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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: April 14, 2023) Case No.: PSH-23-0074
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Issued: July 20, 2023

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “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 Department of Health and Human Services’ (HHS) National Health Service Corps’ (NHSC) has maintained a scholarship program under which individuals could receive scholarships to fund their health-related education in exchange for their promise to provide healthcare services to underserved communities. On March 12, 2007, and February 2, 2011, the Individual signed contracts with the NHSC (the Contracts). Ex. 6 at 1–4. Under the Contracts, the Individual received scholarships to pay for her medical education. In return for these scholarships, the Individual agreed to provide primary health services for a period of obligated service equal to one year for each year of scholarship support received, or two years, whichever is greater. Ex. 6 at 1. The Contracts further allowed the Individual to defer this service obligation while she was completing a residency . . .” Ex. 6 at 1. However, the Contracts further provided that if the Individual failed “to begin or complete the period of obligated service incurred under this contract for any reason . . . or fail[ed] to complete a required residency . . . the United States shall be entitled to recover an amount equal to three times the scholarship funds awarded, plus interest . . .” Ex. 6 at 2. The Contracts further provide: “The damages the United States is entitled to recover shall be

¹ Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

paid within one year of the date the Secretary determines that the applicant has failed to begin or complete the period of obligated service.” Ex. 6 at 2.

On September 6, 2011, the Individual was awarded a Doctor of Osteopathic Medicine Degree. Ex. F at 1. In September 2016, the Individual ended her employment with a Tribal Nation’s Health Service Authority’s Family Practice Residency Program. Ex. 3 at 28–29. In her Questionnaire for National Security Positions (QNSP) the Individual provided the following reason for leaving this position: “Family and medical reasons. Family needed me home.” Ex. 3 at 29. The QNSP further indicates that the Individual worked steadily as a contracted “locum tenens physician” on a full-time status from September 2016 to April 2020 in several states.² Ex. 3 at 25-27.

On October 14, 2017, the HHS’s Debt Collection Center (DCC) sent the Individual a form letter (DCC Letter) stating in pertinent part: “THIS IS TO NOTIFY YOU THAT YOU WERE PLACED IN DEFAULT OF THE CONDITIONS OF YOUR NATIONAL HEALTH SERVICE CORPS AWARD.” Ex. 13 at 18 (emphasis in the original). The DCC Letter further indicated that the Individual’s date of default was September 5, 2016, and that the debt was due on September 5, 2017. Ex. 13 at 19. The DCC Letter further informed the Individual that she owed HHS \$1,013,571.06 (consisting of \$ 495,032 in interest and \$518,538 in principal) and that interest and administrative fees would continue to accrue on her past due balance. Ex. 13 at 18. The DCC Letter also included a ledger showing the date and amounts of each payment made on the Individual’s behalf by the NHSC. Ex. 13 at 19. The ledger indicated that the NHSC distributed a total of \$172,846 to pay for the Individual’s medical education.³ Ex. 13 at 19.

On January 6, 2022, the Individual submitted a QNSP to the Local Security Office (LSO). Ex. 4 at 1. The QNSP asked several questions to determine whether the Individual was delinquent on any of her financial responsibilities, specifically, whether she: (1) was “currently delinquent on any Federal debt,” (2) had been “over 120 days delinquent on any debt not previously entered,” and (3) was “currently over 120 days delinquent on any debt.” Ex. 4 at 52–53. The Individual responded to these questions by checking boxes indicating that her answer to each of these questions was “no.” Ex. 4 at 53. In this QNSP the Individual also reported “Due to COVID limitations, my 2019 and 2020 taxes are going to be filed this year.” Ex. 4 at 52.

After the Individual’s January 6, 2022, QNSP was received by the LSO, the Defense Counterintelligence and Security Agency (DCSA), initiated a background investigation of the Individual. As part of this background investigation, the DCSA obtained a credit report on January 12, 2022, indicating that the Individual had a delinquent Federal debt of \$1,246,959, that she owed to the HHS. Ex. 3 at 83. The credit report indicated that this debt was over 120 days past due. Ex. 3 at 83.

² According to the Indeed website: “A locum doctor, or locum tenens physician, is a medical professional who substitutes for a practice's regular doctor for a period of time. These doctors might temporarily replace physicians who are ill, on sabbatical or traveling. Also, when hospitals or clinics experience higher traffic than their current staff can manage, facility administrators might request additional support from locum doctors.” [What Is a Locum Doctor? Definition, Benefits and Career Path | Indeed.com](#).

³ \$172,846 multiplied by three equals \$518,538, the amount cited as the amount of principle due by the DCC Letter. Ex. 13 at 18.

On January 26, 2022, a DCSA investigator (the Investigator) conducted an Enhanced Subject Interview (ESI) of the Individual. Ex. 3 at 62. The Report of Investigation (ROI) indicates that, during the ESI, the Investigator asked the Individual if the financial information that she had provided in the QNSP was accurate and that the Individual had stated that it was. Ex. 3 at 64. The ROI further indicates that the Individual was then “confronted” with information indicating that she had a federal debt of \$1,246,959, owed to the HHS, that became delinquent in 2017. Ex. 3 at 64–65. The ROI reported that the Individual responded to being confronted with the debt by disputing the amount of that debt, claiming that although she had been provided with a scholarship that would have allowed her to draw up to \$1,246,959 from a scholarship account, she had only utilized approximately \$240,000 of that account. Ex. 3 at 65. The Individual also claimed that she had attempted to repay her debt but could not because HHS would not accept her payments. Ex. 3 at 65. The Individual further indicated her readiness and willingness to pay this debt. Ex. 3 at 65. The ROI further states: “[The Individual] was given five business days to provide financial documentation and was unable to provide any documentation regarding these accounts.” Ex. 3 at 65.

After the Individual failed to provide the requested documentation, the Investigator contacted the Individual again on February 15, 2022. Ex. 3 at 67. The Individual informed the Investigator that she last contacted the HHS about the status of her scholarship and its delinquency on June 6, 2021. Ex. 3 at 67. The Investigator confirmed that HHS had indeed received the Individual’s June 6, 2021, inquiry but had not yet provided any status updates or responses to the Individual. Ex. 3 at 67.

After receiving the ROI, the LSO issued a Letter of Interrogatory (LOI) to the Individual on May 11, 2022, inquiring about her debt to HHS and her failure to file returns for tax years 2019 and 2020. Ex. 7 at 1. The Individual responded to the LOI on May 15, 2022, indicating that she had filed her tax returns for tax years 2019 and 2020 on April 3, 2022, and April 9, 2022. Ex. 7 at 5. The Individual responded to the LOI’s questions concerning her debt to HHS by claiming that she had experienced cardiac issues before her second heart surgery which caused her to leave her residency program, noting that she had undergone her second open heart surgery in November 2017. Ex. 7 at 5. She further claimed that her heart condition had caused her to default on her scholarship, since her heart condition would not allow her to complete her residency. Ex. 7 at 5. She also indicated that she was trying to work with HHS to have her default status re-evaluated or to allow her to meet her service obligation through government or military service. Ex. 7 at 6. The Individual also admitted that the HHS scholarships had paid for her medical school and associated fees. Ex. 7 at 6. She contended that her scholarship was never a loan, but rather a “service obligation” where she was expected to provide medical services rather than make a monetary repayment. Ex. 7 at 6.

On October 25, 2022, the LSO wrote the Individual a letter, noting that the Individual had informed the LSO that her request for a re-evaluation had been denied by HHS. Ex. 10 at 1. The letter further stated: “On October 13, 2022, [a letter] was sent to you to request documentation and verification of any additional steps taken by you to resolve your debt since your re-evaluation was denied. You were given five (5) days to respond. As of the date of this correspondence, no response has been received.” Ex. 10 at 1. On October 27, 2022, the Individual responded to this letter by email providing copies of her state and Federal tax returns filed for tax years, 2019 and 2020. Ex.

11 at 2–6. In this email, she also stated that she had contacted HHS, and claimed “So far the amounts that the [HHS] representative could find regarding my contract were only \$36,103.00 and \$26,000.00.” The Individual further stated, “I know that my tuition was paid for by the scholarship program, so the original amount should be closer roughly to \$208,000 to \$300,000.” Ex. 11 at 1. She also stated that the HHS was going to consider her request for a waiver of her service obligation, noting that her waiver request might “take some time, [since] the process goes through the Secretary of Health’s office . . .” Ex. 10 at 1.

On November 4, 2022, the LSO issued a third LOI to the Individual requiring her to provide “Documentation that you have obtained thus far from [the NHSC] showing the amount you used from the scholarship program and the amount owed in repayment.” Ex. 12 at 1. The third LOI also required that the Individual: “explain in detail the definition of a waiver,” provide a copy of her waiver request, and explain why she would qualify for a waiver. Ex. 12 at 1. The Individual responded to this LOI on November 8, 2022, by contending that the HHS had informed her that it could only verify \$62,103 of her scholarship debt. Ex. 13 at 24. The Individual further claimed that she had requested that HHS further investigate her scholarship. Ex. 13 at 24. She further claimed that the HHS was considering her October 27, 2022, request for a waiver of her service obligation and claimed that she was gathering her medical records from several sources to document her disability. Ex. 13 at 24–25. The Individual also claimed that her service obligation was supposed to start on November 11, 2017, but she was unable to perform it because she had open heart surgery on November 15, 2017, which she stated was “where the problem with the scholarship going into default began.”⁴ Ex. 13 at 25. The Individual reiterated her contention that her medical condition prevented her from completing her residency, which caused her default on her service obligation. Ex. 13 at 25.

On November 17, 2022, the Individual updated this response by submitting copies of email correspondence between her and the HHS’s Debt Collection Service (DCS) in which a DCS official stated in pertinent part: “Please see attached for your initial default invoice dated October 14, 2017, which shows you received a total of \$172,846 in NHSC scholarship funds. Since you breached your NHSC SP contract (attached), you are liable for default damages.” Ex. 13 at 12. The Individual also submitted copies of the Contracts, a Personal Financial Statement (PFS) completed and signed by the Individual on November 11, 2022, and the DCC Letter. Ex. 13 at 14–22. The PFS indicates that the Individual had a monthly net salary of \$18,585. Ex. 13 at 20.

On December 6, 2022, the LSO issued a fourth LOI to the Individual asking a number of questions concerning her HHS Debt. The Individual responded to these questions on December 11, 2022. The LSO asked the Individual: “At what point did you default on your service requirements (i.e., on what date, and what portion(s) of your obligation did you fail to complete)? Ex. 14 at 1. The Individual responded by contending: that she had to leave her residency in the fall of September 2016, because her “heart began decompensating;” that she had to wait until November 2017 to have her heart repaired because of insurance issues; and that her medical inability to complete a residency prevents her from obtaining Board Certification and therefore prevents her from meeting her service obligation. Ex. 14 at 5.

⁴ The DCC Letter indicates that the Individual defaulted on September 6, 2016. Ex. 13 at 19.

The Individual was also asked if she had requested a leave of absence or a suspension of the service obligation due to her medical condition. Ex. 14 at 1. The Individual responded by stating:

I didn't even think about the NHSC program then I was discussing a Will and plans for a possible funeral with my heart surgeon; and trying to deal with the ACA to allow me to purchase health insurance. The only things on my mind were obtaining health insurance for a heart surgery and whether my family would be planning a funeral. Also, questions about what would be my outcome "if" I did survive and if I would have complications for the rest of my life.

Ex. 15 at 5. The Individual was also why she claimed she defaulted in November 2017, when the DCC indicated that she had defaulted on September 5, 2016, and to explain what happened in September 2016 that caused her to default. The Individual responded by stating: "The NHSC portal showed me Nov 1st 2017 as the start date and I sent that screenshot to your department. My heart started showing severe signs of decompensation around August 2016, and I had to pull out of residency." Ex. 15 at 5.

The fourth LOI also asked the Individual "Did you fail to disclose this federal debt because you thought it would risk your ability to obtain a security clearance?" Ex. 14 at 2. The Individual responded to this question by stating:

It was a service obligation from a scholarship. It asked about a debt. I wasn't notified of the debt before hand. I was busy trying to live. I really didn't care about anything else. I was planning a will and my family searching for a funeral plot. I didn't pay attention to much else. And then with the covid I was trying to rehabilitate my left side. Even now I am dealing with this brain perfusion problem and fell three times on the ice.

Ex. 15 at 6.

On December 12, 2022, the LSO issued a fifth LOI to the Individual requesting additional information concerning the details of the timelines for the Individual's NHSC Scholarship. Ex. 15 at 4-5. Later that day, the Individual responded by repeating her contentions that her medical conditions had prevented her from meeting her service obligation and that her medical and family issues had preoccupied her and kept her from obtaining a waiver from her service obligation. Ex. 15 at 1-4.

After receiving and reviewing this information, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded her request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual. Transcript of Hearing, Case No. PSH-23-0074 (hereinafter cited as "Tr."). The DOE Counsel submitted 15 exhibits marked as Exhibits 1 through 15. The Individual's attorney submitted the following 18 exhibits, marked as Exhibits A through R:

Exhibit A is a Power of Attorney designating the Individual's attorney as her counsel during the present proceeding.

Exhibit B consists of five personal references attesting to the Individual's good character and integrity (one of which was signed by two people) and a professional reference attesting to the Individual's good character, reliability, professionalism, and clinical skills.

Exhibit C is a copy of the Individual's *curriculum vita* (CV).

Exhibit D is a copy of records demonstrating the Individual's extensive volunteer medical work during the period beginning on August 31, 2019, and ending on April 23, 2023.

Exhibit E is an undated copy of a highly positive performance evaluation for the Individual.

Exhibit F consists of copies of the Individual's Doctor of Osteopathic Medicine diploma; a certificate indicating that she had successfully completed her Traditional Rotating Internship; and an unofficial academic transcript.

Exhibit G consists of: (1) a certificate indicating that the Individual became a Certified Medical Examiner for the Federal Motor Carrier Safety Administration on February 14, 2017; (2) an email indicating that the Individual was designated as an Aviation Medical Examiner by the Federal Aviation Administration on June 25, 2018; and (3) a document indicating that the Individual had received a pay raise for 2023 raising her salary to \$265,200.

Exhibit H is a certificate of completion for a "4 hour behavior modification class."

Exhibit I consists of the Individual's state and Federal tax returns for tax year 2021, indicating that she was due for a refund of \$1,908. Ex. I at 4.

Exhibit J consists of the Individual's state and Federal tax returns for tax year 2022.

Exhibit K is a copy of a state tax refund check for tax year 2019.

Exhibit L is a copy of a letter, dated May 18, 2023, from a state tax authority to the Individual confirming that the Individual had agreed to pay that state \$1, 233.37 for a debt owed to that state.

Exhibit M is a notice from the United States Department of Treasury (DOT) informing the Individual that, on May 26, 2023, it had applied her \$5,733 Federal tax refund to the outstanding debt she owed HHS.

Exhibit N consists of copies of the Contracts.

Exhibit O consists of a letter, dated November 17, 2022, from HHS to the Individual confirming that it had received her request for a waiver of her NHSC Scholarship default debt. The letter further informed the Individual that she would need to "submit all of the requested documentation listed in the enclosures." Ex. O at 2. Ex. O also consisted of an email message, dated May 18,

2023, from an HHS official informing her that it had received all of the documentation necessary to review her waiver request. Ex. O at 1.

Exhibit P is a letter, dated July 20, 2022, from the HHS to the Individual stating in pertinent part that it was denying her request for a suspension of her NHSC debt due to the lack of documentation. Ex. P at 1.

Exhibit Q is a Cardiology Outpatient Clinic Note dated February 21, 2019. It corroborates the Individual's assertions that she has a congenital heart problem which has required two surgeries in January 1999 and in November 2017. Ex. Q at 2–3. Exhibit Q also indicates that the Individual was reporting “a constellation of symptoms including decreased exercise tolerance, palpitations and chest discomfort” at the time of the examination. Ex. Q at 1.

Exhibit R is a Clinical Note generated by a November 24, 2021, office visit to the Individual's attending physician. Exhibit R indicates that the Individual was diagnosed with “nonsustained ventricular tachycardia.” Ex. R at 1.

The Summary of Security Concerns (SSC)

Attached to the Notification Letter was an SSC, in which the LSO raises security concerns under Adjudicative Guidelines, E (Personal Conduct) and F (Financial Considerations).

Under Adjudicative Guideline E, the LSO cites the Individual's failure to disclose her HHS debt in her QNSP and during the ESI. This information adequately justifies the LSO's invocation of Guideline E. Under Guideline E, “[c]onduct involving questionable judgment, 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security 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, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities” and “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an . . . investigator [or] security official . . . involved in making a recommendation relevant to a national security eligibility determination” Adjudicative Guidelines at ¶ 16(a)(b). Accordingly, the LSO's security concerns under Guideline E are justified.

Under Adjudicative Guideline F, the LSO cites the Individual's delinquent Federal debt and failure to file her Federal and state tax returns for tax years 2019, 2020, and 2021, in a timely manner. Guideline F (Financial Considerations) provides that an individual's 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 Guideline F at ¶ 18. Guideline F specifically states that “an inability to satisfy debts,” an “unwillingness to satisfy debts,” “a history of not meeting financial obligations,” and “failure to file . . . annual Federal, state or local income tax returns or failure to

pay annual Federal, state, or local tax as required” . . . “are among those conditions that could raise a security concern and be disqualifying under Guideline F.” Adjudicative Guideline at ¶ 19(a)(b)(c), and (f). Accordingly, the LSO’s security concerns under Guideline F are justified.

II. 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 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 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.

III. Hearing Testimony

At the hearing, the Individual testified that the Contracts required that she complete a residency program in a primary care field and then practice medicine for several years in a “rural or urban environment.” Tr. at 23. She then testified: “I did my duty.” Tr. at 24. The Individual further testified: “I really didn’t remember the contract except for I just remembered what I was supposed to do, and it was hung onto.” Tr. at 24. She testified that the Contracts require that she be board certified in family practice or internal medicine in order to complete her service obligation and that obtaining board certification would require the completion of a residency. Tr. at 37, 96–97. The Individual testified that she was born with a congenital heart condition, which required her to undergo open-heart surgery in 1999 and 2017. Tr. at 24. The Individual testified that her heart condition and her second open heart surgery in 2017 “pushed me out of my residency program.” Tr. at 24–25. The Individual testified that she has “still not recovered” from her second open heart surgery. Tr. at 25. She claimed that her prolonged recovery from her surgery was further complicated by her contracting COVID. Tr. at 26. The Individual testified that she continues to experience complications from her heart condition and COVID infection, including, losses of consciousness, difficulty walking, and a loss of grip strength. Tr. at 27, 30-31. She ended up on medical disability until the end of 2021. Tr. at 27. These medical conditions, she testified, prevent her from being able to withstand the physical rigors of a residency program. Tr. at 26, 37, 44. The Individual admitted that she had not informed the NHSC about her medical issues while she was having them, claiming her focus was upon her medical issues and trying to obtain a new residency.

Tr. at 31-33. The Individual also admitted that she failed to inform the NHSC when she resigned from her residency as required by the program. Tr. at 63-64.

The Individual testified that she contacted the NHSC to see if she could find some relief from her debt because of her medical issues and that an NHSC employee suggested that she should apply for a waiver. Tr. at 37. She was supplied with the paperwork to apply for the waiver in the summer of 2022 and she began applying for the waiver in November 2022. Tr. at 38-39. The Individual testified that the NHSC is still requesting information from her. Tr. at 39. She claimed that she has complied with all of the NHSC's requests for information. Tr. at 39. Her take home pay is "about \$16,300" a month. Tr. at 43. The Individual admitted that she had not initiated the process of seeking a waiver of her service obligation until five and a half years after she had left her residency. Tr. at 76-77. She admitted that her request for a suspension of her service obligation that she filed in February 2022, was denied because she failed to file all of her paperwork. Tr. at 77. She claimed that she, "just let it drop" because she was instructed by an HHS employee to let her suspension request be denied so that she could file for a waiver of her service obligation instead. Tr. at 78. She claimed that she initiated her waiver request on October 27, 2022. Tr. at 83. She contended that the delay in filing for the waiver request was due to her busy schedule and the need to gather supporting information. Tr. at 83-85. The Individual was asked by her attorney "when you resigned from your residency program, was that just on a whim or was it because of your medical condition?" The Individual responded by stating: "Both. Because of my heart, I wasn't -- I was passing out in front of patients." Tr. at 101-102. She testified that she would have completed her service obligation if not for her medical conditions. Tr. at 102. She testified that she would comply with any payment plan that would be put in place to address her delinquent debt. Tr. at 106. The Individual testified that she has filed her Federal and state tax returns for tax years 2019, 2020, and 2021. Tr. at 52-54.

When she was asked if she remembered receiving the DCC Letter, the Individual responded by stating: Well, I recall that in the summer of 2022, I asked for the information that they had so that I could have it for this clearance process and to fix it. And they sent me email -- that letter --." Tr. at 34-35. She further testified that the DCC Letter was originally sent to her permanent address and that at the time that letter was sent to her she was living, temporarily, in a different state. Tr. at 35.

The Individual further testified that when the Investigator confronted her with the outstanding debt during the ESI, she was surprised because she was unaware of the debt and thought that the debt was due to fraud. Tr. at 34, 47-48, 68-75, 111. She then contacted the HHS who supplied her with a copy of the DCC Letter. Tr. at 48. The Individual's attorney asked her "So you were never put on notice about this debt prior to you actually requesting and receiving that letter?" The Individual responded by stating: "No." Tr. at 35-36. Upon questioning from the Administrative Judge, the Individual admitted that she had tried to contact HHS about the service obligation on June 6, 2021.⁵ Tr. at 112-113. The Individual subsequently admitted that she had previously been making payments on the NHSC debt after being dropped from a residency. Tr. at 75.

⁵ The Individual submitted her QNSP on January 6, 2022. Ex. 4 at 1.

The Individual's attorney subsequently asked her why she did not disclose her delinquent debt on her QNSP. She responded by noting that "the word debt is semantically different than the word scholarship" and claiming that she did not disclose her HHS debt in her QNSP because she considered it to be a "service obligation" rather than a debt. Tr. at 46, 50. The Individual denied lying to the investigator. Tr. at 103–104. She further testified that she did not deliberately withhold any information from her QNSP or during her ESI. Tr. at 104.

Analysis

The Record shows that the Individual has had a delinquent debt of at least \$1,013,571 since September 5, 2017. The Individual has not resolved this debt, nor shown that she is likely to be able to do so in the foreseeable future. Nor has the Individual shown that her failure to meet this financial obligation was excused. While the Individual has claimed that her medical issues prevent her from fulfilling her service obligations under the Contracts, she has not submitted sufficient medical documentation to support this claim.⁶ Moreover, even if her medical conditions have, in fact, prevented her from fulfilling her service obligations under the Contracts, her lack of diligence in addressing this issue over a period of over six years continues to raise serious concerns about her judgment and reliability.

Moreover, the Record shows that the Individual failed to disclose this debt in her QNSP and then failed to disclose this information during an ESI until confronted by the Investigator. She then continued to provide conflicting and difficult to believe information concerning this debt in her responses to several LOIs and during her hearing testimony. For example, at the hearing, the Individual claimed both that she was unaware of the debt until it was brought to her attention by the Investigator and that she did not consider her financial obligation to HHS to be a debt. The evidence in the record shows that the Individual was most likely aware of her debt when she submitted her QNSP and when she was interviewed by the Investigator, since she had contacted HHS about the debt in June 2021, just six months prior to her filing the QNSP. Moreover, when she was confronted with this debt during the ESI, she did not object to its existence but rather contended that it was for the wrong amount. Nor did she explain that the default was caused by her medical conditions during the ESI. Accordingly, the evidence in the record indicates that the Individual intentionally omitted her HHS debt from her QNSP and during her ESI and continued to be less than forthcoming about that omission in her LOI responses and at the hearing.

A. Guideline E

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline E, four of which are relevant to the present case.⁷ First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if they "made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted

⁶ The only medical records submitted by the Individual are Exhibits Q and R. These records clearly establish that the Individual has faced some very serious medical challenges, which include two open heart surgeries in 1999 and 2017 as she has testified. However, they do not corroborate many of the medical conditions cited by the Individual in her LOI responses and her hearing testimony.

⁷ The remaining mitigating factors under Guideline E, set forth at ¶ 17(e), (f), and (g), apply to circumstances other than the deliberate omission of information during the security clearance process.

with the facts.” Adjudicative Guidelines at ¶ 17(a). In the present case, the Individual did not make a prompt good-faith effort to correct the omission. Accordingly, I find that the mitigating condition set forth at ¶ 17(a) is not present in the instant case.

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “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” and “[u]pon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.” Adjudicative Guidelines at ¶ 17(b). In the present case, there is no evidence in the record indicating that the Individual’s omission was caused or contributed to by the advice of legal counsel or some other professional. Accordingly, I find that the mitigating condition set forth at ¶ 17(b) is not present in the instant case.

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he 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.” Adjudicative Guidelines at ¶ 17(c). In the present case, the security concerns raised by Individual’s omission of the HSS Debt from her QNSP and during her ESI were compounded by her contradictory and difficult to believe testimony at her hearing, therefore casting doubt on her present trustworthiness, reliability, and judgment. Accordingly, I find that the mitigating condition set forth at ¶ 17(c) is not present in the instant case.

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he 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.” Adjudicative Guidelines at ¶ 17(d). In the present case, the Individual has not acknowledged that she was intentionally attempting to conceal the HSS debt by omitting it from her QNSP and failing to disclose it during the ESI. Accordingly, I find that the mitigating condition set forth at ¶ 17(d) is not present in the instant case.

For these reasons, I conclude that the Individual has not resolved the Guideline E security concerns raised by omission of her HSS Debt from the QNSP and the ESI.

B. Guideline F

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline F. The Individual’s current indebtedness to the HHS and her failure to file timely Federal and state tax returns for tax years 2019, 2020, and 2021, have both raised security concerns under Guideline F. I will consider both sets of concerns separately.

Tax Returns

The Adjudicative Guidelines provide that security concerns under Guideline F arising from an individual’s failure to file or pay taxes can be mitigated when “the Individual has made

arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.” Guideline F at ¶ 20(g). The Individual has submitted evidence that she has filed her Federal and state tax returns for tax years 2019, 2020, and 2021, and has paid all of her past due taxes. Accordingly, I find that the security concerns raised under Guideline F arising from her failure to timely file her state and Federal tax returns from tax years 2019, 2020, and 2021 have been resolved.

HHS Debt

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline F, four of which are relevant to the present case.⁸

The Adjudicative Guidelines provide that an individual can mitigate security concerns under Guideline F if “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.” Guideline F at ¶ 20(a). In the present case, the Individual’s HHS debt remains unresolved, although she has initiated the process to waive the service obligation from which the debt has arisen. However, the Individual’s failure to address her HHS debt has been a longstanding issue and her failure to address the issue in a timely manner until very recently has not removed the doubts about her judgement, trustworthiness, and reliability raised by her longstanding failure to address her HHS debt. Accordingly, I find that the mitigating condition set forth at ¶ 20(a) is not sufficiently present to resolve the issues arising from her HHS debt.

The Adjudicative Guidelines provide that an individual can mitigate security concerns under Guideline F if “the conditions that resulted in the financial problem were largely beyond the person's control (e.g . . . unexpected medical emergency . . .) and the individual acted responsibly under the circumstances.” Guideline F at ¶ 20(b). In the present case, the Individual has faced some challenges arising from her heart condition, but the record indicates that she has not acted responsibly under these circumstances, since she has waited for six years before taking action to address her outstanding debt. Accordingly, I find that the mitigating condition set forth at ¶ 20(b) is not present.

The Adjudicative Guidelines provide that an individual can mitigate security concerns under Guideline F if “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control.” Guideline F at ¶ 20(c). In the present case, there is no evidence that the Individual has received credit counseling for her outstanding debt. Accordingly, I find that the mitigating condition set forth at ¶ 20(c) is not present in the instant case.

The Adjudicative Guidelines further provide that an individual can mitigate security concerns under Guideline F if “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Guideline F at ¶ 20(d). The Individual has not shown that she has initiated a good-faith effort to repay the HHS. While the Individual has initiated a request from a waiver from her service obligation, she has not shown that she is likely to receive this

⁸ The remaining three mitigating factors under Guideline F, set forth at ¶ 20(e),(f), and (g), apply to circumstances other than an Individual’s failure to address past due debts or when an individual disputes the legitimacy of the past due debt.

waiver. Accordingly, I find that the mitigating condition set forth at ¶ 20(d) is not present in the instant case.

For these reasons, I find that the Individual has not resolved the security concerns raised by her HHS debt under Guideline F.

IV. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not fully mitigated the security concerns raised under either Guideline. Accordingly, the Individual has not demonstrated that granting her security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals