

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
 )  
Filing Date: February 23, 2022 ) Case No.: PSH-22-0058  
 )  
 )  
\_\_\_\_\_ )

Issued: June 22, 2022

**Administrative Judge Decision**

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In March 2020, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 8 at 38. The Individual disclosed on the QNSP that she owed approximately \$43,000 in unpaid Federal personal income taxes and \$45,000 in credit card debts. *Id.* at 32–35. On April 3, 2020, the Office of Personnel Management (OPM) obtained a credit report (2020 Credit Report) for the Individual as part of its investigation of her eligibility for a security clearance. Ex. 9 at 73. The 2020 Credit Report revealed that the Individual had twenty-four debts, on which she owed nearly \$45,000, referred to collections and that she was past due on numerous other debts, including her home mortgage. *Id.* at 74–94.

On April 20, 2021, the local security office (LSO) obtained a credit report (2021 Credit Report) for the Individual which revealed thirty-nine debts referred to collections, of which thirty-one had been charged off by the Individual’s creditors. Ex. 6 at 1. The LSO subsequently issued the Individual a letter of interrogatory (LOI) concerning her financial situation. Ex. 7. In her

<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.

September 2021 response to the LOI, the Individual disclosed that she had not taken any steps to resolve her credit card debt and that the balance on her unpaid Federal personal income taxes had grown to \$51,148. *Id.* at 1, 20–21. She indicated that she intended to file for Chapter 13 bankruptcy by November 2021.<sup>2</sup> *Id.* at 1.

The LSO issued the Individual a letter in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information described above raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her 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 nine exhibits (Ex. 1–9). The Individual did not submit any exhibits.<sup>3</sup> The Individual testified on her own behalf and offered the testimony of three character witnesses. Hearing Transcript (Tr.) at 3, 15, 26, 33, 41. The LSO did not call any witnesses. *Id.* at 3.

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

The LSO cited Guideline F (Financial Considerations) as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “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. “An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.” *Id.* The SSC cited the Individual’s extensive debt, which the LSO calculated at \$86,294, and the Individual’s \$51,148 in unpaid Federal personal income taxes. Ex. 1. The LSO’s allegations that the Individual demonstrated an inability to satisfy debts, consistently spent beyond her means, and failed to pay Federal income taxes justified its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (e)–(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

---

<sup>2</sup> Chapter 13 bankruptcy allows debtors to resolve debts to creditors through payments over three to five years without liquidation of assets, such as houses. *Chapter 13 – Bankruptcy Basics*, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics> (last accessed June 21, 2022).

<sup>3</sup> The Individual included numerous documents related to her efforts to resolve her financial delinquencies as attachments to her December 2021 request for a hearing. These documents were submitted by the LSO as part of Exhibit 2.

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 Dep't 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. FINDINGS OF FACT**

From July 2010 to March 2018, the Individual worked for a government contractor. Ex. 8 at 13. Her most senior title while working for the government contractor was Director of Sales and Operations, in which capacity she earned a salary of \$120,000 with additional sales commissions annually. *Id.*; Ex. 2 at 2; Tr. at 42, 58. During this period, the Individual opened credit card accounts with numerous retailers and did not pay the entire balance of her credit card bills each month. Tr. at 54–55. The Individual devoted a significant portion of her take-home pay to servicing her credit card debts and maintained only \$500 - \$750 in savings at any time, which she believed “was not what it should have been considering what [she] was making.” *Id.* at 59. The Individual realized that she “needed to do something” about her “wallet full of credit cards” in 2017, but did not take action beyond internet research to address her financial situation. *Id.* at 57–58.

In March 2018, the Individual was laid off from her job with the government contractor. Ex. 8 at 13; Ex. 7 at 20. The government contractor distributed the balance of the Individual’s 401(k) account – approximately \$197,000 – to her and she deposited the money into her bank account rather than rolling the balance over into another retirement account.<sup>4</sup> *Id.* at 44; Ex. 9 at 56. The Individual obtained part-time employment in August 2018 which provided sufficient compensation to cover her monthly expenses. Ex. 8 at 11; Tr. at 85, 87. However, she was laid off from this employment several months later and applied for unemployment benefits. Tr. at 42–43, 87–88. The Individual was then unemployed until she was hired by the DOE contractor in March 2020. *Id.*; Ex. 8 at 10. While unemployed, the Individual gifted her son \$10,000 to help him purchase a vehicle. Tr. at 61. The Individual did not significantly reduce her monthly expenditures while she was unemployed, and exhausted the balance of her 401(k) distribution by mid-2019. *Id.* at 48, 62–63 (testifying that she “live[d] the same life that [she] was living while [she] was employed” after being laid off and that she was unable to make minimum payments on credit cards

---

<sup>4</sup> At the time that she was laid off from the government contractor and received the distribution of her 401(k), the Individual had an outstanding loan balance of \$50,000 against her 401(k). Ex. 9 at 56. The Individual had used \$28,000 of the 401(k) loan for home repairs and the remainder for personal expenses. *Id.*

beginning in July 2019); Ex. 9 at 56 (indicating that the Individual had spent the entirety of her savings and 401(k) distribution by August 2019).<sup>5</sup>

On March 29, 2020, the Individual signed and submitted the QNSP. Ex. 8 at 38. The Individual disclosed on the QNSP that she owed \$43,000 in unpaid Federal personal income taxes for the 2018 tax year. *Id.* at 31. The Individual indicated on the QNSP that she accrued this liability as a result of making withdrawals from her 401(k) retirement account during a period of unemployment and being unable to pay the applicable taxes on the distribution. *Id.* The Individual asserted that she was “hoping to work with a tax relief [sic] or attorney to find out [her] options or try to decrease the amount owed.” *Id.* at 32.

The Individual also disclosed on the QNSP that she owed approximately \$45,000 in credit card debt. *Id.* at 34. She indicated that she incurred the debt in 2019 and that “[w]hile unemployed [her] priority was paying [her] mortgage and daily living expenses.” *Id.* at 34–35. In response to a question on the QNSP concerning actions she had taken to satisfy this debt, the Individual responded: “nothing as of yet.” *Id.* at 35.

OPM conducted a background investigation of the Individual. *See* Ex. 9 (reflecting the information obtained by OPM through its investigation). As part of its investigation, OPM obtained the 2020 Credit Report, dated April 3, 2020. *Id.* at 73. The 2020 Credit Report revealed that the Individual had twenty-four debts, on which she owed \$44,795, referred to collections. *Id.* at 74–82. The 2020 Credit Report additionally reflected that the Individual was at least thirty days past due on twelve credit card accounts and her home mortgage. *Id.* at 82–87.

In August 2020, the Individual retained a tax service to assist her in arranging a settlement with the IRS. Ex. 2 at 2, 7, 9–10. In October 2020, the Individual terminated her agreement with the tax service on the advice of an attorney she was seeking to retain to file for bankruptcy. *Id.* at 3, 12. However, the attorney did not agree to represent the Individual. *Id.* at 3.

On April 20, 2021, the LSO obtained the 2021 Credit Report. Ex. 6. The 2021 Credit Report identified thirty-nine debts referred to collections, of which thirty-one had been charged off by the Individual’s creditors, on which the Individual owed over \$70,000 in debt. *Id.* at 1–6. On September 21, 2021, the Individual submitted a response to the LOI issued by the LSO. Ex. 7 at 22. In response to questions concerning her efforts to address these credit card debts, the Individual responded “none.” *Id.* at 1–19. The Individual attributed these debts to “[b]eing unemployed for two years” and expressed the intention to file for Chapter 13 bankruptcy “by the end of November of 2021.” *Id.* Regarding her unpaid Federal personal income taxes, the Individual disclosed that the balance had grown to \$51,148.35. *Id.* at 21. She indicated that she expected to resolve her unpaid Federal personal income taxes through the bankruptcy process. *Id.*

On December 14, 2021, the Individual submitted a letter and documents to the LSO concerning her financial situation. Ex. 2. The Individual indicated that she had been in the process of obtaining legal counsel to file for bankruptcy since July 2021, and provided documentation showing that she had paid \$1,000 of the \$1,500 retainer fee for bankruptcy counsel. *Id.* at 3, 14–16; *see also* Tr. at

---

<sup>5</sup> The Individual testified during the hearing that she made lifestyle changes while unemployed, such as changing cable providers and buying discounted goods, to reduce her expenditures. Tr. at 91–92.

70 (indicating that the retainer fee was \$1,500). The Individual also provided documentation to show that she had paid off one credit card debt in the amount of \$632, and entered into payment plans for two other credit card debts for a combined \$4,566. Ex. 2 at 3, 18–21. The Individual indicated that, on the advice of the attorney she sought to retain, she would resolve all of her other debts through bankruptcy. *Id.* at 3.

A former coworker of the Individual testified at the hearing that she perceived the Individual to be honest, reliable, and a hard worker. Tr. at 17. Two personal friends of the Individual testified as to her honesty and trustworthiness in their personal interactions. *Id.* at 26, 30, 33, 36–37.

The Individual testified that she was committed to resolving her financial delinquencies and planned to do so through filing for bankruptcy. *Id.* at 70–73. The Individual asserted that she had paid \$425 towards the retainer for bankruptcy counsel since December 2021, and planned to make a final payment within the next month. *Id.* at 78–79. The Individual explained that she had contributed as much as she could afford towards the retainer, but that bills from the December 2021 Christmas season and repairs to her vehicle’s air conditioning system had prevented her from paying the balance of the retainer as of the date of the hearing. *Id.* at 82. She also testified that she completed two hours of online credit counseling in connection with her planned bankruptcy. *Id.* at 70–71.

## V. ANALYSIS

The Individual’s substantial unpaid debts and Federal personal income taxes justify the LSO’s invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (e)–(f). Conditions that could mitigate a security concern under Guideline F include:

- (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.

*Id.* at ¶ 20(a)–(g).

The Individual's failure to meet her financial obligations has been ongoing for several years and involves dozens of creditors. Despite steady employment with the DOE contractor, the Individual had not resolved her unpaid taxes or the significant majority of her unpaid debts as of the date of the hearing, and she did not provide any information related to her current financial situation. Accordingly, I find that the Individual's derogatory behavior was frequent and recent. While the Individual attributed her financial delinquencies to a lengthy period of unemployment, she incurred significant credit card debt before she became unemployed. Moreover, the cost of servicing her debts while she was employed placed her in a precarious financial position and prevented her from establishing more than a few hundred dollars in savings despite earning a substantial salary and commissions. The Individual also admitted that while she was unemployed, she spent the entirety of her 401(k) distribution, did not significantly reduce her standard of living, and gifted her son \$10,000 to help him purchase a car. Accordingly, although the Individual's unemployment contributed to her financial difficulties, the Individual's irresponsible spending and failure to live within her means appear to be the primary causes of her inability to meet her financial obligations. Thus, I find the first two mitigating conditions under Guideline F inapplicable in this case. *Id.* at ¶ 20(a)–(b).

The Individual testified that she participated in some form of credit counseling in anticipation of filing for bankruptcy, but did not provide documentation of her participation or the scope of the counseling she received. Moreover, the Individual did not provide documentation of her monthly savings and expenditures that would show that she has learned to control her spending. Instead, she testified at the hearing that, in the five months since she made her request for a hearing to the LSO, she was unable to fully pay the \$500 balance remaining on the retainer for her bankruptcy counsel in part because of expenditures during the Christmas season. In light of the absence of evidence that the Individual has undergone substantive financial counseling from a credible source, and that her financial situation has stabilized and she has learned to manage her finances responsibly, I find the third mitigating condition under Guideline F inapplicable. *Id.* at ¶ 20(c).

The Individual has not yet filed for bankruptcy or made arrangements with the IRS or the significant majority of her creditors to resolve her financial delinquencies. While the Individual represented that she has nearly paid the entirety of the retainer for bankruptcy counsel and that she intends to pursue bankruptcy as soon as is practicable, she previously told the LSO in her response to the LOI that she expected to be prepared to file for bankruptcy in November 2021. In light of the Individual's inaction to resolve her financial delinquencies, and history of failing to act with urgency to pursue relief through bankruptcy, I find that the fourth mitigating condition under Guideline F is inapplicable. *Id.* at ¶ 20(d).

The fifth mitigating condition is inapplicable because the Individual has not disputed the financial delinquencies identified in the SSC. *Id.* at ¶ 20(e). The sixth mitigating condition is inapplicable because the LSO has not asserted that the Individual displayed unexplained affluence. *Id.* at ¶ 20(f). The final mitigating condition is inapplicable because the Individual has not made any arrangements with the IRS to pay her unpaid personal income taxes. *Id.* at ¶ 20(g).

For the reasons indicated above, none of mitigating conditions under Guideline F are applicable in this case. The Individual has established a years-long pattern of failing to meet her financial obligations due in part to her failure to control her spending and poor decision making. In the more than two-year period that has passed since she disclosed her financial delinquencies on the QNSP, she has made minimal progress towards resolving the issues despite her steady employment with the DOE contractor. Accordingly, I find that the Individual's financial delinquencies continue to raise serious concerns as to her judgment, trustworthiness, and reliability.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. 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.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals