation to report wage garnishments in the QNSP, a view he abandoned when directed to his response to that specific question in his QNSP. I do not find his testimony credible, and I conclude that the Individual has not taken adequate positive steps to alleviate the circumstances or factors that contributed to him omitting relevant information from security questionnaires. I remain concerned regarding his reliability, trustworthiness, and ability to exercise good judgment. Accordingly, I conclude that the Individual has not resolved the Guideline E security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F and Guideline E of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should not be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals