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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: June 4, 2024)	Case No.: PSH-24-0136
)	
_____)	

Issued: November 13, 2024

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 or Eligibility to Hold a Sensitive Position."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 not be granted.

I. BACKGROUND

The Individual is employed with a DOE Contractor in a position that requires him to hold a security clearance. In June 2023, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 8 at 114.² The Individual also underwent an Enhanced Subject Interview (ESI) in August 2023. Ex. 10 at 246. He was then issued two Letters of Interrogatory (LOI), to which he submitted responses on November 22 and December 27, 2023. Ex. 5; Ex. 6.

Through the investigation, the local security office (LSO) became aware of (1) eight outstanding delinquent financial debts owed by the Individual, totaling \$11,743; (2) two civil court actions filed against the Individual in 2014 and 2017 for money owed, totaling \$5,558; and (3) his failure to file and pay federal and state income taxes, in particular his failure to file his 2022 federal income tax return, his failure to file his 2022 state income tax return, and his failure to pay 2021 federal income tax liability totaling \$2,452.63. Ex. 5 at 23–30; Ex. 6 at 33–47; Ex. 8 at 102–10;

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

Ex. 10 at 247–50, 80–89. Additionally, despite his failure to file taxes and the history of civil court actions against him, the Individual answered in the negative in his QNSP when asked if he had failed to file his federal and state taxes in the last seven years and if he had been a party to any civil court actions in the last ten years. Ex. 8 at 101, 111–12.

Due to the above unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated February 27, 2024, that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. Ex. 1 at 8–9. In an attachment to the letter entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations) of the Adjudicative Guidelines. *Id.* at 5–7.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 12. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted ten numbered exhibits (Exs. 1–10) into the record. The Individual submitted twenty-three exhibits that I have marked with letters (Exs. A through W). The Individual presented the testimony of one witness and testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-24-0136 (hereinafter cited as “Tr.”). The LSO did not present any witnesses.

II. NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as a basis for its security concerns regarding the Individual. Ex. 1 at 5–6. Guideline E relates to questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 15. Especially concerning is the refusal to be truthful and honest during the administrative review process. *Id.* at ¶ 16. In citing Guideline E, the LSO relied upon the Individual’s failure to report that he had failed to file federal and state tax returns within the last seven years and his failure to report the civil actions filed against him within the last ten years. Ex. 1 at 5–6.

The LSO also cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as a basis for its security concerns regarding the Individual. Ex. 1 at 6–7. “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 . . . information.” Adjudicative Guidelines at ¶ 18. Among the conditions set forth in this guideline that could raise a disqualifying security concern are the failure to satisfy debts, the failure to file federal or state income tax returns, and the failure to pay federal or state income taxes as required. *Id.* at ¶ 19(a)–(c), (f). The SSC cited the Individual’s failure to file his 2022 federal income tax return, his failure to file his 2022 state tax return, and his failure to pay his 2021 tax liability totaling \$2,452.63.³ Ex.

³ The SSC mistakenly identified the 2021 tax liability totaling \$2,452.63 as a state tax liability. Ex. 1 at 6 (citing Ex. 6). However, the Individual’s responses to the November and December 2023 LOIs, to which the SSC cites, reflect

1 at 6. The SSC also cited eight delinquent debts owed by the Individual totaling \$11,743. *Id.* at 6–7. 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 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 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.* § 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

A. Individual’s 2021 Federal Tax Liability, 2022 Federal and State Tax Returns, and Related Reporting Requirements in the 2023 QNSP

In his June 2023 QNSP, the Individual claimed that he neither failed to file his federal and state tax returns nor failed to pay his taxes in the last seven years. Ex. 8 at 101; Tr. at 15. However, the Individual later submitted two responses to LOIs on November 22, 2023, and December 27, 2023, admitting to not filing his 2022 federal tax return; not filing his 2022 state tax return; and owing \$2,452.63 in 2021 federal taxes. Ex. 5 at 23–24; Ex. 6 at 43–44; *see also* Tr. at 15.

The Individual testified that he typically filed his taxes on time and that he would typically get a tax refund. Tr. at 16–17. Regarding tax year 2021, the Individual submitted a 2021 federal tax transcript reflecting that he was given an “[e]xtension of time to file [his] tax return” to October 15, 2022, and that the tax return was received by the IRS on October 19, 2022. Ex. P at 1–2. The

that the \$2,452.63 owed was a 2021 federal tax liability. Ex. 5 at 24 (confirming that he owed “\$2,452.63 for the tax year 2021” to the “Internal Revenue Service” (IRS)); Ex. 6 at 43–44 (answering that he owed “[f]ederal” taxes in the amount of \$2,452.63 for tax year 2021). Despite the typographical error in the SSC, I consider the past due \$2,452.63 federal taxes as part of the Guideline F security concern because the SSC cited to the responses to the November and December 2023 LOIs and because the Individual admitted to owing the tax liability.

tax transcript demonstrates that, because the Individual filed the tax return reflecting a tax liability, the Individual also knew of the tax liability. *Id.* at 1. During the hearing, the Individual testified that the 2021 tax year “may have been the first year that [he and his wife] owed” taxes. Tr. at 79. He testified, however, that he was not able to pay the amount owed at the time of filing and that the amount was never fully paid off. *Id.* at 28; Ex. P at 1–3.

The Individual testified that he was placed on a payment plan for the 2021 tax liability prior to submitting the June 2023 QNSP. Tr. at 28–29. However, the tax transcript reflects that on November 22, 2023—the same day that he signed and submitted his November 2023 LOI informing the LSO of the \$2,452.63 tax liability—the Individual was placed on a repayment plan for the outstanding tax liability. Ex. P at 3 (“Installment agreement established 11-22-2023”); Ex. 6 at 47 (demonstrating that the LOI was signed on “11/22/23”). Regardless, the record reflects that the Individual made monthly \$60 payments from January 2024 to October 2024 towards the 2021 tax liability and owes an outstanding balance of \$777.87.⁴ Ex. P at 1, 3; Tr. at 31–32.

Regarding tax year 2022, the Individual testified that he failed to timely file both his 2022 federal and state returns because he “forgot” and “didn’t get to it.” Tr. at 14, 20. However, in the Individual’s response to the December 2023 LOI, he explained that he had not filed his 2022 federal and state tax returns because he lacked “the money to pay for [the] tax filing[s] as well as taxes due.”⁵ Ex. 5 at 23. During the hearing, he further admitted that one of the possible reasons he failed to file his 2022 federal taxes was because he was surprised to have owed money for his 2021 taxes. Tr. at 79.

The Individual’s federal tax transcript for the 2022 tax year indicated that he was granted an “[e]xtension of time to file” to October 15, 2023. Ex. U at 1. Despite the extension, the Individual failed to submit his 2022 federal tax return until September 6, 2024, almost a year after the extended deadline. *Id.* (indicating that the tax return was received on September 6, 2024); Tr. at 11. The Individual testified that he also submitted the 2022 state tax return on September 6, 2024,⁶ well after the April 2023 deadline. *Id.* at 18–19.

When asked why he had not reported the failure to file his 2022 federal and state tax returns in the June 2023 QNSP, the Individual testified that it had “[s]lipped [his] mind . . .” and that he “was just reading through the questions . . . too quickly [] and just marked it wrong . . .” Tr. at 15, 20.⁷

⁴ The tax transcript reflects that the outstanding 2021 tax balance had been reduced by various credits to the account taking place prior to the initiation of the payment plan. Ex. P at 1–3.

⁵ The 2022 federal tax return and the transcript reflect a refund in the amount of \$1,265. Ex. I at 4; Ex. U at 6; Tr. at 12–14. The 2022 state tax return reflects a refund of \$425. Ex. J at 3; Tr. at 19.

⁶ To corroborate his testimony that the 2022 state tax return is now filed, the Individual submitted a letter from the state’s Taxation and Revenue Department confirming that the Individual, as of October 14, 2024, “submitted all required reports[.]” Ex. Q.

⁷ As stated above, the Individual’s tax transcript shows that the Individual received an extension to October 2023 to file his 2022 federal tax report, which indicates he was not in fact late on filing his 2022 federal taxes at the time he completed the June 2023 QNSP.

The Individual further testified that he had not “realize[d] that [he] hadn’t done it [filing his tax returns] at the time.” *Id.* at 20. According to the Individual, the November 2023 LOI, which asked him about the status of his tax filings, made him realize that he made a mistake on the June 2023 QNSP and led him to correct the information in his response to the LOI. *Id.* at 15; Ex. 6 at 43. The Individual testified that the discrepancy was “not intentional.” Tr. at 15; *see also* Ex. 5 at 30 (responding “[n]o it was not” when asked in the December 2023 LOI whether the omission was intentional). However, in his testimony, the Individual acknowledged that he had signed a statement on the June 2023 QNSP, certifying that all the answers in the form were true. Tr. at 20; Ex. 8 at 114 (certifying on the June 2023 QNSP that all his “statements on this form . . . are true, complete, and correct to the best of [his] knowledge and belief and are made in good faith.”).

B. Two Civil Actions Against the Individual for Unpaid Debt and Related Failure to Report in the June 2023 QNSP

The Individual certified in his June 2023 QNSP that he was not a party to civil suits within the last ten years prior to his application for access authorization. Ex. 10 at 111–12.⁸ However, court records reflect two civil suits filed against the Individual. The first case, filed in 2014, involved unpaid educational loans. *Id.* at 262. The second case, filed in 2017, involved unpaid rent owed to his former landlord. Ex. N.

Regarding the 2014 civil suit, the Individual testified that he enrolled in an educational program with a school in 2012. Tr. at 38. The Individual claimed that he did not pay tuition while in school, believing that he was receiving financial aid. *Id.* He further testified that in 2014, after he left the educational program, a collection agency contacted him informing him that he owed money to the school; the Individual testified he was subsequently enrolled in a payment plan of about \$50 per month, but at some point, stopped paying the monthly amount. *Id.* at 38, 40.

During the hearing, the Individual stated that he was unaware of the fact that a lawsuit had been filed in connection with this educational debt. *Id.* at 40. However, court records obtained during his background investigation indicate that the Individual was personally served the summons for this proceeding in September 2014 and that the Individual entered into a stipulated judgment on this claim in November 2014. Ex. 10 at 262–63. In the stipulated judgment, the Individual, as a defendant, admitted to the amount of indebtedness and agreed to paying \$50 per month. *Id.* at 263. The court records obtained in the background investigation further reflect that the Individual stopped making payments sometime in 2015 and that his wages were garnished in connection with the debt in 2018. *Id.* According to the records, the terms of the judgment had not been satisfied. *Id.*

⁸ The Individual also submitted a QNSP in July 2019. Ex. 9 at 171. The Individual indicated in the July 2019 QNSP that “[i]n the last ten (10) years” he was not “a party to any public record civil court action . . .” despite the 2014 and 2017 civil actions. *Id.* at 168.

Regarding the outstanding balance on the educational debt, the Individual testified that he was recently⁹ offered a settlement amount, but that the amount was too high for him to accept. Tr. at 39. Accordingly, the Individual has been making monthly payments of \$100 until the debt is paid off in full. *Id.*; *see also* Ex. F (receipt dated October 1, 2024, evincing payment of \$100 to the educational program). The Individual, in his testimony, estimated that the balance is approximately \$3,000. Tr. at 42.

Regarding the 2017 civil suit, the Individual explained that this lawsuit was initiated in connection to an outstanding debt of \$1,238.15 owed to the former landlord. Tr. at 33; Ex. 6 at 40. According to the Individual, former roommates had failed to pay their half of the rent, and the Individual lacked the funds to cover the remaining balance. Tr. at 33; Ex. 6 at 40. The civil action was filed in April 2017. Ex. N. The Individual was aware of the 2017 civil suit filed against him and his wife, as the two of them filed a motion for continuance on the docket. *Id.* The case was dismissed in May 2017 as the plaintiff had failed to appear. *Id.* The Individual testified that he attempted to contact the rental company to resolve the debt; however, his former apartment complex is now owned by a different company, and he is unsure of how to contact the company to which he owes the debt. Tr. at 33. The Individual further testified that he does not have any information that would indicate that he still owes the money and that he did not believe he owed the money to the rental company when completing the June 2023 QNSP or November 2023 LOI.¹⁰ *Id.* at 35.

C. Eight Other Delinquent Debts Involving Routine Accounts

Outside of the two above debts for which civil actions were filed, the Individual in his June 2023 QNSP reported eight other “[d]elinquenc[ies] [i]nvolving [r]outine [a]ccounts[.]” Ex. 8 at 102–11. During the hearing, the Individual specified that the debts were for: (1) a television purchased from an appliance store in 2013; (2) a credit card bill; (3) an electric bill from 2018; (4) an auto loan he owed for a vehicle that was “totaled” in a car accident in December 2015; (5) a personal loan taken for reasons he could not recall; (6) another personal loan taken to purchase a new car after the December 2015 car accident; (7) money owed to another former landlord for breaking a lease in 2018; and (8) a bill for his wife’s emergency medical visit in 2023. Tr. at 43, 45, 48–51, 53–57, 63–66. Of these delinquencies, four appear in the “COLLECTIONS” section of his July 2023 credit report, and the other four – the debts related to the television, the credit card bill, the electric bill, and his wife’s medical visit – do not appear on the credit report. Ex. 7 at 49–58 (formatting in original); *see also* Ex. 10 at 249 (listing the four debts that did not appear in the Individual’s credit report).

Regarding the first listed debt, the Individual testified that in 2013 he purchased a television, financed by the appliance store from which he bought the television. Tr. at 43–44. The Individual testified that he was making monthly payments of about \$100 per month but at some unspecified point stopped making the monthly payments because he could not afford them. *Id.* at 44. The Individual cited that the financial strain was at least in part brought on by expenses related to the

⁹ This would have occurred after December 2023, as his response to the December 2023 LOI stated that he had had not yet contacted this creditor. Ex. 5 at 29.

¹⁰ The investigator’s notes from the August 2023 ESI reflect that the Individual “underst[ood] that he still owes this money and w[ould] contact [the rental company] in the next month and pay this off.” Ex. 10 at 247.

birth of one of his children. *Id.* The Individual reported in the June 2023 QNSP that the balance owed in relation to this debt was \$1,808. Ex. 8 at 102–03. The Individual submitted into the record a receipt of \$520 for a payment made in September 2024 to the appliance store. Ex. D. The Individual testified that the payment completely resolved the debt. Tr. at 44.

Regarding the second listed debt, the Individual admitted that in 2014 he failed to pay credit card debt owed to a bank in the amount of \$448. *Id.* at 45; Ex. 8 at 104. The Individual testified that after December 2023 he attempted to contact the bank but was told that the debt had been “charged off.” Tr. at 45–46. According to the Individual, an employee of the bank told him that he did not have to pay off the debt and that the bank was going to send him a letter to that effect. *Id.*

Regarding the third listed debt, the Individual acknowledged owing money to a collection agency that originated from an unpaid electric bill from 2018. *Id.* at 48; Ex. 8 at 104–05. The unpaid debt amounted to \$485.89. Ex. S at 2. The Individual testified that he did not pay the bill simply because he had moved and “just did[] [not] pay it right away.” Tr. at 50. The Individual further testified to paying off the debt in full in December 2023 and provided a statement from the electric company evincing that the debt was fully paid. *Id.* at 49; Ex. S at 1–2.

Regarding the fourth listed debt, the Individual’s credit report reflects an unpaid debt to a credit union amounting to \$2,684. Ex. 7 at 51. The Individual testified that he originally took out an auto loan with the credit union to purchase a vehicle. Tr. at 51–52. However, the vehicle was “totaled” in a car crash in December 2015. *Id.* at 51–52, 57; Ex. 6 at 35. His insurance did not cover the balance on the auto loan. Tr. at 52; *see also* Ex. 6 at 35. The Individual did not pay off the remaining balance despite realizing that he still owed money for the auto loan and made no efforts to contact the creditor to pay this debt until after August 2023. Tr. at 52, 54; Ex. 10 at 248 (reflecting that the Individual represented during the August 2023 ESI that he “intends to contact [the creditor] this week and make payment arrangements); *see also* Ex. 5 at 27 (describing in the Individual’s response to the December 2023 LOI the contemporaneous efforts made to be placed on a payment plan with the creditor). The Individual submitted a letter from the collection agency to whom the debt was assigned; the letter reflects that the Individual was placed on a repayment plan requiring \$149.71 monthly payments for an eighteen-month period. Ex. W. The first payment was scheduled for October 1, 2024, and the last payment is scheduled for March 1, 2026. *Id.*

Regarding the fifth listed debt, the Individual testified to taking out a personal loan with another financial institution for reasons that he could not recall. Tr. at 55–56. The Individual also could not recall the year he incurred the debt or the circumstances surrounding the loan. *Id.* at 56. The Individual’s credit report reflected a balance of \$385. Ex. 7 at 51. The Individual testified to reaching out to the creditor around November or December 2023. Tr. at 56. The Individual submitted a receipt from the creditor reflecting a payment of \$243.58 in September 2024. Ex. G at 1. The Individual testified that the payment fully satisfied the outstanding debt. Tr. at 56–57.

Regarding the sixth listed debt, the Individual’s credit report reflects a debt to a financial institution that went to collections amounting to \$2,624. Ex. 7 at 52. The Individual testified that, because of the above-mentioned December 2015 car accident, he took out a personal loan in 2016 from this financial institution for a down payment on another vehicle. Tr. at 57–58. The Individual testified to making payments on the loan for about a year before discontinuing payment. *Id.* When asked

why he discontinued the payments, the Individual testified that it was “too much financially” but that he was “not exactly sure” of the circumstances making payments difficult at the time. *Id.* The Individual submitted an IRS Form 1099-C dated May 4, 2020, indicating that the debt had been “discharged” by the financial institution in the amount of \$1,957.94. Ex. M. The credit report also states that the “ACCOUNT [was] CHARGED TO PROFIT AND LOSS”; that the debt was “SETTLED FOR LESS THAN FULL BALANCE”; and that the debtor “PAID CHARGE OFF[.]” Ex. 7 at 52 (formatting in original). Accordingly, the Individual testified that he believes the debt to have been resolved as of May 2020. Tr. at 59.

Regarding the seventh listed debt, the Individual’s credit report reflects a debt of \$3,202 owed to a former rental company and reassigned to a collections company. Ex. 7 at 50. The Individual testified that he and his wife broke a lease in 2018 because they could not afford the rent. Tr. at 63–64. The Individual did not reach out to resolve the debt until after June 2023. *Compare* Ex. 10 at 107–08 (affirming in his June 2023 QNSP that he “ha[d] not taken any action[]” to satisfy the debt “because of financial reasons”) *with* Ex. 6 (responding in November 2023 to an LOI that he had “contacted the creditor and made payments”). The Individual submitted correspondence from the collection agency evincing that he has been approved for a payment plan, the terms of which require him to make monthly payments of \$202.48 from October 2024 to February 2026 to fully satisfy the debt. Ex. K at 1–2.

Regarding the eighth listed debt, the Individual testified that the debt was accrued in relation to his wife’s emergency medical visit. Tr. at 66. The Individual submitted as documentation the medical bill demonstrating that the debt was for his wife’s admission and emergency visit in July 2023. Ex. B at 1. The Individual testified that the visit should have entirely been covered by insurance and that this was the reason that they did not pay the medical bill. Tr. at 66–67. The Individual testified that in September 2024 he and his wife contacted their health insurance provider to confirm if the emergency visit was fully covered. *Id.* The Individual represented that the health insurance provider was still determining if the emergency visit was covered and that if it is not then he will take steps to repay the debt. *Id.*

D. Other Information Regarding the Individual’s Background and Finances

The Individual generally answered in his responses to the November 2023 and December 2023 LOIs that he does not feel that anything in his background would subject him to blackmail, influence, or coercion. Ex. 5 at 30; Ex. 6 at 46. The Individual and his wife married approximately eleven-to-twelve years ago. Tr. at 17. They have two children born in 2013 and 2014. *Id.* at 73; Ex. 8 at 89. The Individual’s wife testified that the Individual is primarily responsible for paying their bills and acknowledged that the Individual was making efforts to pay off old debts. Tr. at 75, 77. When asked if there were any significant events leading to the Individual’s nonpayment of debts, the Individual’s wife testified that nothing in particular came to mind. *Id.* at 74–75. However, for at least one of the delinquent accounts, the Individual cited that the birth of one of his children contributed to their financial strain. *Id.* at 44. Furthermore, the Individual’s wife indicated that the debt related to the breaking of a lease in 2018 was in part because she “wasn’t working as m[any] hours personally” and that the Individual “was doing as much as he could to keep [the family] afloat.” *Id.* at 76. The Individual’s wife testified that they purchased a house in May 2021 and that their financial situation has improved. *Id.* at 73–74. The Individual’s wife

testified that, while she worked about 25 hours per week for a retail store's call center since 2016, she recently started working approximately 36 to 40 hours per week. *Id.* at 73–74, 77.

When asked if he had “considered talking to . . . [a] financial planner or any entity that c[ould] assist [him] with staying on top of [his] bills and payment[.]” the Individual testified that he had made no “effort to contact anybody” though “it ha[d] crossed [his] mind.” *Id.* at 70. The Individual further testified that he feels that the debts are on the “older side.” *Id.* at 78. The Individual and his wife testified that they now have enough income to cover the costs of the increased collections and that they have been able to successfully draft a monthly budget covering all their expenses, including his debts placed in collections. Tr. at 69–70, 75, 78. In support, the Individual submitted a breakdown of their monthly budget. Ex. V. Their monthly budget shows that their monthly take home income is \$9,340. *Id.* Their monthly budget also shows that expenses before the debt collections are \$4,891. *Id.* The budget represents that their debt collection expenses are \$452. *Id.* The budget does not account for the \$60 per month the Individual must pay for his 2021 past due federal income taxes. *Compare id.* (failing to include in the budget the \$60 paid toward taxes) *with* Ex. P (2021 federal tax transcript reflecting monthly \$60 payments). Accounting for all the above, the Individual would have \$3,937 left over monthly.

V. ANALYSIS

A. Guideline E

Guideline E concerns may be mitigated if:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The 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. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The 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;
- (d) The 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;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17. The SSC cited the Individual's failures to disclose in his June 2023 QNSP (1) that he had failed to file and pay taxes within the last seven years and (2) that he was a party to civil court actions within the last ten years. Given his 2022 federal tax transcript reflects that he was given an extension of time to file his 2022 federal tax return to October 2023, with respect to the tax-related allegations of omissions from the June 2023 QNSP, I only consider his failure to report that he had failed to file his 2022 state tax return and his failure to report that he had not paid his 2021 taxes.

I cannot find that mitigating condition (a) applies to resolve the security concerns regarding the Individual's omissions in his June 2023 QNSP. With respect to the omission of his failure to file his 2022 state tax return and pay his 2021 taxes in the June 2023 QNSP, the Individual corrected the omission before being confronted with the facts in his response to the November 2023 LOI. However, the Individual has not met his burden in demonstrating that correction was made in good faith. I cannot credit his explanation that the original omission of this information from the June 2023 QNSP was simply because he "forgot" or was not reading closely. The Individual (1) consistently filed his taxes up to tax year 2021; (2) was aware of his 2021 federal tax liability; (3) admitted to not timely filing his 2022 state return because of potential tax liability; and (4) knew he had not filed his 2022 state tax return. The Individual's tax issues were clearly notable and memorable events to the Individual. Additionally, the Individual's June 2023 QNSP included detailed information regarding several of his old delinquent debts, which demonstrates that the Individual had been reading the June 2023 QNSP closely. Furthermore, the Individual admitted that he had certified on the June 2023 QNSP that all his statements on this form were true, complete, and correct to the best of his knowledge and belief. I also cannot find mitigating condition (a) applies regarding the omission of the two civil court actions from the June 2023 QNSP. The Individual did not correct this omission until after the Individual was confronted with the information during the investigation. More specifically, the background investigation uncovered court records demonstrating that he was a party to the two civil suits, and the Individual was later confronted with the information during the ESI and in the LOIs. Accordingly, I cannot find the Individual has mitigated the security concerns under mitigating condition (a).

Regarding mitigating condition (b), the Individual's behavior cannot be attributed to the advice of legal counsel or a person with relevant professional responsibilities. Accordingly, mitigating condition (b) does not apply.

Regarding mitigating condition (c), it cannot be said that the omissions were minor. As explained above, the Individual has not shown that his omission of his failure to pay his 2021 taxes and his failure to file his 2022 federal and state tax returns was not deliberate. Furthermore, the omission of the two civil actions was not minor given that Individual was well aware of these proceedings.

Although the Individual testified that he was unaware of the 2014 civil suit, court records show that he was served a summons and voluntarily stipulated to a court judgment and payment plan. The Individual and his wife had also filed a motion in the 2017 civil suit demonstrating knowledge that he was a party to this civil action. While he might have omitted the 2017 civil suit because the case was dismissed and because he believed he did not owe the money, the June 2023 QNSP specifically required him to certify to the best of his knowledge if he were “a party to any public record civil court action” within the last ten years. Furthermore, I cannot find the above omissions regarding his taxes and civil suits to be infrequent or to have happened so long ago. The Individual omitted four events he was required to report: (1) the failure to pay 2021 federal taxes, (2) the failure to file his 2022 state tax return, (3) the 2014 civil suit, and (4) the 2017 civil suit. The omissions occurred in the June 2023 QNSP, which was submitted only a year and a half ago. Furthermore, the omissions did not occur under unusual circumstances nor were they an isolated incident given that he also failed to include the two civil actions in his July 2019 QNSP. I cannot find that mitigating condition (c) is met.

Regarding mitigating condition (d), the Individual has presented no evidence that he has obtained counseling to address the behavior leading to the omissions or financial issues that underpin these omissions. I cannot find mitigating condition (d) is met.

Regarding mitigating condition (e), the concerns cited in the SSC do not involve issues of exploitation, manipulation, or duress. Mitigating condition (e) lacks application.

Regarding mitigating condition (f), there exists no dispute as to the reliability of the information. Mitigating condition (f) lacks application.

Regarding mitigating condition (g), the concerns cited in the SSC do not involve association with persons involved in criminal activities. Mitigating condition (g) lacks application.

Accordingly, I find that none of the mitigating conditions have been satisfied and that the Individual has not fully resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline F

Conditions that could mitigate a security concern 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 judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . 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 . . . ; 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;
- (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 SSC cited the Individual's: (1) failure to file his 2022 federal and state tax returns and failure to pay his 2021 federal taxes; (2) two civil court actions to which he was a party for past due debts; and (3) eight other delinquent debts incurred from 2014 to 2023.

Regarding mitigating condition (a), the behavior giving rise to the financial concerns cannot be said to have happened so long ago or to be infrequent. First, the 2022 federal and state tax returns remained unfiled until September 2024, only about a month before the hearing. While he was given an extension to October 2023 to file his federal tax return, the return remained unfiled until September 2024, a nearly year-long period of delinquency. His state tax return also remained unfiled until September 2024, nearly a year and a half after its original due date. Furthermore, the Individual knew of his 2021 tax liability when he filed his return in October 2022, nearly two years ago. However, he failed to take steps to fully resolve the 2021 tax liability until he regularly began monthly payments in January 2024, less than a year ago. Regarding the status of his other various debts, the Individual made little to no efforts to resolve several debts from 2014 to 2023 until he started the instant access authorization application process in June 2023. Accordingly, the Individual's various financial delinquencies and lack of initiative in resolving those delinquencies persisted until at least a year and a half ago.

It cannot be said that the circumstances surrounding his financial issues were unusual. The Individual represented that he experienced personal and financial hardship, including the birth of one of his children, roommates not paying their share of rent, and his wife's emergency medical visit. However, as outlined above, the behavior regarding his failure to pay his 2021 federal taxes and other financial obligations occurred over an extended number of years, continued up until recently, and persists with respect to certain outstanding liabilities. There was also a demonstrated pattern of the Individual undertaking a debt or owing a financial obligation, making some payments to satisfy the obligation, but then failing to fully satisfy the obligation and failing to maintain contact with the creditor. As stated above, the Individual lacked initiative in resolving these debts until after he applied for access authorization in June 2023. Accordingly, it cannot be said that the circumstances demonstrate that this behavior is unlikely to recur or does not continue to cast doubt on his reliability, trustworthiness, and credibility.

Ultimately, the Individual: (1) knew of his 2021 federal tax liability on October 2022 but did not start a payment plan until January 2024; (2) admitted to not timely filing his 2022 federal and state

tax returns until September 2024 with the intention of avoiding further tax obligations; (3) accumulated several financial obligations from 2014 to 2023 but failed to keep current payments with them; and (4) for the most part failed to initiate steps to resolve his financial obligations until after he applied for access authorization. I acknowledge that the Individual has paid many of the obligations outright, started payment plans for others, and has at least tried to locate contact information for creditors of old accounts. However, in light of the fact that many of the issues occurred over an extended period, that many of the delinquencies continued to be unresolved up until recently, and that the Individual deliberately chose to ignore his tax and financial obligations—I cannot find that his relatively recent efforts are sufficient to mitigate the security concerns at issue. The Individual’s behaviors do not reflect well on his judgment, trustworthiness, and reliability, and I cannot make a finding that these issues are unlikely to reoccur. Therefore, I find the Individual has not mitigated the security concerns under mitigating condition (a).

Regarding mitigating condition (b), as stated above, there is some evidence the Individual’s financial issues were due to personal and financial circumstances. However, I must also consider his concerning and historic lack of initiative in resolving his financial issues, particularly his debts from 2014 to 2023 and his 2021 tax liability. I must also consider that nothing prevented the Individual from filing his 2022 federal and state taxes and that he deliberately failed to timely file to avoid possible further liability. The Individual only began resolving the issues after applying for access authorization application in 2023. The Individual’s recent steps taken towards resolving his financial issues and any personal and financial hardships are outweighed by the Individual’s longer-term pattern of inaction regarding his obligations to pay his debts, to file his tax returns, and to pay taxes. Given the above, I cannot find that he has acted responsibly. Mitigating condition (b) does not apply.

Regarding mitigating condition (c), the Individual testified that he has not sought financial counseling. Mitigating condition (c) lacks application.

Regarding mitigating conditions (d) and (g), the Individual (1) has outright paid some of his debts and (2), with respect to other debts and the 2021 back taxes, engaged in repayment plans. However, the record hardly demonstrates long term adherence to payment plans in the past. The record shows that the Individual has initiated the following repayment plans:

- For the 2021 back taxes in January 2024, or approximately nine months before the hearing;
- For the 2014 educational debt no earlier than after submission of his response to the December 2023 LOI, or ten months before the hearing;
- For the auto loan from the credit union in October 2024, a little more than a week before the hearing; and
- For the 2018 broken lease in June 2023, or four months before the hearing.

However, the record also reflects that the Individual has a pattern of discontinuing routine payments and failing to take steps to resolve those delinquencies, for example: (1) the 2014 educational debt; (2) the 2013 television purchase; and (3) the personal loan for a downpayment on a vehicle after the 2015 car accident. Given the relatively short time the Individual has been on each repayment plan and the fact that the Individual has a history of discontinuing his financial

obligations even after starting routine payments, I cannot find that the Individual has demonstrated that he is adhering to the repayment plans. Accordingly, I cannot find that mitigating conditions (d) and (g) have been met.

Regarding mitigating condition (e), the Individual (1) disputes the validity of the medical debt incurred for his wife's emergency visit and (2) testified that certain past due accounts are unpayable and that he no longer owes for them. However, no documentation was submitted demonstrating that the medical bill was in fact covered by insurance. Furthermore, the Individual does not dispute the validity of many of the debts and of the 2021 back taxes due. Accordingly, even if I were to credit that the medical bill is covered by insurance, the Individual cannot fully resolve the security concerns pursuant to mitigating condition (e).

Regarding mitigating condition (f), the security concerns raised by the LSO do not involve unexplained affluence. Accordingly, mitigating condition (f) does not apply.

Accordingly, I find that none of the mitigating conditions have been satisfied and that the Individual has not fully 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 Guidelines E and F of the Adjudicative Guidelines. After considering all the relevant information, both 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 brought forth insufficient evidence to resolve the security concerns under Guidelines E and F. Accordingly, I find the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals