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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: August 12, 2022) Case No.: PSH-22-0129
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Issued: December 28, 2022

Administrative Judge Decision

Janet R.H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 granted.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In April 2021, he completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 7. During the background investigation which occurred following his completion of the QNSP, the Office of Personnel Management (OPM) found unresolved financial obligations and criminal charges. Ex. 8. Due to unresolved security concerns, the Local Security Office (LSO) issued a Notification Letter to the Individual in May 2022 informing him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1. In the Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information described above raised security concerns under Guidelines F (Financial Considerations) and J (Criminal Conduct) of the Adjudicative Guidelines. *Id.*

The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security

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.

clearance. *See* 10 C.F.R. § 710.21. 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 appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eight exhibits (Exs. 1–8). The Individual did not present any exhibits. The Individual testified on his own behalf and presented the testimony of his ex-wife. Hearing Transcript (Tr.) at 9, 42. 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) as a basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 1–2. “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. Based on information found in the Individual’s April 27, 2021, credit report, the LSO relied on two charge-off accounts totaling \$16,084 and three collection accounts totaling \$2,955 to raise the Guideline F concern. Ex. 1 at 1. The LSO also relied upon the fact that the Individual stated in his response to a January 2022 Letter of Interrogatory (LOI) that he did not intend to pay one of the charged-off accounts because the creditor could not demand payment. *Id.* Finally, the LSO relied on the Individual’s failure to file his 2017 and 2018 federal and state business tax returns and his 2017 individual federal and state tax returns. *Id.* at 2. These allegations justify the LSO’s invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a), (c), (f).

The LSO cited Guideline J (Criminal Conduct) as a second basis for its determination that the Individual was ineligible for access authorization. Ex. 1. at 2. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The LSO relied upon 1) a criminal charge regarding the Individual’s 2015 failure to secure payment of worker’s compensation insurance; 2) a 2019 restraining order, as the result of a confrontation between the Individual and his ex-wife at a gym; 3) a 2018 domestic violence restraining order; 4) a 2018 charge of battery on a spouse/former spouse, which resulted in an outstanding warrant for failure to appear being issued; 5) a 2011 charge of two counts of battery on a spouse/former spouse; and 6) the Individual’s marijuana use approximately 60 times a year between 2006 through 2019. Ex. 1 at 2–3. The criminal charges, the restraining orders, and the allegation of marijuana use justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a) (b).

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) (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 of the date of the SSC, the Individual had six overdue financial obligations, none of which he included on his QNSP. Ex. 7 at 36. On his response to the LOI, he asserted that he answered the relevant QNSP question incorrectly by mistake. For the largest debt, the Individual disavowed responsibility, claiming that he had returned his truck because he could not afford it and thought returning the truck would satisfy his debt. Ex. 5 at 25; Tr. at 13. At the hearing, he claimed that “by law I’m not obligated to it because of the -- I mean, once you write it off on the profit and loss statement, you can’t go after a person. That’s double-dipping at that point.” Tr. at 11.

The Individual indicated that his financial difficulties began because his self-owned business had a downturn due to the change in the season. Ex. 5 at 25. At the hearing, he also indicated that, although he knew the underlying business, he was not a good businessman. Tr. at 60. In addition, he testified that his financial difficulties were exacerbated because his marriage fell apart. *Id.* at 21. Due to the ending of his marriage,² he could not afford his child support payments and other debts grew. *Id.* The Individual testified, and his wife confirmed, that his alimony³ and child support payments were originally \$4,000 a month, before eventually being reduced to \$1,200. *Id.* at 21–23, 54.

Going through each charged off obligation separately, the Individual stated that he was not aware of the outstanding financial debt in the amount of \$5,073. Ex. 5 at 6; Tr. at 11. He asserted that he does not intend to resolve the debt because it has been charged off, so legally he is not liable as it would result in “double dipping” by the creditor. Tr. at 11. Regarding a second charged off debt in the amount of \$11,011, the Individual stated that the debt was a business obligation resulting from a repossessed truck from when he owned his own company. Ex. 5 at 7; Tr. at 13. Again, he disavowed responsibility because the debt had been charged off and he had returned the truck. Tr.

² Although legally separated, the Individual and his ex-wife both testified that they are not yet divorced. Tr. at 40, 44. I will still refer to her as his ex-wife.

³ Both the Individual and his ex-wife referred to his monthly payments to her as alimony and child support. Tr. at 21–23, 54.

at 13–14. The Individual indicated that he was not planning on paying an overdue obligation, because he lacked the funds and the account had been charged off. Ex. 5 at 8; *see also* Tr. at 13.

The remaining outstanding financial obligations are in collections. Ex. 1 at 1. The debt in the amount of \$2,442 was for a mobile telephone. *Id.* at 15. He initially testified that the cell phone was company owned but then admitted that the phone was for both personal and company use. *Id.* at 15, 16. The Individual did not address whether or how he intends to satisfy the debt. About the debt in the amount of \$285, the Individual stated that he intended to pay the debt “just to make it go away,” but stated he was currently unable to make any payment. *Id.* at 17; Ex. 5 at 7. He claimed that it was vehicle insurance for the company truck, which was underlying the \$11,011 debt, that he returned. *Id.* Regarding the debt in the amount of \$228, the Individual claimed the debt was his ex-wife’s responsibility in their separation agreement, but that he will pay it when he has enough money. Ex. 5 at 7; Tr. at 18. Finally, the Individual stated that his child support and alimony payments are being deducted from his salary and he is current on those obligations. Ex. 5 at 8; Tr. at 23.

The Individual claimed that he was current on filing his personal federal and state taxes, having filed his 2019, 2020, and 2021 tax returns.⁴ Tr. at 63–64; Ex. 5 at 10. However, he indicated that he had not filed his 2017 or 2018 tax returns because he lacked the funds to pay the taxes. Ex. 5 at 10; Tr. at 24, 40. Yet, later in his testimony, he stated that he had filed his 2018 personal tax returns. Tr. at 64. The Individual claimed that he had not filed the tax returns because he did not “want to walk in that door and take on another debt at this point.” *Id.* at 24. When asked why he did not file his 2017 taxes when they were due in 2018, the Individual stated that he was unable to access his records, which were in the marital home from which he had been barred. *Id.* at 25. Yet, both he and his wife testified that they did not separate until September 2018. *Id.* at 27, 45. The Individual asserted that he did not owe any back taxes in relation to his company, although he has not filed those tax returns. *Id.* at 11.

Regarding his criminal activity, the Individual asserted that the May 2018 charge of battery on a spouse/former spouse was false, claiming he was never arrested. Ex. 5 at 13–14; Tr. at 35–36. About the August 2019 bench warrant for failure to appear, the Individual claimed that the warrant was sent to his marital home address, but he no longer lived there, and his ex-wife never forwarded it to him. Ex. 5 at 15; Tr. at 36.

The Individual disputed the underlying facts that supported a September 2018 restraining order. Ex. 5 at 16. He claimed that when he was stopping a fight between his father and ex-father-in-law, his ex-father-in-law lost his balance and fell into a cabinet, causing the ex-father-in-law to be injured. Ex. 5 at 17. His ex-wife filed a complaint with the police the following day and he was given 30 minutes to remove his personal and company belongings from the home. Tr. at 26. The ex-wife testified, “I feel like I was being a bit dramatic at the time. . . . And I did what I had to do to separate us.” Tr. at 45. She reiterated that she “dramatized the story,” but she could not state what occurred other than “yelling and screaming.” *Id.* The ex-wife confirmed the Individual’s testimony that she did not call the police, but rather went to the police station the following day

⁴ As of the date of the LOI, his 2021 federal and state tax returns were not yet due. Ex. 5. At one point during the hearing, the Individual claimed that he had filed his 2018 tax return. Tr. at 64. However, earlier in the hearing, he stated that he had not yet filed his 2018 taxes. *Id.* at 24.

and filled out paperwork to have him removed from the home. *Id.* at 46. She stated, “I went to the police and filled out paperwork and dramatized the situation so I could remove him from the home.” *Id.*

As with the other charges above, the Individual claimed that the February 2019 restraining order resulted from a misunderstanding. Ex. 5 at 18. The Individual testified that his ex-wife had taken their son’s phone. Tr. at 31. She lived only one block away from the Individual, so while the son was on visitation at the Individual’s house, the son went to the ex-wife’s house to get the phone, and then again later to return it. *Id.* at 31. When the son returned the phone to the ex-wife’s house, the ex-wife returned home and found the son there. *Id.* at 32. She then took custody of the son, without the Individual’s knowledge, and apparently, proceeded to take him with her to the gym. The Individual claimed that he was trying to find his son, because again it was his day to have visitation with the son, and the Individual tracked the son’s phone to a gym. Ex. 5 at 18; Tr. at 32. The Individual claims he had texted and called his ex-wife trying to get his son, but that she did not respond. Ex. 5 at 18; Tr. at 32. At the gym, the Individual and the ex-wife had an altercation that they both testified involved “yelling.” Tr. at 48. The ex-wife equivocated on whether it was the Individual’s day to have his young son. Tr. at 49. She confirmed the essence of the Individual’s story regarding the actions that occurred prior to her requesting the restraining order. *Id.* at 48.

The Individual’s ex-wife could not expound on the circumstances that led to the various restraining orders. Tr. at 45, She testified that she had “chosen to block [the events] out.” *Id.* at 45. The ex-wife proclaimed that as a couple they were in a “toxic mind frame,” and she “did what [she] had to do to separate” them. *Id.* She asserted that she remembers verbal altercations. *Id.* The ex-wife did recall that her father was punctured by a piece of glass but continued that it would be unfair to say the Individual stabbed her father. *Id.* at 47. Regarding the incident at the gym, the ex-wife could not recall whether their child was supposed to be in her custody or the Individual’s. *Id.* at 49. She had no memory of the events which led to the May 2018 incident where the Individual was charged with battery on a spouse or a July 2011 incident where the Individual was arrested and charged with battery on a spouse. *Id.* at 50-51. The ex-wife avowed on three occasions that she was being dramatic by reporting the situations to the police. *Id.* at 45, 47, 49.

The Individual denied any knowledge of a July 2015 charge which accused him of violating the labor code and failing to secure payment of worker’s compensation insurance. He also denied knowledge of a July 2016 warrant issued by the state licensing board for not complying with regulations. Ex. 5 at 19, 21; Tr. at 58. In fact, the Individual denied having employees at that time. Tr. at 58. He asserted that his business license is in good standing, although the business is inactive. *Id.* at 59. The Individual also claimed that there were a lot of other companies in his state and in the surrounding states with the same name as his. *Id.* at 60.

The Individual admitted that the July 2011 battery of a spouse/ex-spouse did occur. Ex. 5 at 23. He claimed that he pulled her foot because she was ignoring their young son’s request for juice and in pulling her foot, she slid off the sofa. Ex. 5 at 23. His ex-wife announced that she was leaving, which she did, and he stayed to care for their son. *Id.* The following day, the police interviewed him and arrested him for battery. *Id.* The Individual asserted that he paid bail, but the charges were later dismissed. *Id.* at 23–24.

Finally, regarding the Individual's illicit drug use, in his response to the LOI, the Individual admitted that he has used marijuana in the past, claiming he used it to help him sleep or relax in the evening. Ex. 5 at 1. He testified at the hearing that his last usage was approximately 2016, although he had stated to the OPM investigator that his last use was 2019. *Id.*

V. ANALYSIS

A. Guideline F

The LSO raised security concerns under Guideline F, based on the Individual's financial indebtedness and failure to file his federal and state tax returns. Conditions the Individual could meet to 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.

Adjudicative Guidelines at ¶ 20. Subparagraph (f) does not apply in this case, because the LSO is not alleging that the Individual showed any unexpected affluence. Regarding subparagraph (a), the Individual's debts were all outstanding on the date of the credit report, April 27, 2021, and the Individual testified that he has not subsequently made any payments on the debts. Ex. 6. Thus, the behavior is not so remote in time to satisfy subparagraph (a) above, nor is there any indication that

the behavior will not recur. Regarding subparagraph (b), the Individual testified that because of his separation and his excessive alimony and child support, he had to disregard all of his outstanding obligations. However, his separation occurred in 2018 and his alimony and child support were subsequently significantly reduced.⁵ The Individual testified that he did not pay the debts with the lesser balances of \$285 and \$228 because he had no extra funds to pay those debts. However, he did not contact the debtors to attempt to resolve the obligations. He also testified that he did not believe he should resolve the charged-off obligations because it would result in “double-dipping” by the creditor. However, the unwillingness to satisfy his debts, even if he erroneously believes he is no longer responsible for them, shows an unwillingness to abide by rules and regulations.

Concerning subparagraphs (c) and (d), the Individual did not present any evidence that he has engaged in financial counseling, nor has he made any effort to resolve the outstanding debts. As to subparagraph (e), the Individual did claim that the \$228 debt was his ex-wife’s responsibility as per the separation agreement, but he did not provide any evidence to support this claim.⁶ As to the other outstanding debts, the Individual did not disavow responsibility for the debts. Finally, as to subparagraph (g), the Individual has outstanding business and personal tax returns from 2017 and outstanding business tax returns from 2018. He testified that he has not filed any of these returns because he does not have the funds to pay the taxes. The Individual’s lack of funds does not excuse his failure to file the returns and negotiate with the taxing authorities for a payment plan.

For the reasons listed above, I cannot find that the Individual has mitigated the concerns raised by the LSO under Guideline F.

B. Guideline J

The LSO properly raised security concerns under Guideline J, based on the charges made against the Individual as well as his pattern of criminal behavior. Conditions the Individual could meet to mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance

⁵ According to the Individual’s and his ex-wife’s testimony, the alimony and child support began at \$4,000 and was reduced to \$1,200. Tr. at 21-23, 54.

⁶ The Individual was given the opportunity to submit the separation agreement into evidence following the hearing, but he did not do so.

with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32. Concerning subparagraph (a), the Individual's most recent criminal charge is from 2019, three years prior to the hearing. A single criminal charge may be mitigated by the passage of three years, but when I review the entire record, there are additional criminal charges over a significant period, showing a pattern of criminal behavior. Taken together, these charges are not so remote in time to warrant mitigation under subparagraph (a). There is no evidence that the behavior happened under unusual circumstances or is unlikely to recur. He admitted that he had committed the underlying behavior that led to the restraining orders and battery charges – except for the 2018 battery charge, which he claims never occurred – but downplayed the severity of his actions. These criminal charges concern his behavior with his ex-wife, and he continues to interact with her due to their shared child.

I did not find either the Individual's or his ex-wife's testimony to be credible regarding the circumstances of his criminal behavior. The Individual asserted that most of the domestic incidents cited by the LSO were false or exaggerated, but his explanations were inconsistent at times. In addition, the ex-wife could not recall the details surrounding the incidents that resulted in her requesting the restraining orders, but none of these events occurred so far in the past as to have so completely faded from memory.

The Individual testified that he did not remember the 2015 charge of violating the labor code and his business license remains in good standing. In addition, he claimed there were many businesses in his state by the same name as his company. But the Individual's claimed ignorance of the charge is insufficient to mitigate the concern. The charge appears under his name on the criminal information found by the OPM and the Individual has not submitted any information, other than his claims that his business license remains in good standing and there are numerous businesses with the same name as his company, that the information found by the OPM was incorrect. Further, the Individual's other criminal charges show a pattern of behavior that shows that the Individual lacks the ability or willingness to comply with laws, rules, and regulations, a necessity for holding a security clearance.

Therefore, for all the reasons stated above, I find that the Individual has not mitigated the Guideline J concerns.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines F and J 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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