



security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 hearing regarding the matter. The LSO submitted eight numbered exhibits (Ex. 1–8) into the record, and the Individual submitted forty-seven lettered exhibits (Ex. A–T1).<sup>2</sup> The Individual presented the testimony of nine witnesses, including his own testimony.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for denying the Individual a security clearance. Ex. 1.

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations. Adjudicative Guidelines at ¶ 18. In invoking Guideline F, the Notification Letter indicated that the Individual: was subject to federal and state tax liens totaling \$63,341; incurred \$75,518 in charged-off debts; and was delinquent on an account on which he owed \$1,204. Ex. 1 at 1–2. The Individual’s inability or unwillingness to satisfy debts, history of not meeting financial obligations, and failure to pay state and federal taxes justify the LSO’s invocation of Guideline F in the Notification Letter. Adjudicative Guidelines at ¶ 19(a)–(c), (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 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

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<sup>2</sup> The Individual designated exhibits showing an initial action with an identifying letter, and exhibits showing activity related to that initial action, such as a subsequent payment or follow-up communication, with the same letter and a number. For example, a payment agreement might be labeled Ex. A, and payments made pursuant to the agreement might be labeled Ex. A1, Ex. A2, and so forth.

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**

The Individual disclosed on the e-QIP that he had filed for bankruptcy under Chapter 13 of the Bankruptcy Code in 2014 and 2016, but that both filings had been dismissed. Ex. 7 at 42–43. The Individual admitted that he owed over \$33,000 in U.S. personal income taxes and over \$4,000 in state personal income taxes for the 2016 tax year, and asserted that his income was “only enough to pay current obligations,” and that he could not afford to pay personal income taxes. *Id.* at 45–46. The Individual also disclosed that he had failed to pay state income taxes for the 2009, 2010, 2011, and 2012 tax years, and indicated that he had tried to have these tax obligations discharged through bankruptcy but that his bankruptcy petitions had been dismissed. *Id.* at 44–45.

The Individual checked a box on the e-QIP indicating that he had not experienced delinquency involving routine accounts in the seven years prior to the date that he completed the e-QIP. *Id.* at 46–47. However, a credit report obtained by OPM during its background investigation of the Individual identified numerous delinquent accounts. Ex. 8 at 233–39. The credit report also revealed \$63,341 in federal and state tax liens against the Individual stemming from his unpaid personal income taxes. *Id.* at 231–32. In addition to the credit report, OPM obtained the bankruptcy petitions filed by the Individual which showed that his income exceeded his obligations. On his 2016 petition for bankruptcy, the Individual reported \$15,500 in gross monthly income and a net monthly income of \$2,476 after expenses. *Id.* at 121, 124. On his 2014 petition for bankruptcy, the Individual reported \$12,262 in gross monthly income and a net income of \$88 after expenses. *Id.* at 186, 189. When asked for an explanation for his financial issues by an OPM investigator, the Individual reported that he lived outside of his means because his wife liked to maintain “a certain lifestyle.” *Id.* at 73–74.

On November 28, 2018, the LSO issued a letter of interrogatory to the Individual to provide him with the opportunity to clarify his financial situation. Ex. 4 at 1. In his response, the Individual indicated that, other than contacting the taxing authorities about the possibility of a settlement, he had not taken any action to resolve the federal or state tax liens. *Id.* at 8–11. With respect to the delinquent debts identified from his credit report, the Individual reported that some charged-off debts were resolved through the negotiated surrender of collateralized vehicles, and that he intended to pay several others. *Id.* at 8–10. With respect to the only delinquent debt not yet charged off, the Individual indicated that he had retained a credit repair service to assist him in negotiating a settlement. *Id.* at 9–10. The Individual attributed his financial problems to “poor spending habits, blatant money mismanagement, [and] unemployment.” *Id.* at 10.

At the hearing, several of the Individual’s supervisors and co-workers testified as to his outstanding work ethic, reliability, and personal character. Tr. at 12–13, 21–22, 34, 39–40, 56–57. One of the Individual’s co-workers testified that the Individual had manifested a resistance to learning about financial management and taking steps to improve his financial position in the past, but that the Individual had recently shown signs of genuine change and accepted the importance of financial freedom. *Id.* at 48–49. Several of the Individual’s witnesses, including his mother and a friend of twenty-five years, testified that they had observed the Individual living “lavishly” in the past, but

had believed that the Individual's earnings were enough to support his lifestyle. *Id.* at 26–28, 63, 66–67.

The Individual's wife testified that the Individual acted as the head of the household, and that she was unaware that the family was experiencing serious financial problems until 2014. *Id.* at 74–77, 81. The Individual's wife indicated that she had taken a job to pay for some household expenses. *Id.* at 85; *see also* Ex. 2 at 15 (indicating that the Individual's wife pays for home and auto insurance and groceries). The Individual's wife expressed that she prefers to drive luxury vehicles, but was abstaining from purchasing one at this time due to the family's financial difficulties. Tr. at 85, 89. The Individual's wife also testified as to her intention to purchase a new luxury vehicle as soon as she saved sufficient money from her job. *Id.* at 91.

The Individual testified that his financial problems began in 2004 when he changed employers and began to fall behind on payments for his family's home and luxury automobiles. *Id.* at 106–07. The Individual's financial problems grew when he failed to adequately withhold taxes from his paycheck and took an early distribution from his 401(k) account without accounting for the tax consequences. *Id.* at 112–13. The Individual subsequently resorted to pawning possessions and taking payday loans to make ends meet. *Id.* at 126, 144. The Individual continued to purchase luxury vehicles despite recognizing the instability of his financial position and having to move out of his home due to foreclosure. *Id.* at 111, 115–16. Eventually, the Individual pursued Chapter 13 bankruptcy, but the bankruptcy proceeding was dismissed after the Individual's employment was terminated based on a verbal altercation with another employee and he could no longer make the payments required under the bankruptcy plan. *Id.* at 102–03, 107–08.

According to the Individual, he made repeated efforts to arrange payment plans for his unpaid taxes but found the monthly payments proposed by his state taxing authority unacceptably high and the wait times to speak with an IRS representative by phone too lengthy. *Id.* at 110, 119–20. By June 2019, the Individual's combined state and federal tax liability had increased to \$87,198. Ex. 2 at 8; Ex. B. In July 2019, the Individual successfully reached an IRS representative and entered into an installment agreement pursuant to which he is to make monthly payments of \$650 for seventy-two months. Ex. A at 3. As of the date of the hearing, the Individual had made two payments to the IRS pursuant to the installment agreement. Ex. A1; Ex. A3. The Individual also asserted that he had entered into a repayment agreement with a collection agency acting on behalf of the state taxing authority, pursuant to which he was to make monthly payments of \$350 for forty-two months. *See* Ex. B (an unsigned letter from a law firm indicating that the Individual had agreed to a payment agreement); *see also* Ex. B4 (a notarized one-page letter signed by the Individual stating that he will pay the state taxing authority pursuant to a payment agreement). The Individual provided documentation of three debit card transactions through his bank which he alleged were payments made pursuant to the payment plan. Ex. B1; Ex. B2; Ex. B3.

On the subject of his delinquent accounts, the Individual asserted that most of the debts identified by the LSO had been discharged through bankruptcy. Tr. at 132–42; *see also* Ex. 2 at 4 (identifying vehicles surrendered by the Individual to satisfy debts); *see also* Ex. L2 (credit report indicating that several of the debts identified by the LSO had been dismissed as of August 2019). The Individual also provided evidence that he had paid the three smallest debts identified by the LSO. Ex. C; Ex. D; Ex. O. However, the Individual acknowledged that he was not sure of the status of all of his debts, and that he may have to make payments in the future on some debts currently in dispute. Tr. at 135–36, 140–142 (testifying that he is unsure of the status of one of his debts in

dispute, but that “[n]o one is actively coming after [him]”); *see also* Ex. 2 at 2 (indicating that he was disputing three debts totaling \$27,017).

According to the Individual, he “did not give any credence” to his financial obligations in the past, but now that his financial standing “mattered” with respect to his employment he was “following and being compliant.” *Id.* at 117–18. The Individual testified that the steps he had taken to address his financial issues included working as much overtime as was available to earn extra income, pursuing credit counseling with a not-for-profit organization, abstaining from purchasing additional vehicles for himself or his wife, and withdrawing over \$10,000 from his 401(k) account to pay debts. *Id.* at 160–61, 165–66, 171–72, 177–78. The Individual estimated that, as of the date of the hearing, he had between \$3,000 and \$4,000 remaining in his 401(k) and \$2,000 in cash with no other savings. *Id.* at 172–74.

At the hearing, the Individual estimated that his monthly income, not including overtime, was approximately \$4,100 after tax withholding and deductions. *Id.* at 177–78. The Individual estimated that his monthly expenses totaled \$4,125. *Id.* at 189–90; *see also* Ex. 2 at 15 (budgeting \$3,825 in expenses per month based on an estimate that understated the Individual’s IRS repayment plan by \$300). The Individual’s budget did not include any estimated expenditures for common expenses, such as household toiletries and supplies, medical expenses, grooming, or clothing. Ex. 2 at 15. The budget also relied upon the forbearance or deferment of the Individual’s student loans, the principal of which totaled \$116,210. *Id.*; Ex. R; Ex. R.1.

## V. ANALYSIS

### A. Guideline F

An individual may mitigate security concerns under Guideline F if 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; the conditions that resulted in the financial problem were largely beyond the person’s control, and the individual acted responsibly under the circumstances; the individual has received or is receiving financial counseling; the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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; unexplained affluence resulted from a legal source of income; or the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. Guideline F at ¶ 20(a)–(g).

In this case, I am not convinced that the financial issues giving rise to the security concerns will not recur. The repayment agreements the Individual entered into with the IRS and his state taxing authority, efforts to resolve his other debts, and decision to pursue credit counseling from a not-for-profit entity to bring his financial problems under control are all potentially mitigating conditions under Guideline F. Adjudicative Guidelines at ¶ 20(c)–(d), (g). However, the Individual’s efforts are too recent for me to conclude that the Individual has satisfied the mitigating conditions, and his plans for stabilizing his financial situation are precarious and underdeveloped.

In order to resolve his substantial tax liability, the Individual will need to develop a sustainable budget that will allow him to make payments for up to the seventy-two month term of his IRS repayment plan. The budget provided by the Individual, which omits clothing, medical expenses, household goods, and other necessities, is not sufficiently developed for me to conclude that the Individual has such a plan. The budget also relies in small part on the participation of the Individual's wife, whose testimony did not lead me to believe that she has fully accepted the lifestyle changes that the Individual is trying to effectuate in the household. If any one of many adverse events should occur, such as the Individual's unaccounted expenses being greater than he perceives them to be, opportunities for overtime diminishing, his substantial student loan debts not remaining in forbearance, the taxes he owes on his latest 401(k) withdrawal exceeding his withholding from his paycheck, the debts he is currently disputing resulting in additional liabilities, or the occurrence of any unexpected event resulting in a significant expense, he will likely find himself unable to meet his financial obligations once again.

Furthermore, the Part 710 regulations require me to take into account the age and maturity of the Individual at the time that he engaged in the conduct giving rise to the security concerns, the nature, extent, and seriousness of the conduct, and the frequency and recency of the conduct. 10 C.F.R. § 710.7(c). The Individual is over fifty years of age, owed as much as \$96,000 in unpaid taxes until a few weeks before the hearing, and has experienced financial problems due to reckless spending continuously for at least fifteen years. In light of the Individual's maturity, the lengthy pattern of his financial irresponsibility, and the amount of his tax liability, more time is needed before the Individual's efforts will be sufficient to establish the mitigating conditions set forth under Guideline F.

While the Individual has taken important first steps towards improving his financial condition, the Individual has not established a sufficient record of financial responsibility for me to conclude that he has 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 the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. After considering all of the relevant information, 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 has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Office of Hearings and Appeals