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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: March 2, 2020) Case No.: PSH-20-0050
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Issued: January 7, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 “Procedures for Determining Eligibility for Access to Classified Matter or 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 be denied.

I. BACKGROUND

The Individual signed and submitted a Questionnaire for National Security Positions (QNSP) to the Local Security Office (LSO) on September 25, 2018. Ex. 8. The LSO subsequently obtained the Individual’s credit report on October 9, 2018. Ex. 7. The United States Office of Personnel Management’s (OPM) Federal Investigative Service investigated the Individual and issued a report of its findings on March 29, 2019. Ex. 9. Because the QNSP, the Credit Report, and OPM’s investigation revealed derogatory information concerning the Individual, the LSO issued a Letter of Interrogatory (LOI) to the Individual on July 30, 2019. Ex. 6 at 1. The Individual submitted his response to the LOI on August 20, 2019.² Ex. 6 at 1. After these procedures were concluded, the LSO determined that unresolved derogatory information remained in the Record which raised significant security concerns about the Individual. Accordingly, the LSO began the present

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

² The Individual signed his response to the LOI on August 18, 2019, and it was received by the LSO on August 20, 2019. Ex. 6 at 2, 20.

administrative review proceedings on November 18, 2019, by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge in order to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-20-0050 (hereinafter cited as “Tr.”). The DOE Counsel submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual did not submit any exhibits.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that derogatory information in the possession of the DOE raised security concerns under Guidelines 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), and therefore created a substantial doubt concerning his eligibility for a security clearance.

Under Guideline F (Financial Considerations), the LSO alleges that the Individual: failed to file his Federal and state tax returns for tax years 2011 through 2017; owes \$15,000 in delinquent state sales tax; had his wages garnished by the Internal Revenue Service (IRS); and had a \$30,000 lien filed against him by the IRS. The LSO also alleges that a former landlord obtained a judgment, in the amount of \$1,436, against him for non-payment of rent. The LSO further alleges that the Individual has seven additional outstanding debts, with two accounts in charge-off status, four accounts in collection status, and one account in past due status. This information adequately justifies the LSO’s invocation of Guideline F. The Adjudicative Guidelines state: “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 those conditions set forth in the Guidelines that could raise a disqualifying security concern are an inability to satisfy debt, unwillingness to satisfy debts, a history of not meeting financial obligations, and failure to file Federal, state, or local income tax returns, or failure to pay those tax obligations as required. Guideline F at §§ 19(a)-(d), (f).

Under Guideline J (Criminal Conduct), the LSO cited the Individual’s history of 17 arrests during the period 1993 through 2018. During that period, police charged the Individual with a significant number of offenses, including violating a Domestic Violence Order of Protection, failing to comply with his conditions of release after he tested positive for methamphetamine on a court ordered drug test, Embezzlement, Failure to Appear, possession of a motorcycle with an altered serial number, and on six occasions, Battery Against a Household Member. The Individual’s extensive history of criminal activity adequately justifies the LSO’s invocation of Guideline J. The

Adjudicative Guidelines state: “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” Guideline J at § 30. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are “a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;” “Evidence . . .of criminal conduct regardless of whether the individual was formally charged prosecuted or convicted; and “violation or revocation of parole or probation...” Guideline J at § 31(a), (b), and (d).

III. REGULATORY STANDARDS

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, 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 personal 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 of this case.

IV. FINDINGS OF FACT

The Individual admits that he failed to file his federal and state income tax returns for tax years 2011, 2012, 2013, 2014, 2015, 2016, and 2017. Ex. 6 at 1-5; Ex. 8 at 41-43; Ex. 9 at 68. As a result of the Individual's failure to file those tax returns, the IRS has imposed a lien against him, in the amount of \$30,000, and garnished his wages in the amount of \$800 per month, since July 2018.³ Ex. 8 at 44; Ex. 6 at 6-7. In addition, the Individual failed to either file or pay state sales taxes for tax year 2005. Ex. 8 at 40-41.

A landlord evicted the Individual for failing to pay his rent, and, on April 30, 2018, obtained a judgement in the amount of \$1,436 against him for his delinquent rent. Ex. 8 at 45. This delinquency remains unresolved. Ex. 6 at 7-8; Ex. 8 at 46. In addition, the Individual has six outstanding charge-off and collection accounts, totaling approximately \$5,647. Ex. 7 at 3-5. The Individual also has one account in past due status. Ex. 7 at 5.

The Individual has provided no evidence, other than his uncorroborated assertions, showing that the allegations raised against him concerning his financial and tax delinquencies are inaccurate. Nor has he provided any evidence, other than his uncorroborated assertions, showing that he has resolved any of these outstanding debts, or has taken meaningful action to address his outstanding tax obligations.

The record provides that law enforcement officials have alleged that the Individual engaged in criminal activity on at least 17 occasions between November 4, 1993, and July 7, 2018. OPM Investigative Report at 4-7, 25-32, 36-41, 43-44.

The Individual has provided no evidence, other than his uncorroborated and non-credible assertions, showing that the allegations raised against him concerning his criminal history are inaccurate. Nor has he provided any evidence, other than his uncorroborated and non-credible assertions, showing that the concerns raised by his extensive criminal history have been mitigated.

The Hearing

The Individual began the hearing by asserting his belief that his outstanding debts and involvement with the justice system fail to capture the full scope of his character and his capacity to be a good employee. Tr. at 9. He further acknowledged having made "bad decisions." Tr. at 9.

The Individual testified that he has filed his tax returns for tax year 2018. Tr. at 15. He further testified that he had the tax returns for tax years 2015, 2016, and 2017, "filed and ready to mail off." Tr. at 15-16. The Individual subsequently clarified that he had not filed his tax returns for

³ When the Investigator asked the Individual about the tax lien placed against him by the IRS, the Individual claimed that he did not owe the stated outstanding amount but could not provide documentation supporting that assertion. Ex. at 69.

tax years 2016 and 2017.⁴ Tr. at 19. The Individual further admitted that he has not filed his tax returns for tax year 2019. Tr. at 15. The Individual claimed that he does not have all the documentation needed to complete his outstanding tax returns. Tr. at 16-17. He claimed that his briefcase, which contained all the documentation he had gathered in preparation for this hearing, including his tax filings, was stolen from his automobile. Tr. at 15. The Individual further claimed that his ability to file his outstanding tax returns has been impeded by his ex-wife's unwillingness to cooperate with him. Tr. at 16. He admitted that he has failed to retain the services of a tax attorney or other tax professional, citing his consuming work schedule. Tr. at 17-18. He testified that, after contacting the IRS, he believes that entering into an agreement to settle his tax issues with the IRS, on the IRS's terms, is "not the best solution for [him]." Tr. at 51. He testified that he wants to enter into an agreement with the IRS that will allow him to maintain his current living arrangements while resulting in the satisfaction of his tax obligations. Tr. at 52. He also alleged that his ex-wife is equally responsible for filing taxes for tax years 2012 and prior, as she was listed as a partner in the business that they conducted together. Tr. at 25. The Individual disputed his responsibility to pay or file his delinquent sales taxes for tax year 2005, claiming that he was unfairly assessed with liability for these taxes, since other parties were responsible for their payment.⁵ Tr. at 20-21.

Turning to the matter of the tax liens, the Individual testified that the current balance of the federal lien is approximately \$33,000 but he did not have information pertaining to the balance of the state tax lien. Tr. at 20. Further, the Individual confirmed that his tax liability exceeds the amount of the lien. Tr. at 21.

During his testimony, the Individual denied responsibility for several of the listed delinquent charge-off accounts. Tr. at 22. Specifically, the Individual disputed the debt owed in connection to the purchase of furniture, contending that he was not liable for this debt since the creditor obtained a judgement against him and then failed to repossess the furniture.⁶ Tr. at 23. The Individual further claimed that one of the delinquent debts was incurred in purchasing a motor vehicle for his then-wife, who retained the use and financial responsibility for that vehicle after their divorce. Tr. at 50-51. The Individual claimed that he has contacted the landlord to whom he

⁴ In the Individual's response to the Notification letter, filed with the LSO on February 18, 2020, the Individual claimed that he had filed his tax returns for tax years 2016 and 2017. Ex. 2 at 2.

⁵ The Individual testified that he had been contracting his services to several retailers, installing the product they sold. Tr. at 20. One of the companies in question filed for bankruptcy, and as a result, he was unable to produce a nontaxable transaction certificate showing that he was not responsible for the sale of the products that he was installing. Tr. at 20, 48. Accordingly, the state determined that he was responsible for paying state sales tax on the product that he installed. Tr. at 20. He did not provide any documentation at the hearing to support these assertions. Tr. at 21. I note that, in the QNSP, the Individual admitted that he had "no excuse" for failing to file or pay his sales tax return for tax year 2005. Ex. 8 at 40-41.

⁶ Further, he asserted that his line of credit in connection to the furniture was limited to \$2,000, which is far less than the amount of the delinquency. Tr. at 22.

is indebted in order to resolve the judgement against him. Tr. 26. He also claimed that he was availing himself of the services offered by a credit repair agency. Tr. at 27-28.

Turning to the matter of the Individual's criminal history, he acknowledged that a domestic violence protective order had been issued against him in 2018, and that he had been arrested for violating that order by attempting to speak to his ex-wife, in person, in order to settle matters between them amicably. Tr. at 29. Although he admitted contacting his ex-wife in violation of the order, he denied taking any violent action. Tr. at 29-30. In response to questions pertaining to the several Battery Against a Household Member charges disclosed in the QNSP, the Individual claimed that he was held criminally responsible, even though his partner would initiate violent activity, and that he was just "pushing back." Tr. at 35. He further claimed that law enforcement "would always take the strongest one to jail[.]" and stated that he "was ultimately charged every single time [with] a battery or DV [charge] because of her doings[.]" Tr. at 36. He asserted that the presiding judge in each case dismissed the matter due to a lack of evidence and because it was obvious to the Judge that his partner's behavior was responsible for the Incident. Tr. at 36. However, contrary to the Individual's assertions, the Record indicates that at least two of his arrests for Battery Against a Household Member resulted in criminal convictions. Investigative Results Report at 2, 4.

The Individual stood by his prior assertion that he has never consumed illegal substances, and claimed that, at the time he tested positive for methamphetamines, his probation officer asked him whether he may have ingested methamphetamines without his knowledge. Tr. at 30-31. He further claimed that the probation officer then asked if he had been on any kind of medication, to which he responded that he had been "taking gobs amount of Sudafed" to treat his allergy symptoms. Tr. at 31. At that point, he alleges, the probation officer notified him that the use of Sudafed will result in a positive test for methamphetamines. Tr. at 31.

V. ANALYSIS

Guideline F Concerns

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline F if:

- (a) 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;
- (b) 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;

- (c) The individual received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling services, and there are clear indications that the problem is being resolved or is under control;
- (d) The Individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Guideline F at § 20(a)-(g).

The Individual has presented no credible evidence that he has resolved any of his outstanding debts or tax obligations, that he was not liable for their payment, or that he has filed any of his outstanding tax returns. Instead, he has attempted to claim his ex-wife and a briefcase thief are responsible for his failure to resolve his outstanding debts and tax obligations, and his failure to file his tax returns. Since the Individual has not shown that he has resolved any of the outstanding debts and tax obligations or that he has filed the delinquent tax returns, it appears that the Individual's behavior has continued into the present. Moreover, the Individual's financial irresponsibility was frequent, continues to occur, and continues to cast doubt on the Individual's current reliability, trustworthiness, and good judgment. Accordingly, the mitigating conditions described in § 20(a) are clearly not present in the instant case. There is no evidence in the Record indicating that the Individual's debts and failure to file his tax returns were due to circumstances beyond his control, that he ever took measures to work with creditors to resolve his debts, or that he has ever sought extensions of his filing deadlines from the IRS or state tax authorities. Accordingly, the mitigating conditions described in § 20(b) are clearly not present in the instant case. The Individual has neither offered any corroboration of his claim that he is working with a credit repair counselor, nor has he provided any evidence that his financial problems are being resolved or are under control. Accordingly, the mitigating conditions described in § 20(c) are clearly not present in the instant case. There is no evidence in the Record indicating that the Individual is adhering to any good-faith effort to repay overdue creditors or otherwise resolve debts. Accordingly, the mitigating conditions described in § 20(d) are clearly not present in the instant case. The Individual has not shown that he has a reasonable basis to dispute the legitimacy of any of his past-due debt, nor has he provided documented proof to substantiate the basis of the dispute or evidence of his actions to resolve the issue. Accordingly, the mitigating conditions described in § 20(e) are clearly not present in the instant case. The Individual admits that he has

not reached an arrangement with the IRS or state tax authorities to file or pay the amount owed. Accordingly, the mitigating conditions described in § 20(g) are clearly not present in the instant case. I need not address the mitigating factors described in Guideline F § 20(f), as they are not applicable to this matter.

Because the Individual has not satisfied any of the mitigating conditions under Guideline F, I find that the security concerns raised under Guideline F in the Statement of Charges have not been resolved.

Guideline J Concerns

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if:

- (a) 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;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) 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.

Guideline J at § 31(a)-(d).

Although a significant passage of time has occurred since some of the Individual's criminal activity, his pattern of criminal activity has continued into the recent past. Police charged the Individual with criminal activity on three occasions in 2018 (specifically, Battery Against a Household Member, violating a domestic protection order, and a probation violation resulting from a positive drug test). Accordingly, the mitigating conditions described in § 31(a) are clearly not present in the instant case. While the Individual claims that his partner "pressured or coerced" him to push her back in response to her alleged violence, the Individual did not submit any evidence into the record in support of this assertion other than his unreliable and uncorroborated assertions. Accordingly, the mitigating conditions described in § 31(b) are clearly not present in the instant case. The Individual claims that his positive drug test in March 2018 resulted from his consumption of over-the-counter medicine. Ex. 6 at 12. However, the Individual did not provide any evidence,

other than his unreliable and uncorroborated assertions supporting this claim.⁷ Accordingly, the mitigating conditions described in § 31(c) are clearly not present in the instant case.

The evidence in the Record does not show that the Individual has been successfully rehabilitated. To the contrary, the Record provides that the Individual has violated the terms of his probation, testing positive for methamphetamines, violating a court order and perpetrating a Battery against a Household Member. Ex. 6 at 12. Moreover, the Individual's 23 year-long pattern of criminal activity (that has continued into the relatively recent present), his continuing violation of tax laws, his repeated failure to take full responsibility for his past criminal activities, and the recency and serious nature of some of his criminal activity suggest that he has not been sufficiently rehabilitated. Accordingly, the mitigating conditions described in § 31(d) are clearly not present in the instant case.

Because the Individual has not satisfied any of the mitigating conditions under Guideline J, I find that the security concerns raised under Guideline J in the Statement of Charges have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines 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 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

⁷ Further, I do not find this explanation of events credible, as the record shows the Individual provided differing accounts of the events that led up to the positive test. His first attempt to explain the positive drug test consisted of the claim that he had consumed Benadryl prior to taking the drug test. Ex. 9 at 70. The Individual then stated in the LOI that he had a cold at the time he was tested, and that his probation officer informed him that it is possible to test positive for methamphetamines after consuming over-the-counter drugs containing ephedrine. Ex 6 at 12. During his testimony, he stated that his probation officer suggested that he either may have been unknowingly provided a substance by another individual, or that the positive test was the result of the Individual's consumption of Sudafed to treat his allergies. Tr. at 30-31.