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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 19, 2023)	Case No.: PSH-23-0111
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_____)	

Issued: October 16, 2023

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 should not be granted access authorization.

I. BACKGROUND

On September 8, 2022, the Individual completed a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 7 at Bates 104.² The Individual disclosed on the QNSP that he owed \$2,176 in unpaid personal income taxes to a local government and failed to file Federal or state personal income tax returns for the 2020 and 2021 tax years. *Id.* at Bates 94–95. The Individual also disclosed that he had fallen into delinquency on child support payments and several routine financial accounts. *Id.* at Bates 96–100.

A credit report (Credit Report) obtained as part of the background investigation into the Individual's eligibility for access authorization showed delinquent financial accounts that the Individual failed to disclose on the QNSP. *Id.* at Bates 210–213. In response to a February 2023 letter of interrogatory (LOI) from the local security office (LSO), the Individual indicated that he

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.

² The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

had not yet filed Federal or state personal income tax returns for the 2020 or 2021 tax years or resolved his financial delinquencies. Ex. 6 at Bates 31–44.

The LSO subsequently issued the Individual a Notification Letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. 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. Ex. 1 at Bates 5–6.

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 eight exhibits (Exs. 1–8). The Individual submitted fifteen exhibits (Exs. A–O).³ The Individual testified on his own behalf and did not call any other witnesses. Hearing Transcript (Tr.) at 3, 9. 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 (Financial Considerations) of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at Bates 5–6. “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 2020 and 2021 tax years, failure to pay local personal income taxes as required, delinquency on child support payments, and delinquency on seven routine financial accounts on which the LSO calculated that the Individual owed \$9,318. Ex. 1 at Bates 5–6. The LSO’s allegations that the Individual demonstrated an inability or unwillingness to satisfy his debts, had a history of not meeting financial obligations, and failed to file personal income tax returns or pay personal income taxes as required justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a)–(c), (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

³ The Individual submitted his fifteenth exhibit, labeled “Post Hearing documents,” after the hearing. I have designated the “Post Hearing documents” as Exhibit O.

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). 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.* at § 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 2010, the Individual was ordered to pay monthly child support. Ex. 8 at Bates 202. In 2014, the child for whom the Individual owed support began residing with the Individual and the Individual stopped making child support payments because he could not afford to support the child directly while also paying child support to the child’s mother. *Id.* at Bates 171; Tr. at 24. However, the Individual did not obtain an adjustment of the child support order before discontinuing payments and incurred \$7,582.20 in unpaid child support obligations. Ex. 8 at Bates 171, 202; Ex. 5 at Bates 37; *see also* Tr. at 27–28 (indicating that the Individual submitted a request for an adjustment to child support obligations to an administrative agency that lacked authority to modify the judicial order concerning the Individual’s child support obligations); Ex. O at 3 (showing the Individual’s 2018 request to the administrative agency for an adjustment to his child support obligations).

From 2010 to 2017, the Individual was employed by a manufacturing company. Ex. 7 at Bates 75–76. Beginning in 2015, local personal income taxes were not withheld from the Individual’s wages. Ex. 5 at Bates 35; *see also* Tr. at 37 (testifying that he did not affirmatively request that his employer stop withholding local personal income taxes and that he had “no idea at all” how he accrued the tax debt to the local government). The Individual did not pay local personal income taxes, which he estimated at \$2,176 in total, for several years. Ex. 5 at Bates 35–36. In 2017, the facility at which the Individual was employed closed, and he was laid off. Ex. 7 at Bates 75–76. The Individual was unemployed for eighteen months, during which time he earned an undergraduate degree. Ex. 6 at Bates 75; Tr. at 27.

In May 2020, the local government to which the Individual owed unpaid taxes obtained a civil judgment against him for \$1,821.27. Ex. 8 at Bates 205. The Individual failed to file Federal or state personal income tax returns for the 2020 and 2021 tax years, which he attributed to not having access to documents he needed to complete the tax returns.⁴ Ex. 5 at Bates 34; Ex. 7 at Bates 95;

⁴ The Individual claimed that he withdrew funds from his employer-sponsored retirement account in 2020 and was unable to access documents concerning the withdrawal after he separated from his employer. Ex. 5 at Bates 34; Tr. at 18. However, the Individual did not separate from the employer in question until August 2021, several months after the deadline to file his personal income tax returns. Ex. 8 at Bates 74. The Individual claimed at the hearing that he had difficulty communicating with his employer’s human resources department, and that it was only after separating from the employer that he realized he could have accessed the documents through an online portal but had lost access to the online portal due to no longer being employed by the company. Tr. at 19.

Tr. at 16–19. The Individual did not request extensions of time to file the tax returns. Ex. 5 at Bates 31.

In 2022, the Individual agreed to a payment plan with the local government to resolve his unpaid personal income tax pursuant to which he would make monthly payments of \$200. Ex. 8 at Bates 171. However, he did not begin making payments until June 2023, by which time penalties and interest had increased the balance of his unpaid taxes to \$2,366.71. Ex. 2 at Bates 14; *see also* Ex. O at 2 (reflecting that the Individual made a payment of \$160 in June 2023 but did not make any subsequent payments).

The Individual submitted the QNSP on September 8, 2022. Ex. 7 at Bates 104. The Credit Report, which was obtained as part of the background investigation into the Individual's eligibility for access authorization, showed that he had six delinquent debts referred to collections on which he owed a cumulative \$9,068.⁵ Ex. 8 at Bates 211–212. The Individual also disclosed a delinquent credit card debt, which he estimated at \$250, that was not reflected on the Credit Report. Ex. 7 at Bates 158.

In the Spring of 2023, the Individual made payments to four of his creditors to resolve \$1,949 of the delinquent debt reflected on the Credit Report. Ex. 2 at Bates 16–20. On June 8, 2023, the Individual agreed to a payment plan with a debt consolidation company pursuant to which he agreed to pay \$276.13 twice monthly. *Id.* at Bates 15. The Individual attempted to pay the \$250 credit card debt that he self-reported on the QNSP, but was unable to do so because the debt was sold to collections, the credit card company would not accept payment, and the Individual could not identify the collections agency that had acquired the debt. Tr. at 46–48.

The Individual filed Federal personal income tax returns for 2020 and 2021, which the IRS received on June 30, 2023. Ex. L.⁶ The Individual fully paid his Federal personal income taxes for tax years 2020 and 2021 and does not owe a balance. *Id.* The Individual also filed his state personal income tax returns for tax years 2020 and 2021 and paid the outstanding balance that he owed. Tr. at 20; Ex. B.

As of September 2023, the Individual's unpaid child support balance had decreased to \$3,808. Ex. N. Child support payments are being garnished from the Individual's biweekly paychecks and he will continue to have obligations to pay child support for approximately three years. *Id.*; Tr. at 22, 32–33, 60. The Individual has retained a law firm to seek modification of the child support order. Tr. at 31.

⁵ The Individual claimed at the hearing that these debts were accrued primarily as a result of his period of unemployment from late 2017 to early 2019. Tr. at 50. However, the Credit Report indicated that the Individual's two largest debts, on which he owes a cumulative \$7,119, were referred to collections in 2012 and 2013. Ex. 8 at Bates 211. At the hearing, the Individual confirmed the accuracy of the Credit Report with respect to the dates other delinquent accounts were referred to collections but denied that the Credit Report accurately reflected when the two largest debts were referred to collections. Tr. at 56–58. The Individual submitted a screenshot after the hearing showing that one of the accounts in question was opened in 2013 but which did not show the date on which it was referred to collections. Ex. O at 1.

⁶ The full version of Exhibit L is a PDF embedded in the document submitted by the Individual. The full version of Exhibit L can be retrieved by double clicking on the images labeled Exhibit L in the Individual's exhibit submission.

The Individual testified at the hearing that he does not know the balance of his unpaid local personal income taxes. *Id.* at 33. The Individual represented that he can only make payments on the local personal income tax debt when the local government issues him a voucher, and that he has not received a voucher since his June 2023 payment. *Id.* at 36.

The Individual testified at the hearing that he still owes \$7,119 in consumer debts to a creditor and that the debt consolidation company had not yet negotiated a settlement with the creditor. *Id.* at 38–40. The Individual indicated that the debt consolidation company estimated that the debt repayment program in which he was enrolled would last for three to four years. *Id.* at 52. The Individual testified that, despite his annual salary of over \$90,000, he does not presently have any savings and would be unable to cover an emergency expense of several hundred dollars should one arise. *Id.* at 51, 65.

V. ANALYSIS

Guideline F

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 has experienced financial difficulties on an ongoing basis for approximately ten years and, including the last available balances for the child support debt, local personal income tax debt, and delinquent consumer debts, he currently owes over \$12,000 which he does not presently possess the resources to pay. The Individual's financial situation is precarious, and even a minor unexpected expense could significantly affect his ability to meet his obligations. There is no indication in the record that unusual circumstances are responsible for the Individual's financial situation; rather, the Individual's unilateral decision to discontinue child support payments and lack of attention to his local personal income tax obligations were within his control and reflect negatively on his reliability and judgment. For these reasons, I find that the Individual's financial difficulties did not happen so long ago, so infrequently, or under such circumstances as required to establish the applicability of the first mitigating condition. *Id.* at ¶ 20(a).

The Individual represented that his unemployment from late 2017 to early 2019 is significantly responsible for his financial difficulties. While the Individual represented that his delinquent consumer debts resulted from this period of unemployment, the Credit Report shows that the largest delinquent debts were referred to collections prior to the Individual's period of unemployment, and there is insufficient evidence to establish that these debts fell into delinquency during the Individual's period of unemployment as he claims. *Supra* note 5, at 4. Moreover, the Individual fell into delinquency on his child support payments and incurred the local personal income tax debt prior to 2017. For these reasons, I am not convinced that conditions outside of the Individual's control caused his financial difficulties, and accordingly I find the second mitigating condition inapplicable. *Id.* at ¶ 20(b).

While the Individual has retained a for-profit debt consolidation service, he does not claim to have sought financial counseling from a non-profit credit counseling service or similar organization. Accordingly, I find the third mitigating condition inapplicable. *Id.* at ¶ 20(c).

The Individual has made efforts to repay creditors. However, the debt consolidation service the Individual retained has yet to enter into repayment agreements with the creditors to whom the Individual owes his largest debts. Moreover, the Individual acknowledged that any repayment agreement with these creditors will likely take years to complete. The Individual's payments towards his delinquent child support obligations have been garnished rather than made voluntarily, and the Individual has not complied with the terms of the payment plan to the local government to pay his personal income tax debt. While the Individual claimed that the local government failed to provide him with vouchers required for payments, he has not provided evidence of any efforts on his part to communicate with the local government to obtain vouchers or otherwise return to compliance with the payment plan. In light of the Individual having only made child support payments as a result of garnishment, his nonadherence to the payment plan with the local government, and his precarious financial situation, I harbor significant doubts as to whether he will adhere to a payment plan required to satisfy the delinquent consumer debts over a period of several years in the future. Thus, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 20(d).

The Individual did not bring forth any evidence to challenge the legitimacy of his debts. Thus, the fifth mitigating condition is inapplicable. *Id.* at ¶ 20(e). The LSO did not allege that the Individual displayed unexplained affluence, and the sixth mitigating condition is therefore inapplicable to the facts of this case. *Id.* at ¶ 20(f).

The Individual has brought forth sufficient evidence to establish that he has filed Federal and state personal income tax returns for 2020 and 2021 and has paid all required taxes. Thus, the Individual has mitigated the security concerns asserted by the LSO concerning his 2020 and 2021 Federal and state personal income tax returns under the seventh mitigating condition. However, he has not adhered to the payment plan with the local government to resolve his unpaid local personal income taxes. As noted above, while the Individual attributes his noncompliance to the local government, he has not brought forward evidence to corroborate his account or to show that he has made reasonable efforts to reenter compliance with the payment plan. Accordingly, I find that the seventh mitigating condition partially, but not fully, resolves the tax-related security concerns asserted by the LSO. *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 not 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 not 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