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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: November 17, 2020 ) Case No.: PSH-21-0005  
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Issued: February 12, 2021

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Procedures for Determining Eligibility for Access to Classified Matter of Special Nuclear Material.”<sup>1</sup> 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 denied.

**I. BACKGROUND**

The Individual, an applicant for a DOE Security Clearance, signed and submitted a Questionnaire for National Security Positions (QNSP) to the Local Security Office (LSO) on August 10, 2017. Ex. 9. The LSO subsequently obtained the Individual’s credit report on August 30, 2018, and again on February 4, 2019. Ex. 6; Ex. 7. The United States Office of Personnel Management’s (OPM) Investigation Service investigated the Individual and issued a report of its findings on July 9, 2019. Ex. 10. On February 24, 2019, the Individual signed and submitted his response to a Letter of Interrogatory (LOI) issued to him on February 12, 2019. Ex. 8. The LSO determined that unresolved derogatory information remained in the Record which raised significant security concerns about the Individual. Accordingly, the LSO began the present administrative review proceedings on January 14, 2020 by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled

<sup>1</sup> Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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 to authorization or security clearance

to a hearing before an Administrative Judge to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual and his wife. *See* Transcript of Hearing, Case No. PSH-21-0005 (herein after cited as “Tr.”). The DOE Counsel submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual did not submit any exhibits.

## II. THE 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. That information pertains to Guidelines F and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). The LSO further cites the Bond Amendment, codified at 50 U.S.C. § 3343, in support of its conclusion that the Individual is ineligible for a security clearance.

Guideline F (Financial Considerations) provides that an individual’s 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.” Guideline F at ¶ 18. Under Guideline F, the LSO alleged that the Individual: (1) has thirteen outstanding collection accounts totaling approximately \$18,227; (2) has one outstanding charge-off account in the amount of \$5,930; (3) had two motor vehicles reprocessed, for which he still has outstanding obligations totaling \$9,370; (4) has admitted that he has not yet begun to resolve his financial issues, despite previously providing the LSO with assurances that he would attempt to resolve his debts; and (5) owes an unknown amount in federal income taxes to the Internal Revenue Service (IRS). Ex. 1 at 1-3. Guideline F specifically states that an “[i]nability to satisfy debt, [u]nwillingness to satisfy debts regardless of the ability.., [a] history of not meeting financial obligations, and [f]ailure to file...Federal, state, or local income tax returns or failure to pay [them] as required” are all potentially disqualifying conditions. Guideline F at ¶ 19. Accordingly, the LSO’s security concerns under Guideline F are justified.

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. The conditions that could raise a security concern and may be disqualifying under Guideline J include: “[a] pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness, and evidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” Guideline J at ¶ 31(a)-(b). The LSO alleges that: (1) the Individual was arrested in 2012 in connection with an outstanding warrant for

Driving Without a License or Insurance; (2) the Individual was issued a citation for speeding in 2005; (3) the individual was arrested and charged with Driving Under the Influence (DUI) in 1991; and (4) in 1984, the Individual was sentenced to a term of eighteen months in federal prison after being convicted of Criminal Sexual Penetration of a Minor-Rape, and Aiding and Abetting on a reservation. Ex. 1 at 3. Accordingly, the LSO's concerns under Guideline J are justified.

As stated above, the Notification letter also cites the Bond Amendment. The Bond Amendment states, in pertinent part, that an agency may refuse to grant or renew a security clearance for an individual who "has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than one year." 50 U.S.C. § 3343(c)(1)(A). The LSO noted that the Individual was convicted in federal court, sentenced to eighteen months in federal prison in 1984, and served the full eighteen months. Ex. 1 a 1.

### III. REGULATORY STANDARDS

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all of the relevant evidence, favorable or 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 (9<sup>th</sup> 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 personal 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.

### IV. FINDINGS OF FACT

In 1984, the Individual pled guilty to the felony charges of Criminal Sexual Contact of a Minor-Rape, as well as Aiding and Abetting, and was accordingly sentenced to, and served, eighteen months in federal prison. Ex. 10 at 69; Ex. 9 at 38. The Individual was convicted of DUI in 1991.<sup>2</sup> Ex. 10 at 70. The Individual further reported that he has not consumed alcohol since 1998, nor does he intend to resume the consumption of alcohol in the future. Ex. 10 at 70. On October 29,

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<sup>2</sup> The Individual claimed to the OPM Investigator that he received alcohol-related counseling and discontinued consuming alcohol circa 1998. Ex. 10 at 70.

2005, the Individual was issued a traffic citation for Speeding, and he was arrested in 2012 for the outstanding warrant referenced earlier. Ex. 10 at 89, 92-94.

The Individual has 13 outstanding collection accounts totaling approximately \$18,227, a charge-off account in the amount of \$5,930, and outstanding debts, totaling \$9,370, resulting from the repossession of two motor vehicles. Ex. 6 at 2-3; Ex. 7 at 3-5, 8; Ex. 10 at 70. In his 2017 QNSP, the Individual repeatedly stated in connection to the delinquencies he disclosed that he would “check [the] status” of the debt or would endeavor to make “contact for [a] payment plan.” Ex. 9 at 44-48. In a March 22, 2018, interview with an OPM Investigator, the Individual stated that the trade union to which he belongs and through which he obtains medical insurance was working with him to resolve his medical debts. Ex. 10 at 71. However, he did not provide the OPM Investigator with any documentary evidence regarding this assertion. Ex. 10 at 71. He also stated that he was “in the process of finding out how to get the [auto loan] debt taken care of.” Ex 10 at 71.

In his February 24, 2019, responses to the LOI, the Individual acknowledged that his outstanding collection and charge-off accounts remained unresolved. Ex. 8 at 3-5. He further admitted that he had the debts remaining after his two vehicles were repossessed. Ex. 8 at 1-5. To explain his failure to resolve these debts, he repeatedly indicated in his LOI that he requires more information regarding the origin of the debts. Ex. 8 at 1-5. He stated that, due to his work schedule, he has not had the time to inquire into these matters. Ex. 8 at 5. The Individual admitted that he owes an unknown amount in unpaid federal taxes. Ex. 8 at 6. He further admits he has not sought professional assistance in resolving his financial issues, citing his reluctance to discuss such financial matters. He attributed his financial difficulties to his sporadic employment. Ex. 8 at 6.

### **The Hearing**

The Individual testified that he has been a member of a trade union for almost twenty years. However, his employment has been sporadic, and he would sometimes have periods of unemployment lasting for months, although recently he has been consistently employed. Tr. at 11-12.

At the hearing, the Individual admitted that he has not yet taken any action to resolve the outstanding collection accounts cited in the SSC. Tr. at 13-15. The Individual surmised that many of those debts originated with his son’s hospital stay and testified that he had not resolved these debts because he has lacked the financial resources to do so. Tr. at 17-18. The Individual testified that he was unable to address the debts associated with his repossessed motor vehicles because of his periods of unemployment that resulted from reductions in force. Tr. at 15-16, 19-21.

The Individual testified that the IRS is currently garnishing his wages. Tr. at 21. Although the Individual does not know the exact amount he owes to the IRS, he believes his outstanding federal tax obligations amount to somewhere in the thousands. Tr. at 22. Although his state tax obligations have been resolved, the Individual has yet to reach out to the IRS to make payment arrangements to satisfy his federal tax obligations. Tr. at 22.

The Individual admitted that he has not taken any action on the foregoing debts and obligations, testifying that he has not “had time to look into it[.]” as he has to commute to another town in order to work. Tr. at 23. He does not believe these various delinquencies evidence a lack of reliability, but rather, are explained by his sporadic employment. Tr. at 23. He has not consulted with any financial agency or professional to assist him in resolving his financial obligations. Tr. at 26.

With regard to his felony conviction, the Individual claimed that he served eighteen months in prison pursuant to a guilty plea, although he contended that he only “just aided and abetted, that’s it.” Tr. at 26-27. The Individual testified that he had been under the influence of alcohol at the time of the sexual assault, and also attributed his felonious behavior to his youth and “being in the wrong place at the wrong time.” Tr. at 27-28. He testified that he has discontinued any association with the other perpetrators, and has remained alcohol free for approximately twenty-four years, and drug-free for approximately thirty-four years. Tr. at 27.

The Individual admitted that he was arrested and charged with DUI in 1991 and acknowledged that he should not have been driving after excessively consuming alcohol. Tr. at 28. He also admitted that he had been arrested for Speeding in 2005 and had been arrested on an outstanding warrant in 2012. Tr. at 28-29. The Individual attributed these criminal acts to “stupidity” and “being in the wrong place at the wrong time” but denied the possibility that these actions evidenced poor judgement. Tr. at 30. Explaining his past criminal conduct, the Individual cited the lack of direction from a parental figure during his formative years. Tr. at 31-32. He testified that he had stopped using drugs and alcohol as an adult.

The Individual’s common-law wife of thirty-four years testified that the Individual is a reliable person with good judgement, although under examination she testified that she was unaware of the reasons for the Individual’s incarceration. Tr. at 39-40. She confirmed the Individual’s ongoing sobriety and denied any knowledge of him engaging in illicit drug use. Tr. at 41. She also corroborated the Individual’s account of sporadic employment prior to obtaining his current position, and testified that they had obligations outside of their outstanding debts, such as “raising their four kids” and “putting food on the table.” Tr. at 41. The Individual’s wife further testified that they have not attempted to make any arrangements to satisfy their outstanding debts, and questioned whether they would be able to afford such payments. Tr. at 42-43.

## **V. ANALYSIS**

### **Guideline F**

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline F if:

(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

Guideline F at § 20(a)-(g).

The Individual admits that he has not resolved (or even made any serious attempts to resolve) any of his outstanding debts or tax obligations. Accordingly, his behavior has continued into the present. The Individual's financial irresponsibility was frequent, continues to occur, and continues to cast doubt on the Individual's current reliability, trustworthiness, and good judgement. Although I am not insensitive to the fact that the Individual was without steady employment for a number of years and that some of his outstanding medical debt resulted from his son's hospitalization, there is no evidence before me that the Individual acted responsibly under the circumstances. Tr. at 17, 41. Moreover, the Individual has not shown that he has a reasonable basis to dispute the legitimacy of any of his past-due debts. Although the Individual acknowledges that he owes federal taxes, he has not provided information regarding the outstanding amount, has neglected to make any contact with the IRS regarding the matter, and has failed to retain the services of a tax professional. Accordingly, the mitigating conditions described in § 20(a)-(e) and (g) are not present in the instant case.<sup>3</sup>

### **Guideline J**

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline J if:

(a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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<sup>3</sup> I need not address the mitigating factors described in Guideline F at § 20(f), as it is not applicable to this matter.

(b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) No reliable evidence to support that the individual committed the offense; and

(d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Guideline J at § 32(a)-(d).

Thirty-five years have passed since the Individual's conviction for his participation in the sexual assault of a minor. However, I simply cannot ignore the severity of the Individual's offense, and its terrible nature has not been eroded by the passage of time, particularly since the Individual has not unequivocally taken responsibility for this offense. Although the Individual has not committed a crime of this type since being released, the fact remains that he committed another serious crime in 2008, when he was charged with DUI, and that he was again arrested in 2012, less than a decade ago. Although the Individual has made some strides in mitigating the security concerns under Guideline J in that he has secured employment, he has not fully mitigated those concerns. This is especially true in light of the fact that the Individual attributes his criminal offenses to "being in the wrong place at the wrong time," and to his youth and "stupidity." Tr. at 30. As noted, these explanations only evidence his apparent reluctance to take unequivocal responsibility for his past criminal behavior. The severity of the crime the Individual committed in the 1980s, combined with the Individual's more recent legal entanglements, outweigh the mitigating factors presented. Further, the Individual has not presented any evidence of ongoing job training, high education, a good employment record, or community involvement.<sup>4</sup>

### **Bond Amendment**

The Individual did not deny the fact that he served a term of imprisonment exceeding one year. The Individual is, as a result, disqualified from holding a DOE Access Authorization under the Bond Amendment. Although over thirty years have passed since the Individual's incarceration, I find that, due to the egregious nature of the crime committed, in addition to his seeming reluctance to acknowledge unqualified culpability for the act, an exception to disqualification under the Bond Amendment is not appropriate. *See Personnel Security Hearing*, OHA Case No. PSH-19-0005 (2019) (citing *Personnel Security Hearing*, OHA Case No. PSH-12-0092 (2012)).

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked the Bond Amendment and Guidelines F and J. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised

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<sup>4</sup> I need not address the mitigating factors described in Guidelines J at § 34(b) and (c), as the Individual presented no evidence that he was coerced or pressured into criminal action, and did not present any evidence that he had not committed the criminal acts.

under each of these Guidelines. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be denied. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals