

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing)

Filing Date: August 25, 2017)

Case No.: PSH-17-0058

Issued: December 14, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710 entitled “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” 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 not be granted an access authorization.

I. Background

The individual’s DOE employer requested that the individual be granted a security clearance. In reviewing the individual’s eligibility to receive a security clearance, the Local Security Office (LSO) discovered that the individual had a number of unresolved debts. Consequently, the LSO conducted a personal security interview with the individual in June 2017 (June 2017 PSI).

After the June 2017 PSI, the LSO sent the individual a July 2017 letter (“Notification Letter”) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline F (financial considerations) of the Adjudicative Guidelines.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting 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

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

conducted an administrative hearing in the matter. At the hearing, the individual presented the testimony of three witness and testified on his own behalf. The DOE Counsel submitted six exhibits into the record (Exhibits 1-6); the individual submitted nine exhibits (Exhibits A-I). The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standards

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require 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), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring the individual’s 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 so as 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.

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

III. The Notification Letter and the Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's eligibility for access authorization. The information in the letter specifically cites Guideline F.

Guideline F addresses financial concerns. The “[f]ailure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations,” which “can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines, Guideline F at ¶ 18. As a basis for invoking Guideline F, the Notification Letter cites a civil suit filed against the individual for \$1,359.06, defaulted student loans totaling \$31,624, a mortgage default in which the individual owes a \$16,000 balance, and a collection for a \$763 telephone bill. Ex. 1 at 2-3. Furthermore, the Notification Letter cites the individual's failure to take action to resolve his financial issues despite his assurance that he would during an April 2017 interview with the Office of Personnel Management (OPM). *Id.* at 3.

IV. Findings of Fact

OPM interviewed the individual in April 2017 regarding his delinquent student loan accounts and delinquent phone bill. Ex. 6 at 33-35, 39. During the interview, the individual gave OPM assurances that he would take steps to resolve the issues with these accounts. Ex. 6 at 33-35, 37-40.

Two months later, during the June 2017 PSI, the LSO interviewed the individual regarding his continuing financial issues. The individual confirmed that a medical service provider had initiated a civil suit against the individual for \$1,359.06. Ex. 6 at 16. As a result, the individual's wages were being garnished. *Id.* The individual also confirmed that student loans, totaling \$31,624.06, were in default. Ex. 1 at 2; Ex. 6 at 21-33. Additionally, the individual confirmed that he had a mortgage in default for \$16,000 and a phone bill in collection status with a balance of \$763. Ex. 6 at 36-38, 41-47. The individual also admitted that, despite his promises during the OPM interview, he had not contacted his creditors. *Id.* at 33-35, 37-40.

V. Analysis

At the hearing, the individual did not dispute the allegations in the Notification Letter. Instead, he attempted to demonstrate, through his testimony and that of his witnesses, that he had taken steps to mitigate the DOE's security concerns.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at 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 should not be granted a security clearance. The specific findings that I make in support of this decision are discussed below.

A. Guideline F: Financial Concerns

At the hearing, the individual presented evidence to try to establish that he is making a good-faith effort to repay overdue creditors and resolve his debts. The individual's witnesses, who are all work colleagues, generally testified that the individual is a good worker and he exercises good judgement. One of the witnesses, a project manager, testified that he and the individual had discussed the individual's financial issues and that he worked with the individual to create a budget a week or two before the hearing. Tr. at 25-26. Additionally, the individual provided eleven character statements from his friends, family, and colleagues that expressed positive views of his work ethic, character, and reliability. Exs. A-C, G.

The individual also testified that he had taken positive steps to address his financial issues. First, the individual testified that the delinquent medical bill resulted from a kidney stone, and that his sister and father passed away around the same time as his medical procedure. Tr. at 41-42. As a result, he went through a period of taking it "day-to-day," and failed to address the bill. *Id.* at 42. The individual stated that, during this period, he took care of financial issues for his father, mother, and sister. *Id.* 42-45. The individual also testified that as a consequence of the resultant monthly garnishment, he has paid the balance down from \$1,600 to \$1,000, *id.* at 41, and he expects the debt to be paid in full by February 2018. *Id.* at 45.

The individual also testified that he is addressing his outstanding student loans. The individual's student loans date back to 2007, *id.* at 51, and he recalled first being notified in 2014 that the servicers were seeking payment. *Id.* at 56. Prior to the administrative hearing, he contacted an organization and determined that they can consolidate and then defer his loan. *Id.* at 51. He also recently applied to see if he is eligible for any programs to help with repayment. *Id.* And he has plans to increase his contributions to his student loan repayment once he frees up more money by paying off his medical and phone bills. *Id.* at 53-54.

The individual asserts that he does not have any outstanding debt related to his mortgage. He testified that instead of defaulting on his mortgage, he obtained a "deed in lieu." *Id.* at 58. The deed in lieu allowed him to sell his home back to the creditor with the result that he would owe a zero balance.³ *Id.* The individual then testified that he had taken steps to address his delinquent phone bill. The account originated with a shared family plan with his father. *Id.* at 62. When his father suffered severe medical issues, the individual "just didn't address [the bill]." *Id.* at 63. After the PSI, he contacted the company and set up a plan to satisfy the debt by February 2018. *Id.* To date, he has remitted approximately \$300 toward the \$763 balance. *Id.*

The individual also described, and later provided, a budget which indicates that he can address his outstanding debts. *Id.* at 66; Ex. D. While the individual has not obtained credit counseling, Tr. at 69, he obtained the help of his work colleague in the weeks before the hearing. *Id.* at 70. In addition to his income, the individual's live-in mother contributes to the family finances, and his wife recently obtained a full-time position which doubled her income. *Id.* at 66-67.

³ After the administrative hearing, the individual stated that he received confirmation from his Deeding Attorney that once the deed in lieu process is complete, the judgment associated with the mortgage should be cleared from credit report. Exs. H-I. The individual did not submit documentation confirming this assertion.

Lastly, the individual addressed his failure to act sooner to address his financial issues. He explained that after the PSI, he wanted to focus on resolving the deed in lieu, so he started that process. *Id.* at 72. He also stated that he was “slow to come out and . . . address the other two issues. . . .” *Id.* To explain his delay, he stated that his wife was unemployed during the summer, and he did not want to start making a lot of payments without knowing if he could definitely continue them. *Id.* Consequently, he felt that, despite his assurances to the PSI investigator, his family’s lack of money prevented him from taking care of the financial issues. *Id.* at 73-74.

Based on the evidence, I find that the individual has made a significant effort to try to resolve his debts. Nonetheless, I cannot find that the Guideline F security concerns raised by the individual’s history of financial problems have been totally resolved. The individual has a history of financial instability which he asserts has been caused by the stress of dealing with his family’s significant medical issues. However, the individual, while neglecting his own financial affairs, was able to manage his mother and father’s finances during that time.

Significantly, I find that the individual’s efforts to resolve his financial problems are very recent. As such, I cannot find that I can be sufficiently certain that the individual will continue to handle his financial affairs responsibly in the future. Such assurance can be demonstrated by having a significant period of demonstrating financial responsibility. *See Personnel Security Hearing*, Case No. PSH-12-0103, slip op. at 16 (2012) (“[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely”). While the individual has made admirable efforts in trying to resolve his student loan debt, in the absence of a payment plan, this debt potentially provides a source of future financial instability.

In reviewing the Guideline F mitigating factors, the one factor that is arguably relevant in this case is, “the individual has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Adjudicatory Guidelines, Guideline F at ¶ 20 (d). As discussed above, I cannot find that the individual has sufficiently adhered to a good-faith effort to resolve his debts and so that I can conclude that this mitigating factor is applicable.

The individual has submitted testimony and a number of letters attesting to his character and his work performance. I believe that the individual has shown many admirable character traits and that he has a stellar work record. *See Exs. A-C, G.* Nonetheless, I find that these positive traits do not outweigh the concerns raised by the individual’s history of indebtedness and the recency of his efforts to resolve his finances. Accordingly, I conclude that the individual has not provided sufficient evidence to resolve the DOE’s security concerns under Guideline F.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline F. 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 have found that the individual has not brought forth sufficient evidence to resolve the security concerns.

I therefore cannot find that granting the individual access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should not grant the individual an access authorization at this time. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

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

Date: December 14, 2017