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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: June 3, 2024)
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_____)

Case No.: PSH-24-0125

Issued: October 11, 2024

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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, entitled “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ The present case involves an Individual with twelve past due debts, who failed to report those debts to DOE in accordance with DOE Order 472.2.² This Decision considers whether the Individual has resolved the security concerns raised by his financial issues and failure to comply with DOE’s reporting requirements. 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 not be restored.

I. Background

The Defense Counterintelligence and Security Agency (DCSA) obtained the Individual’s credit report (the Report) on November 4, 2023. Exhibit (Ex.) 4 at 1. The Report indicated that the Individual had twelve delinquent debts, nine of which were in collection status. Ex. 4 at 7–8. On November 16, 2023, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual inquiring about six of these “outstanding delinquencies,” specifically Debt B, Debt C, Debt D, Debt E, Debt F, and Debt I, and asking the Individual to provide information concerning each of these debts. Ex. 5 at 1.

¹ Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

² DOE Order 472.2 requires that individuals maintaining DOE access authorizations must report any “[d]elinquency more than 120 days on any debt.” DOE Order 472.2, Attachment 5 § (6)(b)(3).

In response to this LOI, on November 22, 2023, the Individual submitted a copy of a February 20, 2023, debt consolidation agreement (DCA) between a debt consolidation service (DCS) and himself. Ex. 6 at 1; Ex. 7 at 23, 32. Under the DCA, the Individual was expected to repay the DCS for resolving seven debts, Debts B through H, by making forty-two monthly payments of \$177.34 to settle a combined debt of \$20,228 owed to the seven creditors.³ Ex. 7 at 1, 26-27. The DCA consolidated seven debts into one debt: Debt A. Ex. 7. The Record shows that the Individual missed three payments on Debt A, on April 8, 2023, June 2, 2023, and November 3, 2023. Ex. 7 at 5.

On November 29, 2023, the Individual responded to follow up questions regarding his initial LOI response.⁴ Ex. 8. He stated that he stopped paying on these seven loans at the advice of the DCS. Ex. 8 at 2. After receiving the Individual's November 29, 2023, LOI response, the LSO issued a second LOI (LOI2) to the Individual, requesting information concerning an additional five delinquent debts, Debt J, Debt H, Debt G, Debt K, and Debt L. Ex. 9 at 1. LOI2 also requested additional information concerning Debt I and requested that the Individual submit a personal financial statement (PFS). Ex. 9 at 2. The Individual subsequently responded to LOI2. Concerning Debt J, the Individual stated:

Origin of the debt was a debt consolidation/investment loan. Original amount of the debt was \$50,000. I became delinquent on the debt sometime around February of 2023. I became delinquent because I was simply not making enough money to make the payment and I chose to pay other bills instead. I simply made some bad decisions that put me in a predicament that made paying the loan back difficult. I am hoping I can negotiate a smaller monthly payment with this company and eventually pay the money back.

Ex. 10 at 1. The Individual further stated that two of the loans, Debt G and Debt H, were included in his DCA. Ex. 10 at 1. Concerning Debt K, The Individual further stated:

[Debt K] was a loan on two motorcycles. Original amount of the debt was roughly \$9,000. I became delinquent approx. 120 days ago. I am delinquent because I simply can't make the payment. I made some bad decisions and some bad investments. I intend to satisfy the delinquency by selling the motorcycles and paying off the loan. I do not currently have any formal repayment plan.

Ex. 10 at 1. The Individual further reported that Debt L "was a car loan. Original debt was \$16,255.34. I became delinquent [approximately] 90 days ago. I plan to continue to make payments as I can and pay extra when I can in order to pay back my debt and become current on the debt." Ex. 10 at 1.

On December 21, 2023, the Individual submitted a completed PFS to the LSO indicating that his net monthly income was \$5,886 and his monthly expenses were \$7,417. Ex. 12 at 1-2.

³ Debts B, C, D, E, and F. The DCA did not include Debt I. Ex. 7 at 1. to

⁴ Some of these follow-up questions appear to be missing in the Record.

The LOI and LOI2 both asked the Individual to explain why he had not reported his delinquencies to the LSO. Ex. 5 at 1–2. In the LOI response, the Individual explained his failure to comply with DOE Order 472.2, stating: “I failed to disclose this to [the LSO] because I didn’t understand that I needed to. Ex. 6 at 1. The Individual reiterated this explanation in his response to LOI2. Ex. 8 at 2.

A. Present Administrative Review Proceeding

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it received derogatory information creating substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded the Individual’s 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 the Individual and two of his coworkers. The DOE Counsel submitted twelve exhibits, marked as Exhibits 1 through 12. The Individual submitted four exhibits, marked as Exhibits A through D.

Exhibit A is a letter, dated August 20, 2024, from a creditor indicating that Debt I was settled as of January 31, 2024.

Exhibit B is an undated spreadsheet from the DCS. It is a partial record of his Debt A account with the DCS.

Exhibit C consists of an email, dated August 20, 2024, from a creditor indicating that the payoff amount for Debt J was \$42,642. Ex. C at 1. The email further instructed the Individual on how he could make a settlement offer to resolve that debt. Ex. C at 1–2.

Exhibit D is a statement for Debts K and L, dated August 31, 2024. Ex. D at 1. Exhibit D indicates that the Individual was charged a late fee of \$25 each for both loans on August 29, 2024, and that he continues to owe \$11,949 on Debt L and \$7,715 on Debt K. Ex. D at 1–2. The statement further shows that the Individual made payments on both debts on August 29, 2024. Ex. D at 1–2. The statement indicates that the Individual was past due \$222 on Debt K. Ex. D at 2.

II. The Summary of Security Concerns (SSC)

The SSC attached to the Notification Letter informed the Individual that information in the possession of the DOE creates substantial doubt concerning his eligibility for a security clearance under Guidelines E (Personal Conduct) and F (Financial Considerations) of the Adjudicative Guidelines.

A. Guideline E

Under Guideline E, the LSO cited the Individual’s failure to report his past due debts. This information adequately justifies the LSO’s invocation of Guideline E. Under Guideline E,

“[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “deliberately . . . concealing or omitting information, concerning relevant facts to . . . [a] security official . . . involved in making a recommendation relevant to a national security eligibility determination.” Adjudicative Guidelines at ¶ 16(b).

B. Guideline F

The LSO also invoked Guideline F of the Adjudicative Guidelines. Under Guideline F, the LSO cited the Individual’s twelve delinquent debts, and the negative disparity between his monthly expenses and monthly income. This information adequately justifies the LSO’s invocation of Guideline F. Guideline F states that “[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 under Guideline F include “inability to satisfy debts,” and “a history of not meeting financial obligations.” Adjudicative Guidelines at ¶ 19(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 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 their 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. Hearing Testimony

The Individual's coworker testified that he worked with the Individual for over twenty-five years and holds a security clearance. Tr. at 13. He stated that while he has regularly taken annual security training, he does not recall that training ever mentioning a requirement to report debts that are more than 120 days past due. Tr. at 18. A second coworker, who also held a security clearance, testified that he had worked with the Individual for several years. Tr. at 22. He explained that he was unaware of the requirement to report debts that are more than 120 days past due until the Individual told him about the concerns that prompted the Individual's hearing. Tr. at 23. He also said he did not feel like he had been sufficiently trained on the disclosures required by his security clearance.⁵ Tr. at 23.

The Individual testified that he has worked at the DOE site for approximately nineteen years and has held a security clearance for that entire period. Tr. at 28–29. When the Individual got divorced in 2016, he began to have some financial problems. Tr. at 31. At that time, his vehicle was repossessed, and when he told the LSO about the repossession, they informed him that the only type of personal finance issue that needed to be reported was a bankruptcy. Tr. at 48. He also stated that while he recalls completing computer-based training about security annually, he does not remember that training mentioning that he was required to report debts that are over 120 days past due. Tr. at 46.

The Individual admitted that each of the delinquent debts mentioned in the SSC were his. Tr. at 34. He also stated that he was working with the DCS to satisfy some of those debts, and he was up to date with the payments on the DCA account.⁶ Tr. at 35–36, 57. He also testified that Debts K and L were not included in the DCA. Tr. at 35. He explained that he was current on Debt L and one month behind on Debt K.⁷ Tr. at 35, 42. He also testified that he is attempting to sell the two motorcycles that he used Debt K to purchase so that he can satisfy that debt. Tr. at 42.

The Individual also testified that he had paid off Debt I.⁸ Tr. at 36. The Individual admitted that he was still negotiating with the company that holds Debt J to get that loan current. Tr. at 40. He is currently making payments on Debt J as his current financial situation allows. Tr. at 41. The Individual explained that if he got his clearance back, he would receive back-pay from his job, which would allow him to get current on this loan and negotiate a payment plan. Tr. at 41. He admitted he will only be able to pay off Debt J if he is able to get his clearance reinstated. Tr. at 40.

⁵ The Individual had three additional witnesses that he stated would testify that they were unaware of the security clearance reporting requirements as they relate to past-due debts. Tr. at 26. DOE counsel agreed to stipulate that a number of the Individual's coworkers "were unaware of the reporting requirement for delinquencies over 120 days" in order to avoid overly repetitive testimony. Tr. at 26.

⁶ This testimony is corroborated by Exhibit B.

⁷ This testimony is corroborated by Exhibit D.

⁸ This testimony is corroborated by Exhibit A.

The Individual testified that his salary in his position with the DOE contractor is approximately \$110,000 annually. Tr. at 43. In order to earn more money to pay off of his debts, he plans work four ten-hour days in that position, then work another job on the Fridays he has off in order to earn an extra \$1,000 every month. Tr. at 43. The Individual also stated that in order to save money, he has stopped eating out and tried to reduce the amount that he drives in order to save on gas. Tr. at 43. While he is on leave from his job with the DOE contractor, he is working a job where he is taking home approximately \$3,000 a month as compared to the \$5,000 he took home a month with the DOE contractor. Tr. at 53.

The Individual also explained in his testimony that although he had approximately \$90,000 in a retirement account, for a long period of time he could not use those assets to satisfy his debt because the funds were frozen while courts settled a dispute between him and his ex-wife regarding who was entitled to what portion of the account. Tr. at 50. That account was recently unfrozen, and the Individual attempted to take money out of the account to pay for his debts, but he currently has loans against the account and cannot take any money out until the loans are satisfied. Tr. at 50. He spoke to a bankruptcy attorney about potentially declaring bankruptcy and was told that it would not help lower his payments and would likely hurt his credit score more than his current situation, so he decided that it would not be a good choice. Tr. at 52.

V. Analysis

A. Guideline E

DOE Order 472.2 requires that individuals maintaining DOE access authorizations must report any “[d]elinquency more than 120 days on any debt.” DOE Order 472.2, Attachment 5 § (6)(b)(3). The Individual did not comply with this Order. However, he claims that he did not deliberately violate this Order or otherwise attempt to conceal his debts from the LSO. Rather, he claims that (1) he was unaware of the requirement to report his delinquent debts, and (2) he had been advised by the LSO that the only type of financial issue he needed to report was a bankruptcy filing. To support these assertions the Individual presented the testimony of several of his coworkers who each confessed their ignorance of a requirement to report past due debts. While I find it believable that an individual might not remember their obligation to report past due debts, I note that the Individual has held a security clearance for almost nineteen years. During each of these years the Individual received an annual security briefing which should have educated him about his self-reporting requirements. Moreover, I find the Individual’s uncorroborated testimony that the LSO informed him that the only financial concern he needed to self-report was a bankruptcy filing difficult to believe because it is at odds with DOE security doctrine and because the Individual did not make this claim in his LOI and LOI2 responses after being asked to explain why he did not self-report his past due debts.

The Adjudicative Guidelines set forth seven factors that may mitigate security concerns under Guideline E, four of which are relevant to the present case.⁹ First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if they “made prompt,

⁹ The remaining mitigating factors under Guideline E, set forth at ¶ 17(e), (f), and (g), apply to circumstances other than the deliberate omission of information during the security clearance process.

good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Adjudicative Guidelines at ¶ 17(a). In the present case, the Individual did exhibit good faith by admitting his financial status once confronted with his debts. However, he had made no efforts to disclose his debts prior to being confronted with them by the LSO. Accordingly, I find that the mitigating condition set forth at ¶ 17(a) is not present in the instant case.

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes” and “[u]pon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.” Adjudicative Guidelines at ¶ 17(b). In the present case, the Individual claims his omissions were caused or contributed to by advice he received from the LSO. However, I find this uncorroborated claim is difficult to believe for the reasons discussed above. Accordingly, I find that the mitigating condition set forth at ¶ 17(b) is not present in the instant case.

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” Adjudicative Guidelines at ¶ 17(c). In the present case, the security concerns raised by Individual’s omissions of his past due debts are not minor matters, given that they served to conceal potentially disqualifying information from the LSO. Moreover, these concealments were not infrequent and did not happen under unique circumstances since they involved at least nine separate debts and continued for an extended period. The Individual’s difficult to believe contention that he was relying upon advice from the LSO casts doubt on his present reliability, trustworthiness, and good judgment. Accordingly, I find that the mitigating condition set forth at ¶ 17(c) is not present in the instant case.

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if “[t]he individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” Adjudicative Guidelines at ¶ 17(d). In the present case, the Individual has not acknowledged his error in judgment in failing to self-report his financial issues to the LSO. Accordingly, I find that the mitigating condition set forth at ¶ 17(d) is not present in the instant case.

Accordingly, I find that the Individual has not mitigated the security concerns raised by his failure to report his past due debts to the LSO as required by DOE Order 472.2. Therefore, the Individual has not resolved the security concerns raised under Guideline E.

B. Guideline F

The SSC cited twelve delinquent debts. Ten of those debts have been resolved. The Individual has shown that he is current on Debt A, which not only resolves the concerns raised by that debt, but also resolves the concerns raised by the seven debts it consolidated: Debts B, C, D, E, F, G, and H, since they are each included in the DCA. In addition, the Individual has shown that he has paid a ninth debt, Debt I, resolving that debt. The Individual has also shown that he is current on a tenth debt, Debt L, resolving the concerns raised by that debt. However, two debts, Debts J and K remain unresolved. Moreover, the Individual still faces a large negative disparity between his expected monthly income and monthly expenses. While the Individual has articulated the outlines of a reasonable plan to address this discrepancy going forward, that plan is not sufficiently detailed to resolve the security concerns raised by his current cash flow. Moreover, the plan is based upon a number of uncertain contingencies, including the settlement of his large Debt J.

The Adjudicative Guidelines set forth seven conditions¹⁰ that can mitigate security concerns under Guideline F. None of these conditions are present in the instant case.

Paragraph 20(a) provides that security concerns raised under Guideline F may be mitigated when the individual has shown that “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” The Individual still has two past-due debts and a serious cash flow issue, so it cannot be said that the behavior happened long ago or was infrequent. The Individual has also failed to show that the issues are unlikely to recur as his expenses are still well in excess of his income. Therefore, I cannot find that the Individual has mitigated the security concerns pursuant to ¶ 20(a).

Paragraph 20(b) states that security concerns raised under Guideline F may be mitigated when the individual has shown that the conditions that caused the financial problem were beyond the individual’s control and that the individual acted responsibly given the circumstances. Here, the Individual has repeatedly admitted his financial circumstances resulted from his poor decisions. Consequently, the Individual has not mitigated the security concerns pursuant to ¶ 20(b).

Under ¶ 20(c), the security concerns may be mitigated if the individual is receiving or has received financial counseling for the problem from a “legitimate and credible source” and the financial problems are “being resolved” or “under control.” While he has consulted with a bankruptcy attorney, that consultation did not result in the resolution of his current outstanding debts or his cash flow problems. The Individual has also shown that the DCS is helping him to resolve some of his debts, but he did not present any evidence to show that the DCS has provided him any sort of financial counseling concerning his current cash flow problem and his future financial decision making. Further, the Individual has at least one debt, Debt J, that the DCS is not helping to resolve, and the Individual did not present sufficient evidence to show that that Debt J is “being resolved” or otherwise “under control.” As such, the Individual has not mitigated the security concerns pursuant to ¶ 20(c).

¹⁰ I do not discuss Paragraphs 20(f) and 20(g) because it has not been alleged that the Individual has an unexplained affluence or failed to file his taxes appropriately.

Paragraph 20(d) provides that security concerns under Guideline F may be mitigated when “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” As I discussed above, the Individual here has been making a good-faith effort to resolve many of his debts. However, the Individual still does not have an agreement with the holders of Debt J and has not been able to show that he is adhering to an effort to repay that loan. Moreover, the Individual is behind on his payments for Debt K. Therefore, the Individual has not mitigated the security concerns pursuant to ¶ 20(d).

Under ¶ 20(e), the Individual may mitigate the security concerns under Guideline F if he can show a reasonable basis to dispute the legitimacy of the past-due debts. Here, the Individual has not disputed the debts were his, and, as such, the Individual has not mitigated the security concerns pursuant to ¶ 20(e).

I therefore find that the Individual has not sufficiently established the presence of any of the seven mitigating conditions set forth at Guideline F. Accordingly, I find that he has not resolved the security concerns raised under Guideline F.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, I find that the Individual has not brought forth sufficient evidence to resolve each of the security concerns raised under Guidelines E and F. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals