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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: May 16, 2017	)	Case No.:	PSH-17-0033
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Issued: July 14, 2017

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**Administrative Judge Decision**  
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William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (Adjudicative Guidelines), I have determined that the individual should not be granted an access authorization.

**I. Background**

The individual is employed by a DOE contractor that requested a security clearance on his behalf. When completing a Questionnaire for National Security Positions (QNSP) in September 2015, the individual stated that he had not failed to pay federal or state taxes and was not delinquent on any Federal debt. He additionally certified that, in the past seven years, none of his bills had been turned over to a collection agency, and no judgment had been entered against him. However, during a Personnel Security Interview (PSI) conducted in November 2016, the Local Security Office (LSO) learned that in the past seven years, the individual had: (1) seven accounts that were turned over to collections, five of which were outstanding; (2) one judgment entered against him; and (3) approximately \$50,000 in Federal and state tax debt.

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<sup>1</sup> Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

On March 29, 2017, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines E and F of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual testified on his own behalf. In addition to the testimonial evidence, the individual submitted eighteen exhibits (Exhibits A-R) into the record. The LSO tendered eight numbered exhibits into the record (Exhibits 1-8). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or letter designation. The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

### **A. Individual’s Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (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 his 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 so as 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). An individual is thus afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Administrative Judge’s Decision**

In personnel security cases arising under Part 710, it is my role 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). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

### III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two bases for administrative review of the individual's request for access authorization, Guidelines E and F. Guideline E addresses "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations" as this "can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information." Guideline E at ¶ 15. Among the conditions set forth in that guideline that could raise a disqualifying security concern is the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire." Guideline E at ¶ 16(a). As a basis for invoking Guideline E, the Notification Letter cites to the individual's admissions during the PSI that he should have listed on the QNSP the seven accounts that had been turned over to collections, the judgment entered against him, and his tax debt.

With respect to Guideline F, it is well established that failure or inability 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. Guideline F at ¶ 18.

In support of its security concerns under Guideline F, the LSO relied on the following information:

- A. The individual currently has five unpaid collection accounts totaling \$5,159;
- B. He has a judgment against him in the amount of \$1,648, on which he currently owes \$1,250;
- C. He has a charged-off account for \$4,046;
- D. He currently owes the Internal Revenue Service \$47,702.55;
- E. He currently owes \$6,000 in state taxes.

Ex. 1 at 3-5. These allegations adequately support the invocation of Guidelines E and F, and they raise serious security concerns.

### IV. Findings of Fact

#### A. Guideline E

At the hearing, the individual testified that the allegations contained within the Notification Letter were accurate. Tr. at 14-15. However, he alleged that his failure to disclose the debts turned over to collections and the judgment entered against him was due to the fact that he had answered the questions from memory and had failed to recall any of them at that time. *Id.* at 15. In retrospect, he admitted that he should have obtained a credit report prior to completing the QNSP. *Id.* at 16. The individual asserted that he did not intentionally withhold any information, but he only had a few days to complete the QNSP. *Id.* He stated that he approached the form "too lightly." *Id.* at 20.

With regard to his failure to disclose the unpaid taxes on the QNSP, the individual asserted that he “misread the intent of the question.” *Id.* at 24. The relevant questions on the QNSP asked whether the individual: (1) failed to file or pay Federal, state, or other taxes, in the past seven years, when required by law; and (2) was delinquent on any Federal debt. Ex. 7 at 35-37. The individual stated that he answered “no” to both questions because he had been making payments toward his tax bill. Tr. at 24. He indicated that he was not trying to hide the fact that he owed back taxes as he knew that the LSO would be able to uncover his tax bill. *Id.*

## **B. Guideline F**

At the hearing, the individual testified that his debts were due “almost entirely” to his 2008 divorce, and he did not currently consider himself financially overextended. *Id.* at 13-14. He stated that he sought credit counseling to help resolve his debts. *Id.* at 34. With regard to the five unpaid collection accounts totaling \$5,159, the individual stated that two of the accounts, totaling \$2,258, had been consolidated, and he would start making monthly payments on them on July 14, 2017. *Id.* at 34-35; Ex. R. The individual further testified that he disputed one account in the amount of \$1,531 and submitted evidence showing that it had been removed from his credit report. Tr. at 35; Ex. B. As to a fourth account in the amount of \$120, the individual stated that he contested it, but he did not know if it had been removed from his credit report. Tr. at 39-40. He indicated that if it had not been removed, he would pay it. *Id.* at 64.

The final unpaid collection account is the same account on which a judgment was entered against the individual. *Id.* at 19. The individual explained that the debt was due to the storage of a vehicle that had been wrecked and towed. *Id.* at 17. The individual stated that the creditor sued him in small claims court, but he settled out of court, creating a payment plan. *Id.* at 18, 37. The individual indicated that he was laid off from his job, so he stopped making payments on the debt. *Id.* The creditor then executed a bank levy, obtaining the entirety of the amount due. *Id.* The individual stated that he contested this debt on his credit report and submitted evidence showing it had been removed. *Id.* at 18-19; Ex. C.

As to the charged-off account in the amount of approximately \$4,000, the individual testified that this was the account balance for a credit card that he shared with his wife prior to his divorce, and he could not afford the payments. Tr. at 40-41. He stated that the creditor agreed to reduce the amount owed and ultimately discharged approximately \$3,400 of the debt, the entirety of the amount then due. *Id.* at 41-42. The discharged amount was considered income for the purposes of his 2016 taxes. *Id.* at 42; Ex. E.

The individual explained that he began having financial difficulties in 2008 as a result of his divorce. Tr. at 57, 78. He stated that his financial obligations “took a back seat” to paying the legal fees accrued in the divorce proceeding. *Id.* at 57-58. However, after the divorce, the individual, who had held a real estate license, purchased a home. *Id.* at 58-59. He explained that he knew the mortgage would be difficult to pay, and in order to do so, he decreased his tax withholdings in order to have more take-home income from his paycheck. *Id.* at 22, 59. The individual stated that he thought his decreased withholdings would “balance ... out” with the mortgage interest deduction, but he received substantial tax bills in each of several consecutive years. *Id.* at 22-23,

59. The individual indicated that he “was betting that the market was going to get better,” but the house eventually went into foreclosure. *Id.* at 23, 60.

The individual testified that approximately one year ago, he began receiving garnishment letters from the IRS. *Id.* at 26-27. He contacted the IRS, and it informed him that he needed to make monthly payments of \$800. *Id.* at 27. The individual replied to the IRS that he could not afford that payment but could pay \$100 to \$150 per month. *Id.* at 27-28. The IRS declined this offer and sent a letter stating that it would delay collection on the debt until such time as he could afford to pay as scheduled. *Id.* at 28-29; Ex. 6. The individual testified that he is not currently making payments on the tax debt and currently owes \$47,702. Tr. at 71. He did, however, state that he made a \$100 payment approximately five months ago. *Id.* at 72. The individual explained that he previously worked as a realtor and was very successful; he has reinstated his license and intends to pay the tax debt using his commissions from future real estate transactions. *Id.* at 29-30. The individual stated that he plans to work as a realtor every other Friday and during the weekends. *Id.* at 30. He indicated that he is confident that he can pay off the debt in a few years. *Id.* at 30-31.

With regard to his state tax debt, the individual explained that the state is currently garnishing \$200 per month from his wages. *Id.* at 31, 33; Ex. M. The individual stated that this will likely continue for the next two to three years, but he plans to use real estate commissions to pay off this debt as well. Tr. at 33.

In explaining his current financial situation, the individual testified that he now makes enough money to satisfy his monthly expenses, and he has approximately \$800 to \$1000 in disposable income each month. *Id.* at 43-44. He stated that he uses that money to buy items for his children, contribute to his 401(k) retirement plan, and contribute to his savings account. *Id.* at 76-77. He further stated that he began trying to resolve his financial problem prior to receiving the Notification Letter. *Id.* at 80.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual should not be granted a security clearance at this time. I cannot find that granting the individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### **A. Guideline E**

The LSO’s Guideline E security concerns revolve around the individual’s failure to truthfully and accurately answer questions regarding his financial record on the QNSP. After reviewing the facts presented in the exhibits and elicited at the hearing, I find that the security concern is appropriate. While the individual testified that he “honestly did not recall” that he had outstanding debts, his answers during the PSI are not entirely consistent with this statement. Tr. at 15. When asked about

one of the outstanding collection accounts during the PSI, the individual stated that he knew the debt had been pending since late 2011, and he was planning to pay it off. Ex. 8 at 34-35. Further, when asked if he was aware of delinquencies on his credit report prior to speaking with the Office of Personnel Management, the individual stated that he was indeed aware of them, but there was nothing he could do about them. *Id.* at 136-137.

Additional testimony at the hearing did not resolve this concern, but rather exacerbated it. The individual admitted that he had not taken the QNSP seriously enough and should have obtained and reviewed his credit report before completing it. Tr. at 20. Although the individual acknowledged his error and stated that he will not repeat it in the future, I am not convinced that the omissions were entirely inadvertent and due solely to a lapse in memory. *Id.* In addition, though he asserted that he misinterpreted the question regarding filing and paying his taxes, he could not explain why he had not provided information in response to a query for delinquent debts owed to the Federal government. *Id.* at 24; Ex. 7 at 36-37.

I have considered the mitigating factors set forth in Guideline E; however, I cannot determine that the individual has mitigated this security concern. While the individual asserts that he did not have enough time to complete the QNSP, he did not put forth sufficient evidence to establish that his omission of critical information was a unique circumstance attributable to his time limitations. *See* Guideline E at ¶ 17(c). Furthermore, after completing the QNSP, the individual made no attempt to correct the omissions prior to being confronted with his debts at the PSI. *See id.* at ¶ 17(a). Given the inconsistencies in the evidence and the testimony, and the individual's inability to provide convincing and meaningful explanations for his omissions, I find that the individual has not adequately addressed the DOE's concerns about his honesty and reliability that were raised by his inaccurate and incomplete responses on the QNSP. Therefore, significant security concerns remain under Guideline E.

## **B. Guideline F**

Financial difficulties form the basis of the LSO's Guideline F concerns: outstanding debts and tax bills, both of which paint a picture of failure or inability to satisfy debts. While the individual has worked with a credit counseling service to consolidate two of his unpaid collections accounts, he still owes \$2,258 and has not yet made any payment toward that consolidated debt. Tr. at 34-35; Ex. R. In fact, he stated that he will not make his first payment toward this account until nearly a month after the hearing on this matter. Tr. at 35. Additionally, with regard to the outstanding collection account of \$120, while the amount is relatively low, and the individual indicated he could and would pay it if it was still on his credit report, he has not shown that he initiated a good-faith effort to repay or resolve this debt despite knowing that the LSO is concerned about it. *Id.* at 64; *see* Guideline F at ¶ 20(f). The individual's delay and failure to take action show an unwillingness to satisfy debts. *See* Guideline F at ¶ 19(a).

With regard to the unpaid collection account that led to the judgment against him, the individual was able to have this debt removed from his credit report, as the debt was eventually satisfied. Tr. at 37; Ex. B. However, the individual did not voluntarily satisfy this debt. In spite of negotiating a payment plan, the individual stopped making the monthly payment, and the creditor was forced to execute a bank levy. Tr. at 37. While I recognize that the circumstance that led to the missed

payments (loss of his job) was out of the individual's control, the bank levy shows the individual's unwillingness or inability to satisfy the debt and further demonstrates the individual's history of failing to meet his financial obligations. Guideline F at ¶¶ 19(a), (c).

The Notification Letter listed a charged-off account for \$4,046. While the individual testified that the creditor discharged \$3,376 and submitted an exhibit reflecting the discharge, the fact remains that the individual did not pay this debt. Tr. at 41-42; Ex. E. Furthermore, during the PSI, the individual repeatedly confirmed that he had no intention to pay off the debt. Ex. 8 at 9, 18-19. Again, this demonstrates an unwillingness to satisfy his financial obligations. *See* Guideline F at ¶ 19(a).

Finally, the individual owes over \$50,000 in Federal and state taxes. Tr. at 71, 75. While the individual is making payments toward his state tax debt, he has yet to make significant progress in paying down his Federal tax debt. *Id.* at 71-73. Although this debt arose during the housing market crisis, a factor that was largely out of the individual's control, when the individual purchased the house, he was, as a realtor, acutely aware of the risk involved and recognized the challenges in paying the mortgage. It is commendable that the individual now seeks to take on a second career in real estate to pay down his Federal and state tax debts through his commissions; however, the record shows that the individual has yet to obtain any substantial commissions in this venture. Further, this is not a guaranteed stream of income, and the individual will likely continue to carry significant debt for some time; in fact, the individual himself testified that he anticipated that it would take a few years to pay off the debt. *Id.* at 30-31.<sup>2</sup> Therefore, from a security perspective, the individual will continue to present a risk due to his inability to satisfy his debts. *See* Guideline F at ¶ 19(a).

At the hearing, the individual invoked his military history to demonstrate that he would never jeopardize the national security. Tr. at 49. In addition, some circumstances that led to his current financial position were largely beyond the individual's control, and there are some indications that his financial problems are being resolved through his efforts to repay some of his debts and to live within his means. Guideline F at ¶ 20(b), (c), (d). While I recognize these positive factors, I find that his current financial instability arose in part through willful assumption of risky debt during the housing crisis, and that he was unable to absorb that debt. I must resolve any doubt as to a person's access authorization eligibility in favor of the national security. For this reason, I conclude that the individual has not resolved the security concerns under Guideline F.

## **VI. Conclusion**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guidelines E and F of the Part 710 regulations. I also find that the individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that granting the individual's DOE 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). Accordingly, I find that the DOE should not grant an access authorization to the individual at this time.

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<sup>2</sup> The individual testified that, even as his debts remain unpaid, he is increasing his contribution to his 401(k) retirement fund, and that his savings account is growing. Tr. at 77.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: July 14, 2017