

Subsequently, the LSO issued the Individual a Letter of Interrogatory (LOI), which the Individual completed in June 2023. Ex. 9. In the June 2023, LOI, the Individual explained the circumstances surrounding his delinquencies, including the fact that he omitted an additional delinquent account in the IR. *Id.* at 52–59. He also reported that he had not filed his state and federal tax returns for 2020, 2021, and 2022. *Id.* at 57. The Individual further reported that gambling contributed to his financial hardship. *Id.* at 56.

In August 2023, the Individual completed a second LOI. Ex. 8. In the August 2023, LOI, the Individual reported that he had not yet filed his state or federal tax returns for 2020, 2021, or 2022, but he was currently working with a certified public accountant (CPA). *Id.* at 37–39. The Individual also reported that, once businesses started to re-open during the COVID-19 pandemic, he would gamble at casinos “weekly.” *Id.* at 40–44. In September 2023, the Individual completed an LOI Addendum. Ex. 7. In the September 2023, LOI Addendum, the Individual reported that his gambling activity approximately took place between May 2021, and October 2022. *Id.* at 34.

Due to the unresolved security concerns stemming from the Individual’s disclosures in the June 2023, LOI, August 2023, LOI, and September 2023, LOI Addendum, the LSO informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. Ex. 1 at 7–8. In an attachment to the letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines. *Id.* at 5–6.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 review hearing. The LSO submitted eleven numbered exhibits (Exs. 1–11) into the record and did not call any witnesses at the hearing. The Individual submitted 14 lettered exhibits (Exs. A–N) into the record and presented the testimony of two witnesses, including himself. *See* Transcript of Hearing, Case No. PSH-24-0057 (hereinafter cited as “Tr.”).

II. NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for suspending the Individual’s security clearance. Ex. 1. It is well established that “[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 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. Among the conditions set forth under Guideline F that could raise a disqualifying security concern is the failure to file federal or state income tax returns or to pay federal or state income tax as required. *Id.* at ¶ 19(f). In citing Guideline F, the LSO relied upon the Individual’s admissions that he failed to file his federal and state income tax

returns for 2020, 2021, and 2022. Ex. 1 at 5. The LSO also cited the Individual's four unpaid charge-off accounts totaling \$63,586. *Id.* The LSO further cited the Individual's admissions that, between May 2021, and October 2022, gambling contributed to his financial difficulties, he gambled with funds allocated for bills, and gambling added to his marital issues as he concealed losses from his wife. *Id.* at 5–6. The cited information justifies the LSO's invocation of Guideline F.

III. REGULATORY STANDARDS

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

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

As noted above, although the Individual self-reported several delinquent accounts in the IR, the 2023 Credit Report revealed an additional delinquent debt. Ex. 10 at 63. In the June 2023, LOI, the Individual asserted that he did not intentionally omit the additional delinquent account, but because there were “many accounts overdue,” he “may have left [it] out by accident.” Ex. 9 at 57. The Individual indicated that the stress and financial burden occurred as a result of building a home, including the price increase of materials during the COVID-19 pandemic, caused the delinquencies. *Id.* at 55. He stated that once his wife obtained a job, he planned on refinancing his loans and consolidating the debt.⁴ *Id.* at 55. The Individual also reported that the stress caused by the “price increases, the lock down of covid, and [his] wife taking a break from work” caused him

⁴ The Individual indicated that his wife was employed as a nurse and “worked through covid,” although it is unclear what date exactly the Individual considers to be “through covid.” Ex. 9 at 55. Because his wife developed extreme fatigue during this time, the Individual explained, she was currently “taking a break so she could re[-]enter the workforce.” *Id.*

to gamble as a “short-term escape.” *Id.* at 56. The Individual stated that his gambling contributed to his financial hardship, and he went “more to the casino” once businesses started to re-open during the pandemic. *Id.* Regarding his failure to file his federal or state personal income tax returns for 2020, 2021, and 2022, the Individual stated that he “did not know how to proceed with [his] tax situation” because he and his wife had been “fighting and arguing over money,” and he “wasn’t sure if [they] were going to stay together.” *Id.* at 57. The Individual indicated that he had since contacted a CPA and intended to resolve his tax issues. *Id.*

In the August 2023, LOI, the Individual reported that he was currently working with a CPA and was “in the process” of filing his state and federal personal income tax returns for 2020, 2021, and 2022. Ex. 8 at 37. He indicated that he believed he owed money for his federal taxes, but he was unsure of the exact amount. *Id.* at 40. He also reported that he was not currently gambling, but he last gambled “approximately [two] months ago.” *Id.* at 41–42. The Individual indicated that he previously gambled weekly at various casinos, often spending between \$100 and \$1,000 per visit. *Id.* at 41. The Individual stated that because he was “locked down at a time when [he and his wife] were having marital issues,” the casino provided a “place to be alone and way from the house.” *Id.* at 40. He also reported that he “concealed some losses from his [wife],” and his gambling habit “[a]dded to [his] marital issues.” *Id.* at 43. In the September 2023, LOI Addendum, the Individual reported that his gambling “pattern changed” when he started building his house in May 2021, and “continued [un]til closing on the home [in] October 2022 or shortly thereafter.” *Id.* at 34.

At the hearing, the Individual’s colleague (Colleague) at a second job that is not affiliated with DOE, testified that he has worked with the Individual for approximately four years. Tr. at 10–11. The Colleague stated that he maintains daily contact with the Individual, and although they do not socialize outside of work, he considers the Individual to be a “good friend.” *Id.* at 11–12. The Colleague testified that the Individual informed him of his “challenges,” and he is helping to mentor the Individual and “provide him a good, positive outlook.” *Id.* at 13. The Colleague explained that he helped the Individual “set. . . goals” and articulated what “type of. . . activity” the Individual would need to “remedy his personal financial decisions.” *Id.* at 19–20. He specified that he advised the Individual how to improve in his trade so he could reach his stated financial goals. *Id.* at 20–21, 28–29. The Colleague noted that he was not aware whether the Individual had any difficulties paying bills or taxes. *Id.* at 15–16. He also stated that he is advising the Individual on how to prioritize personal and outstanding bills.⁵ *Id.* at 29–31. When asked whether he could name a specific debt that he helped the Individual identify and pay, the Colleague stated that he could not. *Id.* at 32–33.

⁵ The Colleague explained a financial technique called the “snowball effect” which he indicated that, in his view, was “taking money that you’ve earned and reinvesting it into other profitable ventures that are going to continue to grow and accumulate finances for you to have available for reinvestment, and then utilizing the growing finances to put yourself in a better position” Tr. at 30.

The Individual testified that he had recently filed his federal and state taxes for years 2020 through 2022.⁶ *Id.* at 36, 40, 65–66. The Individual stated that because of his marital issues, he was unsure whether he should file his tax returns together with his wife, or separately. *Id.* at 38, 67–68. The Individual testified that although his accountant advised him at the time that he “need[ed] to address [his tax returns]” and recommended that he file the tax returns jointly with his wife, he did not want to “burden her with [his debt]” by filing jointly. *Id.* at 68–71. He acknowledged that he “should have done a better job,” but at the time, he “froze” under the pressure. *Id.* at 38. Following the submission of his 2020, 2021, and 2022 federal tax returns, the Individual had outstanding balances of \$9,581.11, \$7,421.30, and \$10,572.63, respectively. Regarding the Individual’s state taxes, Individual did not owe money to his state tax authority for the years 2020 through 2022, but instead, was issued a refund. Ex. N.

Although the Individual acknowledged his failure to file his taxes in the June, August, and September 2023 LOIs, he testified that several of his tax returns were not filed until just weeks before the hearing because he was “at the mercy of when [his CPA] had time to do it,” and the holiday season in December 2023, caused delays. Tr. at 45–46. He stated that the filing of his taxes “could have been done sooner,” but asserted that he was actively working on the issue, including “exchanging texts” and submitting documents to his CPA. *Id.* at 46.

The Individual testified that he has not made any outstanding tax debt payments or contacted the IRS to establish a payment plan. *Id.* at 48–49. The Individual also stated that he is not currently able to pay upwards of \$20,000 to satisfy the total amount owed. *Id.* at 41. He explained that his wife had not been employed for a year and a half due to foot surgery and had just returned to work two weeks prior to the hearing. *Id.* at 41–42. The Individual testified that, in addition to his wife’s new income, he has a plan to pay his tax debt, which includes “business plans” with his Colleague on “many ventures.” *Id.* at 42. He stated that he recently received a \$10,000 commission check for his services, which he plans to use to satisfy a 401k loan of approximately the same amount, then obtain “a new 401k loan” for approximately \$40,000–45,000 to pay off his taxes. *Id.* at 48, 61. The Individual further explained that his Colleague told him that he made a “great investment in [his] home,” and he should “use [that] asset to [his] advantage,” which the Individual indicated he planned to do by taking out a home equity loan to start a business. *Id.* at 53. The Individual stated that he is currently working two jobs to address his debts. *Id.* at 47.

Regarding his charge-off accounts, the Individual testified that the debts totaling \$48,586 and \$13,908 were both for vehicle loans. *Id.* at 50, 60. He stated that he is still in possession of both vehicles. *Id.* at 51, 60. For the \$923 charge-off account, the Individual indicated this was for a credit card. *Id.* at 51. For the account totaling \$219, the Individual could not recall what this was for, but stated that it could have been a “payday loan.” *Id.* He asserted that he could not recall how old these loans were, but believed they could have been from 2022. *Id.* The Individual testified

⁶ The Individual’s testimony is supported by his submission of a statement from his CPA, which indicated that the CPA filed income taxes on behalf of the Individual for years 2020 through 2022, copies of his Electronic Filing History, and an IRS Transcript for each of those years. Ex. B; Ex. C; Ex. D; Ex. E; Ex. J; Ex. K; Ex. L. The Individual also submitted screenshots from his State Taxation and Revenue Department website to demonstrate that he filed his state tax returns for years 2020 through 2022. Ex. B; Ex. C; Ex. D; Ex. E; Ex. N.

that for all four charge-off accounts, he had not yet contacted the account holders to determine his current status. *Id.* at 55. The Individual stated that he planned to contact his creditors and attempt to settle his outstanding debts once he had “cash in [his] bank account.” *Id.* at 49–50. As noted above, the Individual testified that he planned on “reinvest[ing]” money from his potential \$40,000-45,000 401k loan or home equity loan to satisfy his debts. *Id.* at 53, 61–62.

The Individual submitted a monthly budget, in which he indicated that he and his wife have an estimated pre-tax monthly income of \$13,518. Ex. M. The Individual estimated that \$6,000 of their monthly income would go towards monthly bills, including \$1,000 allotted for “minimum debt payments.” *Id.*

Regarding his gambling, the Individual testified that he was going through a “rough time” in his marriage during the COVID-19 pandemic, and he needed a “place to get away to be alone.” Tr. at 56. The Individual stated that he suffers from Attention Deficit/Hyperactivity Disorder (ADHD) and anxiety, so “being home, anxious” during the COVID-19 pandemic caused an extreme amount of stress. *Id.* The Individual explained that he turned to the “unhealthy environment of needing to be alone” by gambling, and he is “not proud of it.” *Id.* The Individual testified that gambling is no longer an issue as he currently seeks counseling to help manage his anxiety.⁷ *Id.* at 56–57, 74, 80. The Individual stated that he last saw his therapist a month before the hearing and currently has another appointment scheduled for either April or May 2024. *Id.* at 74.

The Individual indicated that he still goes to the casino “every once and awhile” to use his “free play” credit, including as recently as the day before the hearing. *Id.* at 58, 72. The Individual explained that when he was gambling, casinos would reward him with a “certain amount of money” to play for free with, and this is what he currently uses to gamble with. *Id.* at 72–73. The Individual testified that other than the dollar it takes to activate each free play, he does not spend any of his own money at the casino. *Id.* at 73.

V. ANALYSIS

Conditions that could mitigate a security concern 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 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;

⁷ Although a DOE-consultant psychologist (DOE Psychologist) did not testify at the hearing, in DOE’s December 2023, Case Evaluation, it was noted that a DOE Psychologist determined that it was “likely that [the Individual] experienced increased symptoms [of Generalized Anxiety Disorder and ADHD] during a period of extreme psychosocial stress, which likely influenced his engagement in maladaptive gambling at the time,” but “his symptoms have been well managed since” October 2022. Ex. 3 at 18. The DOE Psychologist determined that the Individual was in sustained remission for Gambling Disorder, Episodic. *Id.*

- (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;
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

As an initial matter, it does not appear that the Individual's gambling is currently impairing him. The Individual testified that he used gambling as an escape from his stress, depression, and marital issues, but he has since addressed these problems through therapy. The Individual explained that when he does gamble, he exclusively uses his "free play" rewards, not his own money (other than the dollar it costs to activate the rewards).

Nevertheless, the circumstances surrounding the Individual's debts do not remove the doubt cast on his reliability, trustworthiness, and judgment. First, the Individual's failure to file his federal and state income taxes continued until as recently as tax-year 2022, and his delinquent debt obligations remain outstanding. Therefore, his behavior cannot be said to have occurred so long ago. Also, very little time has passed since the Individual took significant action to mitigate the security concerns, as he did not choose to file his 2021 through 2022 federal tax returns until March 2024, just weeks before the hearing. Further, the Individual has taken no action to resolve his delinquent debts since reporting the charge-off accounts in January 2023, nor has he contacted the IRS regarding a payment plan for his tax debt. The Individual has stated only that he "plans" to contact the account holders to negotiate a settlement once he has more money. Second, the Individual's behavior was frequent because he failed to file federal and state taxes for three consecutive years and waited to file the majority of the past-due returns until just weeks before the hearing.

Third, the Individual's behavior did not occur under such circumstances that it is unlikely to recur. The Individual testified that his plan for obtaining the necessary funds to satisfy his debts includes taking out additional loans, with the possibility of also using these funds to start a business with his Colleague.⁸ Based on the Individual's stated plan of going further into debt to satisfy his current

⁸ In the June 2023, LOI, the Individual also indicated that he planned to resolve his debts with a "home refinance [loan] now that [his] house construction [was] complete." Ex. 9 at 53.

debts, I cannot conclude that the Individual's behavior 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. Therefore, I find that the Individual has not mitigated the security concerns under factor ¶ 20(a).

Regarding factor ¶ 20(b), although the circumstances that led to the Individual's financial difficulties, such as the increased price of materials for his house during the COVID-19 pandemic, may have been unforeseen, it cannot be said that the Individual acted responsibly under the circumstances. For example, the Individual stated that he talked to his accountant during the years he failed to file his taxes, and his accountant advised him to file at the time. Although the Individual testified that his marital issues caused uncertainty with respect to his filing status, it was not reasonable for him to ignore his accountant's advice regarding this issue. Moreover, the Individual admitted that he gambled as a "short-term escape" from stress associated with his financial issues. While he demonstrated at the hearing that his gambling is not currently impairing him, I cannot find that he acted responsibly under the circumstances when he gambled weekly at various casinos, often spending between \$100 and \$1,000 per visit, during the time he was incurring additional home building costs. And in any event, the Individual has failed to take any action to resolve his outstanding debts prior to the hearing. Therefore, I find the Individual has not mitigated the security concerns under factor ¶ 20(b).

Regarding factor ¶ 20(c), although the Individual's Colleague testified that he has been providing the Individual with financial counseling since December 2023, it is evident that the extent of the Colleague's advice generally relates to how the Individual can meet a certain financial goal. The Colleague acknowledged that he has not helped the Individual resolve any specific debt, and he was not aware whether the Individual had any problems satisfying his bills or taxes. Further, there is no indication that the Individual's financial problems are under control as he has failed to take any action to resolve his outstanding debts as of the date of the hearing. Therefore, I find the Individual has not mitigated the security concerns under factor ¶ 20(c).

Regarding factor ¶ 20(d), while the Individual testified that he intends to resolve his delinquent debt, he has not presented any evidence that he initiated and is adhering to good-faith efforts to repay his outstanding creditors. In fact, he acknowledged that as of the date of the hearing, he has not reached out to any of his creditors despite self-reporting several of his delinquent debts in January 2023. Therefore, I find that mitigating factor ¶ 20(d) is not applicable to this case.

I find that mitigating factor ¶ 20(e) is not applicable to this case because the Individual has not indicated that he disputes the legitimacy of any past-due debt. I find that mitigating factor ¶ 20(f) is not applicable to this case because the security concerns raised by the LSO do not involve unexplained affluence.

Regarding factor ¶ 20(g), although the Individual has successfully filed his outstanding tax returns, he has not yet started to repay his tax debt or establish a payment arrangement with the IRS. Therefore, I find that mitigating factor ¶ 20(g) is not applicable to this case.

Accordingly, for the reasons cited above, I find that the Individual has not mitigated the Guideline F security concerns raised by the LSO.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. After considering all of 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined 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.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals