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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: June 13, 2023) Case No.: PSH-23-0094
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Issued: September 18, 2023

Administrative Judge Decision

Katie Quintana, 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.”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 restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires her to hold an access authorization. In December 2022, as part of its continuous evaluation process, the Local Security Office (LSO) discovered, through a credit report, that the Individual had four outstanding delinquent accounts that she had not reported to the LSO. Exhibit (Ex.) 8 at 10. The LSO asked the Individual to complete a Letter of Interrogatory (LOI), and in her response, the Individual confirmed that she was delinquent on each of the debts and, further, disclosed that she “did know [she] had to let security know if [she] missed payments.” *Id.* at 1–3.

Due to security concerns related to the Individual’s finances and personal conduct, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) that accompanied the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Ex. 2.

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.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eight numbered exhibits (Exs. 1–8) into the record. The Individual introduced three lettered exhibits (Exs. A–C) into the record and presented the testimony of three witnesses, including her own. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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. 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. Notification Letter and Associated Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SSC specifically cites Guidelines F and E of the Adjudicative Guidelines. Ex. 1.

Guideline F relates to security risks arising from financial distress. It provides that a “[f]ailure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or [an] unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern under this guideline include the “inability to satisfy debts,” an “unwillingness to satisfy debts regardless of the ability to do so,” and “a history of not meeting financial obligations.” *Id.* at ¶ 19(a)-(c).

In citing Guideline F, the LSO noted that the Individual had two current collection accounts totaling \$5,322, \$2,728 with Creditor A and \$2,684 with Creditor B. Ex. 2 at 4–5. The LSO also indicated that the Individual had “a history of not meeting her financial obligations.” *Id.* at 5. In support of this assertion, it cited to the nine following accounts that had been delinquent in the prior seven years:

- (1) Creditor C, which was 150 days past due;²
- (2) Creditor D, which was “90 days past due twice”;
- (3) Creditor E, which was 90 days past due;
- (4) Creditor F, which was “90 days past due twice”;
- (5) Creditor G, which was “60 days past due twice”;
- (6) Creditor H, which was 60 days past due;
- (7) Creditor I, which had been “sent to collections”;
- (8) Creditor J, which had been “sent to collections”;
- (9) Creditor K, which had been “sent to collections.”

Id. at 5–6.

Guideline E relates to security risks arising from personal conduct. It provides that “[c]onduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations can raise questions about an individual’s trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. Of special interest under this guideline is the “failure to cooperate fully with the security process.” *Id.* Conditions that could raise a security concern under this guideline include “concealing or omitting information, concerning relevant facts to an employer, investigator, [or] security official.” *Id.* at ¶ 15(b). In citing Guideline E, the LSO noted that the Individual failed to report the delinquent accounts owed to Creditors A, B, and C, as was required of her. Ex. 2 at 6–7.

IV. Findings of Fact and Hearing Testimony

A. Findings of Fact

² The LSO noted that the Individual made a payment on this account when she received the LOI; however, prior to the payment, the account had been delinquent for five months. Ex. 2 at 5.

As stated above, the LSO informed the Individual, in December 2022, that it had become aware of four accounts (Creditors A, B, C, and D) that the Individual had allowed to become delinquent. Ex. 8 at 10. The LSO indicated that, according to the Individual's November 2022 credit report, the Individual owed: (1) \$2,887 to Creditor A, with a past due balance of \$651; (2) \$2,594 to Creditor B;³ (3) \$3,458 to Creditor C, with a past due balance of \$635; and (4) \$57,432 to Creditor D, with a past due balance of \$1,776. *Id.* It requested that she complete an LOI to provide additional information about these accounts. *Id.* With regard to all of the accounts, the Individual stated that she did not report the delinquencies as she "did not know she had to report them." *Id.* at 2–3.

As to Creditor A, the Individual indicated that this debt was for a credit card that was four months delinquent. *Id.* at 2. She stated that it became delinquent because she did "not have the funds" to pay the card because she "[w]as paying other bills." *Id.* The Individual noted that she "[p]ut money down on 12/16," and she was "[w]orking with the creditor to get the card paid off." *Id.* She also submitted documentation in the LOI that indicated that she made a \$200 payment on December 16, 2022. *Id.* at 7. Turning to Creditor B, the Individual reported that this account was attributable to a loan, and her last payment was in July of 2021. *Id.* at 3. She indicated that the loan had become delinquent because she "though the loan was coming out automatic and then thought it was paid in full." *Id.* She stated that she intended to work with the creditor to satisfy the debt. *Id.* Regarding Creditor C, the Individual stated that this was for a credit card used to purchase household appliances, and it was five months delinquent. *Id.* at 2. She stated that the account had become delinquent because she did "not have the funds" as she "[w]as paying other bills." She noted that she was "[w]as working with the creditor to get the card paid off." *Id.* She attached a receipt to the LOI showing that she had made a payment of \$1,000 to the card on December 16, 2022. *Id.* at 6.

Lastly, as to Creditor D, the Individual stated that this debt was for her mortgage and was three months delinquent. *Id.* at 2. Again, she stated that the account had become delinquent as she did not have the funds to pay as she was paying other bills. *Id.* She submitted documentation that appeared to show that she made payments on the account in July 2022, twice in November 2022, and on December 16, 2022. *Id.* at 5. As part of the LOI, the Individual completed a Personal Financial Statement which indicated that, after paying her monthly expenses, her net monthly remaining income was slightly less than \$900.⁴ *Id.* at 8–9.

Following the first LOI, the LSO sent the Individual a second LOI, in February 2023, indicating that, as of January 2023, the Individual was again delinquent on payments to Creditors A and B and asked her to provide an explanation on February 24, 2023. Ex. 6. at 13–14. In early March, the LSO had not yet received a response from the Individual, and it sent her an email asking her to submit her response as soon as possible. *Id.* at 3. The Individual responded, stating that she was "still working on getting all the info together." *Id.* In mid-March, the Individual responded and indicated that she set up a payment plan with Creditor A in which she would pay \$151 for 18 months. *Id.* at 2. Regarding Creditor B, the Individual stated that she made "payment arrangements

³ The LSO did not indicate if there was a past due balance on this account. Ex. 8 at 10.

⁴ It should be noted that the Individual did not list on her Personal Financial Statement any housing, clothing, medical, or miscellaneous expenses. Ex. 8 at 8.

with [the creditor] to start paying the monthly payments of [\$]139.81.” *Id.* She indicated that she made the first payment on the day of the second LOI response. *Id.*

B. Hearing Testimony

At the hearing, the Individual presented the testimony of her DOE contractor supervisor (Contractor Supervisor) and her supervisor at her part time job at a store (Store Supervisor). Tr. at 13, 42. Her Contractor Supervisor testified that he had known the Individual since early 2019 and that he interacts with her, in a professional capacity, daily. *Id.* at 12–13. He stated that she “has been a high contributor to [his] unit and the organization” and felt that “she is very trustworthy[,] . . . reliable[,] and consistent.” *Id.* at 13, 15. He explained that, on several occasions, he observed the Individual making, what he considered to be “very good judgments.” *Id.* at 15. The Contractor Supervisor indicated that he did not have any information as to why the Individual’s security clearance had been suspended but noted that his employees are all trained on the mandatory reporting requirements associated with holding a clearance. *Id.* at 14.

The Individual’s Store Supervisor testified that she has known the Individual approximately two to three years from the Individual’s time working at the store. *Id.* at 42. She explained that the Individual currently works as “head cashier” and has served in that position for approximately one year. *Id.* The Store Supervisor noted that she has never had any problems with the Individual’s performance or conduct. *Id.* She testified that she felt that the Individual is a “very trustworthy and hardworking employee.” *Id.* at 44.

The Individual testified on her own behalf and stated that, despite hearing from her Contractor Supervisor that his employees receive training regarding the reporting requirements associated with holding a security clearance, she did not remember the training. *Id.* at 20. She clarified, however, that, although she knew “there were some things that definitely had to be reported,” she did not recall finances being “one of them.” *Id.*

Turning to the specific accounts at issue, the Individual testified that the two collection accounts listed on the SCC – Creditor A and Creditor B – were attributable to a credit card and personal loan, respectively. *Id.* at 22. She indicated that the credit card “was used for various things that were needed at the house,” but she later stated that the credit card was used for “mainly household expenses, gas and things like that that I just needed.” *Id.* at 22–23. She indicated that “there was a time that she didn’t have sufficient income to cover [her] household expenses[,] and [she] needed to use credit.” *Id.* at 23. She elaborated, stating that it was for this reason that she ended up having a balance on that card that she was not able to pay, and ultimately, the account went to collections. *Id.*

The Individual testified that in addition to the \$200 payment she made toward the credit card in December 2022, she thought she made payments in January and February of 2023. *Id.* at 30. She stated that, although she did set up a payment plan with that creditor and was making consistent payments, when her clearance was suspended in June 2023, she could not report to work for the DOE contractor and was unable to continue to pay. *Id.* at 31, 48; Ex. 2. She testified that, at that time, she asked that she be given more hours at the store, but “it wasn’t enough to pay for everything.” Tr. at 32.

Regarding the personal loan from Creditor B, the Individual stated that the money was used to host a graduation party for her daughter and to pay “other bills.” *Id.* at 22. She testified that she was “actually paying on that” account, but she was not sure when she stopped paying. *Id.* at 23. The Individual testified that she thought that she had paid the balance, but she “wasn’t sure.” *Id.* She stated that once she learned that the account was delinquent, she “was trying to get back into paying[,] . . . but then [she] didn’t have the finances.” *Id.* She testified that she established a payment plan with Creditor B for \$139.81 per month and made a payment in mid-March, but she had not made any additional payments since that time due to a lack of funds. *Id.* at 36–37. The Individual stated that, at the time of the hearing, she did not have a plan regarding how or when she would pay this debt.⁵ *Id.* at 37.

The Individual testified that, approximately one month prior to the hearing, she secured the services of a debt consolidated company (Company). *Id.* at 32–33; *see* Ex. A. According to her contract with the Company, she will pay \$370.61 to provide funding for the Company to attempt to resolve her debts.⁶ Tr. at 46. The contract stated that the accounts covered under the contract were those with Creditor A, Creditor C, Creditor E, Creditor G, and a fifth creditor not listed in the SSC. Ex. A at 2. The contract shows that the current balance owed to the fifth creditor is \$10,815. *Id.* The Individual indicated that this debt is attributable to a loan that she took out to pay for her wedding. Tr. at 47. As part of her contract with the Company, she completed a Personal Cash Flow Statement, which indicated that after paying the Company and her monthly obligations, she would have a remainder of \$343.40; however, the Individual stated that this money would be used to pay another wedding loan as well as a credit card that were not included in the contract.⁷ Ex. A at 9; Tr. at 47. When asked whether she expected to be able to continue to meet her monthly obligations as well as her monthly payment to the Company, the Individual replied, “I’m hoping so.” Tr. at 49.

Turning to the accounts that were listed as delinquent on the SSC, the Individual testified that she did not recall why those accounts originally became delinquent. *Id.* at 49–50. Although some of these accounts – Creditors C, E, and G – are included in the Company’s contract, the Individual recognized that the accounts for Creditors D, F, H, I, J and K, were not being resolved with the Company’s help, and she indicated that Creditor F, Creditor H, and Creditor I had been “paid off.”⁸ *Id.* at 53–56. She explained that Creditor D was her mortgage lender and stated, “that’s being, of

⁵ The Individual submitted documentation showing that her last payment to Creditor B was in March 2023. Ex. B.

⁶ As of the date of the hearing, the Individual had made one payment to the Company, and she testified that the second payment would be made the day after the hearing. Tr. at 66. The Individual submitted documentation supporting this testimony. Ex. B.

⁷ It should be noted that in completing her Personal Cash Flow Statement, the Individual did not account for any medical, food, personal care, or household expenses, but she testified that her husband covers those expenses. Ex. A at 11; Tr. at 66.

⁸ Although the Individual did not testify to the standing of the account with Creditor K, she submitted documentation showing that the accounts for Creditors F, H, and K reflected \$0 balances. Ex. B–C. However, there is no documentation regarding Creditor I.

course, paid and everything now.”⁹ *Id.* at 55–56. The Individual did not provide any explanation as to Creditor J. *See id.* at 53–56.

Regarding why she was not able to cover her household expenses, the Individual explained, “I’ve been a single parent all my life pretty much. I just . . . got married two years ago. When I got married, my husband lost his job. So I’ve been trying to get back on my feet.” *Id.* at 24. The Individual testified that her husband had been out of work since 2021 but does “side jobs.” *Id.* at 64. She also noted that her mother had been diagnosed with cancer, so she has “been trying to help out when” she could, and in doing so, she “f[ell] back behind.” *Id.* at 50. She stated that she has made the choice to pay “the main bills” because she “needed to keep her house and everything else.” *Id.* When asked to explain why the “relatively small” collection accounts had not been resolved when she indicated on the Personal Financial Statement that she had approximately \$900 left after paying her bills, the Individual stated that the money that she indicated to be the “remainder” was “pretty much spoken for with other obligations,” such as “loans . . . to pay for [her] wedding.” *Id.* at 29. She indicated that she does not have any “sense” for how much money she has available after all of her monthly obligations are paid. *Id.* at 29–30.

Ultimately, in addressing her current financial situation, the Individual testified:

I still have some things that . . . need attention just because I haven’t had the funds and I wasn’t able to . . . [get] the unemployment or anything like that yet. So I was – we were managing and getting most of the stuff that we need to get taken care of. But there are still some . . . of the credit cards and stuff like that that I had are still, of course, delinquent.

Id. at 61.

V. Analysis

A. Guideline F

An individual may be able to mitigate security concerns under Guideline F by meeting the following conditions:

- 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 . . . and the individual acted responsibly under the circumstances;

⁹ The Individual later testified, however, that she believes she is currently one month behind on her mortgage. Tr. at 58. She also stated that she withdrew \$4,000 from her 401(k) to ensure that her house did not go into foreclosure. *Id.* at 28. She submitted an exhibit which showed that she made a payment of \$800 and a payment of \$650 toward her mortgage in August 2023; however, this exhibit does not show whether the account is in good standing. Ex. C.

- c) 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;
- 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.

First, I recognize that the Individual has begun to take steps to repay her debts by making some payments and retaining the services of a debt consolidation company. *Id.* at ¶ 20(d). The Individual resolved her debts with Creditors F, H, and K, and is working to repay Creditors A, C, E, and G through the debt consolidation company. However, the Individual has only made two payments to the debt consolidation company, and there is substantial evidence in the record that the Individual has a history of allowing her obligations to become delinquent. Furthermore, although she has taken action on many of her debts, she has no plan to repay Creditor B, and it appears she has at least one outstanding loan and one credit card requiring repayment that is not being managed by the debt consolidation company. As such, I cannot find that the Individual's payments, thus far, are sufficient to resolve the Guideline F security concerns under mitigating condition (d). *See id.*

Furthermore, the Individual indicated that she has a history of not being able to cover her household expenses alone, and although she is now married and could potentially have help paying the expenses, her husband does not have reliable, full-time employment. *See id.* at ¶ 20(a). It appears that the Individual is attempting to better her finances through the repayment of small debts and her work with the debt consolidation company. However, despite knowing that the DOE had concerns about her finances as early as December 2022, the Individual only retained the services of the debt consolidation company approximately one month prior to the hearing. *See id.* As such, there is not sufficient evidence in the record to conclude that her financial irresponsibility 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. *See id.*

Although I recognize that there were unfortunate events out of the Individual's control that contributed to her financial difficulties, I cannot find that the Individual always responded responsibly. *Id.* at ¶ 20(b). For example, the Individual took out two loans, one in excess of \$10,000, to pay for a wedding when she was already struggling to pay her monthly expenses and the credit card she was using to pay those expenses was not being paid. As such, I cannot find that

the security concerns raised by the Individual's financial situation are resolved under mitigating condition (b).¹⁰

B. Guideline E

An individual may be able to mitigate security concerns under Guideline E through the following conditions:

- 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;
- 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

¹⁰ The Individual has not obtained any financial counseling; the Individual has not disputed the legitimacy of any of the debts at issues; and there are no allegations of unexplained affluence or tax liabilities in this case. As such, mitigating factors (c), (e), (f) and (g) are not relevant to this case, and I do not consider them. Adjudicative Guidelines at ¶ 20(c), (e)-(g).

The Individual claims that she was not aware of the financial reporting requirements despite having undergone training on the topic. As such, she failed to report her financial delinquencies as required. There is no evidence in the record that she made any effort to correct the omission, nor does she claim that anyone provided her with any advice on the matter. As such, I find that mitigating factors (a) and (b) are not applicable. *Id.* at ¶ 17(a)-(b). Similarly, I cannot find that mitigating factor (c) is applicable here. Although the Individual should now be aware of the reporting requirements, such that she would likely report any financial issues that she became aware of in the future, the Individual does not appear to have a strong understanding of her financial situation. At various points in her testimony, she indicated that she did not know how particular debts became delinquent, that she hoped she could meet her financial obligations, and that she did not have a sense of how much, if any, money remained after she met her monthly obligations. As such, I have low confidence that the Individual would have sufficient understanding to report financial issues that arise in the future, and thus I cannot find that this behavior is unlikely to recur.¹¹ *Id.* at ¶ 17(c).

VI. 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 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 Guideline E and Guideline F security concerns. Accordingly, I find the Individual has not demonstrated that restoring her 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 restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

¹¹ The record does not indicate that the Individual sought financial counseling, and as such, mitigating factor (d) is not applicable. Adjudicative Guidelines at ¶ 17(d). Although the Individual's financial situation may leave her vulnerable to exploitation, manipulation, or duress, it does not appear that her failure to report contributes to that vulnerability. As such, I find that mitigating factor (e) is not applicable. *Id.* at ¶ 17(e). Further, there is no indication in the record that the information in the SSC is unsubstantiated, and there is no allegation of criminal involvement. As such, mitigating factors (f) and (g) are not relevant. *Id.* at ¶ 17(f), (g).