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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 24, 2023)	Case No.: PSH-24-0021
)	
_____)	

Issued: February 7, 2024

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 November 10, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 7 at 73.² The Individual disclosed on the QNSP that he had not filed federal or state personal income tax returns, or paid federal or state personal income taxes, for the 2017, 2018, 2019, 2020, and 2021 tax years. *Id.* at 67–68. A background investigation of the Individual additionally revealed that he had two consumer debts referred to collections and another, which was charged off by the creditor, on which he owed a cumulative \$2,487. Ex. 6 at 28–29.

The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his financial situation. Ex. 5. The Individual's responses to the LOI did not resolve the LSO's security

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.

concerns. *See* Ex. 3 (summarizing the LSO's evaluation of the Individual's eligibility for access authorization).

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 6–8. 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. *Id.* at 5.

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) and the Individual submitted four exhibits (Exs. A–D).³ The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-24-0021 (Tr.) at 3, 8. 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 of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "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 2017 to 2021 tax years and the Individual's three delinquent debts on which he owed a cumulative \$2,487. Ex. 1 at 5. The LSO's allegations that the Individual demonstrated an inability or unwillingness to satisfy his debts and failed to file federal and state personal income tax returns as required justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(a)–(b), (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 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).

³ The Individual labeled three of his exhibits as responses to exhibits submitted by the LSO. I designated the Individual's "Exhibit 1 Response" as Ex. A, "Exhibit 3 Response" as Ex. B, and "Exhibit 6 Response" as Ex. C. Tr. at 7. I designated a fourth, unlabeled submission from the Individual as Ex. D. *Id.*

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.* § 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 2017, the Individual and his wife were married. Ex. 7 at 54. Neither the Individual nor his wife adjusted the income taxes withheld from their paychecks in 2017. Ex. 8 at 138–39. When the Individual had his federal and state tax returns prepared for the 2017 tax year, he learned that he and his wife had under withheld income taxes from their paychecks and owed \$560 in personal income taxes. *Id.* The Individual did not have sufficient savings to pay the income taxes that he owed, and the Individual’s tax preparer advised him that he could file his 2017 tax returns and then make arrangements with the taxing authorities to pay the income taxes. *Id.* at 139. However, the Individual did not file his 2017 income tax returns. *Id.*

The Individual did not file his personal income tax returns for the 2018 tax year because he did not have sufficient savings to pay his 2017 personal income taxes and believed that he could not file his personal income tax returns for 2018 without first filing returns for the 2017 tax year. *Id.* The Individual subsequently failed to file personal income tax returns for the 2019, 2020, and 2021 tax years because “[t]he taxes escalated” and he decided to “let the taxes go.” *Id.* (reflecting the Individual’s explanation to the investigator for his failure to timely file his personal income tax returns).

The Individual signed and submitted the QNSP on November 10, 2022. Ex. 7 at 73. The Individual disclosed on the QNSP that he had failed to file personal income tax returns and pay income taxes as required for the 2017, 2018, 2019, 2020, and 2021 tax years. *Id.* at 67–68. The Individual represented on the QNSP that his tax situation would be “corrected in 2022.” *Id.* at 67. He denied that he had fallen 120 days or more behind on any debt or had any debt charged off by a creditor in the prior seven years. *Id.* at 70.

An investigator obtained a credit report for the Individual as part of an investigation into the Individual’s eligibility for access authorization. Ex. 6. The Individual’s credit report indicated that he had three delinquent debts, on which he owed a cumulative \$2,487, charged off or assigned to collections by his creditors from 2019 to 2022. *Id.* at 28–29. During an interview with the investigator in December 2022, the Individual denied knowledge of his delinquent debts. Ex. 8 at 140.

The LSO issued the Individual the LOI in July 2023. Ex. 5. In his response, the Individual represented that he had not filed his personal income tax returns for 2017 through 2021 because he had consulted a tax preparer who advised him that he was required to “pay the full balance of the taxes” for each tax year when filing his returns and he did not have enough savings to do so.

Id. at 23. The Individual represented that he only had “about [\$]200 saved up,” but owed \$730 in personal income taxes for the 2021 tax year alone. *Id.* The Individual indicated that he planned to save enough to file and pay his personal income taxes for 2021 and would then “work back each year afterwards” as he saved enough to file those tax returns. *Id.*

Regarding his delinquent debts, the Individual indicated that his creditors were payday loan companies. *Id.* at 24. The Individual stated that he obtained the payday loans to pay for a couch and his rent because he “was mismanaging [his] finances” *Id.* He represented that he had entered into a payment plan with one of his creditors to pay off a \$322 debt, and that he intended to enter into payment plans with his other creditors after paying off the first delinquent debt. *Id.* at 23; *see also* Tr. at 24 (testifying at the hearing that he paid the \$322 debt, as well as the creditor’s legal fees, after the creditor filed a civil action against him); Ex. B, Att. (reflecting confirmation from the creditor that the Individual had paid \$1,002.49 pursuant to a settlement agreement).

The Individual testified at the hearing that he had not filed his 2017, 2018, 2019, 2020, 2021, or 2022 federal or state personal income tax returns. Tr. at 9–12. The Individual indicated that he had an appointment with a tax preparer scheduled for January 27 to discuss preparing these tax returns. *Id.* at 16. The Individual testified that he did not know how much he owed in unpaid taxes. *Id.* at 10–11, 15–16. He indicated that “mismanagement of [his] funds” was the reason he had not addressed his tax situation earlier. *Id.* at 16. In addition to his unpaid personal income taxes, the Individual disclosed that he had received a notice that he was required to repay unemployment benefits that he had collected while employed. *Id.* at 30–31. The Individual testified that he decided to continue collecting unemployment benefits after obtaining employment because he was “living above [his] means” and “thought [he] was smarter than the system” but that “ultimately they caught onto it” *Id.*

The Individual testified that his wife had taken over the household’s financial management, and that she had instituted a household budget and ensured that all of household bills were sent to an e-mail account dedicated to financial matters so that they would not be overlooked. *Id.* at 17–18. He also testified that he and his wife were now employed in positions that paid sufficient wages for them to meet their financial obligations. *Id.* at 26–27.

The Individual testified that one of his debts, on which he owed \$935, had been charged off and sold by the creditor and that he was unaware of which company owned the debt. *Id.* at 21. The Individual testified that he had fully repaid one of his debts pursuant to the settlement agreement described above and had entered into a payment plan that would begin in February 2024 to resolve the other delinquent debt identified by the LSO in the SSC. *Id.* at 23–25; *see also* Ex. B at 3 (showing that the Individual was enrolled in a payment plan pursuant to which he agreed to make \$115.55 monthly payments beginning on February 2, 2024).

V. ANALYSIS

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's failure to file personal income tax returns as required is ongoing as he has yet to take any action besides making an appointment with a tax preparer to address the situation. Moreover, the Individual's failure to file tax returns as required for six consecutive years represents a serious and recurring disregard for rules and regulations which casts significant doubt on his reliability, trustworthiness, and judgment. The Individual's delinquent consumer debts, two of which remain unresolved and the third of which was only resolved after the creditor initiated a civil action against the Individual, were the product of the Individual's self-admitted financial mismanagement and did not happen so long ago, so infrequently, or under such unusual circumstances as to mitigate the security concerns arising from the debts. Thus, the first mitigating condition is inapplicable to the Individual's unfiled personal income tax returns and delinquent debts. *Id.* at ¶ 20(a).

The Individual attributed his financial difficulties to financial mismanagement on his part, not to an external event beyond his control. Thus, the second mitigating condition is inapplicable. *Id.* at ¶ 20(b). The third mitigating condition is inapplicable because the Individual did not allege that he had received financial counseling. *Id.* at ¶ 20(c).

While the Individual did repay one of his delinquent consumer debts, he did so only after the creditor pursued legal action against him; thus, he did not initiate the repayment as is required for the fourth mitigating condition to apply. The Individual entered into a payment plan with a creditor to resolve another of his delinquent debts, but, as of the date of the hearing, had not yet made any payments and thus did not establish adherence to the repayment arrangements. The Individual admitted that he had not entered into arrangements to repay the third creditor, which he could not identify. Thus, the Individual's efforts to resolve his delinquent debts do not satisfy the fourth mitigating condition. *Id.* at ¶ 20(d).

The fifth mitigating condition is inapplicable as the Individual has not disputed the legitimacy of his debts. *Id.* at ¶ (20)(e). The sixth mitigating condition is irrelevant to the facts of this case as the LSO did not allege that the Individual demonstrated unexplained affluence. *Id.* at ¶ 20(f). The final mitigating condition is inapplicable as the Individual has not made any arrangements with the IRS or his state taxing authority to file his personal income tax returns or pay the personal income taxes he may owe after his tax returns have been prepared. *Id.* at ¶ 20(g).

While the Individual has begun to take steps to improve his financial situation, these efforts are too recent and limited to establish the applicability of any of the mitigating conditions under Guideline F. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

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