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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: May 10, 2023	)	Case No.: PSH-23-0083
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Issued: July 17, 2023

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**Administrative Judge Decision**

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Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> 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 should be granted access authorization.

**I. BACKGROUND**

On March 22, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 10 at 50.<sup>2</sup> The Individual disclosed on the QNSP that he had fallen into delinquency on two routine financial accounts on which he estimated that he owed \$10,245. *Id.* at 45–47. During an interview with an investigator (Investigator) on April 4, 2022, the Individual represented that he intended to contact his creditors to resolve his debts. *Id.* at 60.

The local security office (LSO) subsequently issued the Individual a letter of interrogatory (LOI) concerning his financial situation. Ex. 11. In his response, the Individual identified a third delinquent account and estimated that he owed \$10,497 across all three debts. *Id.* at 3. The

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<sup>1</sup> 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.

<sup>2</sup> The internal pagination of numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, the pagination of Ex. 10 does not correspond to the total number of pages due to an unnumbered first page. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

Individual appended a personal financial statement (PFS) to his response to the LOI in which he estimated that his net monthly income was \$1,630. Ex. 12.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 3 at 1–2. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. *Id.* at 4.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 5. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted twelve exhibits (Exs. 1–12). The Individual submitted two exhibits (Exs. A–B). The Individual testified on his own behalf. Hearing Transcript (Tr.) at 3, 9. The LSO did not call any witnesses to testify. *Id.* at 3.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline F of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 3 at 4. "Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 18. The SSC cited the Individual's three delinquent debts on which he owed an estimated \$10,497, and the Individual's failure to repay his debts despite his stated intention to do so and his net monthly income of \$1,630. Ex. 3 at 4. The LSO's allegations that the Individual demonstrated unwillingness to satisfy his debts and a history of not meeting financial obligations justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(b)–(c).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a

full opportunity to present evidence supporting his or her 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.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **IV. FINDINGS OF FACT**

The Individual opened a credit card with his wife (ex-wife), from whom he is now divorced, in 2013. Tr. at 12; Ex. 10 at 60, 81. The Individual and his ex-wife used the credit card for gifts and miscellaneous purchases for several years, and made timely monthly payments on the card. Tr. at 12. In 2015, the Individual accepted a job offer from a DOE contractor and relocated his family to a city near a DOE site. *Id.* at 12–13; Ex. 10 at 25. The Individual was unable to work at the DOE site without access authorization, and he was unemployed while awaiting a determination concerning his eligibility for access authorization. Tr. at 13–14. During this period of unemployment, the Individual used the credit card for essential household expenses and fell behind on payments. *Id.* at 13, 15.

After four months passed, the Individual determined that his financial situation was too precarious to continue to wait for access authorization, and he accepted a physically demanding low-wage job. *Id.* at 14, 16–17. The monthly payments on the credit card were too high for the Individual and his ex-wife to make while also satisfying their current obligations, and in 2016 the account was charged off by the creditor and referred to collections. *Id.* at 18. The Individual and his ex-wife discussed potentially attempting to pay off the debt in 2017 when he obtained another job and their financial position improved, but since it was already referred to collections they “just continued to let it sit there.” *Id.*

In 2018, a medical debt (Medical Debt 1) attributed to the Individual was referred to collections. Ex. 10 at 81. The Individual disputed Medical Debt 1. *See id.* (showing that the Individual challenged the debt); *see also* Tr. at 9–10 (denying having ever received a bill concerning Medical Debt 1 before it was referred to collections).

On March 22, 2022, the Individual signed and submitted the QNSP. Ex. 10 at 50. The Individual disclosed his two delinquent debts on the QNSP. *Id.* at 45–47. On April 4, 2022, the Investigator interviewed the Individual as part of an investigation into the Individual’s eligibility for access authorization. *Id.* at 56. During the interview, the Individual represented that he intended to contact his creditors to resolve his debts. *Id.* at 60.

On September 19, 2022, the LSO issued the Individual the LOI. Ex. 11 at 1. In his response to the LOI, the Individual disclosed a new medical debt (Medical Debt 2) that he indicated had recently been sent to collections. *Id.* at 3. The Individual denied knowledge of the source of Medical Debt 2 and represented that he had disputed the debt. *Id.* at 3–4. The Individual also reported that he had successfully disputed Medical Debt 1 and that it had been removed from his credit report. *Id.* at 3. The Individual indicated in his response to the LOI that “[n]o action has been taken” with respect to his credit card debt. *Id.*; *see also* Tr. at 21 (indicating that he perceived that “the damage was done” and that he did not realize that the credit card debt “would have this big of an impact” on

the adjudication of his eligibility for access authorization). The Individual appended the PFS, in which he estimated that his monthly income net of all expenses was \$1,630, to his response to the LOI. Ex. 12.

At the hearing, the Individual testified that he adheres to a monthly budget and is “a lot more cautious” in utilizing credit. Tr. at 23. The Individual represented that he contacted the collections agency to which the credit card debt was referred and was told that the debt balance was zero. *Id.* at 22. The Individual surmised that, due to the passage of seven years since the credit card debt was referred to collections, the collections agency was no longer legally entitled to collect the debt and therefore that the balance on the debt appeared as zero. *Id.* The Individual provided copies of credit reports from May 2023. Ex. A; Ex. B. The credit card debt did not appear as a delinquency on the credit reports, which indicated that the Individual was in good standing on his consumer debts and had made timely payments on all accounts since 2019. Ex. A; Ex. B. The Individual also indicated that he had successfully challenged Medical Debt 2. Tr. at 9–10.

## V. ANALYSIS

### A. Guideline F

Conditions that could mitigate security concerns under Guideline F include:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income; and,
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

The Individual incurred the credit card debt approximately eight years prior to the hearing during a period in which he was unemployed while awaiting the adjudication of his security clearance eligibility. When the Individual perceived that his financial situation was too dire to continue waiting for a determination concerning his security clearance eligibility, he took an undesirable job to provide for his family but was unable to earn enough money to both meet his current obligations and repay the credit card debt he incurred while unemployed. The Individual's financial situation has significantly improved since he incurred the credit card debt, the credit card debt no longer appears on his credit reports, and the Individual has demonstrated improved financial responsibility by making timely payments towards his consumer debts for the past four years. For these reasons, I find the first and second mitigating conditions under Guideline F applicable. *Id.* at ¶ 20(a)–(b).

The third mitigating condition is inapplicable because the Individual does not claim to have pursued financial counseling. *Id.* at ¶ 20(c). The fourth mitigating condition is inapplicable because the Individual does not assert that he repaid the debts cited by the LSO in the SSC. *Id.* at ¶ 20(d).

The fifth mitigating condition is applicable to the medical debts cited by the LSO because the Individual successfully challenged the validity of both debts. *Id.* at ¶ 20(e). The sixth mitigating condition is inapplicable because the LSO did not allege that the Individual displayed unexplained affluence. *Id.* at ¶ 20(f). The seventh mitigating condition is inapplicable because the LSO did not allege that the Individual failed to file tax returns or pay taxes as required. *Id.* at ¶ 20(g).

The Individual fell into financial delinquency during a period of unemployment in 2015 that occurred due to delays in adjudicating his clearance eligibility that were not within his control. The Individual could not reasonably repay the credit card debt and provide essentials for his family while employed at a low-wage job following the period of unemployment. While the Individual might have made greater efforts to resolve the credit card debt after he obtained more remunerative employment, I find that the Individual's demonstrated financial responsibility since at least 2019 is sufficient to establish that his prior indebtedness does not reflect on his current reliability, trustworthiness, and ability to protect classified information. Accordingly, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline F.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline F of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals