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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: June 3, 2022) Case No.: PSH-22-0096
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Issued: September 26, 2022

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (the Individual) to obtain an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be granted.

I. BACKGROUND

The Individual is employed at a DOE facility, and it was requested that he be granted a security clearance. During its investigation of the Individual, the Local Security Office (LSO) discovered that the Individual had charged-off or in-collection accounts totaling over \$200,000 and failed to file federal and state income taxes for the years 2016, 2017 and 2018. Exhibit (Ex.) 1; Ex. 3; Ex. 4. The LSO then issued a Letter of Interrogatory (LOI) to the Individual seeking additional information regarding these matters. *Id.* In November 2021, the Individual responded to the LOI, providing a detailed accounting of these debts and his intention to resolve the outstanding debts. Ex. 8 at 89–105. The Individual also confirmed that he had not filed or paid federal or state income taxes for the years 2016-2018. Ex. 8 at 97-100. However, the Individual asserted in his response that he did not owe taxes during those years. *Id.*

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

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

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted ten exhibits (Ex. 1–10) and the Individual submitted seven exhibits (Ex. A–G). The Individual testified on his own behalf and presented the testimony of one other witness, his mother. Hearing Transcript (Tr.) at 11-20. The LSO submitted 10 exhibits but 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. 2 at 10–12. Guideline F provides that “[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. “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 charged-off and collection accounts and his failure to file tax returns to the Internal Revenue Service (IRS) and his state tax authority for tax years 2016-2018. Ex. 1 at 1–2. These allegations justify the LSO’s invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (c).

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 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 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 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

As referenced above, the Individual is employed by a DOE facility. During the preliminary investigation regarding a request that the Individual be given a security clearance, the LSO found that the Individual had in-collection or charged-off credit accounts totaling \$225,738. Ex. 1; Ex. 5; Ex. 6. Specifically, 17 of the past due collection accounts, totaling \$200,200, arose from various student loans the Individual borrowed to earn his Bachelor's and Master's Degrees from for-profit colleges. Ex. 1. Seven of the collection accounts, totaling \$12,444, were from various credit cards and two unpaid bills. Two delinquent credit accounts had been charged off by the original debt holder totaling \$13,094 (\$9,043 for a repossessed car and \$4,051 for a credit card debt). Ex.1; Ex. 5; Ex.6. Tr. at 61, 64.

The Individual was current on his expenses and debts when he began work in 2012 as college instructor for another for-profit college and was seeking a Doctor of Philosophy degree. Tr. at 31, 45. While working as an instructor, the federal government closed the for-profit college he worked in 2015 for improper business practices, none of which he was involved with. Tr. at 31-32. Four or five months later, the Individual obtained a position at another for-profit college at a lower rate of pay and was employed for less than full time. Tr. at 31, 41. Approximately a year later, in 2016 or 2017, the federal government stripped the school of accreditation for federal student loans and the Individual again lost his job. Tr. at 32-34.

The Individual started to experience financial difficulties after losing his second instructor position in 2016-2017. Tr. at 37. His financial difficulties became increasingly more difficult, and he began to fall behind on more and more accounts. Tr. at 37. During this period of unemployment, the Individual did sporadic contractor work and drove for two different ride-sharing employers. Tr. at 39. Eventually, in 2017, the Individual gained part-time work at another for-profit college at a lower hourly rate than his prior two positions and for fewer guaranteed hours of employment. Tr. at 40-41. After a year, the Individual was again dismissed from employment because this for-profit college eliminated the department in which he was an instructor. Tr. at 40.

Because of his joblessness, the Individual fell behind on all his accounts and his car was repossessed. Tr. at 41-42. The Individual eventually had to move in with his sister and sleep on her couch. Tr. at 43. He also fell behind on his student loans which originally totaled approximately \$80,000 but eventually increased to approximately \$200,000 due to interest. Tr. at 46.

Eventually, the Individual was able to find employment with a contractor at a DOE facility in 2018. Tr. at 40. In 2019, the Individual was hired by another contractor at a significantly greater rate of full-time pay at \$51 per hour. Tr. at 72-74. However, despite having significantly more income for the past three years, the Individual did not begin to resolve his finances until the background investigation for his security clearance had commenced. Tr. at 75. When asked why it had taken so long the Individual testified that at the time, he really didn't understand how credit worked and that he received no calls or notices from creditors. Tr. at 75. When he reviewed his

credit report, he did not understand closed accounts that seemingly were not listed on the report as adding to his total indebtedness were still considered debts. Tr. at 75; *see* Ex. E.

The Individual's mother confirmed that the Individual managed to support himself while employed at the for-profit colleges, despite relatively low wages. Tr. at 13. While employed, the Individual did not live beyond his means. Tr. at 14, 17. She helped the Individual by making a car payment so the Individual could work. Tr. at 14. She also discussed with the Individual his financial problems. She believed that his failure to pay bills resulted from the Individual not having any income. Tr. at 14. She also reported that during his periods of unemployment the Individual resorted to sleeping on a couch or in a basement of various family members. Tr. at 14-15. At one point the Individual had to ask his mother for food since he had not eaten in two days. Tr. at 14-15. The Individual's mother corroborated the Individual's account of why he had become unemployed and confirmed that it was not due to any misconduct. Tr. at 16-17.

The Individual sought to remedy his student loan debts a few months prior to the hearing. Tr. at 78. By contacting the federal program responsible for student loans, he was able to have his numerous student loans consolidated into one loan of \$195,831 with a payment of \$870 per month. Tr. at 78; Ex. A; Ex. B. With this consolidation, his student loans are no longer in collection and are in a forbearance status with payments beginning at the end of September 2022. Ex. B, E.

For the non-student loan debts in collection, the Individual has submitted evidence that he has payment plans addressing two of the accounts and has made payments pursuant to the plan. Ex. C; Ex. D. He has also recently begun to pay another delinquent credit card account on a payment plan. Tr. at 48-49. Regarding the remaining four non-student loan delinquent accounts for credit cards, cable TV equipment, and delinquent rent, the Individual is researching how to contact the creditors to arrange a repayment plan. *See* Tr. at 42, 58 and 60. As for the two charged-off accounts, the Individual has not contacted the account holder for his repossessed automobile nor has he recently contacted the charged-off credit card account holder.² Tr. at 62, 65.

The Individual testified that he has a computer spreadsheet listing his payments on several of his debts. Tr. at 97. He does not believe he needs a formal budget since his current expenses are "well underneath" his monthly take-home pay. Tr. at 97. As of the date of the hearing, the Individual is current with all his "regular bills" and an examination of his credit reports reveals that he has a "100 percent payment rate." Tr. at 64-65. The Individual also testified that after his student loan consolidation, none of his student loan accounts are listed as delinquent. Tr. at 66. The Individual currently earns take-home pay of \$4,600 monthly. Tr. at 98. After accounting for the student loan repayment plan into which he has entered, his two loan repayment plans and his household bills, the Individual has approximately \$1,200 a month remaining. Tr. at 99-100.³ Tr. at 97. The Individual then tries to set aside \$600 to \$1,000 per month in his savings. Tr. at 100. The Individual

² The Individual stated that, in 2016, when he began experiencing difficulties in paying this credit card, he initially contacted the credit card account holder who refused to accept any type of payment plan. Tr. at 65.

³ The Individual later testified that he had approximately \$2,000 per month remaining. Tr. at 99.

asserted in his testimony that he does not live beyond his means and is careful not to try to resolve too much debt in a manner that would put him in financial distress. Tr. at 97-99.

Regarding the SSC's allegation that he failed to file state and federal taxes for the years 2016 through 2018, the Individual asserted that he had filed both federal and state tax returns for all the 23 years prior to 2016.⁴ Tr. at 69. He stated that he "probably" did not owe any additional taxes regarding his recently-filed 2016 through 2018 tax returns since he believed that, in his experience, he had only owed taxes in one tax year ever, 2015. Tr. at 24. The Individual asserted that when he lost his job at the first for-profit college when it was closed, he asked tax officials for an extension because he had difficulty getting a W-2 from the college. Tr. at 68. He was unaware that he could obtain the form from the IRS. Tr. at 68. Because he believed that he did not owe taxes to the state or federal government and because of the stress of his financial situation, he neglected to file tax returns. Tr. at 68. He stated that he now realizes the importance of filing his tax returns promptly even if he owes no additional taxes. Tr. at 68.

V. ANALYSIS

Regarding the security concerns raised under Guideline F, the Individual has made significant advances in paying his numerous outstanding debts. Guideline F lists seven conditions that could mitigate a concern raised by financial irregularities:

- (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;

⁴ The Individual stated he had been late filing his 2019 tax returns but had promptly filed his 2020 tax returns. Tr. 69-70.

(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).

In reviewing the applicability of the first mitigating factor (Mitigating Factor A) to the present case, I have reviewed the facts and circumstances leading to the Individual's financial difficulties.⁵ The Individual's circumstances leading to his financial difficulties are unusual. The Individual lost three positions within a short time frame through no fault of his own. The Individual is now employed in a position with a higher salary than he received in his prior positions, and is current on all his bills. Because I find that the highly unusual circumstance leading to his indebtedness is very unlikely to reoccur and as such does not cast doubt on the individual's current reliability, trustworthiness, or good judgment, I find that Mitigating Factor A applies to this case.

Mitigating Factor B is not applicable in this case, since, although I find that the Individual lived within his financial means before being terminated and could do little to resolve his debt while jobless, he did not act in a prompt manner to try to resolve his financial delinquencies until some three years after his employment at the DOE facility.

Mitigating Factors C, E and F are not applicable in the present case. Other than discussions with his mother about his financial problems, there is no evidence in the record that the Individual has received financial counseling. Nor has the Individual indicated that he has challenged the legitimacy of the student loan debt or any of the other debts that are in collection status. Further, the financial concern does not arise from unexplained affluence.

As for Mitigating Factor D, the Individual has submitted evidence that he is currently on payment plans regard three of the non-student loan collection accounts and has agreed to a repayment plan regarding his student loans. Tr. at 49-51, 55. Further, he had demonstrated that he is making the required payments, and his current level of income will allow him to continue making the payments without difficulty. Thus, I find that the Individual's testimony and his submitted exhibits have provided adequate evidence that the Individual has initiated good faith efforts to resolve his indebtedness and is adhering to his repayment plans. Although the Individual has not yet located the creditors associated with some of his delinquent accounts, those creditors represent only a small percentage of his overall debt, and I find credible his testimony that he is actively seeking to locate them. Consequently, I find that Mitigating Factor D is applicable in this case.

Regarding Mitigating Factor G, the Individual testified credibly that he has submitted all his delinquent tax returns. Further, there is no evidence in the record that the Individual currently owes federal or state taxes. I therefore find that Mitigating Factor G applies in this case.

As discussed above, I find that a number of the Guideline F mitigating factors apply in the present case. The testimony indicates that the Individual was successfully managing his finances until a

⁵ In discussing these factors, I will identify them by their letter designator in Paragraph 20 of the Adjudicatory Guidelines.

series of events beyond his control severely impacted the Individual's ability to earn a living. Compounding this situation was the fact at the time he was a student who had financed his education through student loans. The extent of his devastating financial state after his job loss was illustrated by the fact he became for a while functionally homeless. The Individual's mother testimony supports the Individual's account of his financial situation before finding a job at the DOE facility. Evidence in the record shows that the Individual has been able to refinance his substantial student loan debt, which constitutes a significant portion of his total debt, into a repayment plan with manageable a monthly payment that he can afford. A recent credit report indicates that he has refinanced and is current regarding his student loan debt of approximately \$195,000 of his now total overall debt of \$207,116. Ex. E at 1 (August 2022 credit report). I also found the Individual's testimony credible as to his effort to reach out to his creditors. As such, I find that the Individual has resolved the Guideline F security concerns raised by the SCC.

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 the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns under Guideline F. Accordingly, the Individual has sufficiently demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual should be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals