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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: September 30, 2022) Case No.: PSH-22-0139
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Issued: January 20, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, 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 applied to a job that requires him to hold a security clearance. To begin the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) on April 19, 2022. Exhibit (Ex.) 7. In the QNSP, the Individual indicated that he received a bachelor’s degree from a university in 1997. *Id.* at 9. He also indicated that he had not had any “bills or debts turned over to a collection agency” in the last seven years. *Id.* at 24. As part of the clearance investigation, the Individual was subject to an Enhanced Subject Interview (ESI) conducted by a Defense Counterintelligence and Security Agency investigator (DCSA investigator) in May 2022. The investigation did not corroborate the Individual’s assertion that he had received a diploma from the stated university. Ex. 8 at 44-45. Further, a copy of the Individual’s credit report was obtained in April 2022, which revealed that four separate debts were assigned to collections between the years of 2018 and 2021. Ex. 6. Accordingly, the Local Security Office (LSO) instructed the Individual to complete a Letter of Interrogatory (LOI), which the Individual signed and submitted in June 2022. Ex. 5.

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.

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Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual 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 raised security concerns under Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 1. 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 clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and did not submit any exhibits. The DOE Counsel submitted eight exhibits marked as Exhibits 1 through 8.

II. Notification Letter and Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E of the Adjudicative Guidelines. Ex. 1.

Under Guideline E, “[c]onduct involving questionable judgement, 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. The “[r]efusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination[]” may raise concerns regarding “an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” *Id.* at ¶ 15(b). Of particular concern is the “[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations” or “determine national security eligibility or trustworthiness.” *Id.* ¶ 16(a). “Deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator” is also of particular concern. *Id.* ¶ 16(b).

Regarding the Guideline E allegations, the LSO alleged that the Individual stated in his QNSP that he obtained a bachelor’s degree from a university in May 1997, and that during the ESI, the Individual indicated that “he was certain he completed his degree [in his chosen major] and that he obtained it in the late 1990s.” Ex. 1 at 1. However, the information gathered from the university revealed that the Individual completed a total of three credit hours in 1994 and six credit hours in 1996. *Id.* Although he stated in the LOI that he believed he had enough credit hours to obtain a degree, he also stated that “he did not have any documentation to support his claim that he had in fact obtained a degree” and should have told the DCSA “investigator that he was not fully aware of whether he obtained a degree.” *Id.*

The LSO also alleged that the Individual indicated in his QNSP “that in the last seven (7) years, he has not had any bills or debts turned over to a collection agency.” *Id.* The investigation, however, revealed that the Individual had four accounts assigned to collections: two different medical accounts in September 2018 and March 2020, a mobile telephone service account in January 2019, and a fourth account in August 2021. *Id.* Based on the foregoing, the LSO’s invocation of security concerns under Guideline E is justified.

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 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).

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 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.* § 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 and Hearing Testimony

The Office of Personnel Management (OPM) report, which documents the results of the clearance investigation, states that information obtained from the university registrar indicates that the Individual attended the university in question in the fall of 1994, completing three credit hours, and the spring of 1995, completing six credit hours. Ex. 8 at 44. The OPM report also indicates that the Individual told the DCSA investigator during the ESI that he “is certain [that] he completed his degree” in the late 1990s, but that “[h]e did have remaining financial obligations with the school[.]” *Id.* at 42. The Individual also told the DCSA investigator that “[i]t was not his intention to be misleading.” *Id.*

In the LOI and in his hearing testimony, in an effort to explain the matter, the Individual stated that the university from which he believed he obtained a degree held his transcripts due to unpaid sums of money, and accordingly, he “had had no idea of [the] hours or degree [he] obtained.” Ex. 5 at 1; Tr. at 20, 29. He stated in his LOI, and confirmed in his testimony, that he had transferred course credit hours from a community college, and because so much time had passed, “[he] just assumed that [he] had enough hours to obtain [his] degree[.]” Ex. 5 at 1; Tr. at 20. The Individual

testified that he completed approximately twenty credit hours at the community college, which was in addition to the hours he completed at the university in question, and accordingly, he questioned the accuracy of credit hours the LSO alleged he completed in the SSC. Ex. 5 at 1; Tr. at 22, 29. He admitted that, at the time he completed the QNSP, he was not sure whether he received a degree, and he testified that, in hindsight, he should have indicated that he had not received a degree. Tr. at 22-23. At the hearing, the Individual could not articulate why he indicated that he had received a degree despite his uncertainty. *Id.* at 23. The Individual indicated that he was not in possession of any documents that could corroborate the assertion that he had received a degree. *Id.* at 20-21, 32. He testified that on his resume he only states that he attended the university, omitting any reference to graduating from said institution. *Id.* at 21. He also confirmed that he did not participate in any kind of commencement ceremony. *Id.* at 22-23.

At the hearing, the Individual initially denied that he had intended to misrepresent his education on the QNSP but later he acknowledged that “[he] could have misrepresented that [he] had a degree by checking that [he] did when [he] . . . [was not] . . . sure how many total . . . credit hours [he] had.” *Id.* at 24. He later testified that he did not intentionally misrepresent the facts. *Id.*

The credit report that was obtained in conjunction with the investigation revealed that the account that was assigned to collections in August 2021 was closed with an unpaid balance of over \$800. Ex. 6 at 2. The mobile telephone account that was assigned to collections in January 2019 was closed with a zero balance, as the amount had been settled for less than the full balance later the same year. *Id.* The credit report also indicated that the medical debts that were assigned to collections in March 2020 and September 2018 were paid in collection in late 2020 and late 2018, respectively. *Id.* at 3. Regarding the medical debts on the credit report, the Individual testified that his minor children’s “mother had taken them to the doctor and [he did not] know anything about it[.]” Tr. at 13. He indicated that the children were covered by his medical insurance at the time, and, accordingly, he was responsible for the outstanding amount. *Id.*

Regarding the debts, the Individual indicated in his LOI that, “to [his] knowledge[,] they were paid on time[.]” and, accordingly, he did not know that the debts had been placed in collection. Ex. 5 at 2. He denied any “deliberate attempt to mislead or conceal” information pertaining to the debts. *Id.* During his testimony, the Individual stated that he was not aware that the mobile telephone account had been assigned to collections in January 2019, because “it was paid off” when he changed service providers. Tr. at 12. He stated that the first service provider had retained physical possession of his mobile telephone, which it did not release to him until he satisfied the outstanding amount owed. *Id.* The Individual indicated that he satisfied the outstanding amount years prior to completing the QNSP, and accordingly, he “[did not] think it was on [his] credit report.” *Id.* at 12, 14. He confirmed during his testimony that he did not have any records to show that the account had been satisfied but stated that he could obtain these documents. *Id.* at 13. He also testified that the online credit service he uses to monitor his credit does not contain the debts the LSO was “looking at” and that he is “pretty sure” that he satisfied the outstanding amount on the mobile telephone account by paying the collection agency. *Id.* at 14-15, 31.

Regarding the debt that went to collections in August 2021, the Individual explained that it pertained to a specific medical test that had previously been covered by his insurance. *Id.* at 12, 31. He stated that he had not been advised of the cost of the test before it was conducted, and had

he known, he would have refused the medical test. *Id.* at 12, 15. Accordingly, upon his receipt of the bill some weeks later, he endeavored to dispute the cost of the test. *Id.* Although the Individual could not provide an approximate date for when he first disputed the bill, he testified that he ultimately paid the bill in 2018 or 2019 and indicated that he would endeavor to retrieve a copy of the receipt after the hearing.² *Id.* at 15, 31. Regarding this debt, he also stated that he “[did not] think it was on [his] credit report.” *Id.* at 12. He denied any attempt to hide information regarding the aforementioned collection accounts and admitted that he had not reviewed any documents pertaining to such matters prior to completing his QNSP. *Id.* at 19. He stated that he “had no idea what [he] was getting into as far as what [he] was going to fill out[.]” *Id.*

The Individual testified that he can ultimately be trusted with classified material, as the indication that he had received a college degree was just “careless on [his] part.” *Id.* at 25. He recognized the fact that “[he] should have [done his] research[.]” *Id.* The Individual testified that he has no reason to be dishonest or untruthful. *Id.* at 27. He indicated in his testimony that he was “being as honest as [he] could be” while completing the QNSP and apologized if any of the information he provided was misleading. *Id.* at 35.

V. Analysis

As noted, Guideline E concerns “[c]onduct involving questionable judgement, 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 mitigate Guideline E concerns include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;

² The Individual failed to provide any exhibits prior to OHA’s receipt of the hearing transcript and close of the record.

- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations

Id. at ¶ 17.

A QNSP is an important tool in establishing whether an individual is fit to hold a security clearance. Any individual “seeking a security clearance should be well aware of the need for complete, honest and candid answers to DOE questions. Therefore[,] when completing a QNSP such an individual should err on the side of providing too much rather than too little information.” *Personnel Security Hearing*, OHA Case No. TSO-0023 at 30-31 (2003).

With regard to the Individual’s claim that he graduated from a university, the Individual failed to provide any documentation corroborating his claim that he received a university degree. Instead, his testimony consisted of self-serving and arguably inconsistent statements that strongly suggest that he knew that he was providing inaccurate information on the QNSP. For example, although he denied providing misleading information on the QNSP, he testified that he does not indicate on his resume that he graduated from the institution: he simply lists that he attended the university. Tr. at 20-21. This information, taken with his subsequent assertion that he should have “probably just put that [he] did not[.]” have a diploma from the institution, strongly suggests the Individual knew he was providing inaccurate information on the QNSP.

With regard to the Individual’s false claim that he had no debts turned over to a collection agency, he testified that he “[does not] look at [his] credit report often[.]” and stated in his LOI that he did not know the “debts were in collections and to [his] knowledge they were paid on time.” Ex. 5 at 2. However, he also testified that he was “pretty sure” that he had satisfied the debt that was assigned to collections in January 2019 by paying the collection agency. Tr. at 14. This testimony seemingly contradicts the Individual’s assertion that his debts were paid in a timely manner and strongly suggests that the Individual knew that at least one debt was assigned to collection within the past seven years.

Turning to whether mitigating factors (a), (b), or (d) apply in this case, I have no evidence before me that the Individual made prompt, good-faith efforts to correct the alleged omissions and falsification, that the alleged omission was pursuant to advice from legal counsel, or that the Individual has engaged in counseling to change his behavior to alleviate circumstances that contributed to this behavior. I also cannot conclude that the Individual has taken any positive steps to alleviate the circumstances that contributed to his omissions and falsification pursuant to mitigating factor (d), as there is no such evidence before me, and further, the Individual’s testimony, as demonstrated in my analysis in the preceding paragraphs, causes some concern that

he continues to exhibit dishonest behavior. Further, with regard to mitigating factor (c), the alleged omissions and falsifications occurred in the recent past, there was more than one instance of false information on the same QNSP, and the Individual later failed to correct the inaccuracies when questioned by the DCSA investigator as to whether he obtained a degree from the university in question. As such, I cannot conclude that the alleged omissions and falsifications were minor or occurred under such unique circumstances that such omissions or falsifications are unlikely to recur. With regard to mitigating factors (e) and (f), I do not have any evidence that the Individual took any measures to reduce or eliminate vulnerability to exploitation, manipulation, or duress, or that the information regarding the alleged omissions and falsification came from a source of questionable reliability. Lastly, there is no allegation before me that the Individual was involved in any criminal activity, making the mitigating factor (g) inapplicable.

Because the Individual has not satisfied any of the mitigating conditions under Guideline E, I find that the security concerns raised under Guideline E in the SSC have not been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E 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 SSC. 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.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals