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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: July 27, 2022) Case No.: PSH-22-0124
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Issued: October 17, 2022

Administrative Judge Decision

Phillip Harmonick, 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.”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 not be restored.

I. BACKGROUND

On August 17, 2021, the Individual completed and signed a Questionnaire for National Security Positions (QNSP) in order to continue his access authorization. Exhibit (Ex.) 5 at 54. The Individual disclosed on the QNSP that he had fallen into delinquency on several debts on which he owed over \$9,000, and that he owed approximately \$3,000 in unpaid state personal income taxes for the 2018 tax year. *Id.* at 46–51.

A credit report obtained as part of a background investigation of the Individual revealed additional delinquent debts the Individual failed to disclose on the QNSP. *Id.* at 61–62, 94–97. The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his financial situation. Ex. 6. In his response, the Individual indicated that he had paid several of the delinquent debts and identified \$4,485 in outstanding delinquent debts that he owed. *Id.* at 7. The Individual also provided tax documents showing that he owed \$589 in unpaid Federal personal income taxes and \$3,611 in unpaid state personal income taxes. *Id.* at 1–2.

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 issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 2. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. *Id.* at 4–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 1. 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 six exhibits (Ex. 1–6). The Individual submitted three exhibits (Ex. A–C). The Individual testified on his own behalf. Hearing Transcript (Tr.) at 3, 9–10. The LSO did not call any witnesses to testify.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for its determination that the Individual was ineligible for access authorization. Ex. 2 at 4–6. “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. The SSC cited: nine delinquent debts on which it calculated that the Individual owed \$11,527; unpaid federal personal income taxes in the amount of \$589; and unpaid state personal income taxes in the amount of \$3,611.96. Ex. 2 at 4–6. The LSO’s allegations that the Individual demonstrated an inability to satisfy debts, established a history of failing to meet financial obligations, and failed to pay federal and state personal income taxes justified its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (c), (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 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).

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 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

The Individual has been employed by a DOE contractor continuously since 2016. Ex. 5 at 23; Tr. at 54. He earned an average of \$1,500 per week through his employment with the DOE contractor from 2016 to the date of the hearing. Tr. at 54–55. In 2018, the Individual stopped withholding state personal income taxes in order to receive more money in his paychecks. *Id.* at 18. He failed to timely file his state personal income tax return for the 2018 tax year, and lacked sufficient savings to pay the taxes that he owed when he did file due to “spending money recklessly.” *Id.* at 21–23, 56; Ex. 5 at 61. The Individual also failed to fully pay his Federal personal income taxes for the 2019 tax year when he filed his Federal personal income tax return. Ex. 6 at 2.

As of August 28, 2021 – the date of the credit report obtained as part of the background investigation of the Individual – the Individual was delinquent on the following debts:

- (1) First Payday Loan - \$1,635
- (2) Second Payday Loan - \$1,207
- (3) Electrical Utility - \$860
- (4) Progressive Insurance - \$786
- (5) Credit Union Account 1 - \$556²
- (6) Lease to Own - \$1,159
- (7) Credit Union Account 2 - \$450
- (8) Hyundai Finance - \$5,477

Ex. 5 at 94–97.³

In March 2022, the Individual submitted his response to the LOI in which he provided the LSO with information concerning the status of his financial situation. Ex. 6. The Individual attached tax documents to his response to the LOI showing that he owed \$589 in unpaid Federal personal income taxes and \$3,611 in unpaid state personal income taxes. *Id.* at 1–2.

As of the date of the hearing, the Individual had fully paid Credit Union Account 2. Ex. A; Tr. at 11. However, he had not made arrangements to pay his other debts.⁴ Tr. at 12, 39, 57–58, 61; *see also*

² The credit report reflected two delinquent debts in the amount of \$556 owed by the Individual to a credit union. Ex. 5 at 95. The Individual testified at the hearing that these two entries concerned the same debt. Tr. at 11. In light of the Individual’s testimony, and the improbability that the Individual would owe two debts of exactly \$556 to the same creditor, I determined that the aforementioned entries were duplicative and that the Individual only owed one debt of \$556 to the creditor.

³ The credit report listed an additional delinquent debt in the amount of \$17,208 related to an automobile loan. Ex. 5 at 97. In his response to the LOI, the Individual claimed that the debt “shows paid on [his] credit report.” Ex. 6 at 7. The LSO did not list the debt in its allegations in the SSC. Ex. 2.

⁴ The Individual testified that he made arrangements with Hyundai Finance to resolve his debt. Tr. at 12. However, he claimed that he was unable to obtain documentation of the terms of the repayment agreement. *Id.* I find it implausible that Hyundai Finance and the Individual would have entered into a repayment agreement without memorializing any of the terms in writing. Moreover, the Individual failed to provide evidence, such as bank statements showing payments to Hyundai Finance, that might have corroborated his claims. For these reasons, there is insufficient evidence to establish that the Individual entered into an agreement to resolve the Hyundai Finance debt as he claims to have done.

Ex. C (reflecting that the outstanding balance on the Hyundai Finance debt was \$4,901.60 as of September 19, 2022). The Individual claimed that he had made payments towards the Electrical Utility debt on an *ad hoc* basis in the past, but stopped due to financial constraints. Tr. at 57–58. He testified that he had cancelled subscriptions to streaming video services and moved to housing with a lower monthly rent to improve his financial situation. *Id.* at 52–53. The Individual has not pursued credit counseling or debt consolidation to address his delinquent debts. *Id.* at 59–60.

The Individual testified at the hearing that his unpaid Federal and state personal income taxes were “an ongoing thing.” *Id.* at 39. He represented that he had applied his state personal income tax refund for the 2021 tax year to the unpaid state tax balance, but was unsure how much he still owed and claimed that he had misplaced relevant documentation during a recent change in residence. *Id.* at 22. The Individual attributed his failure to make arrangements to resolve his unpaid Federal and state personal income taxes to being unable to reach representatives of the appropriate agencies by phone due to long wait times. *Id.* at 20, 45–46.

V. ANALYSIS

The Individual’s delinquent debts, history of failing to meet financial obligations, and failure to pay federal and state personal income taxes justify the LSO’s invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (c), (f). Conditions that could mitigate security concerns 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 his financial obligations is longstanding, ongoing, and, by the Individual’s own admission, the result of irresponsible spending. The Individual has made minimal progress towards resolving his delinquent debts, and did not put forth evidence that he has avoided incurring additional financial delinquencies since the LSO issued the SSC. As the Individual’s delinquent debts and unpaid taxes were the product of his own poor judgment, and the Individual has

not demonstrated actions that might lead me to believe that his financial difficulties will not persist in the future, I find that the first two mitigating conditions under Guideline F are inapplicable in this case. *Id.* at ¶ 20(a)–(b).

The third mitigating condition is not applicable in this case because the Individual has not pursued financial counseling. *Id.* at ¶ 20(c). The fourth mitigating condition is inapplicable because the Individual has not brought forth evidence that he has initiated or adhered to efforts to repay the significant majority of his debts. *Id.* at ¶ 20(d).

The fifth mitigating condition is inapplicable because the Individual has not disputed any of the debts identified by the LSO in the SSC. *Id.* at ¶ 20(e). The sixth mitigating condition is irrelevant in this case because the LSO has not alleged that the Individual displayed unexplained affluence. *Id.* at ¶ 20(f). The final mitigating condition is inapplicable because the Individual has not entered into any arrangements with the IRS or applicable state taxing authority to resolve his unpaid personal income taxes. *Id.* at ¶ 20(g).

The Individual has established a years-long pattern of failing to meet his financial obligations and fully pay taxes, he has made only limited progress in resolving his financial delinquencies, and he has not brought forth sufficient evidence of changed financial behavior to convince me that his financial delinquencies will not persist in the future. Accordingly, I find that he has not resolved the security concerns asserted by the LSO under Guideline F.

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 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