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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: October 17, 2023) Case No.: PSH-24-0005
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Issued: January 26, 2024

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as 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 be granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. The Individual’s employer submitted a request to the local security office (LSO) for the Individual to be granted a security clearance. The LSO subsequently initiated a background investigation on the Individual to determine his fitness to hold a security clearance. Exhibit (Ex.) 7. The investigation revealed that the Individual had failed to file a federal tax return for 2022 and had three unpaid medical collection accounts totaling \$9,455.² Ex. 1 at 5. Additionally, in a Letter of Interrogatory (LOI) and during an Enhanced Subject Interview (ESI), the Individual expressed his intention not to pay the overdue medical accounts unless the debt holders contacted him. *Id.*; Ex. 7 at 117.

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.

² With regard to these accounts, in the account I have designated as Account 1, the Individual owed \$8,584. Ex. 1. For the account, designated as Account 2, the Individual owed \$525, and for the third account, designated as Account 3, the Individual owed \$346. *Id.*

Due to unresolved security concerns related to the Individual's failure to file his 2022 Federal tax return, his overdue medical collection accounts, and his stated intention not to pay the medical debts, the LSO informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC), attached to the Notification Letter, the LSO explained that the derogatory information raised a security concern under Guideline F (Financial Considerations) of the Adjudicative Guidelines, thus preventing him from possessing a security clearance. Ex. 1 at 5.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. Ex. 2. 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 seven numbered exhibits (Exs. 1–7) into the record. The Individual testified on his own behalf and introduced 14 lettered exhibits (Exs. A–N) into the record.³

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 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. *Id.* § 710.26(h).

³ The Individual's exhibits are as follows: Ex. A: Individual's Federal 2022 Tax Return Transcript; Ex. B: Individual's Bank Statement, referencing the Individual's Final Payment of Account 2; Ex. C: Individual's Credit Reports; Ex. D: September 18, 2023 E-mail receipt regarding Account 2 documenting Individual's Initial Payment; Ex. E: Individual's Internal Revenue Service 2021 Tax Return; Ex. F: Payment Receipt for Individual's Account 3; Ex. G: Payment Receipt for Individual's Account 2; Ex. H: Individual's Account 2, Initial payment; Ex. I: Individual's Account 1 Payment Receipt; Ex. J: Individual's Account 1 Payment Plan; and Ex. K: Payment Receipt for Individual's Account 3. The Individual had not designated these exhibits when initially submitted, but during the hearing, the exhibits were redesignated with letters. Hearing Transcript in Case No. PSH-24-0005 (Tr.) at 10. The Individual, with my approval, submitted three exhibits after the hearing, which I designated as: Ex. L: A State balance sheet that tracks the Individual's child support payments; Ex. M: A sample pay stub from the Individual's current employer; and Ex. N: The Individual's monthly earnings and expenses balance sheet.

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 Security 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 Guideline F of the Adjudicative Guidelines. Ex. 1. Guideline F relates to security concerns arising from financial problems. "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. In citing Guideline F, the LSO cited the Individual's failure to file a 2022 Federal tax return, his three overdue medical collection accounts, and his statements in the LOI and ESI regarding his intention to pay those debts. Ex. 1 at 1; Ex. 4 at 2. Given the derogatory information cited by the LSO, I find that the LSO was justified in invoking Guideline F.

IV. Findings of Fact

Pursuant to a background check regarding the Individual, the LSO discovered that he had three medical accounts in collections which were related to a 2018 visit to an emergency room. Ex. 4 at 23; Ex. 6 at 47-48; Ex. 7 at 117. At the time of this visit, the Individual was not covered by medical insurance. *Id.* The Individual owed \$8,584 to Account 1, \$525 to Account 2, and \$346 to Account 3. Ex. 4 at 23. Concerning these accounts in collections, the investigator, who conducted the October 2022 ESI, indicated the Individual "feels that it is the responsibility of the [debt holders] to collect, not his to reach out to them." Ex. 7 at 117. The Individual asserted that he could not remember ever receiving any correspondence concerning these accounts. *Id.*

Subsequently, in his June 23, 2023 response to the LOI, the Individual confirmed that he had told the ESI investigator that he would not pay the delinquent medical accounts unless the debt holders reached out to him. Ex. 5 at 28. When asked in the LOI why he had not arranged to pay the over \$8,000 debt in Account 1, the Individual replied, "[t]he charges are excessive." *Id.* Nonetheless, the Individual also stated in the LOI regarding this debt, "If contacted by the creditor I will set up a payment plan." *Id.* at 29. Regarding the other two delinquent medical accounts, the Individual stated that he would seek out the debt holders and "seek resolution." *Id.* at 29-30. The Individual also reported that he had not filed his 2022 Federal tax return but intended to file in July of 2023. *Id.* at 27.

V. Hearing Testimony

At the hearing, the Individual testified that with regard to the 2022 Federal tax return, he had filed it prior to the hearing and had received a refund for that tax year of \$52. Tr. at 16-17; Ex. A at 5 (Internal Revenue Service tax document indicating that the Individual's 2022 return was filed on July 10, 2023, and that the Individual received a \$52.61 tax refund).

The Individual testified that he paid most the medical bills associated with his hospital visit but was unaware of the three delinquent accounts and only became aware of the accounts when informed of their existence during the LSO's background investigation. Tr. at 14. As for his collection debt of \$8,584 owed to Account 1, the Individual testified that he had entered into a 48-month payment plan with the creditor on December 6, 2023, and has made one payment on the plan. *Id.* at 18. After the 48 months of payments, he will have paid the creditor \$6,000 and the remaining amount will then be amortized over the following year. *Id.*; Ex. I, J. As for Account 2, where he owed \$525, the Individual has paid off that account. Tr. at 19-20; Ex. B. The Individual also testified that he has paid off Account 3. Tr. at 20; Ex. 2 at 14.

As for his attitude regarding the three collection accounts and his assertion that he would make arrangements for payments only when initiated by the debt holder, the Individual testified that at that time, during the ESI and the LOI, he was "extremely defensive." *Id.* at 34. The Individual testified that his attitude was "a mistake." *Id.* The Individual pointed out in his testimony that despite his then-attitude, he did initiate contact with all three debt holders for the delinquent accounts in order to pay. *Id.* He also testified that initially he did not know about these debts until he was contacted by DOE. *Id.* at 27. He also noted that his credit reports issued by credit rating agencies did not list these debts.⁴ *Id.*; Ex. C.

When asked about the possibility of getting into financial difficulties in the future, the Individual highlighted his current steady employment. Tr. at 29. He feels confident about his future and is "cleaning up his past." *Id.* at 30. He now knows the importance of promptly filing his Federal tax returns. *Id.* The Individual believes that he is now financially responsible and cited to his current high credit scores which are over 700 as rated by three credit reporting agencies. *Id.* at 27. The Individual testified that his current pay is approximately \$130,000 per year and that as the date of the hearing he has \$5,000 in cash. *Id.* at 22, 34. The Individual also submitted into the record an accounting of his monthly and yearly expenses which indicates that the Individual has a monthly surplus totaling \$978. Ex. N.

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony presented during the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has resolved the Guideline F security concerns raised by the derogatory information recorded in the SSC and should be granted a security clearance. The specific findings that I make in support of this decision are discussed below.

The relevant Guideline F mitigating factors in this case include:

⁴ The November 30, 2023 credit report, submitted into the record, contains no reference to any of the delinquent medical accounts cited in the SSC. Ex. C.

(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;

....

(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.

In the present case, the Individual's testimony concerning his lack of awareness of the three delinquent accounts is consistent with his account in the ESI. Tr. at 14; Ex. 7 at 114-16 (ESI). The Individual's current financial status and the unique circumstances in which his three delinquent accounts arose suggest that the Individual will be unlikely to be financially irresponsible in the future and that there is little reason to question the Individual's current reliability, trustworthiness, or good judgment. I found the Individual's testimony convincing in describing his new attitude regarding the importance of attention to his finances and the importance of promptly filing tax returns. Tr. at 13 (containing the Individual's testimony that "going forward, I can now – I can now see how important it is to file them on time, which I plan to do"), 30 (containing the Individual's testimony that "I really appreciate that [DOE has] gotten a hold of me, and I'm going to – you know, I'm cleaning up my past. I'm getting out of debt, and not going to be in debt in the future"). Consequently, I find that the mitigating factor described by ¶ 20(a) is applicable in this case.

As for the mitigating factor described by ¶ 20(b), all of the delinquent accounts were related to the Individual's unexpected visit for treatment at the hospital. As discussed above, I find the Individual's testimony regarding his knowledge of the existence of the three delinquent medical accounts to be credible. The Individual's assertion is supported by the Individual's credit report obtained in November 2023 which does not have any mention of the three delinquent accounts. Ex. C. I recognize that his initial reaction when informed of the debts by DOE was not responsible, given his statements regarding Account 1 that he thought the amount of debt was excessive and that it was the account holder's responsibility to contact him to arrange a payment plan. At the hearing, the Individual testified about his initial attitude, "[w]hen this first came to me, I was extremely defensive. I don't want to say insulted, but I was very, very defensive when I responded to this. So, I can't explain that. That was a mistake, and I should not have said that." Tr. at 33-34. I believe that the Individual has internalized the importance of being responsive to financial issues. Further, the Individual proactively paid off two of the accounts and set up a payment plan regarding the Account 1 debt. In sum, I find that the Individual acted responsibly regarding the three

delinquent medical accounts under the circumstances. Given the evidence before me, the mitigating factor described in ¶ 20(b) is applicable to the Individual.

I also find that the mitigating factor described in ¶ 20(g) applies in this case because the Individual has submitted convincing evidence that he filed his 2022 Federal return and received a \$52 refund. *See Ex. A.*

Given the applicability of the mitigating factors described above, I find that the Individual has mitigated the Guideline F security concerns.

VII. Conclusion

After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline F. Accordingly, I have determined that the Individual's access authorization should be granted. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Richard A. Cronin, Jr
Administrative Judge
Office of Hearings and Appeals