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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: November 20, 2019)	Case No.:	PSH-19-0055
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Issued: January 17, 2020

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.

I. BACKGROUND

The Individual is employed by DOE in a position that requires him to hold a security clearance. Derogatory information relating to the Individual’s finances was discovered, which was not mitigated by the Individual’s explanation of the situation. His clearance was suspended and the Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on November 20, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-19-0055 (hereinafter cited as “Tr.”). The LSO submitted four exhibits, marked as Exhibits 1 through 4 (hereinafter cited as “Ex.”). The Individual submitted 11 exhibits, marked as Exhibits A through K.

¹ Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline F of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration.

Guideline F (Financial Considerations) addresses "[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.* The conditions set forth in that guideline that could raise a disqualifying security concern are inability to satisfy debts or unwillingness to satisfy debts; a history of not meeting financial obligations; deceptive or illegal financial practices; consistent spending beyond one's means or frivolous or irresponsible spending; 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; unexplained affluence; borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and concealing gambling losses, family conflict, or other problems caused by gambling. Adjudicative Guidelines at ¶ 19.

The LSO alleges that the Individual made a number of electronic banking transactions totaling in the hundreds of thousands of dollars, many of which were not honored by the transferring bank. The LSO could not determine where the Individual would have acquired such a sum and was not able to ascertain that it came from a legal source. The LSO further alleges that the Individual incurred a significant tax debt in 2016 and that seven of his monthly payments on the debt were dishonored. Finally, the LSO alleges that the Individual's credit report shows him owing over \$700,000 in debt, with payments surpassing \$9,000 per month. Accordingly, the LSO's security concerns under Guideline F are justified.

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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

At the hearing, the Individual presented the testimony of his colleague, his supervisor, and his wife. DOE Counsel confirmed that the focus of the security concerns was the excessive amount of balance transfers, not delinquencies. Tr. at 208–09.

The Individual's colleague had known the Individual for 20 years, working with him regularly for 11 years and socializing with him outside of work on occasion. Tr. at 11–12. He described the Individual as being honest, unimpulsive, and a rule-follower. *Id.* at 12, 15. He also described the Individual as thrifty and meticulous. *Id.* at 12, 14. He did not know of any security violations involving the Individual. *Id.* at 15.

The Individual's supervisor had known the Individual for over 20 years and supervised him for nearly 15 years. Tr. at 22. She described him as diligent, well-respected, detail-oriented, and highly skilled. *Id.* She had never had need to discipline him and, having checked with the security office before testifying, she confirmed that he had never had a security infraction with DOE. *Id.* at 23. She described the Individual as frugal, testifying that the Individual bought a new car last year after having driven his previous car for 10 years. *Id.* at 25. The Individual had shown her the Summary of Security Concerns from the Notification Letter and explained his situation to her in detail. *Id.* at 24–25. She found the Individual to be very honest and trustworthy and testified that he is trusted by other employees to assist them with sensitive issues. *Id.* at 29.

The Individual's wife testified that she handled all the finances for the household up until the Individual's clearance was suspended. Tr. at 33. After that, they handled them as a team. *Id.* Before the Individual's clearance issues, she did not share financial details with the Individual, who she described as a “big picture” person. *Id.* at 34. She testified that since the clearance issues arose, she

and the Individual have paid off \$237,000 in debt, which included eliminating their credit card debt, and have cash savings in the bank. *Id.* at 35. She testified that they were putting at least \$4,000 per month into retirement savings and that they were being very cautious with money due to the risk of the Individual losing his job. *Id.* at 35–36. Their non-mortgage debt payments totaled about \$2,400 per month. *Id.* at 115.

The wife testified that she was raised in a home where she wanted for nothing and learned very little about responsible money management. Tr. at 75–77. She did not realize that she was in over her head with her household's finances until the Individual's clearance was suspended. *Id.* at 92, 127–28. At the time when her financial difficulties started, she had transitioned from a lucrative private sector job with long hours to a less demanding job, but had then fallen ill and nearly died.² *Id.* at 39–40, 71–72. The Individual's wife also provided financial assistance at times to her family. Tr. at 70-71. She still worked to take care of the family's finances alone and did not ask for the help she needed, even to the extent of making transfers and paying bills from her hospital bed. *Id.* at 40. She took full responsibility for the strange transactions flagged by the LSO. *Id.* at 38. She testified that the transactions occurred when she and the Individual refinanced their home to pay off high interest debt. *Id.* at 36–37. In transferring money between accounts to pay off debts, she mistakenly made four transactions from the wrong account, which were returned. *Id.* at 38. These transactions were each submitted two more times and rejected each time. *Id.* She testified that these mistaken transactions and their resubmissions constituted 12 of the 17 transactions in question. *Id.* The wife further testified that the source of all the funds was legal. *Id.* at 39. The wife also mistakenly set up two payment plans with the IRS, totaling \$1,800 per month, which is why seven payments were returned. *Id.* at 58–59. The IRS debt had since been paid in full. *Id.* at 60.

The wife testified that she was embarrassed and ashamed of her mistakes and did not tell the Individual about any of the difficulties she was having processing their family's finances. *Id.* at 34, 38, 91. When the Individual's clearance was suspended, she told him to leave her, stating that she was ruining his career and reputation. *Id.* at 105. She testified that the Individual said he would not leave her, but told her that the financial issues had to stop. *Id.* The wife showed significant remorse throughout her testimony and took full responsibility for the couple's financial missteps. *Id.* at 38.

The wife testified that the Individual is now fully involved in their finances. Tr. at 61–62. She tells him everything. *Id.* at 62. She also has been receiving help from a financial advisor and a therapist to improve her financial literacy and decision-making skills. *Id.* at 61–62. She testified that she and the Individual use the calendar associated with a joint email account to track and plan their finances, allowing them both to be up to date about their financial situation. *Id.* at 62.

The Individual testified that he had not had a security infraction in 29 years of near continuous holding of a security clearance. Tr. at 138. When he and his wife got married, she made most of the money and did most of the spending, so it was easy for him to let her handle the finances. *Id.* at 139. The Individual acknowledged that he should have been more involved in his family's finances. *Id.* at 140. Early in his marriage, he would work on the taxes, but eventually his only involvement was to double check the numbers before submission. *Id.* at 142–43. Eventually, things got to the point where the Individual did not even have access to the family's financial information.

² Prior to when the Individual's wife transferred to a less lucrative job the Individual and his wife had a household income of approximately \$400,000 to \$500,000. Tr. at 72.

Id. at 163. In late 2015, the Individual and his wife decided to refinance her debt in his name. *Id.* at 168–69. Still, he did not keep track of the accounts. *Id.* At various times, the Individual would receive several calls per week from his primary bank, but he would simply have his wife call back and would not seek details about the reasons for the calls. *Id.* at 197–98.

In July 2018, an OPM investigator met with the Individual to discuss his finances and taxes. It was the first time he had heard of the questioned transactions. Tr. at 199–200. He told the investigator that he could only guess at what the transfers were and that his wife had the answers. *Id.* at 150. He became aware of the transfers later. *Id.* at 157. It was not until several months later, when he received the Summary of Security Concerns, that he took over the finances and forced his family to reduce spending where possible. *Id.* at 171.

As of the hearing date, the Individual and his wife held one joint credit card account, which they used for daily expenses and paid in full each month. Tr. at 131, 184. He goes through the statement each month with his wife and she explains every transaction to him. *Id.* at 131. He decreased the family’s debt and the family’s spending. *Id.* at 176. He also created “financial buffers,” meaning a minimum amount of money that needed to remain in their accounts to cover any unforeseen charge that may come along. *Id.* He testified that he now has strong control over the family’s spending and that he intends to continue using a financial advisor. *Id.* at 176–78. The Individual and his wife, together, make over \$300,000.00 per year and plan to save for unplanned financial emergencies. *Id.* at 171–72.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Failure to live within one’s means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F provides that the following conditions may mitigate security concerns:

- (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 affluence resulted from a legal source of income (*id.* at ¶ 20(f)); 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)).³

At its heart, this case revolves around the suspicious nature of the money transfers, not any ultimate failure to pay debt. Even when the Individual's wife began to make unwise transfers over a myriad of accounts, engage in home refinancing and assist her family financially, the Individual's household had significant income from the wife's position as a professional. While it is likely that the Individual's household was under financial stress due to a number of life events and the Individual's wife spending habits, the household did not default on debts other than those occasions where the wife made errors in designating banking accounts to pay various expenses.

The Individual did show a lack of responsibility in monitoring his household financial status. This is mitigated somewhat by the fact that his wife was a professional and had significant income of her own. Nonetheless, I believe that the Individual has undertaken significant steps to prevent this situation from happening in the future. When he learned about the true state of his finances, the Individual took immediate action to remedy the problem, tackling both the symptoms and root cause. He sought financial counseling and began aggressively paying down his family's overall debt. He also took an active role in the family's financial work. The Individual has explained the source of the money involved in the questioned transactions and demonstrated that the sum involved came from a legal source and was significantly lower than it appeared at first blush. At the time of the hearing, the Individual was current on all debt repayment and his tax debt had been fully resolved. He had a plan in place to keep himself engaged in the family's finances and was committed to using a financial planner for the foreseeable future. He has done all that could be done to change his situation, not only to resolve the issues raised by the LSO, but also to ensure that he and his wife are responsibly planning for their future.

I also find that the Individual has satisfactorily explained what happened, accounted for all the money involved, and confirmed that all funds were transferred to and from a legal source. Based on the Individual's actions since learning of his financial issues, I find that his judgment is sound, he is reliable, and he can be trusted to make good decisions. I further find that the Individual's

³ Paragraph 20(e) (reasonable basis to dispute past-due debt) of the mitigating factors is not applicable to these facts.

financial situation does not put him at risk for blackmail or other compromise. Specifically, I find that the mitigating factors of paragraphs 20 (a), (c), (e) and (g) are applicable in this case. Based on the record before me, I find that the Individual has mitigated the Guideline F concerns.

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 Guideline F of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that restoring 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 restore 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.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals