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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: July 21, 2021)
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_____)

Case No.: PSH-21-0087

Issued: March 21, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ 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 restored.

I. Background

On April 15, 2019, an Office of Personnel Management (OPM) investigator conducted an Enhanced Subject Interview (ESI) of the Individual. During this ESI, the Individual reported that she had entered into an installment agreement with the Internal Revenue Service (IRS) for payment of approximately \$7,000 in delinquent taxes from tax years 2015 and 2016. Ex. 15 at 52.

On December 23, 2019, a Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual. Ex. 9 at 1. The Individual submitted her response to the December 23, 2019, LOI on December 24, 2019, acknowledging that she owed the IRS \$8,845.10 for delinquent taxes for tax years 2015, 2016, 2017, and 2018. Ex. 9 at 1-2, 12. She further indicated that she had entered

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

into an installment agreement with the IRS for payment of these delinquent taxes, requiring her to pay \$250 a month. Ex. 9 at 1. The Individual attributed her tax delinquencies to her failure to withhold enough from her paychecks. Ex. 9 at 2.

On January 23, 2020, the LSO obtained a credit report for the Individual, indicating that she owed \$81,160 in outstanding credit card debt and personal loans, however, the credit report indicated that none of this debt was past due. Ex. 11 at 1-11.

On March 5, 2020, the LSO issued a second LOI to the Individual. Ex. 8 at 1. The Individual submitted her response to this LOI on March 12, 2020, in which she admitted that she had made large withdrawals from ATM machines located in casinos. Ex. 8 at 3. However, she claimed that she had used these withdrawals to pay other expenses including food, bus fare, and entertainment. Ex. 8 at 3. The Individual again acknowledged that she owed the IRS \$8,845 for delinquent tax payments, which she again attributed to inadequate withholding from her paychecks. Ex. 8 at 4. She further indicated that she had increased her withholding to address this issue. Ex. 8 at 4. She described her current financial status as “stable.” Ex. 8 at 4. At the LSO’s request, the Individual completed and submitted a Personal Financial Statement (PFS) on March 12, 2020. Ex. 12 at 1. The Individual’s PFS indicated that her net monthly income was \$6,691 while claiming that her monthly expenses totaled \$926.00.² Ex. 12 at 1.

Prompted by its concern regarding the Individual’s finances, the LSO requested that the Individual undergo an evaluation by a DOE-contractor Psychologist (Psychologist) who conducted a clinical interview (CI) of the Individual on September 4, 2020. Ex. 13 at 2. After conducting the CI, reviewing the Individual’s Personnel Security File, and administering a standardized psychological test to the Individual,³ the Psychologist issued a report (the Report) on September 8, 2020. Ex. 13 at 2, 10. In the Report, the Psychologist noted that the Individual exhibited “a pattern of maladaptive choices, denial in the face of reality, and poor judgment which dates back many years.” Ex. 13 at 8. The Psychologist further opined that the Individual “has a history of over-spending and using loans and credit cards to supplement her income” and had “exhibited a pattern of chronically poor judgment in her finances for which she has, for many years, sought loans and additional credit cards.” Ex. 13 at 8-9. She noted that “the causes for her indebtedness [are] not clear based upon her explanations,” and expressed a concern that gambling might have caused the Individual’s financial issues. Ex. 13 at 9. Finally, the Psychologist stated:

[The Individual] has demonstrated irrational, illogical thinking about her finances which has impaired her judgment regarding the extent of her debt. She has utilized mental defenses of denial, minimization, and avoidance which, over time, consistently fail and prevent resolution of problems. While it is difficult to provide a prognosis with medical confidence, [the Individual] would most likely make

² During the present proceeding, the Individual has repeatedly provided inconsistent information concerning her finances. Some of these inconsistencies may have resulted from changes over time. Other inconsistencies may have resulted from the Individual’s poor attention to her financial details. My findings on this case are based upon documentation such as her credit reports, her actual tax return, and an IRS website.

³ The Minnesota Multiphasic Personality Inventory Restructured Form (MMPI-2-RF) was administered to the Individual.

progress in addressing her issues if she entered counseling with a therapist who could help her address underlying motivations for her pattern of financial mismanagement, and consulted with a financial planner who held her accountable to a realistic plan, in which case her prognosis would be good. Otherwise, given the length of time and extent of debt she has developed, and the attitude and mental condition involved for her, the situation would be unlikely to change and the prognosis would be guarded.

Ex. 13 at 9.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. See 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded her request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from four witnesses: the Individual, her investment advisor (the Advisor), her counselor (the Counselor), and the Psychologist. See Transcript of Hearing, Case No. PSH-21-0087 (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15 (hereinafter cited as “Ex.”). The Individual submitted seven exhibits, marked as Exhibits A through G. A summary of these Exhibits is described below.

Ex. A is a credit report, dated September 8, 2021, from one of the three major credit reporting agencies. Ex. A at 1. This report indicates that the Individual has a FICO score of 700,⁴ and has no current delinquent debt. Ex. A at 1. The credit report indicates that the Individual’s total outstanding debt on September 8, 2021, was \$48,910. Ex. A at 1.

Ex. B is a copy of the Individual’s Federal tax return for tax year 2020. Ex. B at 1. It shows that the Individual’s Adjusted Gross income for tax year 2020 was \$128,560. Ex. B at 1.

Ex. C is a copy of the Individual’s state tax return for tax year 2020. Ex. C at 1. It shows that the Individual’s Adjusted Gross income for tax year 2020 was \$128,560. Ex. C at 1.

Ex. D is a copy of Ex. 7, a case evaluation prepared by the LSO on October 15, 2019, while Ex. E is a copy of Ex. 8, a case evaluation prepared by the LSO on March 12, 2020.

Ex. F is a copy of an IRS webpage showing that the Individual did not have any unpaid tax obligations to the IRS as of March 2, 2022. Ex. F at 1.

⁴ According to Equifax’s website: “generally credit scores from 580 to 669 are considered fair; 670 to 739 are considered good; 740 to 799 are considered very good; and 800 and up are considered excellent.” <https://www.equifax.com/personal/education/credit/score/what-is-a-good-credit-score/>

Ex. G appears to be a spreadsheet, prepared by the Individual, indicating the outstanding balances for each of her outstanding debts and her average monthly payments to each of her creditors as well as her monthly expenses including her telephone bill, utilities, car insurance, internet service, and trash pickup. Ex. G at 1. Ex. G indicates that the Individual's outstanding debt was \$46,740 as of March 9, 2022, and that her average monthly expenses are \$2,668.⁵

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 her eligibility for a security clearance. In support of this determination, the LSO cited Guideline F 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). Under Guideline F, the LSO cited the Individual's outstanding federal tax debts as well as her substantial credit card and personal loan debt, which have occurred even though she has \$5,765 a month in available disposable income.⁶ 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. Guideline F specifically states that "consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness. . . ." and "failure to pay annual Federal . . . income tax" are among those conditions that could raise a security concern and be disqualifying under Guideline F. Guideline F at § 19(e) and (f). Accordingly, the LSO's security concerns under Guideline F are justified.

Under Guideline I (Psychological Conditions), the LSO cited the Psychologist's conclusion that the Individual has an emotional, mental, or personality condition or conditions that can impair her judgment, reliability, stability, or trustworthiness. These allegations adequately justify the LSO's invocation of Guideline I. The Adjudicative Guidelines state: "[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness." Guideline I at § 27. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are "behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness not covered under any other guideline and that may indicate an emotional, mental, or personality condition. . .," and "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness." Guideline I at §§ 28(a) and (b).

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

⁵ I note that this figure appears to exclude groceries, clothing, or medical insurance.

⁶ This figure is based on her net monthly income of \$6,691 less her monthly expenses of \$926.00.

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).

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 clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her 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. 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. The Hearing

The Counselor testified at the Hearing that she is a licensed mental health counselor. Tr. at 13. She initially began meeting with the Individual on a weekly basis on August 11, 2021, and then transitioned to bi-weekly meetings and then to monthly meetings. Tr. at 16, 25. The Individual’s attendance was excellent. Tr. at 17. Initially, their focus was addressing the Individual’s concerns about her security clearance and the grief she was experiencing after recently losing her mother. Tr. at 18, 40. Eventually, the counseling moved to focusing upon the Individual’s work/life balance. Tr. at 18, 40. While the Counselor did not feel qualified to provide financial advice to the Individual, she noted that the Individual exhibited clear thinking about her financial issues during her therapy sessions. Tr. at 19. The Individual appeared determined to address the issues raised in the Report. The Counselor noted that she did not observe the Individual engaging in illogical, irrational thinking about her finances or otherwise exhibiting poor judgment about her finances or any other matter. Tr. at 19-20, 31. The Counselor never observed any reason to believe that the Individual was engaged in irresponsible spending or gambling, although the Individual had informed her that she had a significant amount of debt. Tr. at 39, 41. The Individual reported to her that she was not making any new purchases. Tr. at 39. The Counselor further testified that she had not observed the Individual engage in denial, although she had observed some minimization and avoidance. Tr. at 20-21. The Counselor opined that Individual tended “to put her work first over her self-care often,” but had made progress in addressing this issue. Tr. at 33. She noted that the Individual’s counseling did not focus upon addressing the Individual’s underlying motivations for her pattern of financial mismanagement, but rather addressed the Individual’s work/life balance and her personal goals. Tr. at 21-22. The Counselor opined that the Individual had made progress through her counseling. Tr. at 22. The Counselor testified that the Individual had been candid with her. Tr. at 22, 41-42. She discussed the Psychologist’s concerns about gambling with the Individual, and the Individual did not believe that she had a gambling issue. Tr. at 26-27. The Individual informed the Counselor that she no longer goes to casinos and that she is focused on sorting her finances out. Tr. at 27. The Counselor noted that the Individual had made progress, responded well to treatment, and was now more effectively managing her stress. Tr. at 34, 41.

The Advisor testified at the Hearing that he is a financial advisor with an investment firm, and that he has 22 years of experience in the financial industry. Tr. at 45-46. He began working with the Individual in August 2021. Tr. at 47. The Individual sought help with creating a budget and planning for her retirement. Tr. at 48. The Individual provided him with a large volume of financial information which enabled him to analyze her current spending needs and to prepare an investment strategy to fund her retirement. Tr. at 49-50. He assisted the Individual with preparing a monthly budget. Tr. at 56-57, 65. They developed a plan under which she would “make systematic deposits to increase her overall savings, and then to be able to sustain her current standard of living and pay down her debt a little bit faster by isolating what payments would be most beneficial to her to put her overpayments towards.” Tr. at 50. They also developed a debt payment strategy for her that would eventually allow her to have sufficient disposable income to allow her to invest and increase her 401(k) contributions. Tr. at 50. The Advisor stated that the Individual obviously put a great deal of effort into gathering her financial information. Tr. at 50-51. The Advisor characterized the Individual’s debt issues as “very common.” Tr. at 54. The Individual provided him with documentation indicating that she had increased her 401(k) contributions. Tr. at 55. He provided the Individual with software to facilitate her financial planning. Tr. at 57.

The Individual testified that she had reduced the number of exemptions that she was claiming to avoid future problems with the IRS. Tr. at 84. After she received the Report, the Individual began counseling and meeting with the Advisor. Tr. at 84-85. She testified that she paid off her entire remaining debt to the IRS in February 2021 and currently owes no money to the IRS. Tr. at 85, 135. She has managed to pay off much of her other outstanding debt, and only has two more car payments due. Tr. at 86. She testified that her FICO score was 700 in September 2021, and that her total debt was \$48,910 at that time and is now lower. Tr. at 87-88. On the advice of the Advisor, she has minimized her credit card use. Tr. at 88. She noted that her credit report indicates that her payment history on several accounts is “exceptional.” Tr. at 89-90. She testified that she has not been to a casino since August 2021 and plans to continue avoiding casinos in the future. Tr. at 90-91, 135. She has stopped gambling. Tr. at 93. The Counselor has helped her learn to use her free time for activities other than gambling, such as gardening. Tr. at 95. She testified that she no longer has any personal loan debt but still owes about \$40,000 in credit card debt. Tr. at 104. The Individual testified that her pay rate has recently increased to \$70 per hour. Tr. at 107. Her monthly take home pay is “about” \$5,700. Tr. at 108. She does not have a mortgage and owns her home free and clear. Tr. at 108, 132. After paying her monthly bills, including her credit card payments, she still has about \$1,200 left over. Tr. at 109, 115. She also makes monthly payments to her savings account towards her goal of having an emergency reserve of \$17,000. Tr. at 116-17. Her emergency reserve is now \$11,000. Tr. at 117. Her aim is to completely pay-off her credit card debt. Tr. at 118-119. She has been able to pay off about \$40,000 in debt during the past six months. Tr. at 119. While she has had a lot of debt, she does not miss payments. Tr. at 133. She is current on all her credit card debt. Tr. at 134. In addition, she has recently inherited some valuable real estate which she hopes to sell. Tr. at 137.

Prior to providing her testimony at the Hearing, the Psychologist observed the testimony provided by the other three witnesses, including the Individual. Tr. at 148. The Psychologist opined that she now believes that the Individual’s prognosis is “good.” Tr. at 149. She now believes that the

Individual is “addressing her finances in a reasonable, logical, rational manner, which would not require intervention. Tr. at 149. She believes that the Individual has now demonstrated reformation. Tr. at 149.

V. Analysis

In essence, the Notification Letter⁷ raised four security concerns. The first security concern was raised by the Individual’s outstanding debt to the IRS. However, this concern was first mitigated when the Individual entered a repayment plan with the IRS, and then further mitigated when the Individual paid this debt in full. The second security concern was raised by the extremely poor judgment exhibited by the Individual when she purposely claimed too many exemptions in order to reduce her tax withholdings from her paycheck. However, the Individual mitigated this concern by stopping this practice, and claiming only one exemption. The third security concern was raised by the Individual’s accumulation of over \$80,000 of credit card and personal loan debt. However, the Individual has shown that she obtained financial advice, changed her behavior, and reduced her debt from \$81,160 to \$46,740. Finally, the Psychologist, noting the Individual’s financial predicament, raised a concern about her judgment, reliability, and trustworthiness, and recommended that she receive behavioral and financial counseling. The Individual, however, has mitigated this concern by complying with the Psychologist’s recommendations and the Psychologist provided further mitigation of this concern by testifying at the hearing that the Individual had shown reformation.

Guideline F

The Adjudicative Guidelines provide that an individual can mitigate security concerns under Guideline F if “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.” Guideline F at § 20(c). In the present case, the Individual has shown that she received financial advice from the Advisor, who helped her develop a financial plan to address her outstanding debts. The evidence in the record showing that she had paid the IRS in full and has reduced her debt from \$81,160 to \$46,740 demonstrates the effectiveness of this advice and provides a clear indication that her debt issues are under control. Moreover, she now claims an appropriate number of exemptions for her tax withholdings and has therefore resolved the issues arising from her former practice of claiming too many exemptions. Accordingly, I find that the mitigating condition set forth at § 20(c) is present in the instant case.

The Adjudicative Guidelines further provide that an individual can mitigate security concerns under Guideline F if “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(d). The Individual first entered into a repayment plan with the IRS, and then paid the IRS in full. Accordingly, the mitigating condition set forth at § 20(c) is present in the instant case.

For these reasons, I find that the Individual has resolved the security concerns raised under Guideline F.

⁷ I note that at the time that the Notification Letter was issued, the Individual was not past due on any of her obligations.

Guideline I

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline I if: there is a “recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual’s previous condition is under control or in remission and has a low probability of recurrence or exacerbation.” Guideline I at § 29(c). In the present case, the Psychologist testified at the Hearing that she believed that the Individual had achieved reformation from her prior poor judgment concerning her financial affairs and described the Individual’s prognosis as “good.” Based on a review of the evidence and the testimony presented, I concur in the Psychologist’s assessment. Accordingly, the mitigating condition set forth at § 29(c) is present in the instant case.

For these reasons, I find that the Individual has resolved the security concerns raised under Guideline I.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines F and I. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guidelines F and I. Accordingly, the Individual has demonstrated that granting her 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 restored. 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