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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 6, 2018 ) Case No.: PSH-18-0047  
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Issued: September 24, 2018

**Administrative Judge Decision**

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and 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’s access authorization should not be granted.

**I. Background**

The Individual is employed by a DOE contractor that requested a security clearance on his behalf. In applying for his clearance, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) in May 2017. Ex 6. In response to one of the financial questions, the Individual stated that, in the last seven years, he had failed to “file or pay Federal, state, or other taxes when required by law or ordinance.” Ex. 6 at 38. The Individual additionally acknowledged that he was delinquent on multiple student loans. *Id.* at 40–44. Subsequently, the Local security office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in February of 2018. Ex. 7. Due to unresolved security concerns raised during the PSI, the LSO informed the Individual, in a Notification Letter dated April 19, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations). Ex. 1.

<sup>1</sup> 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.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting 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 eight numbered exhibits (Exhibits 1–8) into the record and presented the testimony of the DOE psychologist. The Individual tendered ten exhibits (Exhibits A–G)<sup>2</sup> and testified on his own behalf. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. 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 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 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 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 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.

## **III. Notification Letter and Associated 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 Guidelines F of the Adjudicative Guidelines. Guideline F addresses one’s “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations.” Guideline F at ¶ 18. It is well established that failure 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. *Id.* Among the conditions set forth in that guideline that could raise a disqualifying security concern are the inability to satisfy debts; a history of not meeting financial obligations; and failure to file or fraudulently filing annual Federal,

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<sup>2</sup> Four of the Individual’s exhibits were labeled F1–F4.

state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required. Guideline F at ¶ 19(a), (c), (f).

In citing Guideline F, the LSO relied upon the Individual acknowledgment during the PSI that he failed to file both his Federal and state income tax returns for the 2015 tax year. Ex. 1. The LSO also cited six of the Individual's unpaid collection accounts, amounting to \$85,290 in delinquent debts. *Id.* Additionally, the LSO relied upon the Individual's admissions in the PSI that: (1) he had not paid one creditor (Creditor A) for student loans since 2017 when the wage garnishment from this creditor ceased; (2) he had never made any payments to another creditor (Creditor B) for student loans, which were due in 2011; (3) he intended to let the student loans from Creditor B stay in default for another three to four years; and (4) he had an excess income of \$1,900 each month that he could have been using to make payments towards his delinquent student loans. *Id.*

#### **IV. Findings of Fact**

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

During a February 2018 PSI, the Individual explained that while attending school, he accumulated four years of student loans, the last of which he acquired in 2010. Ex. 7 at 22. The Individual stated that he was afforded a one year forbearance, and in 2011, explored setting up a payment plan; however, he was unable to afford the minimum payments that were required. *Id.* at 23. As such, the Individual opted to not make the payments. *Id.* The Individual explained that, in May 2017, he was hired by a DOE Contractor and his income increased, yielding a net monthly income of approximately \$2,700. *Id.* at 52. He stated that, each month, he pays approximately \$800 in bills and is left with an excess of \$1900, which he has been saving. *Id.* at 53–54. At the time of the PSI, the Individual indicated that he had \$4,000 in savings. *Id.* at 54.

Turning to his student loans, the Individual explained that in November 2012, one of his creditors, Creditor A, began garnishing his wages, taking 15% of his earnings. *Id.* at 27. The garnishment ended in May 2017, when he was hired by the DOE Contractor. *Id.* at 26. The Individual clarified that the only payment he made to this creditor was through the garnishment, and he had not made any payments since the garnishment ceased almost a year earlier. *Id.* at 41. The Individual indicated that he did not know why the garnishment had ceased and that he had not made any effort to find out any additional information. *Id.* at 26–27. He additionally stated that he had not contacted the creditor to establish a payment plan, despite indicating in a July 2017 interview with the Office of Personnel Management (OPM) that he would do so. *Id.* at 28, 34. Instead, at his PSI, the Individual claimed that he thought Creditor A was included in a payment plan he had created with a separate loan servicer. *Id.* at 28, 31. The Individual then explained that when he received a call from the LSO a week prior to the PSI, he visited Creditor A's website to "figure out [how] to set up a payment program with them;" however, he was unable to create a payment plan as he did not have the appropriate tax documentation. *Id.* at 33. The Individual verified that he owed Creditor A \$21,179, which was past due. *Id.* at 34–35.

With regard to Creditor B, the Individual indicated that he had a balance of \$69,143, which was in default. *Id.* at 43. The Individual explained that Creditor B only recently took over the loan, and, in spite of his efforts to set up a payment plan, the previous creditor required a settlement or payment in full, which the Individual stated he could not afford. *Id.* at 43–44. The Individual stated

that approximately a month prior to the PSI, Creditor B informed him by mail that the loans were in default and requested payment. *Id.* at 45. The Individual stated that he did not contact Creditor B or attempt to establish a payment plan as he assumed that, though the creditor was new, “nothing had changed.” *Id.* at 46–47. He further clarified that at the time of the PSI, he had not had any contact with Creditor B. *Id.* at 50.

When asked about his future intentions regarding these student loans, the Individual stated that he planned to save money in order to be able to pay the settlement. *Id.* at 48. He clarified that “it didn’t seem to make a lot of financial sense...to make the payment plan...as it would probably be both cheaper for [him] to save up over those three to four years...and make the settlement amount.” *Id.* When the LSO questioned whether the Individual intended to allow the accounts to remain in default for years, the Individual stated “that was the best option [he] could see.” *Id.* at 48–49. When the LSO again clarified that she understood that the Individual “intend[ed] to let these stay in default for the foreseeable future,” the Individual stated, “I guess until now...yeah that was kind of the plan.” *Id.* at 49. By way of reassuring the LSO that he would initiate payments plans when he had failed to previously follow through on his assurances, the Individual stated, “I understand that I need to get this done in order to keep this job and...I do want to keep this job.” *Id.* at 42.

In addition to the Individual’s unpaid student loans, the LSO inquired about the Individual’s tax history. The Individual confirmed that he was late paying his 2014 state taxes because he “thought [he] had paid them or was getting a return from them.” *Id.* at 16. He indicated that by the time he realized they were late, he could not afford the \$240 penalty. *Id.* at 16–17. That balance was deducted from his 2016 tax refund. *Id.* at 17.

The Individual additionally confirmed that he had failed to file his 2015 Federal and state taxes. *Id.* at 9. By way of explanation, the Individual stated that his former employer did not provide him with a W-2, he had been waiting for the W-2, and “it slipped [his] mind.” *Id.* at 10. He explained that after the tax deadline passed, “it didn’t seem important to [him] because...[he] frankly didn’t make that much money that year.” *Id.* The Individual stated that shortly after his OPM interview in July of 2017, he contacted his previous employer’s accountant directly, but she no longer served as the accountant and was unable to provide him with the W-2. *Id.* at 10–11. The Individual noted that he did not contact the former employer directly as he “didn’t feel comfortable talking to her.” *Id.* at 11. It was not until shortly before the PSI that the Individual reached out directly to the employer to obtain the 2015 W-2. *Id.* at 12–13. Although the Individual indicated that he was attempting to file the taxes, he had not yet done so at the time of the PSI. *Id.* at 13–14.

## V. Analysis

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 has not sufficiently mitigated the security concerns noted by the LSO with regard to Guideline F. I cannot find that granting the Individual’s DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security

clearance should not be granted. The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns exist as a result of the Individual's PSI and financial situation.

At the hearing, the Individual presented only his own testimony. He restated the testimony he gave during the PSI with regard to his 2015 Federal and state taxes. Tr. at 13-23. The Individual added that he ultimately took his Federal and state taxes to a tax professional and filed his taxes "the same week as the [PSI]." *Id.* at 16; *see* Ex. A; Ex. B. As of the date of the hearing, the Individual testified that to the best of his knowledge, "all of [his] taxes have been filed." Tr. at 19.

Turning to the Individual's student loan debt, he again reiterated the testimony he gave during the PSI. He added that with regard to Creditor A, in May 2018, he entered into a "delinquency forgiveness repayment plan," which is a nine-month income-based repayment program. *Id.* at 25; Ex. G. The Individual explained that, upon successful completion of the program, his loans would be "taken out of delinquency... and put back into good standing." *Id.* at 25. He explained that as of the date of the hearing, he had made four payments of \$208 that were automatically withdrawn from his checking account and currently owes a balance of \$20,633.91. *Id.* at 26, 31; Ex. C; Ex. G.

With regard to Creditor B, the Individual submitted two exhibits showing that he had paid one of the four debts associated with Creditor B after the Creditor made him an offer to settle the debt for 10% of the total balance. Ex. D; Ex. E. However, although Creditor B offered to settle each of the Individual's four defaulted debts for 9-10% of the current balances, the Individual chose to pay only one as he "wasn't sure what effect paying those off would have on [his] taxes as the end of the year." Tr. at 43. As such, he "wanted to pay the one off, see what effect that has at the end of the year, and then move forward from there." *Id.* At the time of the hearing, the Individual clarified that his plan was to let the remaining loans stay in default until early 2019 and, if there were tax consequences from the settlement he paid in 2018, he would settle one debt per year. *Id.* at 43-44, 48. He explained that although this is not a payment plan, it is a personal payment plan and he intends to pay the debts. *Id.* at 46-47.

The Individual explained that he has been saving approximately \$1,000 per month since January of 2018 and that he currently has \$3,000 saved. *Id.* at 54-55. He plans to use that money to pay his taxes on the loan he already settled or use it to pay the remaining three loans at the beginning of 2019, for which he has been offered a settlements of \$2,229.37, \$1,638.35, and \$1,705.88. *Id.* at 48; Ex. D. When the Individual was questioned as to the balance of his savings account and why the balance was not higher after nine months of saving \$1,000 per month, he was only able to provide that he "wasn't able to put very much away" for the months of July and August as he spent about \$1,400 helping his mother and a family friend. Tr. at 55.

When asked about his financial situation causing him to "do something questionable," the Individual explained that it "struck [him] as a little bit silly" that, after his PSI, DOE was issuing what he perceived as a "kind of a mandate to get [the loans] paid." *Id.* at 48. He stated that this "pressure" was causing "more distress than the loans themselves." *Id.* at 48-49.

#### **A. Guideline F**

An inability to satisfy one's debts or an individual's unwillingness to do so regardless of his or her ability may raise a security concern that could serve as a disqualifier to receiving a security clearance. Guideline F at ¶ 19(a)(b). Furthermore, a failure to file annual Federal or state income tax returns or failure to pay annual Federal or state income tax may also serve as a disqualifier. *Id.* at ¶ 19(f). An individual may be able to mitigate the security concerns by demonstrating that 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. *Id.* at ¶ 20(a). Additionally, the individual may be able to mitigate the security concerns by initiating and adhering to a good-faith effort to repay overdue creditors. *Id.* at ¶ 20(d).

In examining the individual's tax situation, although the Individual has now filed his delinquent taxes, he did not take substantial action to resolve the taxes until DOE intervened. Further, the Individual stated that he had not called his prior employer for his W-2 as he "just didn't want to talk to her," and repeatedly stated that failing to file these taxes did not seem to be problematic. Tr. at 21-22. Given the individual's nonchalance toward his tax situation up until DOE involvement, I cannot find that this behavior occurred under circumstances that are unlikely to recur, nor can I find that this situation does not cast doubt on the Individual's current reliability, trustworthiness, and good judgment. *See* Guideline F at ¶ 20(a).

Turning to the delinquent loans, the Individual has made a good-faith effort to repay one of his debts to Creditor B. *See id.* at ¶20(d). While it is admirable that he has entered into a repayment plan with Creditor A, he had, as of his hearing, only made four payments toward that plan, and I cannot find that four payments demonstrates an adherence to the repayment for loans that have been in default for nearly a decade. *Id.* Further, the Individual had savings of \$3,000 and, therefore, could have paid one or more of his three remaining debts to Creditor B. Had he diligently adhered to his personal payment plan of saving \$1,000 per month, he would have had enough funds to settle all of the debts to Creditor B before the hearing. However, the Individual clearly has not complied with his personal payment plan to save \$1,000 per month, and he chooses not to resolve his debts out of concern for the tax implications. Although this concern is understandable, it does not absolve the Individual of his responsibility to resolve financial issues. Thus, I cannot find that he is making a good faith effort to repay his overdue creditors when he has available funds and still chooses to leave the debts unpaid. *Id.* Lastly, I cannot find that the individual demonstrates good judgment when DOE's concerns about his unresolved debts strike him as "silly." Tr. at 48.

For the foregoing reasons, I cannot find that the Individual has mitigated DOE's Guideline F security concerns.

## VI. CONCLUSION

After considering all of 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 have found that the Individual has not brought forth sufficient evidence to resolve the security concern associated with Guidelines F. Accordingly, I have determined that the Individual's access authorization should not be granted.

The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals