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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: August 15, 2023)	Case No.: PSH-23-0119
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_____)		

Issued: December 19, 2023

Administrative Judge Decision

James P. Thompson III, 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

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. During the investigation into his eligibility to possess a security clearance, the DOE Local Security Office (LSO) discovered that he had significant outstanding delinquent debt. Consequently, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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.

hearing. At the hearing, the Individual testified on his own behalf. The LSO did not call any witnesses. The Individual submitted four exhibits, marked Exhibits A through D. The LSO submitted seven exhibits, marked Exhibits 1 through 7.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO first cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as a basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1. Guideline F provides that that an individual's "[f]ailure 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. Conditions that could raise a security concern include an individual's "inability to satisfy debts[.]" "[u]nwillingness to satisfy debts regardless of the ability to do so[.]" and a "history of not meeting financial obligations" *Id.* at ¶ 19(a)–(c). In the SSC, the LSO cites that the Individual had two collection accounts totaling \$221, a charge off account totaling \$5,147, and a delinquent account totaling \$12,052. Ex. 1 at 5. The cited information justifies the LSO's invocation of Guideline 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 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).

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 or 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. *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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

² References to the LSO exhibits are to the exhibit number and the bates number located in the top right corner of each exhibit page.

IV. FINDINGS OF FACT

In August 2022, the Individual reported in a Questionnaire for National Security Positions that he was currently over 120 days delinquent on a debt. Ex. 7 at 83. That particular debt is unrelated to the accounts listed in the SSC; however, the following month, the Individual was interviewed by an investigator regarding his financial conduct. *Id.* at 94. During the interview, the Individual reported that he had reduced the 120-day debt by making payments and that he expected to satisfy it by December 2022. *Id.* at 99. He then reported that he had no other concerning financial issues. *Id.* In response, the investigator confronted the Individual with the several accounts in various states of delinquency or collection that precipitated this case. First, he was confronted with a \$164 account in collection. *Id.* at 100. The Individual explained that it was an account for vehicle insurance that originated in 2019, and it became delinquent because he stopped using the vehicle and forgot about it. *Id.* He was also confronted with a second delinquent account totaling \$57. *Id.* He reported that the balance represented a final payment amount that he forgot to make. *Id.* Regarding both collection accounts, which total \$221, he reported that his failure to disclose them was an oversight and that he anticipated resolving both debts by December 2022. *Id.*

Next the investigator confronted the Individual with the \$5,147 charge off account. *Id.* The Individual reported that it resulted from a vehicle loan for a vehicle he previously returned because he was unable to make the payments. *Id.* He reported that he had “started making payments” on the remaining balance, reducing it by half, and expected to resolve it by December 2023. *Id.* Lastly, the Individual was confronted with the delinquent debt of \$12,052 for a different vehicle loan for a vehicle which he could not afford and which was repossessed. *Id.* at 101–02. At the time of the interview, he was attempting to make an agreement to satisfy the debt and he expected to resolve it by December 2023. *Id.* at 101. He reported that his overall financial situation had improved since he obtained a job with much better compensation. *Id.*

The Individual subsequently responded to a Letter of Interrogatory in April 2023 and reported updated information regarding the delinquent accounts he disclosed during the interview. For each account, he reported that he had not yet resolved the debts and that he had not yet made arrangements to resolve the debts because he was “currently paying off other debts.”³ Ex. 6 at 19–20.

At the hearing, the Individual testified that in 2020 a lot of jobsites in his field began shutting down so he was not able to work, which meant he could not maintain his income or cover all of his expenses. Hearing Transcript, OHA Case No. PSH-23-0119 (Tr.) at 17. As a result, he had to make decisions that would “keep a roof over [his] family’s head and keep the lights on for them.” *Id.* 17–18. He therefore decided to give up the expense of his second vehicle and the associated insurance. *Id.* at 18. He provided the necessities for his family of four by taking side work when available. *Id.* 18–19.

The Individual testified that he had paid the outstanding \$164 balance for the insurance-related account on November 13, 2023, ahead of the hearing. *Id.* at 9–10. The record includes a copy of the digital receipt of the payment. Ex. A. As for the collection account totaling \$57, he explained that he thought that he had paid the amount in full until he received a final invoice in August 2022.

³ He did not identify the “other debts.” Ex. 6 at 20.

Tr. at 10–11. He testified that he had failed to pay it because he was addressing other financial concerns in order to care for his family and “overlooked it.” *Id.* at 11. He testified that he contacted the company ahead of the hearing and satisfied the account on November 13.⁴ *Id.* at 12.

He then provided testimony regarding the charge off account for \$5,147. *Id.* He testified that the vehicle related to an account that had been owned by himself and his first child’s mother before they separated. *Id.* at 12. He testified that he decided to return the vehicle in 2021 after they separated because he could not obtain personal financing in order to keep the vehicle. *Id.* The charge off account represented the remaining balance on the loan after he returned the vehicle. *Id.* He testified that he did not make any additional payments after returning the vehicle, which conflicted with his statement to the investigator that he had started making payments on this debt. *Compare id.* at 29 with Ex. 7 at 100. He testified that he contacted the creditor by email on November 11, 2023, to address the outstanding balance, and the company responded by offering the option to pay the balance off over time or by lump sum payment. Tr. at 14. He testified that he intends to pay the full lump sum, but he still needs to consult with his current fiancée on how to accomplish this and has not yet determined or arranged the date he intends to make the payment. *Id.* 14–15.

Regarding the \$12,052 delinquent debt, the Individual acknowledged that he understood at the time he returned the associated vehicle that he would be responsible for the large remaining balance. *Id.* at 15. He testified that he had contacted the creditor multiple time since November 11, 2023, but had not yet received a response. *Id.*

He testified that he now has a goal to be “debt free” in five years. *Id.* at 21. He testified that he regretted providing the investigator unrealistic repayment timelines in an attempt to look good during the interview. *Id.* He explained that he felt a lot of pressure during the interview and realized that he did not set himself up for success. *Id.* at 22. He testified that his fiancée now manages the family finances since she is better at managing money due to being an accountant. *Id.* He plans get married in the next year, and they “want to . . . start taking care of the debt . . .” *Id.* at 23–24. They also plan to eventually move to a new state with a lower cost of living. *Id.* at 24. He acknowledged that he was caught off guard when COVID brought about changes and challenges to his income opportunities. *Id.* In retrospect, he believes that he had been living beyond his means and regretted his past financial decisions, especially because they are now impacting his career. *Id.* 24–25. He acknowledged that his present position is less lucrative than his prior position, and it has been challenging maintaining his family while also addressing his outstanding debt. *Id.* at 21.

He testified that he had not been “neglecting” the debts but that he has been “trying to maintain the cost of living for [his] family . . . between house expenses and cost of housing and travel . . . back and forth to work . . .” *Id.* at 26. As to why he waited until November 11, 2023, to begin addressing the large, outstanding debts, he testified that he did not have the information he needed until he received the exhibit package from the LSO ahead of the hearing date, which provided “an actual blueprint” of the accounts in question. *Id.* at 31. At the time of his interview with the investigator, he said he never received “paper documents” and instead was only questioned about

⁴ At the time of the hearing, he testified that he had not yet received the mailed receipt for his payment and the organization did not provide electronic receipts. Tr. at 11–12.

his outstanding debts. *Id.* He asserted that, had he had the benefit of the exhibits earlier, he “probably could have been a little bit farther on some of these bigger accounts.” *Id.* at 32.

Finally, he testified that he had one more past-due debt in collection that was not listed in the SSC: a medical bill for approximately \$540, which he intends to satisfy. *Id.* at 33. He explained that it resulted from him accidentally obtaining care from a provider that was out of his insurance network. *Id.* at 34.

V. ANALYSIS

Under Guideline F, the following conditions could mitigate security concerns based on financial considerations:

- (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, . . . divorce or separation . . .), 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.

I find that none of the above conditions apply to resolve the Guideline F concerns. Paragraph 20(a) does not apply for the following reasons. At the time of the hearing, the Individual revealed a new delinquent medical bill, and he had not yet made arrangements to start repayment of this new bill nor the large charge off accounts identified in the SSC. Thus, I do not conclude that the Individual’s behavior happened long ago because his financial circumstances continue to create a concern that he is still unable or unwilling to address his debts. That concern is also supported by the evidence that he failed to take any action to address these significant delinquent debts even after being confronted by an investigator to whom he stated he would resolve them over one year ago. While

he regrets providing a self-described unrealistic timeframe at that time for resolving the debts, I cannot conclude that his present expressed intent to resolve his outstanding delinquent debts is any more reliable than in the past. Therefore, I do not conclude that the security concerns are resolved by the infrequency of his conduct or circumstances surrounding his conduct.

Furthermore, I find that ¶ 20(b) does not apply to resolve the security concerns. While the Individual testified that the circumstances that resulted in his unresolved financial problems initially resulted from a marriage separation and the impact of the COVID pandemic, he did not act responsibly given the circumstances. For example, he neglected to address his outstanding vehicle related balances until relatively recently and did not attempt to make any arrangements until the eve of the hearing even though he was made aware of the status of the unpaid balances over a year before the hearing date. Once he did reach out to the creditors, about a month before the hearing, he was offered a repayment plan or a significantly reduced lump sum payment opportunity to resolve the \$5,147 charge off account. Despite being offered that opportunity, he has not yet made arrangements. I therefore also find that ¶ 20(c) and ¶ 20(d) do not apply to resolve the concerns. Given the above findings, there is insufficient evidence in the record to conclude that the problem is being resolved or is under control or that he has initiated or adhered to a good-faith effort to repay creditors or otherwise resolve his outstanding debts.

Lastly, ¶ 20(e), ¶ 20(f), and ¶ 20(g) do not apply to resolve the concerns: the Individual does not dispute any of the debts; none of the allegations contained in the SSC reference the Individual's relative affluence; and none of the allegations contained in the SSC reference the Individual's failure to file or pay taxes.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. 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 find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals