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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: October 18, 2019) Case No.: PSH-20-0004
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Issued: January 15, 2020

Administrative Judge Decision

Steven L. Fine, 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 denied.

I. BACKGROUND

The Individual, who is employed by a DOE contractor, is an applicant for a DOE Security Clearance. During the Individual’s background investigation, the Local Security Office (LSO) obtained a significant amount of derogatory information which raised significant security concerns about the Individual. On September 12, 2019, the LSO began the present administrative review proceeding by issuing a Notification Letter informing the Individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for 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 October 18, 2019. I took testimony from the Individual at the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g). *See* Transcript of Hearing, Case No. PSH-20-0004 (hereinafter cited as “Tr.”). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11. (hereinafter cited as “Ex.”). The Individual submitted two exhibits, marked as Exhibits A and B.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

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.

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. In support of its determination that this information raises a substantial doubt about the Individual's eligibility for a security clearance, the LSO cites Guidelines A, E, F, and J 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). The LSO further cites the Bond Amendment, codified at 50 U.S.C. § 3343, in support of its conclusion that the Individual is ineligible for a security clearance.

Under Guideline A, the LSO cites the Individual's admissions that he had identified himself as a "sovereign citizen," and had made several attempts to exempt himself from Federal and state law. This information adequately justifies the LSO's invocation of Guideline A and has raised significant security concerns. Guideline A states: "The willingness to safeguard classified or sensitive information is in doubt if there is any reason to suspect an individual's allegiance to the United States." Guideline A at § 3.

Under Guideline E, the LSO cites the Individual's nine omissions from a Questionnaire for National Security Positions (QNSP) that he had signed and submitted on January 27, 2016, numerous false statements made by the Individual during a Personnel Security Interview (PSI) conducted on July 27, 2017, a false statement made to an Office of Personnel Management (OPM) Investigator, the Individual's attempts to acquire real estate in which he had no legitimate interest by filing a fraudulent lien on that property, and the Individual's admissions that he had declared himself to be a "sovereign citizen" and had informed local law enforcement and courthouse officials of his sovereign citizenship in writing. This information adequately justifies the LSO's invocation of Guideline E and has raised significant security concerns. The Adjudicative Guidelines state: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." Guideline E at § 15. Among those conditions set forth in Guideline E that could raise a disqualifying security concern are: "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities." Guideline E at §16(a); "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative." Guideline E at § 16(b); "Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information." Guideline E at § 16 (d).

Under Guideline F, the LSO alleges that the Individual has a history of failing to meet his financial obligations, failing to file his Federal and state tax returns, and failing to honor the restitutionary obligations imposed by a court for his prior Bank Fraud and Receiving Stolen Property convictions.

To this end, the LSO alleges that the Individual has failed to file his Federal and state income tax returns for tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016, and that the Individual owes approximately \$6,000 in past due Federal taxes. In addition, the LSO alleges that the IRS has garnished his wages to satisfy his outstanding tax debt. The LSO alleges that the Individual still owes approximately \$12,000 in court-ordered restitution for his Bank Fraud and Receiving Stolen Property charges, and that the Individual discontinued making these payments in 2012. The LSO further alleges that the Individual has four outstanding charged-off accounts totaling \$11,991. The LSO also notes that the Individual filed for Chapter 7 bankruptcy in 2000. The LSO also cites as Guideline F derogatory information the Individual's statements during the PSI indicating that he has not taken any actions to address his outstanding tax issues, and that he has not resolved any of his four charged-off debts. The LSO further notes that the Individual admitted in the PSI that he has no intention of resolving one of the outstanding charged-off accounts, and has not made any payments to the other three charged-off accounts. These allegations adequately justify the LSO's invocation of Guideline F. Guideline F (Financial Considerations) provides: "failure 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 or sensitive information." Guideline F at § 18. Among the conditions that can raise security concerns under Guideline F are an individual's inability to satisfy debts; an unwillingness to satisfy debts regardless of the ability to do so; a history of not meeting financial obligations; a history of late payments or non-payment, or other negative financial indicators; failure to file annual Federal or state income tax returns, and failure to pay annual Federal or state income tax. Guideline F at § 19(a), (b), (e), and (f).

The Notification Letter further cites the Individual's Bank Fraud and Receiving Stolen Property convictions in denying his clearance.² Under Guideline J (Criminal Conduct), criminal activity creates doubt about a person's judgement, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶ 30. Ex. 1 at 3-4. The Individual's Bank Fraud and Receiving Stolen Property convictions, as well as his history of three arrests, justify the LSO's invocation of Guideline J. Adjudicative Guidelines at ¶ 31(a)-(b).

The Notification further cites the Bond Amendment in denying the Individual's request for a security clearance. The Bond Amendment provides, in pertinent part, that a Federal agency may not grant or renew a security clearance for a covered person who "has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year." 50 U.S.C. § 3343(c)(1)(A). The LSO noted that the Individual was convicted of Bank Fraud and Receiving Stolen Property, which resulted in his being incarcerated for 15 months.

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

² The Notification Letter also cites the Individual's August 8, 1998, arrest for Transporting an Open Container and Expired Registration, and an incident in 2013 or 2014 which resulted in law enforcement charging him with No Seatbelt, No Insurance, Expired Registration, and Improper Tags, under Criterion J.

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

On October 7, 2003, Federal Law Enforcement Officials charged the Individual with three counts of Receipt of Stolen Securities, two counts of Uttering a Counterfeit Check, two counts of Bank Fraud, and one count of Money Laundering.³ Ex. 11 at 102. On March 5, 2004, the Individual pleaded guilty to Bank Fraud and Receiving Stolen Property,⁴ and was sentenced to 18 months in prison and five years of probation. Ex. 11 at 85. The Individual was incarcerated from April 26, 2004, until July 29, 2005. Ex. 11 at 59, 103; Tr. at 10.

³ On August 12, 2016, the Individual was interviewed by the OPM Investigator. During this interview the Individual provided the following information concerning the events which led to that arrest:

Earlier in 2003 (exact date not recalled) subject and his brother Anthony, responded [to] an email from an unknown source in Nigeria. The email indicated that the source would pay them a sum of money for their assistance in paying the fees and taxes on an account. Subject thought the email was a scam, but they responded anyway. A few days later, subject received a check in the mail, with instructions to cash the check and return a portion of the money. Subject believed that the check was real, so he deposited it in his checking account. The amount of the check was \$45,000. The bank released \$6000 from the deposited check which subject sent back to the source in Nigeria. Subject's brother received money orders from the source, which were also deposited into subject's account. A few weeks later, they were contacted by the FBI. Subject and his brother were ultimately arrested. Subject was initially charged with 8 counts of money laundering, bank fraud, receiving stolen securities and property and conspiracy.

Ex. 11 at 59.

⁴ The Summary of Security Concerns (SSC) alleges that the Individual was also convicted of Conspiracy to Receive, Possess, Conceal and Dispose of Certain Stolen Securities. Ex. 1 at 1. However, the information cited in the SSC in support of this allegation is ambiguous. Ex. 9 at 31-33; Ex. 10 at 125-176; Ex. 11 at 100-103.

In 2013 or 2014, law enforcement officials charged the Individual with No Seatbelt, No Insurance, Expired Registration and Improper Tags. The Individual's decision to operate his vehicle without abiding by the mandatory legal requirements was influenced by his involvement in the "sovereign citizen" movement. The Individual estimated that he was involved in "sovereign citizen" activities from 2012 until 2014.⁵ Ex. 10 at 283, 297-298, 301, 318, 320, 327-328, 353. In 2012, he prepared a document which he described as a "Security Agreement."⁶ Ex. 10 at 273, 283. The "Security Agreement" identified the Individual as a "sovereign citizen," a "High Priest with the Nation of Yisreal,"⁷ and a "Foreign Diplomat." Ex. 10 at 290, 293-294, 297-298. When questioned about these activities during the PSI, the Individual admitted that he claimed "diplomatic" immunity from the laws of the United States in the "Security Agreement." Ex. 10 at 293-294, 309-310. The Individual mailed copies of the "Security Agreement" to local law enforcement officials and "filed" the "Security Agreement" with the local courthouse. Ex. 10 at 299-304, 306. The Individual further created and displayed a fraudulent license plate on his vehicle, in order to identify himself as a "diplomat," and to avoid the financial cost of obtaining legitimate license plates and registration. Ex. 10 at 301-302, 312-314, 318. The Individual also created a personal identification card identifying himself as a "sovereign citizen." Ex. 10 at 325. The Individual admitted that his declaration of "sovereign citizenship" was intended to allow him to escape (or delay) criminal, financial, and tax liability. Ex. 10 at 275, 278, 280-288, 296, 299, 314, 317, 328, 330-332, 337, 355. During the PSI, the Individual indicated that he no longer adheres to the beliefs he expressed in the "Security Agreement." Ex. 10 at 294-295.

In 2013, at the suggestion of other members of the "sovereign citizen" movement, the Individual placed a \$375,000 lien on a foreclosed property. Ex. 10 at 216, 233-234, 239. The Individual admits that he filed this lien illegally. Ex. 10 at 298. Although he admits that he never had any legitimate interest in that property, his intent was to obtain ownership of that property. Ex. 10 at 216-217, 225, 227, 230-234, 238, 241, 308-309. Two individuals who had a legitimate interest in the foreclosed-upon property filed suit against the Individual in order to remove the lien and to recover damages from the Individual, compensating them for the expenses they occurred in clearing their property's title. Ex. 10 at 226, 244-245. The legitimate titleholders obtained a judgment of \$8,160 against the Individual. Ex. 10 at 244-246.

The Individual claims that he no longer associates with anyone in the "sovereign citizen" movement and has not been involved in it since 2014. Ex. 10 at 319, 330-331, 335. During the PSI, he acknowledged that his involvement in the "sovereign citizen" movement was a "bad decision." Ex. 10 at 331.

⁵ The Individual provided inconsistent information concerning the time frame of his involvement in the "sovereign citizen" movement. On at least one occasion, he stated that his involvement with the movement ended in 2013. Ex. 10 at 342.

⁶ During the PSI, the Individual provided an illogical and incoherent explanation and definition of the document he refers to as a "Security Agreement." Ex. 10 at 274-281, 297-298, 311.

⁷ During the PSI, the Individual initially denied that he had been a member of the "Nation of Yisreal," and initially denied ever claiming to be a "foreign diplomat." Ex. 10 at 260, 271.

During the PSI, the Individual admitted that, on nine occasions, he had omitted information from his January 27, 2016, QNSP that he was required to disclose. Ex. 10 at 11-15, 29-31, 68-70, 72-76, 83-84, 87, 91-98, 112-113, 119, 216, 224-253, 259-263, 267-268, 298, 307-308, 328, 343-346, 348-352. The omitted information includes his August 8, 1998, arrest for Transporting an Open Container [of alcohol]; his failure to file both his Federal and state tax returns for tax years 2009, 2010, 2011, 2012, 2013, 2015, and 2016; three of his four outstanding charged-off accounts; a collection account; a garnishment of his wages by the Internal Revenue Service (IRS); and a judgment entered against him in a civil action.

The Individual reported one of his four outstanding charged-off accounts in the January 27, 2016, QNSP. Ex. 9 at 37. During the PSI, the Individual initially indicated that he had not yet made any payments to this creditor for the 2012 debt, and that he planned to work-out a payment plan in the future in order to resolve this outstanding debt. Ex. 10 at 38-41. Subsequently during the PSI, the interviewer asked the Individual if he had previously informed an OPM Investigator that he had addressed this debt by making payments of \$100 a month. Ex. 10 at 50. The Individual admitted that he made this statement to the OPM Investigator. Ex. 10 at 50. The Individual then claimed that he “misspoke” to the OPM Investigator. Ex. 10 at 52. The Individual eventually admitted that he had provided the OPM Investigator with false information. Ex. 10 at 53.

During the PSI, the Individual initially claimed that he had not been questioned by law enforcement officials about his involvement with the “sovereign citizen” movement or a specific sovereign citizen organization. Ex. 10 at 270-272, 291-292. During the PSI, however, the Individual reported that two Federal Bureau of Investigation (FBI) agents had questioned him about his participation in the “sovereign citizen” movement. Ex. 10 at 340-341.

Prior to the hearing, the Individual submitted Exhibits A and B. These two exhibits are the only evidence submitted by the Individual in the present case, besides his hearing testimony. Exhibit A is a notarized document, dated December 23, 2017, and entitled “AFFIDAVIT for Financial Plan.”⁸

⁸ Exhibit A states:

I, . . . agrees [sic] in good-faith effort to repay overdue creditors of past and current debt obligations to be resolved before creating any new debt obligations from any new creditor. The last debt to my knowledge that was created was in 2010 except for Federal Taxes. That behavior happened so long ago that it is unlikely to recur and does not cast doubt on my reliability, trustworthiness, or good judgment. My priority of repayment is to start with the IRS debt first then resolve all other debts. The purpose for not entering into a payment agreement with other creditor [sic] before entering a payment agreement with federal obligations is to prevent a financial hardship. Federal obligations will have first lien and will have a maximum amount that I would have to pay (I estimate a payment of \$450 per month). If the federal payments are too expensive for me to handle, that would result in a default on the creditors payment plan. To create a payment plan with other creditors would be irresponsible, deceitful, dishonest, and would ruin my reliability and trustworthiness on a payment plan in the future when I would be in a better financial situation. Once my federal obligations are resolved then I can resolve other creditor obligations.

Exhibit B is a letter from the IRS to the Individual, dated April 24, 2019, rejecting his request to be allowed to enter into an installment plan with the IRS in order to resolve his outstanding Federal tax debt for tax years 2014 through 2017. Ex. B at 1.

The Hearing

At the Hearing, the Individual testified that his Bank Fraud and Receiving Stolen Property Convictions were the result of an email scam in which he was the actual victim. Tr. at 11-12. According to the Individual's testimony, he and his then-wife were planning to start a business, and were looking to obtain funding for that business. The Individual found a lender online and applied for a loan. Tr. at 11. The "lender" sent him a \$50,000 check, by mail, three days later. Tr. at 11. The Individual testified that he then deposited this check in a bank. Tr. at 11. He testified that the bank and the FBI informed him that the check was counterfeit. Tr. at 11, 13. The Individual testified that "I got charged with stolen property . . . because they used . . . an old business bank account number and routing number." Tr. at 11. The Individual testified that bank cashed the check and credited it to his account. Tr. at 14. He then spent \$31,000 of the money he received from the check. Tr. at 14-15. The court ordered the Individual to pay \$31,000 in restitution. Tr. at 15. The Individual was initially paying \$150 a month towards this restitution. Tr. at 16. However, the Individual unilaterally discontinued making his restitution payments in 2012. Tr. at 16. The Individual further claimed that at the time that he stopped making payments for restitution, he only owed \$12,000. Tr. at 16. The Individual claimed that he did not have "enough money" to continue making the restitution payments. Tr. at 16. The Individual testified that he is still in "financial trouble," because he "has too much debt." Tr. at 17. The Individual does not expect that his financial situation will improve in the near future. Tr. at 18.

The Individual testified that his involvement with the "sovereign citizen" movement began a result of his financial and tax issues. Tr. at 20. He met a member of the movement who informed him that he did not have to pay his taxes if he were to claim to be a "sovereign citizen." Tr. at 20. He admitted that he eventually realized that his claim of sovereign citizenship would not shield him from tax liability. Tr. at 20. He claimed that it appeared to him to be his only option to address his financial issues. Tr. at 20-21. The Individual admitted that he had identified himself as a "high priest with the Nation of Israel and a foreign diplomat." Tr. at 21. The Individual testified that he didn't really know what those terms meant. Tr. at 21. Nor did he know what a "security agreement" meant. Tr. at 21. He claimed that he was just following the instructions given to him by other members of the group. Tr. at 21. He claimed he never intended to become a "sovereign citizen," but rather was just trying to get out of "tax debt." Tr. at 21-22, 26. He further claimed that he was not trying to get out of paying his taxes, but rather was trying to "buy some time." Tr. at 22-23. He testified that he "wasn't a pure sovereign," and that he "wasn't against the government." Tr. at 23. He admitted making a fraudulent license plate. Tr. at 23-24. The Individual testified that he used the fraudulent license plate "because at the time I couldn't get my car registered because I didn't [have] enough money to pay the property taxes to get the car registered." Tr. at 24. He further admitted that he created and used a personal identification that identified him as a "sovereign citizen." Tr. at 24-25. The Individual stated that he never considered himself not to be a citizen of the United States. Tr. at 26.

The Individual admitted that he placed a \$375,000 lien on a foreclosed property in 2013 with the intent of obtaining ownership of the property.⁹ Tr. at 26-27. The Individual admitted that he had no actual interest in that property. Tr. at 26-28. The Individual testified that members of the “sovereign citizen” movement advised him that he could obtain foreclosed properties by placing liens on them. Tr. at 27. He testified that he thought the property was abandoned, so he was just claiming it. Tr. at 28. He testified that he thought he was complying with the law, but now realizes that he did not understand the process. Tr. at 28-29.

When the Individual was asked why he initially denied ever claiming anything other than U.S. citizenship during the PSI, he responded by testifying that “I didn't denounce my citizenship, I just filed that paperwork to get out of taxes.” Tr. at 30-31. He testified that he did not recall denying that he had been interviewed by the FBI during the PSI. Tr. at 33. He admitted that he had been interviewed by the FBI. Tr. at 34. The Individual claimed that some of his omissions from the QNSP occurred because he completed it very quickly. Tr. at 35. He further claimed that he had forgotten some of the information. Tr. at 36. He claimed that he failed to disclose his failure to file his Federal and state tax returns for seven tax years on his QNSP because the IRS eventually took action to recover his unpaid taxes for those years. Tr. at 36-37. He further testified that “since I paid it, I just assumed that, you know, it was filed.” Tr. at 37-38.

The Individual claimed that his statement in the QNSP that he had resolved one of his charged-off accounts in 2014, even though he had not done so, was valid because he was in litigation with that creditor and expected to prevail in court. Tr. at 38-39. He subsequently testified that this creditor had prevailed against him in court. Tr. at 39. The Individual testified that he did not report his other three charge-off accounts in the QNSP because he believed that those debts belonged to his estranged spouse. Tr. at 42-43. He also claimed that he had forgotten about two of those debts. Tr. at 44. He testified that he had forgotten that the IRS had garnished his wages when he filed his QNSP certifying that he had never had his wages garnished. Tr. at 47-48. Further, he claimed he did not report the 2014 judgment arising from his filing of a false lien, because he had paid the plaintiffs a settlement. Tr. at 48. The Individual denied that he had omitted any information from his QNSP in order to hide his issues from the LSO. Tr. at 48-49.

The Individual admitted that he has not resolved any of the four charge-off accounts, or made any additional payments to those creditors. Tr. at 49-54. The Individual admitted that has not made any additional payments for his restitution since the PSI. Tr. at 49-50. The Individual stated that he does not have enough money to resume his restitution payments. Tr. at 50. The Individual was initially unable to explain why he failed to file his Federal and state tax returns. Tr. at 50. He subsequently admitted that he did could not afford to make his tax payments. Tr. at 50-51. He claimed that that he has entered into an installment payment plan with the IRS. Tr. at 52-53. The Individual admitted that he has not developed a formal budget. Tr. at 60.

The Individual agreed that his past behavior shows a lack of judgment, responsibility, and reliability. Tr. at 58. He stated: “I know my character and my judgment is probably not stellar to say the least with the financial situation.” Tr. at 59. He noted, however, that none of his poor

⁹ Apparently, the Individual planned to subsequently file an action to quiet title in order to obtain ownership of the property. Tr. at 29.

behavior occurred while he was at work. Tr. at 58. He further cited his eleven years of military service as evidence of his commitment to America. Tr. at 58-59.

V. ANALYSIS

The Record contains a significant amount of derogatory information evidencing the Individual's unreliability, poor judgment, and untrustworthiness. In 2003, he was convicted of two felonies, Bank Fraud and Receiving Stolen Property, which resulted in his incarceration for 15 months. That information alone, is sufficient to disqualify him from holding a security clearance. Roughly, ten years later, the Individual became involved with the "sovereign citizen" movement. During the Individual's involvement in that movement, he took a number of actions designed to disassociate himself from our Government and to circumvent its laws. Several of those actions exhibited remarkably poor judgment, as well as a marked inability or unwillingness to follow rules or obey laws. While he claims that his involvement with the "sovereign citizen" movement ended in 2014, the Individual has continued to exhibit poor judgment and unwillingness to follow the law by failing to file his Federal and state tax returns from 2009 through 2016. Moreover, despite the fact that the Individual claims to have worked for his present employer (a DOE contractor) since November 2015, Ex. 9 at 12, he continues to have financial issues and admits that he has no plans or intentions to resolve these outstanding debts. The Individual has continued to exhibit poor judgment, unreliability, and lack of trustworthiness during the present proceeding, where he has omitted potentially disqualifying information from a QNSP, engaged in deceptive behavior during his PSI, and provided testimony during the hearing that was inconsistent with his previous statements provided during his OPM investigation and PSI.

Guideline A

The Individual's actions and statements during his involvement with the "sovereign citizen" movement certainly brought his allegiance to the United States into question. While it is not clear that the Individual fully understood the significance of these actions and statements (because of his poor judgment), an individual's allegiance to the United States must be without question in order to maintain a security clearance. The Individual's statements and actions during this period continue to bring this allegiance into question. Guideline A provides that mitigation from security concerns arising under Guideline A may be shown when an individual's "involvement or association with such activities occurred under such unusual circumstances, or so much time has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or allegiance." Guideline A at § 5(d). In the present case, however, the Individual's past actions and statements during his involvement with the "sovereign citizen" movement continue to contribute to those factors casting serious doubt upon his current judgment, reliability and trustworthiness. Accordingly, I find that the security concerns about the Individual raised under Guideline A remain unresolved.

Guideline E

The multiple security concerns arising under Guideline E remain unresolved. The information cited under Guideline E conclusively establishes that the information provided by the Individual in this proceeding cannot be relied upon, and that the Individual's failure to provide truthful and candid answers has continued throughout the present process. None of the conditions set forth in Guideline E at § 17 are present in this case. Concerning the Individual's omissions, I note that the Individual has not made any efforts to correct his omissions prior to being confronted with the facts. The Individual has not claimed that he was counseled to omit this information from his QNSP or to refrain from disclosing it in the QNSP. The Individual's omissions were not minor, were not due to unusual circumstances, are likely to recur, and continue to raise doubts about the Individual's reliability, trustworthiness, and good judgment.

While I am convinced that the Individual now realizes that his involvement in the "sovereign citizen" movement was a mistake, and that its teachings should not be relied upon by him, the defect in the Individual's reliability, trustworthiness, and judgment evidenced by his actions during his involvement with that movement, when combined with the other derogatory information set forth in the SSC, continues to raise significant security concerns about the Individual. Moreover, the Individual has not obtained counseling or taken any other positive steps towards alleviating the stressors, circumstances, or factors (*i.e.*, his financial and tax issues) that contributed to his untrustworthy, unreliable, or other inappropriate behavior.

Accordingly, I find the security concerns raised by the LSO, under Guideline E, have not been mitigated.

Guideline F

By failing to file his state and Federal tax returns for an extended period, from 2009 through 2016, the Individual has exhibited poor judgment, shown that he cannot be relied upon, and shown that he cannot be considered trustworthy. The only explanation provided by the Individual for his failure to file his taxes is troubling: he stated that he knew he could not afford to pay his tax bill.

Nor has the Individual submitted any evidence, other than his testimony, that he is repaying the IRS, showing that he has resolved his outstanding Federal and state tax debts by either paying his debts or entering into payment plans with the IRS and his state government tax authority. Moreover, the Individual admitted, at the hearing, that he has not resolved any of the four charge-off accounts, or made any additional payments to those creditors. Tr. at 49-54. The Individual admitted that he has not made any additional payments for restitution since the PSI.

Guideline F provides seven conditions that can mitigate security concerns, five of which could apply to circumstances present in the instant case. Guideline F at § 20. The Individual has not shown that any of these conditions are sufficiently present in the instant case.

Section 20(a) provides that mitigation could occur 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 Individual's pattern of failing to file his tax returns has continued until relatively recently, and therefore cannot be said to have occurred long ago. Moreover, the Individual's pattern of failing to file his tax returns occurred over an extended period of time, from 2009 through 2016, and therefore cannot be

considered to have occurred under such circumstances that it can be considered unlikely to recur. The recentness of the Individual's failure to file his tax returns continues to cast doubt upon his current reliability, trustworthiness, or good judgment.

Section (b) provides that mitigation could occur if "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, however, has not submitted any evidence that such conditions were present in the instant case.

Section 20(c) provides that mitigation could occur if: "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." The Individual has not done so. Accordingly, I find that this condition does not mitigate the security concerns raised under Guideline F.

Section 20(d) provides that mitigation could occur if: "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." While the Individual has apparently initiated an effort to repay his overdue tax obligations, he has not shown that he has entered into finalized repayment plans with each of his tax creditors. Moreover, the Individual admits that he has not resolved any of the four charge-off accounts, made any additional payments to those creditors, or made any additional payments for his restitution since the PSI. Therefore, this condition is not yet present in the instant case.

Section 20(g) provides that mitigation could occur if: "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." However, the Individual has not made final arrangements with the IRS or the state taxing authorities to repay. Therefore, this condition is not present in the instant case.

Since the Individual has not shown that any of the conditions that can mitigate security concerns arising under Guideline F at § 20 have been met in the present case, I am not convinced that the Individual has sufficiently mitigated the significant security concerns arising under Guideline F, from his failure to file his Federal and state tax returns for several years, his outstanding restitutionary obligation, and his four outstanding charge-off accounts.

Guideline J and Bond Amendment

In the present case, the Individual has been convicted of two felonies, for which he was incarcerated for 15 months. Guideline J provides four conditions that can mitigate security concerns. Guideline J at § 32. The Individual has not shown that any of these conditions are sufficiently present in the instant case.

Section 32(a) provides that mitigation could occur if: "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." While 17 years have passed since the Individual's convictions for Bank Fraud and Receiving Stolen Property, the defects in the Individual's judgement, reliability, and trustworthiness exhibited in the events which led to those convictions have continued into the present, as discussed at length above.

Accordingly, this condition is not sufficiently present to provide mitigation for the Individual's criminal activity.

Section 32(b) provides that mitigation could occur if: "the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life." The Individual never contended that this condition was present, accordingly, it does not provide any mitigation for the Individual's criminal activity.

Section 32(c) provides that mitigation could occur if: [there exists] no reliable evidence to support that the individual committed the offense." In the present case, there is conclusive evidence that the Individual committed the offenses: His guilty plea. Accordingly, this condition does not provide any mitigation for the Individual's criminal activity.

Section 32(d) provides that mitigation could occur if: "there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement." While the Individual has established a good employment record, his criminal activity continued, leading to his arrest in 2013 or 2014, and his failure to file his tax returns from 2009 through 2016 showed that he was continuing to fail to abide by the law. Moreover, the Individual has unilaterally discontinued making the restitutionary payments ordered by the court as a part of his plea agreement.

Since the Individual has not shown that any of the conditions that can mitigate security concerns arising under Guideline J at § 32 have been met in the present case, the Individual has not sufficiently mitigated the significant security concerns arising under Guideline J and the Bond Amendment.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked the Bond Amendment and Guidelines A, E, F, and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not mitigated the security concerns raised under each of these Guidelines. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be denied. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals