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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: January 10, 2023) Case No.: PSH-23-0044
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Issued: May 17, 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 is employed with a DOE Contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in July 2022. Exhibit (Ex.) 8. In the QNSP, the Individual answered questions pertaining to his financial state, and accordingly, he disclosed one delinquent cellular phone account and the fact that he had not satisfied his federal tax obligations for tax year 2013. *Id.* at 35–38. In conjunction with the clearance process, the Local Security Office (LSO) obtained a copy of the Individual's credit report in August 2022. Ex. 5. Following that, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an investigator in August 2022, during which he was asked about a number of outstanding financial obligations. Ex. 9 at 60–61. As questions regarding the delinquent accounts and taxes remained, the LSO asked the Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted in October 2022. Ex. 7.

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.

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 for access authorization in connection with his employment. 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 Concerns) 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. *See* Transcript of Hearing, Case No. PSH-23-0044 (hereinafter cited as "Tr."). He also submitted seven exhibits, marked as Exhibits A through G. The DOE Counsel submitted nine exhibits marked as Exhibits 1 through 9.

II. Notification Letter and the 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 Guideline F (Financial Considerations). Guideline F provides that 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are an "[i]nability to satisfy debts[.]" and a "[f]ailure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required[.]" *Id.* at ¶ 19(a) and (f). With respect to Guideline F, the LSO alleged that: 1) the Individual has unpaid charge off accounts totaling approximately \$2,418; 2) the Individual has unpaid collection accounts totaling approximately \$9,395; and 3) the Individual owes approximately \$29,738 in federal taxes for the tax years 2013 and 2014. Ex. 1 at 1.

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 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. *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

In his July 2022 QNSP, the Individual disclosed that he had failed to pay federal income taxes for tax year 2013 and estimated that he owed approximately \$20,000 for that year. Ex. 8 at 35. He did not indicate that he owed outstanding federal income taxes for tax year 2014 in the QNSP. *Id.* at 35–36. In his LOI, he explained that he owes a total of \$29,000 in unpaid federal income taxes and that although the government retains his refunds, he “can never get ahead on this” matter because the “penalties and fees keep adding to [his] debt.”² Ex. 7 at 6. He stated that he would contact “a tax relief agency to see what [his] options are.” *Id.*

Although the Individual also indicated in the QNSP that he had a delinquent cellular phone bill for a personal cellular phone, in the approximate amount of \$400, he was confronted with several other delinquent accounts during the ESI. Ex. 8 at 38–39; Ex. 9 at 60–61. Regarding this particular cellular phone account, the investigator noted that the Individual had provided a discrepant amount owed, and that the current balance was \$457. Ex. 9 at 60; Ex. 5 at 4. The Individual told the investigator that he was “in the process of clearing this account and paying it off.” Ex. 9 at 60. The Individual was also asked about several accounts in collections in the amounts of \$3,441, \$921, \$798, and \$598, which he indicated corresponded to personal credit cards. *Id.*; Ex. 5 at 3–4. The Individual told the investigator that a second past due cellular phone account, totaling approximately \$1,380, was an account on which the Individual cosigned for his current girlfriend. Ex. 9 at 60; Ex. 5 at 3. The Individual told the investigator that he had “no knowledge” of several additional accounts in collections for the approximate amounts of \$899,³ \$719, and \$2,600. Ex. 9 at 60; Ex. 5 at 3–5.

The Individual expressed to the investigator his intention to satisfy his outstanding financial obligations and explained that the delinquencies were the result of periods of unemployment. Ex. 9 at 60–61. He explained that “[d]uring those times[,] he only had enough to pay for rent and daily living expenses, so he had to pay for that first, causing these accounts to be late or go to collections.” *Id.* at 61.

² The Individual confirmed in his testimony that the IRS has been retaining his tax refunds to offset the amount owed. Tr. at 22–23. The Individual also testified that he had not made any further attempts to pay off the remainder of his tax obligations, as he was under the assumption “that by keeping [his] refund[,]” he was “paying off [his] debt to [the IRS].” *Id.* at 27.

³ During the hearing, the Individual indicated that he believed the debt approximating \$899 to be an outstanding balance for a credit card debt that he had personally incurred. Tr. at 16.

In the October 2022 LOI, the Individual indicated that he could not afford to pay the outstanding obligations that were listed therein but expressed his desire to satisfy the outstanding obligations when he could afford to and that he would contact a debt consolidation company to resolve these matters. Ex. 7 at 1–5. In the LOI, the Individual also disclosed that the debt amounting \$598 was actually incurred by his girlfriend and was an account on which he cosigned. *Id.* at 4. Regarding the debts he stated that his girlfriend incurred, he indicated that he would direct her to satisfy the outstanding obligations. *Id.* at 1, 4. The Individual also indicated that he had paid the debt totaling \$457 and stated that he was “disput[ing] this charge.”⁴ *Id.* at 4; Tr. at 25–26.

The Individual testified during the hearing that other than the debt totaling \$457, he had not yet made any progress resolving the matter of the aforementioned outstanding charge off and collection accounts. Tr. at 16, 19, 24, 46–47. Further, regarding the accounts totaling \$598 and \$1,380 that he had cosigned for his girlfriend, he indicated that he has been unsuccessful in convincing her to satisfy those outstanding obligations.⁵ *Id.* at 16–17, 24–25. The Individual also testified that he has been researching various debt relief services to help him consolidate his credit card debt so that he can satisfy his outstanding obligations within 48 months. *Id.* at 20–21. He had not yet engaged the services of a debt relief agency, as he was waiting to achieve some clarity and establish a payment plan for his outstanding federal income tax obligations so that he may make simultaneous payments on the consolidated debts and taxes. *Id.* at 21, 30. He estimated that he would be able to make a monthly payment of \$400 to satisfy his outstanding debts once they have been consolidated. *Id.* at 45–46. The Individual engaged the services of a tax service in October 2022 to assist him with establishing a payment plan with the Internal Revenue Service (IRS).⁶ Exs. A, B, C; Tr. at 21. At the time of the hearing, the Individual could not provide any further information regarding his progress toward establishing a payment plan with the IRS. Tr. at 21–22; Ex. B. The Individual estimated that he could earmark approximately \$300 to \$400 every month to satisfy his outstanding obligations to the IRS once he establishes a payment plan. Tr. at 29.

Regarding his overall financial health, the Individual confirmed during the ESI, in the LOI, and at the hearing that he filed for bankruptcy in 2013. Ex. 6; Ex. 9 at 60; Tr. at 13; Ex. 7 at 5. The Individual testified that his seemingly recurring financial issues stem from bouts of unemployment. Tr. at 13. He explained that in his line of work, it is common to secure employment under “a three-to six-month contract” followed by a period of unemployment. *Id.* at 14, 48. The Individual explained that although his last position was permanent, the company was not “doing so well, and . . . laid a bunch of people off, including [him].” *Id.* at 14. The Individual estimated that in the last decade, he had been laid off approximately five times and that his bouts of unemployment were

⁴ After the hearing and before OHA’s receipt of the transcript, the Individual submitted a bank statement indicating that this debt, totaling \$457.89, was actually satisfied on or about May 3, 2023. Ex. E. All exhibits submitted after hearing were admitted into the record without objection.

⁵ The Individual explained that he knew his girlfriend had limited means but cosigned for her on these two occasions in an effort to assist her. Tr. at 18–19. He also indicated that he occasionally provides her with \$800 in financial assistance. *Id.* at 18–19. He did confirm that if asked, he would not cosign for his girlfriend again. *Id.* at 19, 39–40.

⁶ The Individual contacted a tax service the same month he received a letter indicating that his outstanding federal income taxes had been sent to a collection company. Ex. G; Tr. at 22–23.

unpredictable when employers promised permanent positions that would ultimately end when the contract would end. *Id.* at 15. In later testimony, the Individual indicated that after his 2013 layoff triggered his bankruptcy, he secured new employment in 2015, and he has held two additional positions thereafter, including his current position. *Id.* at 47–48. He approximated that he had been unemployed for a total of one year since 2013. *Id.* at 48. He confirmed in his testimony that he had been, for the most part, steadily employed since 2017 and that since then, he had been earning approximately the same amount of income. *Id.* at 35.

In term of his current ability to satisfy his outstanding obligations, the Individual was asked whether he has a retirement account from which he can withdraw funds, and although he testified that he does have a retirement account, he does not know whether he can withdraw funds. *Id.* at 30–31; Ex. F. Further, he indicated that he was given \$15,000 from car insurance and maintains it in an account. *Id.* at 47, Ex. D. The Individual also estimated that he has an extra \$500 left over every month after he satisfies all costs associated with necessities like rent, food, and transportation. Tr. at 39. He testified that he tries to save this leftover amount. *Id.* at 40.

V. Analysis

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline F if:

- 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.

As the Individual testified, he has not resolved any of the delinquent debts, save for one previously delinquent cellular phone account in the amount of \$457. Further, although the Individual has begun addressing the matter of his outstanding federal income taxes for tax years 2013 and 2014, this issue has not been resolved. The Individual stated his intention to consolidate his debts in the October 2022 LOI, but at the time of the hearing, he had not yet made any contact with any debt consolidation service, indicating that he would prefer to address the matter of his outstanding debts and income taxes at the same time. Accordingly, the Individual's plans regarding how he will actually satisfy these outstanding obligations remain vague, and the concerns stated in the SSC remain unresolved and unmitigated.

As an initial matter, I cannot conclude that 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. The Individual's outstanding obligations are continuing, involve thousands of dollars, and have been an issue for years. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (a).

The Individual testified that his financial concerns began when he lost his employment in 2013, causing him to file for bankruptcy, and that since 2013, he has held three other positions. While the circumstances that resulted from his loss of employment in 2013 were arguably not within his control, I cannot conclude that the Individual acted responsibly under the circumstances. As an initial matter, the Individual testified that in his line of work, it is common to secure employment under "a three-to six-month contract" followed by a period of unemployment. Accordingly, these cycles of employment and unemployment could have been anticipated. Additionally, the Individual knew that he had failed to satisfy his federal income taxes for tax years 2013 and 2014 but failed to take any action until October 2022, and at the time of the hearing, the Individual had not yet contacted a debt consolidation company, as he indicated he would in his LOI. Further, the Individual has not utilized the \$15,000 he received from insurance to at least begin the process of satisfying his outstanding obligations. Lastly, although the Individual has indicated that two of the outstanding debts were incurred by his girlfriend, he is still responsible for the debt, as he acted as a cosigner. Accordingly, I cannot conclude that the Individual has mitigated the concerns pursuant to mitigating factor (b).

Although the Individual has engaged a tax service to resolve the matter of his unpaid taxes, there is no indication that a payment plan has been established with the IRS. Further, there is nothing in the record that indicates the Individual has made contact with and retained a debt consolidation service. Accordingly, there is no evidence before me that suggests the stated concerns are being resolved or under control, and therefore, mitigating factor (c) is not applicable. Additionally, there is no indication that the Individual has initiated a payment plan or is adhering to good-faith efforts to repay creditors, and therefore, he has not mitigated the concerns pursuant to mitigating factor (d). I also cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (e) because there is no indication before me that the Individual has a reasonable basis to dispute any of the aforementioned outstanding obligations.

Mitigating factor (f) is not applicable, as there is no allegation of affluence from any source. Lastly, although the Individual has engaged a tax service to resolve the matter of his delinquent federal income taxes, I have no evidence before me that the Individual has made arrangements with the IRS, and as he has not started making any payments, I have no information regarding compliance with a payment arrangement. Accordingly, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factor (g).

VI. Conclusion

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

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals