

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and on September 8, 2017, I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of three witnesses and testified on his own behalf. In addition to the testimonial evidence, the individual submitted 19 exhibits (Exhibits A-S) into the record. The LSO tendered nine numbered exhibits into the record (Exhibits 1-9). 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 (9th 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 December 2016 PSI that he should have listed his failure to file taxes for several years, his arrests, the judgment entered against him, his debts in collection, and his delinquent debts on 2015 QNSP. Ex. 1 at 1-2.

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, which the individual provided during the December 2016 PSI: that he had not filed his federal or state income tax returns for 2015, paid the amount of the judgment rendered against him that had been turned over to collection, nor paid off four additional collection accounts. *Id.* at 2-3.

These allegations adequately support the invocation of Guidelines E and F, and they raise serious security concerns.

IV. Findings of Fact

The individual was arrested twice, in 2012 and 2015. In September 2012, the individual was arrested for a traffic offense, at which time the officer discovered that the individual's license had been suspended for an earlier offense that involved speeding and lack of proof of automobile insurance, and that the individual had failed to appear in court. Ex. 8 at 79, 82-87. The individual was arrested again in 2015 on similar charges, including driving on a suspended license and failure to appear in court. *Id.* at 93-96. Both arrests resulted in his being jailed pending a court appearance. *Id.* at 86, 95. Many of the charges appear to have been dismissed, but the individual's recollection of these matters is unclear. *Id.* at 86-87, 92-94. At the hearing, the individual testified that he denied any arrests on the QNSP because he misunderstood the question. He stated that he believed at the time that, because the charges associated with the arrests were later dismissed, the police actions should not be considered to be arrests. Tr. at 73-77. He further stated that he now realizes that he misinterpreted the question, and if completing the form now would respond in the affirmative, understanding that the term "arrest" is not dependent on the outcome of any charges. *Id.* at 78.

The individual did not file federal or state tax returns for the years 2011, 2012, 2013, and 2014 until July 2016. Ex. 8 at 36-38. As of December 2016, he had not yet filed his taxes for 2015, but had obtained a filing extension. *Id.* at 35. At the hearing, the individual stated that he had misinterpreted the question on the QNSP regarding the filing and paying of taxes. He stated that, at the time he completed the QNSP, he understood the question to be asking whether he owed any

taxes. He was under the impression that, because taxes were withheld from every paycheck, he owed no taxes and had no obligation to file tax returns. *Id.* at 66, 70. In mid-2016, through the intervention of friends and the assistance of a tax filing service, he realized he had misunderstood his responsibilities regarding income taxes, and engaged a service to file all his outstanding tax returns. *Id.* at 86. He could not afford to pay his overdue taxes until this year, but as of July 2017, he had paid all outstanding tax obligations for those years. *Id.* at 91; Exs. A, B, C, D, E, F, G, H, I. He has since filed his tax returns and paid all income taxes for 2016 as well. *Id.* at 91-92.

In 2014 or 2015, the individual broke up with his girlfriend. They had two incomes and had been sharing residential expenses. *Id.* at 31, 44. Before the breakup, the individual experienced no financial difficulties. *Id.* at 50. After the girlfriend departed, the individual maintained the apartment and the lifestyle he had shared with her. However, his single income was insufficient to support his expenses, and he acquired debt and fell behind on paying his bills. *Id.* at 31, 45. In particular, he fell behind on his rent. He knew he owed the landlord and he was aware that he was going to be evicted. *Id.* at 80. He moved back in with his parents, recognizing that ultimately he would have to repay his landlord. *Id.* at 45, 80. He maintained in his testimony that he was never served with any notice of legal action taken against him. He also asserted that he did not know the meaning of “judgment,” nor did he seek an explanation of the term, as he thought he understood it. *Id.* at 80-81. In mid-2016, when he decided to address his tax issues, he also enrolled in a credit reporting program, through which he learned that his landlord had obtained a judgment against him. *Id.* at 95. He has since hired a law firm to help him with debt repayment, including this judgment. He testified that he would satisfy this judgment within the next month. *Id.* at 96-97.

After the breakup with his girlfriend, the individual quit his job, confident that he would find a new one soon, given his skills. He remained unemployed for three months but did not adjust his lifestyle accordingly. He took out loans, including payday loans, and increased his credit card debt. *Id.* at 102-04. According to his testimony, at the time he was completing the QNSP, he was not aware that any of his accounts had gone into collection, but was unsure what collections were. *Id.* at 82. His current employment, along with his recently adopted more economical lifestyle, has allowed him to repay two of the four collection accounts specifically listed by the LSO. Exs. O, P, Q. He testified that he had repaid a third outstanding account (from Comcast), but did not offer documentary evidence of that transaction. Tr. at 98-100. Finally, he successfully disputed the remaining collection account and it has been closed. Ex. J.

In November 2015, the individual was more than 120 days delinquent on at least one debt. Nevertheless, he responded to a question on the QNSP regarding such delinquency by stating that he was not more than 120 days delinquent. When questioned at the hearing, the individual testified that, at that time, he believed that the debts were more recent and, though he recognized he was delinquent, he did not believe he was delinquent to that extent. *Id.* at 84-85. He stated that he did not check on the age of any specific accounts before responding to the question, because “I felt confident enough . . . in my recollection. I didn’t see a need.” *Id.* at 85.

After he moved home, the individual altered his spending pattern to better suit his reduced income. He acquired a loan from his 401(k) account to pay off debts and taxes. *Id.* at 109. He stopped driving his car, and canceled his auto insurance, and now rides a bicycle. *Id.* at 111, 122. After about a year of living with his parents, he moved out. He now lives in a rented room in another

person's house; his rent and utilities bills are considerably lower than before. *Id.* at 122. He now severely restricts his expenditures on clothing and entertainment. *Id.* at 124. He presented a budget that, particularly in light of a recent raise, indicates that he is now living within his means and has the financial ability to repay his few remaining outstanding debts. *Id.* at 109-13.

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 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. The duration of the individual's financial irresponsibility is relatively short. It began when he and his girlfriend separated in late 2014 or early 2015, and ended when he recognized that he needed to change his lifestyle to live within his means. He has since reduced his expenses considerably, and now has a positive balance in his monthly budget that has enabled him to pay off the bulk of his debts, including his 2015 federal and state income taxes. He has engaged professional services to help him consolidate and renegotiate his debts. He therefore has the guidance and the financial wherewithal to repay the remaining obligations, including the judgment amount and the Comcast collection amount (unless it has in fact been repaid), within a matter of months.

Having reviewed the conditions presented in Guideline F of the Adjudicative Guidelines that could mitigate security concerns related to financial irresponsibility, I find that some of these conditions do not apply to the facts of this case: the individual's behavior that led to these concerns did not happen long ago, nor were they beyond the individual's control (for example, his loss of employment was voluntary). Adjudicative Guidelines, Guideline F at ¶ 20(a), (b). I do find, however, that a number of mitigating conditions do apply to the individual's circumstances: he is receiving financial counseling for the problem and there are clear indications that the problem is being resolved or is under control; he initiated and is adhering to a good-faith effort to repay overdue creditors; and he has successfully disputed the legitimacy of one of his past-due debts. *Id.* at ¶ 20(c), (d), (e). While I recognize that the individual has not satisfied each of his outstanding debts, I am convinced that he soon will do so and, more important, that he now understands how to remain financially responsible. I therefore find that the individual has resolved the LSO's concerns under Guideline F.

B. Guideline E

The LSO's Guideline E security concerns revolve around the individual's failure to truthfully and accurately answer a number of questions on the QNSP. After reviewing the facts presented in the exhibits and elicited at the hearing, I find that the security concern is appropriate. The individual testified during the hearing that he had no intention of misleading the LSO when he supplied inaccurate responses on the QNSP. Tr. at 75, 137-38. Nevertheless, each of the individual's incorrect responses served to conceal potentially derogatory information, whether intentionally or unintentionally, placing him in a better light than he would have been had he answered the questions correctly.

At the hearing, the individual explained in great detail his rationale for his responses that raised security concerns. His explanations revealed incorrect assumptions he had made; for example, that he believed he owed no taxes because deductions were taken from his paychecks, and that he believed he had no obligation to file a tax return because he owed no taxes. While I recognize that the individual is a relatively young man, he has held a number of jobs and has lived independently for several years. I cannot determine whether he is uncommonly naïve or defiantly clings to misperceptions about the adult world to suit his internal compass, and I need not do so. He acknowledged that he was instructed to complete the QNSP carefully. *Id.* at 63. When asked why he answered the relevant questions incorrectly, he stated on some occasions that he did not know what the question was asking: he admitted he did not know, when completing the QNSP what the terms "judgment" and "collection" meant. *Id.* at 80-82. Concerning those and other matters, he stated that he had felt confident at the time that he understood how to respond appropriately. *Id.* at 72 (taxes); 73-74, 79 (arrests); 81 (judgment); 83-85 (age of delinquent debts, though he had not reviewed his own records). When asked why he had not sought assistance in responding to questions, he stated, in addition to his self-confidence, that he is a very private person and reluctant to reveal his personal information to others. *Id.* at 86. He employed questionable judgment in his approach to completing the QNSP.

I have considered the mitigating factors set forth in Guideline E; however, I cannot determine that the individual has resolved this security concern. After completing the QNSP, the individual made no attempt to correct the omissions prior to being confronted with his misinformation at the PSI. Adjudicative Guidelines, Guideline E at ¶ 17(a). However, upon being made aware of his errors, he cooperated fully with the LSO. *Id.* at ¶ 17(b). The remaining mitigating factors do not apply to the individual favorably, though the factors set forth in ¶ 17(c) deserve some attention. The offense cannot be considered minor or a matter of past history. I recognize that this behavior is infrequent, if only because this QNSP was the first the individual had ever completed. I am convinced that the individual will never repeat these errors, as he now recognizes the importance of completing a QNSP correctly, and employing due diligence when doing so. Tr. at 87-88. I am not confident, however, of how the individual would respond when faced with new challenges in the future. In particular, I am not convinced that he would follow appropriate protocol with respect to handling classified material, were he placed in a situation of some complexity. I am also not convinced that he would recognize that he did not know how to respond. Nor am I convinced that he would seek advice from classification or security experts, rather than simply act on his understanding, as he has in the past. In my opinion, the individual displays an unmerited sense of self-confidence in his ability to know what is right. This trait may well temper with maturity, but as of now, I find a substantial risk that he might not handle classified material properly under all circumstances. 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 E.

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 further find that, while the individual has presented sufficient evidence to mitigate the LSO's concerns under Guideline F, he has not succeeded in fully resolving the concerns raised under Guideline E. Therefore, I cannot conclude that granting the individual's DOE access authorization to the individual "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.

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: October 16, 2017