

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: May 4, 2020) Case No.: PSH-20-0055
)
)
_____)

Issued: September 11, 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 authorization¹ 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 or Special Nuclear Material.” 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 employed by a DOE contractor in a position that requires her to hold a security clearance. As part of the investigation for her security clearance, the Individual completed a Questionnaire for National Security Positions (QNSP) in January 2019. Ex 10. In response to the financial questions, the Individual indicated that she had six delinquent or collection accounts totaling approximately \$31,500. *Id.* at 46-50. She also indicated that she would be seeking the help of a credit counseling service. *Id.* at 44. Subsequently, the Local Security Office (LSO) asked her to complete a Letter of Interrogatory (LOI). Ex. 11. Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated February 25, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations). Ex. 1.

¹ Access authorization is defined as “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 be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised her right under the 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 13 numbered exhibits (Exhibits 1–13) into the record. The Individual did not tender any exhibits, but she testified on her own behalf. 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 Standard

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 her 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 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 cited Guideline F of the Adjudicative Guidelines. Guideline F addresses “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations.” Guideline F at ¶ 18. It is well established that failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. *Id.* Among the conditions set forth in this guideline that could raise a disqualifying security concern is the inability to satisfy debts. Guideline F at ¶ 19(a).

In citing Guideline F, the LSO relied upon the Individual’s admissions in the QNSP that she had six “delinquent/collection accounts,” totaling approximately \$31,500. The LSO additionally cited its discovery that the Individual had ten outstanding delinquent accounts, totaling approximately

\$9,500, which she failed to list on the QNSP. Ex. 1. It also alleged that the Individual had not yet obtained the services of a credit counseling agency and noted that, based upon her Personal Financial Statement (PFS), she is in a deficit of \$105 each month, indicating her inability to pay her debts. *Id.* The LSO cited that, in June 2019, it requested documentation from the Individual demonstrating that she was represented by a professional with regard to her financial matters, and the Individual stated that she would provide documentation as soon as a representative was retained. *Id.*

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

The Individual testified that she and her husband incurred the outstanding debts while they were married, and at the time, they were making regular payments. Tr. at 14, 30. The Individual explained that, during the marriage, she was not employed and stayed home to care for her children. *Id.* at 26. However, in mid-2017, her husband left, and she had no means by which to pay her bills. *Id.* The Individual stated that she was able to obtain employment; however, she was not making enough money to cover her monthly necessities as well as her debts. *Id.* at 14. She accepted her current position in late 2018; however, she explained that, even with her new income and the child support she receives, she “barely ha[s] enough to make it month to month.” *Id.* at 29. As such, she is not making any payments toward her outstanding debts.² *Id.* at 34. In fact, according to the PFS she submitted, her necessary expenses currently exceed her income by \$105 each month. Ex. 12.

With regard to the ten debts that she failed to list on the QNSP, the Individual stated that she tried to consult her credit report, but “there was so much,” and she was unable to remember all of the debts. Tr. at 16-17. She further noted that she is not even aware of how some of the debts were incurred, and although she has tried to find out, she was unable to obtain the necessary information and is unaware of their current status. *Id.* at 18-19. The Individual stated that she informed the background investigator that she was trying to pay her debts in full by 2019 or 2020, but she reiterated that she was not in the position to do so as she has “just enough to make it by each month.” *Id.* at 17.

When questioned about seeking assistance from a credit counseling service or other resource, the Individual acknowledged that she did indicate on the QNSP that she was seeking assistance and that she did inform a background investigator that she would be seeking assistance. *Id.* at 12 15. She explained that she did contact a credit counseling service in February 2019, after speaking to the background investigator; however, the fee for the credit counseling service was “outrageous,” and she was unable to afford it. *Id.* at 15, 33. She further explained that she consulted an attorney with regard to managing her debts, and that the attorney advised her to file for Chapter 7 bankruptcy. *Id.* at 19-20. She then sought the opinion of a second attorney, who provided the same advice. *Id.* She stated that, at this time, she is trying to obtain the funds to hire the attorney to file for bankruptcy. *Id.* at 20-21. The Individual indicated that her mother is helping her to obtain the funds, and she intends to file for bankruptcy within the next month in order to get “situated and back on the right path.” *Id.* at 25.

² The Individual additionally noted that she has student loan debt that is currently being deferred due to her income. Tr. at 31, 35.

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. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns, noted by the LSO, with regard to Guideline F. 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.

As discussed above, failure to satisfy debts and meet financial obligations can raise security concerns with regard to an individual's trustworthiness and reliability. Guideline F at ¶ 18. An individual may be able to mitigate the security concerns by demonstrating that the conditions that resulted in the financial problems were largely beyond the person's control, and that the individual acted responsibly under the circumstances. *Id.* at ¶ 20(b). An individual may also be able to mitigate the security concerns by demonstrating that the behavior occurred under such circumstances that it is unlikely to recur, or by showing the receipt of financial counseling from a legitimate and credible source, and showing clear indications that the problem is being resolved. *Id.* at ¶ 20(a), (c).

Here, it is clear that, as a result of her divorce, the Individual has suffered a personal hardship that deeply impacted her financial security and circumstances, a condition that was largely beyond her control. However, the fact remains that the Individual is unable to satisfy her debts, which she readily acknowledges. *Id.* at ¶ 19(a). Although it appears that the Individual has acted responsibly and done her best to live within her means, she has not submitted any documentation that demonstrates that she has a history of responsibly managing her finances, is currently paying her monthly living expenses in a timely manner, or is refraining from incurring additional debt, a concern that is increased by her admission that her monthly income does not cover her necessary expenses. *Contra id.* at ¶ 20(a). Furthermore, although the Individual has sought this advice of an attorney, who encouraged her to file for bankruptcy, she has not submitted any documentation demonstrating any such advice or communications, and she has yet to take any significant action towards filing for bankruptcy or otherwise resolving her financial difficulties.³ *Contra id.* at ¶ 20(c).

Although I recognize that the Individual has undergone significant adverse life events, which she understandably described as "devastating," for the foregoing reasons, I cannot find that the Individual has mitigated the DOE's security concerns under Guideline F. Tr. at 24.

³ I held two prehearing conference calls during which both the DOE Counsel and I provided examples of potential exhibits and encouraged the submission of such exhibits. The DOE Counsel even inquired, during the hearing, about documents the Individual may have received from the attorney, and the Individual indicated that she was "not exactly sure where [they were]." Tr. 26. Also during the hearing, I indicated that I would hold the record open for the submission of exhibits for two weeks following the hearing. The transcript, however, was completed one week after the hearing. I then contacted the Individual and asked if she would like the record to continue to remain open for the submission of exhibits. *See* Email Correspondence, September 9, 2020. The Individual responded that I could close the record. *See* Email Correspondence, September 10, 2020.

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 Guideline F. Accordingly, I have determined that the Individual's access authorization should not be granted.

The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals