

this matter on May 16, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the individual testified on his own behalf and presented the testimony of his wife and two former supervisors. *See* Transcript of Hearing, Case No. PSH-18-0040 (“Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10. The individual submitted eight exhibits, marked as Exhibits A through H.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO informed the individual in the Notification Letter that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the LSO cited Guideline F of the Adjudicative Guidelines. Guideline F, titled “Financial Considerations,” regards a “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations.” Adjudicative Guidelines at ¶ 18. 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. *Id.* Among the conditions set forth in Guideline F that could raise a disqualifying security concern are the inability to satisfy debts; a history of not meeting financial obligations; and failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required. *Id.* at ¶ 19(a), (c), (f).

As a basis for invoking Guideline F, the LSO alleged three areas of concern. First, the LSO alleged that the individual had eight collection accounts totaling \$2,732 and a charge-off account with a credit card provider for \$4,742. Ex. 1 at 1-2. Second, the LSO alleged that the individual promised to settle certain debts during his first PSI but that he did not take action to resolve those debts by his second PSI. *Id.* at 2. Third, the LSO alleged that the individual did not file his state and federal tax returns for 2016 and that he did not follow through on statements he made during his first PSI that he would file those returns and set up a payment plan to resolve his state tax debt. *Id.* These allegations adequately support the invocation of Guideline F, and they raise serious security concerns.

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), 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 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 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). 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. Tax History

The individual has a longstanding federal tax debt. Starting around 2003, frustrated by a tax dispute with the IRS, the individual chose not to file a federal tax return or pay his federal income taxes for the next five or six years. Ex. 9 at 6-7, 22-24; Ex. 3 at 1. The individual believes that at one point he owed almost \$15,000 in federal taxes. Ex. 9 at 9. According to the individual, the IRS seized money from his bank account in 2009 and did so again a few years later. *Id.* at 23-24, 38. The individual began catching up on filing his federal tax returns in 2010 and had filed all of his past federal tax returns by 2013. *Id.* at 6, 21; Ex. 3 at 1. However, he continued to owe a federal tax debt. In 2014, he set up a payment plan with the IRS under which he pays \$100 per month. Ex. 9 at 39-40; Ex. 10 at 71. The money is automatically deducted from his pay. Ex. 9 at 40.

B. Security Clearance Application

In February 2015, the individual obtained employment with the DOE contractor that is his present employer. Ex. 10 at 24. A year later, in February 2016, the individual submitted an electronic Questionnaire for Investigations Processing (“e-QIP”) with the goal of obtaining a security clearance. *Id.* at 61. On his e-QIP, the individual indicated that he had not filed and paid all his state and federal taxes during the past seven years. *Id.* at 49-50. He also reported that he had several delinquent debts. *Id.* at 52-57.

During an interview in May 2017 with an OPM investigator, the individual stated that soon after the interview he would make arrangements to pay his debts, including a \$562 debt to HSBC Bank. *Id.* at 71-72. Regarding a \$445 debt to T-Mobile for a laptop he had purchased, the individual reported to OPM that he had set up a payment plan in February 2016 and that he was paying \$25 per month. *Id.* at 55, 72.

C. First PSI

The LSO conducted a PSI with the individual on September 25, 2017. Ex. 9 at 1. The individual stated during the PSI that he owed \$12,765 in federal taxes and about \$4,000 in state taxes. *Id.* at 29-31. Although he had put in place an arrangement to pay \$100 per month to the IRS, he had not contacted state authorities to make payment arrangements on his state tax debt. *See id.* at 34. When asked about his plans to pay his state tax debt, the individual stated that he would contact state tax authorities the next day, September 26, 2017, and set up a payment plan. *Id.* As of the date of the PSI, the individual had not filed his state and federal tax returns for 2016 but had received an

extension until mid-October. *Id.* at 27-28. He stated that he would file his state and federal taxes for 2016 before the extension ran out. *Id.* at 34, 49.

At the PSI, the LSO and the individual discussed the debts that had appeared on a February 2016 credit report obtained during the OPM investigation. *Id.* at 52. Among other debts, these included the HSBC debt for \$562 and the T-Mobile debt for \$445. Ex. 7 at 3. Regarding the HSBC debt, the individual stated that he had incurred the debt when purchasing tires around 2010, and he pledged to address it. Ex. 9 at 59, 61. Discussing the T-Mobile debt, the individual did not mention any existing payment plan, as he had reported to OPM. Instead, he stated that he would return the laptop the following week, obtain a partial refund, and set up a payment arrangement on the rest of the debt. *Id.* at 56-58.

D. Second PSI

The LSO conducted a second PSI with the individual on December 8, 2017. As of the second PSI, the individual had not filed his state and federal tax returns for 2016, and his tax extension had expired. Ex. 8 at 17-20. He explained that he had been trying to receive tax preparation assistance from the IRS and that it was necessary to make an appointment to receive this assistance.² *Id.* at 21-22. He indicated that he did not attempt to make an appointment with the IRS until after the expiration of his tax extension. *Id.* at 21. The IRS offered him an appointment close to Thanksgiving. *Id.* at 20. However, to accommodate his schedule, he requested an appointment after the Thanksgiving holiday. *Id.* at 20, 53. At the PSI, he stated that this IRS appointment was scheduled for the following Wednesday, December 13, 2017. *Id.* at 22-23. He stated that, at the appointment, the IRS would redo his payment plan for his federal tax debt. *Id.* at 18.

With respect to his state taxes, the individual had not set up a payment plan on September 26, 2017, as he had stated he would at his first PSI. *Id.* at 18, 43. He claimed that it was his intention, immediately following his upcoming IRS appointment, to go to a state government office to receive assistance filing his state taxes and then set up a payment plan. *Id.* at 17-18. He claimed that the state would not set up a payment plan until he had filed his 2016 income tax returns. *Id.* at 43.

As to the delinquent debts discussed during his first PSI, the individual could not describe any substantial actions he had taken to resolve them. *Id.* at 16-17, 32. Despite indicating at his first PSI that he would address his HSBC debt and T-Mobile debt, the individual still had not done so. *Id.* at 28-29, 31-32. He stated that one reason he had not taken action on the T-Mobile debt was that he had been unable to find the laptop he intended to return for a partial refund. *Id.* at 28. In addition to making little progress on past debts, the individual appeared to be incurring more debts. On September 25, 2017, following the first PSI, the LSO had obtained a new credit report. *Id.* at 8; Ex. 6. The February 2016 credit report had shown one delinquent medical debt for \$151.³ Ex. 9 at 53; Ex. 7 at 4. This more recent credit report showed four additional medical accounts for \$35, \$50, \$178, and \$816. Ex. 8 at 13-14, 23; Ex. 6 at 3. The credit report also showed that the state had filed

² Specifically, the individual explained that he needed an appointment with the IRS because he was unable to find certain tax documents and he believed that the IRS could access those documents and print them. Ex. 8 at 22, 53-54.

³ The individual discussed the medical debt for \$151 at the first PSI. He recalled that he had incurred it when getting some blood work done. Ex. 9 at 53. He acknowledged that he had not paid the debt. *Id.* at 54.

a tax lien against him in March 2017 for \$1,139. Ex. 8 at 39-42; Ex. 6 at 5. Additionally, the new credit report showed a Chase credit card charge-off account for \$4,742. Ex. 8 at 8-9; Ex. 6 at 2.

The individual had not obtained a new credit report since the first PSI and was unaware that these debts were appearing. Ex. 8 at 13. The individual stated that he had incurred the \$816 medical debt, but claimed that his insurance should have covered all or most of the cost. *Id.* at 14. He recalled receiving the bill about six or seven months before the second PSI and acknowledged that he had not taken action on it. *Id.* at 15-16. The individual stated he would need to investigate the other new medical debts. *Id.* at 27. As to the Chase charge-off for \$4,742, the individual claimed that he did not have a Chase credit card and that the debt was inaccurate. *Id.* at 10-12.

The individual explained during the PSI that he and his wife were in difficult financial circumstances because his wife had lost her job and had returned to school. *Id.* at 17, 31. He stated that all of his extra income was being used to pay current bills, such as house and car payments, and that he was barely able to pay those bills. *Id.* at 28, 31, 33-34, 45. The individual told the LSO that he and his wife had cut back on their expenses, reducing money spent on gifts or dining out, in order to make ends meet.⁴ *Id.* at 64. The individual stated that he was planning to receive financial counseling from a manager at his bank. *Id.* at 34, 65.

E. Additional Action on Debts

The LSO issued the Notification Letter to the individual on March 23, 2018. As observed, the LSO raised three concerns, the first two of which related to the individual's debts. First, the LSO alleged that the individual had eight collection accounts totaling \$2,732 and a charge-off account with Chase for \$4,742. Ex. 1 at 1-2. The LSO specified that the eight collection accounts consisted of the five medical accounts, the HSBC debt, the T-Mobile debt, and a \$495 debt to a company called Century Link.⁵ *Id.* at 1. Second, the LSO alleged that individual had stated at the first PSI that he would resolve the T-Mobile and HSBC debts, but that he had not taken any action on these debts before the second PSI. *Id.* at 2.

At the hearing on June 20, 2017, and through exhibits submitted into the record, the individual introduced evidence in an attempt to mitigate these security concerns. Regarding the five medical debts, the individual and his wife testified at the hearing that he settled the largest medical debt, of \$816.44 in total, for \$408.22. Tr. at 13-14, 63. On April 6, 2018, the individual made a payment of \$204.11 on this debt. Tr. at 14, 64; Ex. A at 1-3. The individual submitted evidence after the hearing showing that he made another payment of \$64.83 on July 10, 2018. Ex. A at 4. He claimed that the creditor had accepted these two payments as payment in full. Ex. A at 2, 4.

As to the four other medical debts, the individual testified that he settled the \$178 medical debt for \$151. Tr. at 67. He provided a copy of a check showing payment on April 6, 2018. Ex. B. at 2. The individual and his wife testified that he paid the \$50 and \$35 medical debts in full. Tr. at 14-15, 68.

⁴ The individual nevertheless suspected that his wife had been putting a strain on their financial resources by spending money without his knowledge or consent. Ex. 8 at 35, 37.

⁵ The individual discussed the debt to Century Link at the first PSI. He described the company as a provider of Internet services. Ex. 9 at 63.

As further evidence, the individual submitted a confirmation number and bank records showing that he had made an \$85 payment on April 6, 2018. Ex. C at 1-2. After the hearing, he also submitted a credit report, dated July 10, 2018, showing that the \$50 medical debt had been closed. Ex. G at 3. The individual testified that he could find no information on the medical debt for \$151. Tr. at 16, 72-73, 77-78. His February 2016 credit report does not list a creditor. Ex. 7 at 4. He believes that the \$178 debt, which he happened to settle for \$151, may be the same debt as the \$151 debt. Tr. at 76-77. This debt does not appear on his latest credit report. *Id.* at 77; Ex. G at 2-3.

With regard to the HSBC debt, the T-Mobile debt,⁶ and the Century Link debt, the individual and his wife testified that they had made phone calls to the collection departments at the companies to inquire about the debts. Tr. at 32-33, 75. The companies could not provide them any information. *Id.* at 32-33, 75. The individual further testified that he had reviewed his credit report around March 2018 and that none of the three collections appeared on his credit report. Tr. at 72, 75-76. The credit report submitted by the individual after the hearing does not list these debts. Ex. G at 2-3.

With respect to the Chase charge-off for \$4,742, the individual testified that he did not owe the debt. Tr. at 78. The individual has obtained a letter from Chase, dated April 9, 2018, that states that the account was not his. Ex. D at 2. The letter states that Chase has contacted the credit reporting agencies to ask that they remove the account from the individual's credit history. *Id.*

In sum, the individual has addressed or attempted to address the debts listed on the Notification Letter. However, his latest credit report raises new questions; it shows a new medical collection account for \$326, opened in August 2017 and last reported on June 5, 2018. Ex. G at 2.

F. Additional Action on Taxes

In the Notification Letter, the LSO raised, as a third concern, the individual's tardiness in filing and paying his taxes. Ex. 1 at 2. Specifically, the LSO alleged that: (1) the individual had not filed his state and federal tax returns for 2016; (2) the individual did not file his state and federal returns before his tax extension expired in October 2017; and (3) the individual did not set up a payment plan to resolve his state tax debt as he stated he would during his first PSI. *Id.*

At the hearing, the individual testified that he filed his state and federal income tax returns for 2016 on June 18, 2018, which was two days before the hearing.⁷ Tr. at 82-83; Ex. H. The individual testified that in March 2018, prior to the tax filing deadline, he submitted his state and federal tax returns for 2017. Tr. at 100. A professional tax preparer assisted the individual with his tax returns for 2016 but not his returns for 2017. *Id.* at 99-100.

The individual was asked at the hearing why it took him six additional months, following the second PSI on December 8, 2017, to file his state and federal tax returns for 2016. He stated that, after the PSI, he went to his appointment with the IRS the following week. *Id.* at 97. He was told

⁶ At the hearing, the individual stated that he bought the laptop about eight years ago, in 2010. Tr. at 71.

⁷ The individual submitted into the record an undated copy of his 2016 state income tax return. Ex. H at 2. He submitted the undated first page of his state income tax returns for the years 2014-2017. Ex. E. He did not submit a copy of any federal tax returns.

at the appointment that the IRS no longer provides direct assistance to taxpayers with filing taxes. *Id.* Around January or early February 2018, the individual's mother recommended a professional tax preparer to him. *Id.* at 98. He contacted the tax preparer at the beginning of February to obtain the price. *Id.* at 106. The tax preparer charges \$60 for a federal return and \$60 for a state return. *Id.* at 103. The individual chose not to immediately use the tax preparer's services. At the hearing, he explained that this was because he thought he might wait to do his 2016 taxes with his 2017 taxes, because he wanted time to try to prepare the tax returns on his own, and because he needed time to assemble relevant documents. *Id.* at 87, 98-99. However, he also stated, "I have no excuse." *Id.* at 87. The individual testified that when he received notice of the hearing in this matter, he made an appointment with the tax preparer to file his 2016 taxes. *Id.* at 82. The appointment fell two days before the hearing. *Id.*

At the hearing, the individual indicated that when he filed his state and federal returns for 2016 and 2017, he did not submit any payments. *Id.* at 86, 93, 101. The individual owes \$490 in state taxes for 2016. *Id.* at 86; Ex. H at 2. Although he did not submit his 2016 federal tax return into the record, he indicated at the hearing that he owed \$1,230 in federal income tax for 2016. Tr. at 83. He believes that he may owe a similar amount in federal taxes for 2017. *Id.* at 101. The individual did not provide an estimate of his total federal tax debt as of the date of the hearing. Despite previously estimating a state tax debt of \$4,000, he believes that his total tax debt to the state from the years prior to 2016 would be only the tax lien amount of \$1,139. *Id.* at 88-89.

The individual claimed that he had wanted to set up a payment plan with the state prior to the hearing, but that the state told him that it would not let him set up such a plan until he had filed all of his tax returns for all outstanding years. *Id.* at 88. However, on April 6, 2018, even without a payment plan in place, he made a payment of \$230 to his state government.⁸ Ex. H at 4; Ex. 2 at 1. At the hearing, he stated that he would go to his state and federal tax offices that same day, June 20, 2018, to set up payment plans. Tr. at 87, 89-90, 93, 103. Following the hearing, on July 11, 2018, the individual submitted a statement into the record indicating that he had not yet set up any payment plans. Ex. H at 4. He claimed that he could not set up a payment plan for his federal tax debt until the IRS had finished processing his returns for 2016 and 2017. *Id.* Nevertheless, he reported that he had scheduled a new appointment with the IRS, for July 23, 2018, and indicated that he might be able to adjust his payment plan at the appointment. *Id.* He stated that he would need to wait until he corrected his state income tax return for 2017 before he could set up a payment plan with the state. *Id.*

G. Financial Planning

The individual asserted at the hearing that he was putting his financial problems behind him. His wife was unemployed between August 2017 and February 2018, but is working again. Tr. at 22-23. The individual estimated that since February 2018 he and his wife had been in the position of having about \$4,000 per month that they could use to pay down debts. *Id.* at 22, 94-95. He stated: "We're a lot more comfortable, and we don't have any trouble paying anything." *Id.* at 90. The individual stated that he had used the estimated \$16,000 in surplus income since February 2018 to catch up on car payments and pay other bills that he fell behind on when his wife was not working.

⁸ The individual did not submit documentation to support his statement that he made the April payment.

Id. at 95-96. He had about \$1,800 in the bank as of the hearing date, but stated that he would have less by the end of that day because he would be paying several bills. *Id.* at 92.

Looking to the future, the individual testified that his intention is to pay \$100 per month on his state tax debt and \$200 per month on his federal tax debt. *Id.* at 94. Before committing to a higher payment, he prefers to build up savings that he can use for emergency expenses. *Id.* at 108-109. He intends to claim zero deductions on his paycheck for the next year so that he does not owe money when he next files his taxes and so that any refund is available to pay tax debt. *Id.* at 101-102. He testified that he intends to file his 2018 taxes as soon as he gets his W-2 and that he will use the services of the tax preparer again. *Id.* at 102, 104.

The individual testified that most of his financial problems stemmed from not having enough money, but acknowledged that some of his problems resulted from financial mismanagement. *Id.* at 116. Although the individual had stated at his second PSI that he would obtain financial counseling from his bank, he had not done so by the date of the hearing. *Id.* at 109-10. The individual claimed that he still plans to ask his bank for financial counseling. *Id.*

H. Witness Testimony

Among other jobs, the individual worked as a correctional officer between 2006 and 2009 and as a hardware store employee between 2009 and 2015. Ex. 10 at 25-26. His former supervisor at the correctional facility testified that the individual is trustworthy and honest. Tr. at 41, 44. Notably, this witness testified that, although prisoners offered bribes to the officers daily, he never had to worry that the individual would take those bribes because the individual was an honest employee. *Id.* at 43-44. The individual's former supervisor at the hardware store also testified that the individual is trustworthy. *Id.* at 49. He added that although store employees had opportunities for theft, he never had any concerns about the individual being dishonest or taking merchandise. *Id.* at 53-54.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual and his witnesses 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 a security clearance will not endanger the common defense and security, and that it 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.

The LSO's security concerns under Guideline F are based on the individual's failure to pay his bills on time, his failure to resolve his T-Mobile debt and HSBC debt as promised at his initial PSI, and his failure to file and pay his state and federal taxes on time or set up a payment plan for his state tax debt. Under Guideline F, a failure to live within one's means, satisfy debts, and meet financial obligations can raise questions about an individual's reliability and trustworthiness. Guideline F at ¶ 18. In particular, Guideline F provides that failing to file federal or state income tax returns or pay annual income taxes as required can raise security concerns and may be disqualifying.

Guideline F at ¶ 19(f). Moreover, an individual's history in not meeting financial obligations is relevant. Here, the individual has a long history of not meeting his financial obligations and of owing a federal tax debt. He has owed federal income taxes for over a dozen years. Some of the debts at issue, including the T-Mobile debt and the HSBC debt, are around eight years old.

Guideline F nevertheless provides that the following conditions can mitigate security concerns arising from financial issues:

- (1) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment (*id.* at ¶ 20(a));
- (2) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances (*id.* at ¶ 20(b));
- (3) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control (*id.* at ¶ 20(c));
- (4) the individual initiated and is adhering to a good-faith effort to repay overdue creditors (*id.* at ¶ 20(d));
- (5) 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 (*id.* at ¶ 20(e)); and
- (6) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. (*id.* at ¶ 20(g)).⁹

I find that the applicable conditions above do not sufficiently mitigate the security concerns that the LSO has raised. To begin, the behavior at issue here did not happen “so long ago” that it is unlikely to recur, pursuant to Guideline F at ¶ 20(a). Although the LSO raised concerns about the individual's collection accounts and the Chase charge-off during his PSIs in September 2017 and December 2017, he presented little evidence of any action taken on these debts until April 2018. The individual, for example, paid some of his medical debts in early April and appears to have addressed the Chase charge-off account around the same time. The individual did not resolve his largest medical debt until after the hearing. It is also troubling that a new collection appears on the credit report that the individual submitted. Although the Notification Letter does not list this debt as a concern, its presence suggests the possibility that the individual's problems with paying his bills or perhaps keeping track of them are ongoing.

The individual's failure to file and pay his taxes is an issue that is recent and ongoing. Until two days before the hearing, the individual still had not filed his state and federal income tax returns for 2016. When he did file those returns, he did not submit a payment. Although the individual

⁹ Paragraphs 20(f) (unexplained affluence) of the mitigating factors is not applicable to the facts in this matter and has been omitted.

claims to have filed his 2017 state and federal tax returns before the tax deadline in April 2018, he did not pay those taxes when he filed. The individual made a \$230 payment to state tax authorities in April and pays \$100 per month toward his federal tax debt. Nevertheless, given that he owes additional state and federal income taxes for 2016 and 2017, it is likely that his overall tax debt has not diminished over the past year and that it has, in fact, risen to a sum above the \$12,765 he owed in September 2017. Moreover, according to the individual's post-hearing submission, he still has not set up a state payment plan or a revised federal payment plan. All of these facts suggest that the individual's problem with paying taxes is not a thing of past.

Guideline F at ¶ 20(c) indicates that financial counseling from a legitimate and credible source can mitigate security concerns related to financial issues if "there are clear indications that the problem is being resolved or is under control." At his second PSI in December 2017, the individual stated that he would seek financial counseling at his bank, which could be a legitimate and credible source of counseling. However, he still had not done so as of the date of the hearing. The individual does not yet appear to have a plan to permanently resolve his debts and it is not clear that his financial problems are under control.

Another situation in which an individual may mitigate security concerns raised under Guideline F is when the individual has "initiated or is adhering to a good-faith effort" to repay his debts. Guideline F ¶ 20(d). The individual's efforts to address and investigate his collection accounts and the charge-off, prior to the hearing, do show that he initiated a good-faith effort to address his debts. Yet this must be balanced against the individual's decision to wait until April 2018 to address many of these debts, and his failure to follow through on the pledges he made in his first PSI to address the T-Mobile debt and the HSBC debt. With respect to his T-Mobile debt, it is worth noting that the individual offered shifting and questionable explanations. After claiming during the OPM investigation that a payment plan was already in place, he asserted in his PSIs that he needed to find the laptop so he could return it. This intention to return the laptop is difficult to take seriously if the laptop was eight years old, as he stated at the hearing, and it suggests a lack of good faith.

More importantly, I cannot find that the individual made a good faith effort to file his 2016 state and federal income taxes and either pay those taxes or make payment arrangements. The history of his attempts to file and pay his taxes evidence a distinct lack of urgency or effort on this score. He stated at both PSIs that he would soon file his taxes, but, as has been observed, did not accomplish this task until June 2018. Although he claimed that a delay resulted from his need to schedule an appointment with the IRS, it appears that he did not even attempt to schedule this IRS appointment until after the expiration of the tax extension. The individual's explanations for the delay between December 2017 and June 2018 are similarly unpersuasive, as the individual himself seemed to acknowledge at the hearing. Indeed, given that the individual claims to have had \$4,000 of surplus income each month, starting in February 2018, it is difficult to understand why he hesitated to spend \$120 on a tax preparer. The individual's statement that he did not contact a tax preparer until learning of the hearing in this matter offers more evidence that he had not been making a good-faith effort and that he may view filing taxes on time as an inconvenience that may be ignored until consequences present themselves.

The individual's efforts to set up a payment plan likewise do not show a good faith effort to pay debts under Guideline F at ¶ 20(e). Additionally, other than the pre-existing arrangement to pay \$100 per month to the IRS on his federal tax debt, the individual has not met the condition at

Guideline F at ¶ 20(g)), which specifically regards setting up a payment plan with tax authorities. The individual claims that he was delayed in setting up a payment plan because it was first necessary to file all outstanding tax returns. Yet nothing prevented the individual from submitting regular payments, on his own, to state or federal tax authorities. Further, given that the individual was aware that he needed to file his taxes before setting up new or revised payment plans, his delay in filing his taxes is evidence that he did not put forth a good faith effort to set up new payment plans. It is also noteworthy that the LSO raised a specific concern about the individual's failure to follow through on a promise, made during his first PSI, to set up a payment plan for his state debt on the day after the PSI. Ex. 1 at 2. Far from mitigating this concern with good faith efforts, the individual compounded it by repeating the behavior. He did not follow through on a pledge during his second PSI to set up a payment plan for his state tax debt the next week. He subsequently did not follow through on his pledge at the hearing to set up a payment plan later that same day.

The individual's assertion that he has \$4,000 per month in income available to pay down debts, starting in February 2018, also raises questions about whether he has made a good-faith commitment to pay his tax debts. If the individual really does have that much disposable income, or something close to it, it is unclear why he did not submit any payment along with his 2016 and 2017 state and federal tax returns. It is also unclear why he intends to pay only \$100 per month on his state tax debt and \$200 per month on his federal tax debt. At that rate, he will not be able to satisfy these debts for many years.

There are two additional mitigating conditions in Guideline F that could plausibly mitigate some of the security concerns raised by the LSO. First, Guideline F provides that a security concern can be mitigated if the individual has a reasonable basis to dispute the legitimacy of a past due debt. The individual has provided documentation showing that the Chase charge-off was an error. He has also raised the possibility, supported by his credit report, that he does not owe the \$151 medical debt and that this may be same as the \$178 medical debt.¹⁰ Second, Guideline F provides that security concerns can be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control." *Id.* at ¶ 20(b). The Guideline cites loss of employment as an example. Here, the individual has persuasively contended that his wife's lack of employment between August 2017 and February 2018 was a factor that affected his ability to address his debts in late 2017 and early 2018.

In summary, I find that the recent and ongoing nature of the individual's tax problems, as well as his lack of good-faith efforts to address his tax issues or make payment arrangements, demonstrate that the security concerns that the LSO raised have not been mitigated and remain serious concerns. It should be recognized that the individual has made some efforts to address his debts and that he faced financial hardship due to his wife's lack of employment. I have also taken into account the testimony of his witnesses. However, these considerations are insufficient to mitigate the core issue here, which is his recent failure to file and pay his taxes on time, as required. I therefore find that the individual has not resolved the LSO's security concerns under Guideline F.

VI. CONCLUSION

¹⁰ During the first PSI, the individual also expressed that the Century Link debt might be an error. Ex. 9 at 62-63. He stated that he had never purchased services from the company, that he had verified this with Century Link, and that the debt was not his. *Id.*

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 Guideline F of the Adjudicative Guidelines. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting 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.

Gregory S. Krauss
Administrative Judge
Office of Hearings and Appeals