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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: January 30, 2020) Case No.: PSH-20-0035
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Issued: July 13, 2020

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter of Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be granted.

I. Background

The Individual is an applicant for a position that requires him to hold a security clearance. The Individual completed and signed a Questionnaire for National Security Positions (QNSP) in October 2018. Ex. 8. In response to the QNSP’s financial questions, the Individual indicated that, in the last seven years, he suffered financial difficulties. *Id.* at 43-44. Specifically, he noted that he was over 120 days delinquent on particular debts; particular unpaid bills had been turned over to collection agencies; and certain accounts had been charged off due to his failure to pay. *Id.* at 44-49. Subsequently, the National Background Investigations Bureau (NBIB) conducted an interview with the Individual in January 2019. Later, the Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), dated June 2019. Ex. 1; Ex. 7. Due to unresolved security concerns, arising in part from the Individual’s indebtedness, the LSO informed the Individual, in a Notification Letter, dated December 6, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance.

derogatory information raised security concerns under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted ten numbered exhibits (Exhibits 1-10) into the record. The Individual submitted nine exhibits (Exhibits A-I), and presented the testimony of two witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines F and J of the Adjudicative Guidelines. Guideline F relates to security risks arising from financial concerns. Conduct like a “[f]ailure 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, all of which can raise questions about and individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Guideline F at ¶ 18. As support for citing Guideline F, the LSO relied upon the fact that the Individual has two outstanding charge off accounts totaling \$29,955 and three medical collection accounts totaling \$2,507. Ex. 1. The LSO also relied on the fact that the Individual's

answers to questions posed by investigators and on the LOI, with regard to the resolution of this financial situation, were inconsistent. *Id.*

Guideline J relates to security risks arising from criminal conduct. Criminal conduct, “calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. In support of the use of Guideline J, the LSO cited ten separate instances of criminal conduct between the years 2006 and 2017. Ex. 1. The pertinent reported instances are listed chronologically as follows:

- (1) September 2006: Arrested and charged with Aggravated Driving Under the Influence of Intoxicating Liquor and/or Drugs (DUI);
- (2) May 2007: Arrested and charged with Unlawful use of License and Driving While License Suspended or Revoked;
- (3) 2008 or 2009: An ex-girlfriend filed a restraining order against him for sending harassing text messages;
- (4) December 2009: Law enforcement responded after the Individual’s girlfriend accused him of harassing her by phone;
- (5) May 2011: Arrested and charged with Aggravated DUI;
- (6) November 2011: Arrested and charged with Battery Upon a Police Officer and Resisting, Evading, or Obstructing an Officer;
- (7) December 2011: Arrested and charged with Driving While License Suspended or Revoked;
- (8) 2011 or 2012: Ex-Wife filed a restraining order against the Individual as the result of domestic abuse;
- (9) August 2016: Arrested and charged with Battery Against a Household Member, based on the allegation that he hit his wife;
- (10) August 2017: Law enforcement responded after the Individual’s girlfriend alleged that he hit her.

Ex. 1.

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below. At the hearing, the Individual presented his own testimony and that of his father.

A. Charge Off Accounts

The Summary of Security Concerns listed two charge off accounts, totaling \$29,955. Ex. 1. The first was attributable to a purchase from a jewelry store, in the amount of \$1,303, and the second was for a motorcycle purchase, in the amount of \$ 28,652. *Id.* At the hearing, the Individual testified that the charge offs for these two purchases were the result of his loss of employment. Tr. at 10, 14. The Individual explained that he purchased a ring for his girlfriend at the jewelry store, but subsequently lost his job. *Id.* at 10. He stated that he was responsible for five car payments during this time, which he acknowledged was “kind of irresponsible,” and he “had to prioritize the things [he] wanted and the things [he] didn’t.” *Id.* at 11. The Individual explained that once he obtained employment again, he did not make any attempt to pay the debt for the ring back because he was delinquent on other debts. *Id.*

During his examination of the Individual, the DOE attorney noted that during the January 2019 NBIB interview, the Individual stated that he had created a payment plan with the jewelry creditor in late 2018, but then, in the June 2019 LOI, the Individual indicated that he had not made any payments. *Id.* at 33; Ex. 1. The Individual explained that the concern about the inconsistencies in his statements arose because, although he had set up a payment plan with the creditor, he did not make any payments in accordance with the plan. *Id.* at 34. Instead, he settled with the creditor for \$522, which he paid in January 2020. *Id.* at 12, 34; Ex. B., Ex. E; *see* Ex. H.

With regard to the motorcycle, the Individual explained that he purchased it in May 2017 when he felt that he was financially secure. Tr. at 13. He stated that he made the motorcycle payments from May-September, but then his “dogs ate” the motorcycle. *Id.* At that time, he took the motorcycle to be repaired,² but subsequently lost his job and “put the bike on the back burner.” *Id.* at 14. When the creditor began contacting him for payment, he stated that he wanted the creditor to recover the motorcycle from the repair shop, sell it, and then charge him for the remainder of what was owed. *Id.* The Individual stated that he did not feel that he should be responsible for the full price of the motorcycle because he did not have it in his possession, and he did not “feel like [he] should have to pay for a bike” that he did not have. *Id.* at 16.

The Individual noted that, as of the hearing, he had not settled with the creditor. *Id.* at 14. He explained that, because the motorcycle had been charged off, he would either have to settle with the creditor for \$15,000 or begin to make monthly payments again. *Id.* at 14-15. He stated that he was unable to afford either of these options. *Id.* at 14-15. The Individual testified that he felt that the creditor asking him to pay for the full amount owed on the motorcycle “seem[ed] like robbery.” *Id.* at 17. He clarified, “I don’t really feel like I should have to pay for [it] – it’s not like I stole it from them.” *Id.*

The Summary of Security Concerns noted that, in completing the October 2018 QNSP, the Individual stated that he would contact the motorcycle creditor to arrange payment; however, in the June 2019 LOI, the Individual stated that he never indicated that he would contact the creditor, and he had no plans to resolve the debt. Ex. 1. When the DOE attorney asked the Individual to explain the inconsistent statements, the Individual testified that he has “gone back and forth” trying

² The Individual later explained that he paid the repair shop for the work performed on the motorcycle. Tr. at 17. However, upon further questioning, the Individual clarified that he did not pay the repair shop “physical money;” instead, the repair shop retained the motorcycle, and as such the Individual and the repair shop were “square.” *Id.* at 18.

to decide whether he should pay the creditor. Tr. at 31. However, he ultimately reasoned that he should not have to pay for something he does not have anymore. *Id.* The Individual explained that the inconsistent statements between the QNSP and the LOI may have been the result of “a misunderstanding on [his] behalf,” but he clarified that he did contact the creditor to “tell them where the bike was” and to offer to pay for the remaining costs of motorcycle after the creditor retrieved it and sold it. *Id.* at 32

B. Medical Collection Accounts

The Summary of Security Concerns listed three medical collection accounts, totaling \$2,507, consisting of debts in the amounts of: (1) \$1,371, (2) \$1,065 and (3) \$71. Ex. 1. With regard to the first debt, the Individual explained that the debt occurred in 2016; however, he was unaware of the debt prior to receiving the Summary of Security Concerns. *Id.* at 19-21. He testified that he did not know what the bill was related to, that he had medical insurance in 2016, and that he was unsure why his medical insurance did not pay the bill. *Id.* The Individual explained that he has not contacted his medical insurance, but instead, he has just been making payments to the creditor. *Id.* The Individual noted that he created a payment plan with the creditor, and has been paying \$50 a month for three months.³ *Id.* at 19-20.

The Individual went on to explain that the second debt of \$1,065 was due to the same creditor as the first debt, and as such, the creditor “rolled both” debts together. *Id.* at 23. The Individual noted that the \$50 monthly payment is applied to the sum of both debts. *Id.* However, he then clarified that the creditor never provided confirmation that the debts had been combined, and a representative of the creditor indicated that the \$50 payments will be applied to the \$1,371 balance as it was the first account to become delinquent.⁴ *Id.* at 25.

The Individual admitted that, although he indicated on his October 2018 QNSP that he would contact this creditor to learn more about the source of the debts, he had not done so by his January 2019 NBIB interview or his June 2019 LOI. *Id.* at 35. He explained that he did not contact the creditor as he said he would because he could not afford any additional payments at the time. *Id.*

Turning to the last debt for \$71, the Individual testified that, although he stated in the NBIB interview that he planned on looking into the debt, he did not know how to contact the creditor. *Id.* at 36. However upon examining Exhibit 6 during the hearing, the Individual was able to locate a P.O. Box address for the creditor. *Id.* at 23. He stated that, if he were able to contact the creditor, he would be able to make the \$71 payment. *Id.*

C. Criminal Conduct

³ The Individual submitted Exhibit A, showing that a payment of \$100 was made to this creditor. Tr. at 26. He explained that he decided to pay for “two months right away.” *Id.*

⁴ The Individual’s testimony does not provide an entirely clear explanation of the circumstances surrounding the combination of these two debts. *See* Tr. at 19-26. However, according to the Individual’s testimony and Exhibit A, it is clear that he has at least made a payment of \$100 to this creditor.

In turning to the criminal conduct portion of the Summary of Security Concerns, the Individual addressed the incidents in chronological order, beginning with the 2006 Aggravated DUI. *Id.* at 37. The Individual testified that on the night he was arrested, he felt he had consumed too much alcohol, but drove despite his alcohol consumption. *Id.* at 37-38. He stated that he was ordered by the court to attend classes, but he did not feel that they helped him to reduce his alcohol consumption. *Id.* at 38.

The Individual went on to acknowledge that, in May 2007, he was driving on a revoked or suspended license. *Id.* at 39.

With regard to the 2008 or 2009 restraining order, the Individual denied that he was sending his ex-girlfriend harassing texts as she alleged. *Id.* at 38-39. The Individual explained that his ex-wife “was always filing restraining orders” against him, and he believes that the ex-girlfriend “thought it would be cool” to file the restraining orders because she “knew how much [he] hated it.” *Id.* at 40. He testified that the restraining order was never made permanent. *Id.* Then in December 2009, the same ex-girlfriend alleged that the Individual was making harassing phone calls to her. *Id.* at 41. The Individual acknowledged that he was “trying to get some of his items back,” but stated that he was not making harassing calls. *Id.* He clarified that he did not recall much about the incident. *Id.*

Turning next to the May 2011 Aggravated DUI, the Individual stated that he could not recall, due to his alcohol consumption, if the DUI was aggravated because he refused a breathalyzer or because his blood-alcohol content (BAC) was over the legal limit. *Id.* at 42. Again, the Individual completed court-ordered classes, but indicated that he did not receive any benefits from the classes. *Id.* at 42-43. He also acknowledged that, in November 2011, he was arrested and charged with battery on a peace officer and resisting, evading, or obstructing an officer. *Id.* at 43. The Individual explained that he was intoxicated and became lost while trying to find his way to his hotel room. *Id.* at 43. When law enforcement approached him and attempted to arrest him, the Individual testified that a police officer put her finger inside his mouth, and he bit her. *Id.* at 44. Again, the Individual noted that he did not recall the entirety of the event due to the level of his intoxication. *Id.*

The Individual testified that, in December 2011, he was arrested and charged with driving on a revoked license. *Id.* at 45. He explained that he had an interlock device in his vehicle, but he had not obtained the required interlock license. *Id.* Next, the Individual recalled that, in approximately 2011 or 2012, his ex-wife filed a restraining order against him for domestic abuse. *Id.* He noted that his ex-wife had filed several restraining orders against him, and although he “never really hit her as far as like punched, or kicked or slapped” her, he would engage in “shoving matches and stuff like that.” *Id.* at 46. Later, in August 2016, the Individual stated that he pled guilty to Battery Against a Household Member. *Id.* at 50; *see* Ex. 1. The Individual explained that, while driving around with his children, he spotted his ex-wife and believed she was under the influence of methamphetamines. *Tr.* at 47-48. He testified that he did not “slap her” as she claimed, but he “did verbally abuse the f*** [obscenity] out of her.”⁵ *Id.* at 48.

⁵ As a result of this incident, the Individual testified that he was court-ordered to attend a four month outpatient domestic abuse program. *Tr.* at 49. He clarified that although he did not complete the program, he completed the portion that was ordered by the court. *Id.*

The final instance of criminal conduct listed on the Summary of Security Concerns is an August 2017 incident in which law enforcement responded to an allegation that the Individual hit his girlfriend. Ex. 1. The Individual stated that, on the night in question, he and his girlfriend were highly intoxicated, and neither of them could recall whether he hit her or not. Tr. at 53. The Individual acknowledged that his alcohol consumption has contributed to many of the problems in his life, and as such, he has been abstaining from alcohol since August of 2019. *Id.* at 54

The Individual's father testified on his behalf. *Id.* at 71. He stated that he has routine contact with his son, and he described his son as "trustworthy" and "a man of his word." *Id.* at 72, 74. He noted that his son is a private person, and he is not privy to the details of the Individual's financial situation. *Id.* at 73. He explained that, although he has seen his son get angry, he has only witnessed his son being verbally, but not physically, violent. *Id.* at 75.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony presented 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. As an initial matter, I note that legitimate security concerns exist as a result of the Individual's financial situation and criminal history. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns noted by the LSO with regard to Guidelines F and J. I cannot find that granting the Individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be granted. The specific findings that I make in support of this decision are discussed below.

A. Guideline F

An individual may be able to mitigate Guideline F security concerns by demonstrating that 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). Additionally, an individual may be able to mitigate the security concerns if the conditions that resulted in the financial problem were largely beyond the person's control and the person acted responsibly under the circumstances. *Id.* at ¶ 20(b). Further, if an individual has initiated and is adhering to a good-faith effort to repay overdue creditors, an individual may be able to mitigate a security concern. *Id.* at ¶ 20(d).

In the present case, the primary explanation the Individual provided for his debt was the loss of employment. Tr. at 9-11. Although I recognize that the loss of his job was a circumstance that was likely outside of the Individual's control, the Individual acknowledged that he engaged in irresponsible spending prior to the loss of his employment. Tr. at 11. Further, even after gaining employment, the Individual testified that he did not believe he should have to pay for a motorcycle he purchased, because it was no longer in his possession. However, the motorcycle was no longer in his possession because, after the motorcycle was damaged by his dogs, he failed to pay the repair shop that undertook the restoration, choosing instead to abandon it to the shop. To date, it appears that the Individual fails to accept his responsibility to pay the creditor in full for the motorcycle he

purchased; instead, he seeks to have the creditor look to the repair shop for redress. *See* Guideline F ¶ 19(a)(b) (stating that an inability or an unwillingness to satisfy debts, regardless of ability to do so, may raise a security concern and potentially disqualify an individual from holding a security clearance). Further, with regard to his medical debts, the Individual demonstrated that he has limited knowledge surrounding these debts. Although he did testify to establishing a payment plan and provided evidence of a one-time \$100 payment, I cannot find that this action is sufficient to mitigate the security concern at issue. *Contra id.* at ¶ 20(a).

B. Guideline J

Guideline J security concerns may be mitigated if an individual can show, in relevant part, that: (1) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; or (2) there is evidence of successful rehabilitation, including, but not limited to, the passage of time without recurrence of criminal activity or compliance with the terms of probation. Guideline J at ¶ 32(a)(d).

In examining the Summary of Security Concerns and the Individual's testimony, I recognize that several of the instances of criminal conduct may have been the result of unfounded accusations. I additionally note that alcohol was the cause of many of the events that led to the concerns related to his criminal conduct, and the Individual claims he is now abstaining from alcohol.⁶ However, the record demonstrates that the Individual has engaged in relationships and behaviors that resulted in over a decade's worth of activities that cast doubt on his judgment and his ability and willingness to comply with rules and regulations. *Contra* Guideline J ¶ 30. Less than three years have elapsed since law enforcement was last dispatched to a situation involving the Individual and less than one year has elapsed since the Individual began abstaining from alcohol, which he acknowledged to be the cause of much of his criminal conduct. Considering that the Individual has over a decade-long history of engaging in behaviors that constitute criminal conduct, many of which involved alcohol, I cannot find that sufficient time has elapsed or that the events occurred under such circumstances that make them unlikely to recur. Accordingly, I find that the Individual has not mitigated the Guideline J security concerns.

VI. CONCLUSION

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guidelines F and J. 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 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.

⁶ The Individual's alcohol consumption was not raised as a security concern, pursuant to Guideline G, in the Summary of Security Concerns. Ex. 1 As such, it will not be addressed herein.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals