



concerns. *See* Ex. 3 (summarizing the LSO’s evaluation of the Individual’s eligibility for access authorization).

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines. *Id.* at 5.

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 conducted an administrative hearing. The LSO submitted nine exhibits (Exs. 1–9) and the Individual submitted six exhibits (Exs. A–E).<sup>3</sup> The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-24-0062 (Tr.) at 3, 10. 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. 1 at 5. “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 failure to file federal or state personal income tax returns for the 2021 tax year and the Individual’s delinquent debt of \$2,450. Ex. 1 at 5. The LSO’s allegations that the Individual demonstrated an inability or unwillingness to satisfy his debts and failed to file federal and state personal income tax returns as required justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a)–(b), (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 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

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<sup>3</sup> The Individual labeled two related exhibits as “A” and “A2.” Hence, the Individual’s exhibit labels do not correspond to the total number of exhibits he submitted.

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.* § 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**

On June 23, 2023, the Individual signed and submitted the QNSP. Ex. 8 at 73. The Individual represented on the QNSP that he had not filed federal or state personal income tax returns for the 2021 tax year because “turbotax rej[e]cted paperwork.” *Id.* A credit reported collected as part of a background investigation of the Individual additionally revealed that a consumer debt on which he owed \$2,450 had been referred to collections. Ex. 7 at 36.

On August 11, 2023, the Individual met with an investigator (Investigator) for an interview. Ex. 9 at 127. The Individual told the Investigator that he was unable to file personal income tax returns for the 2021 tax year due to his return having been rejected and claimed that this was “because [he] owed \$0.” *Id.* at 129; *see also* Tr. at 13 (testifying during the hearing that he was out of work in 2021 due to a workplace injury); Ex. C (documenting the Individual’s injury). The Individual represented that he would consult with an accountant the next month to file the tax returns. Ex. 9 at 129. Regarding his delinquent debt, the Individual admitted that he owed the debt to a former landlord and indicated that he incurred the debt in 2020 after breaking a lease following the loss of a job. *Id.* He indicated that he did not have sufficient resources in the past to pay the debt but expressed that he planned to contact the collection agency that held the debt in September or October of 2023 to enter into a settlement agreement. *Id.*

The LSO subsequently issued the Individual the LOI, to which the Individual responded on November 11, 2023. Ex. 5 at 30. In response to a question on the LOI concerning whether he had filed his federal personal income tax return, the Individual responded “possible” without elaboration. *Id.* at 22. The Individual indicated that he had not filed his state personal income tax return for 2021 and that he had “no clue” whether he owed state personal income taxes. *Id.* The Individual attributed his failure to file the tax returns since the interview with the Investigator to “car problems and health issues.” *Id.* at 23. Regarding his delinquent debt, the Individual indicated that he had “no intention to reach out [to] or contact [the creditor].” *Id.* at 20.

On February 16, 2024, the Individual met with a tax preparer who prepared the Individual’s federal and state personal income tax returns for the 2021 tax year. Ex. A; Ex. A2. The tax preparer filed the Individual’s 2021 tax returns that same day. Tr. at 28–30; Ex. E at 1. On March 11, 2024, the Internal Revenue Service (IRS) processed the Individual’s personal income tax return for 2021. Ex. E at 1. An IRS tax transcript for the Individual dated April 8, 2024, indicates that he has no outstanding tax balance for the 2021 tax year. *Id.*

The Individual also contacted his creditor in February 2024 and made arrangements to pay his delinquent debt. Tr. at 15. On February 19, 2024, the Individual’s creditor sent him a letter confirming that he had paid the debt in full. Ex. B. At the hearing, the Individual testified that his

monthly net income after bills and expenses was approximately \$2,000 and he did not anticipate falling into delinquency on any debts in the future. Tr. at 23–24.

## V. ANALYSIS

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 demonstrated that he contacted his creditor to resolve his delinquent debt and paid the debt in full. This debt was an isolated incident rather than a pattern, the Individual fully resolved the debt, and his current employment affords him sufficient monthly net income that he is unlikely to fall into delinquency on debts in the future. For these reasons, I find that the security concerns presented by the Individual's delinquent debt are resolved by the first mitigating condition under Guideline F. *Id.* at ¶ 20(a).

With respect to the Individual's failure to timely file personal income tax returns, the Individual has established that he filed the tax returns in question. Moreover, his IRS tax transcript indicates that he has no outstanding federal tax liability for the 2021 tax year. While the Individual failed to exercise reliability or good judgment in delaying for years in resolving this issue, the security

concerns presented by the Individual's failure to file personal income tax returns for one tax year in which he had no tax liability are relatively minor and are outweighed by his having filed the tax returns. Accordingly, I find that the security concerns presented by the Individual's failure to timely file his 2021 personal income tax returns are resolved pursuant to the seventh mitigating condition. *Id.* at ¶ 20(g).

## **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