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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: February 8, 2013 )

Case No.: PSH-13-0015

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Issued: May 20, 2013

**Decision and Order**

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." <sup>1</sup> For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time. <sup>2</sup>

**I. BACKGROUND**

The individual is employed as a Security Police Officer (SPO) by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. On November 13, 2012, the individual was disciplined for allegedly violating two of his employer's rules. Based on this information and other information in the individual's personnel security file, the local security office (LSO) determined that derogatory information existed that cast into doubt the individual's eligibility for access

<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 61 exhibits into the record of this proceeding, and presented the testimony of seven witnesses at the hearing. The individual introduced two exhibits and presented the testimony of two witnesses, in addition to testifying himself.

## **II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8(h). As support for this criterion, the Letter cites the diagnosis of a board-certified psychiatrist (hereinafter referred to as "the DOE psychiatrist") that the individual suffers from Depressive Disorder NOS, and that this disorder "can cause problems with judgment and/or reliability." The Letter also cites the DOE psychiatrist's allegations that:

- The individual informed him that his December 2012 arrest for Driving Under the Influence (DUI) was his only legal problem, and did not tell the DOE psychologist about his traffic violations, his disorderly conduct charge, and an offense that occurred while he was in the military;
- The individual failed to tell the DOE psychologist that the individual had been written up for not participating in job-related activities; and
- The individual incorrectly indicated on his 2010 Questionnaire for National Security Positions (QNSP) that he had not had any financial problems before 2008.

According to the DOE psychologist, these alleged mis-representations and omissions also call into question the individual's judgment and reliability.

Criterion (l) defines as derogatory information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct or circumstances include, but are not limited to, criminal behavior, financial concerns, and violation of any commitment or

promise upon which the DOE previously relied to favorably resolve an issue of access authorization reliability. As support for this criterion, the Letter cites information from a local jurisdiction indicating that the individual has been charged with multiple unlawful acts dating back to 1996, including six citations for speeding, and arrests or citations for DUI, Assault, Bogus Check, Loud Music and Tinted Windows, and Disorderly Conduct. Under this criterion, the Letter also cites seven disciplinary actions taken against the individual by his employer for rules violations since 2008, consisting of:

- Written Warnings for Missed Appointment, “Failure to Complete Audit Run/Laying (*sic*) in Back Seat of Car,” Inattention to Duty, and Failure to Complete Weapons Re-qualification on Scheduled Day,
- A Written Warning and Counseling for Four Attendance Discrepancies Within a 90 Day Period,
- A Suspension for Failure to Follow Orders or Failure to Perform Assigned Duties and Abandonment of Post, Loitering, or Being Away from Place of Work During Work Hours for Extended Periods of Time Without Permission from Supervisor, and
- A Written Reprimand for Missed Scheduled Appointment.

As additional support for its invocation of this criterion, the Letter alleges that the individual has a history of failing to honor verbal commitments that he has made to the DOE and failing to meet his financial obligations, and that he has provided false, misleading, or incomplete information to the DOE on multiple occasions. Specifically, the Letter states that the individual:

- Committed to abide by all federal and state laws; yet he was charged with Speeding six times, and also charged with Disorderly Conduct and DUI since making that commitment;
- Acknowledged his commitment to report any arrests and traffic violations carrying a potential fine in excess of \$250 to the DOE; yet he failed to report his 2009 Disorderly Conduct charge and his 2009 Speeding citation;
- Committed to straightening out his finances and to reporting financial concerns; however, he failed to list his financial information on his December 9, 2010, QNSP and failed to report his 2011 Chapter 13 bankruptcy;
- Committed to list all required information on his DOE forms; yet on his 2008 and 2010 QNSPs, he failed to list four civil court actions;
- Committed to adhere to work requirements; however, he received a written warning for four attendance discrepancies within a 90 day period, a two day suspension for failure to follow orders, and another written warning after his access authorization was suspended.

Regarding his alleged history of failure to meet financial obligations, the letter cites seven credit reports dating from 2002 to 2012 showing delinquent debt on each report ranging from \$133 to \$36,548, and also showing the 2011 Chapter 13 bankruptcy.

Finally, concerning the individual's provision of allegedly false, misleading, or incomplete information to the DOE, the Letter states that he:

- Informed the DOE psychiatrist that he had no financial concerns prior to 2008; yet he was interviewed by the LSO a total of three times in 2003 and 2004 for financial concerns;
- Told the DOE that he failed to list his financial delinquencies on his December 2010 QNSP because his financial hardship did not occur until after that QNSP; however, he later admitted that he was already delinquent on his mortgage when he completed the Questionnaire. He was also interviewed in 2003 and 2004 for financial concerns;
- Did not indicate the existence of any financial concerns on his December 2010 QNSP; yet he filed for Chapter 13 bankruptcy on March 1, 2011.

These circumstances adequately justify the DOE's invocation of criteria (h) and (l), and raise significant security concerns. As an initial matter, the individual has been diagnosed, by a duly qualified mental health professional retained by the U.S. Government, with a mental condition that could cause a significant defect in his judgment or reliability. Moreover, illegal 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. In addition, conduct involving questionable judgment, lack of candor, or dishonesty can also raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Finally, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines I, J, E and F.*

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of

derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### **IV. FINDINGS OF FACT AND ANALYSIS**

The security concerns set forth in the Notification Letter essentially fall into four categories: the individual’s alleged failure to provide required information to the DOE or the provision of false, incomplete or misleading information; the individual’s alleged inability or unwillingness to consistently conform his behavior to the requirements of the law or of his employer’s rules and regulations; the individual’s mental and emotional condition; and the individual’s finances. My findings and analysis concerning each of the categories of security concerns are set forth below.

##### **A. The Individual’s Honesty and Trustworthiness**

In the Notification Letter, the DOE alleges that the individual provided false, misleading or incomplete information to the DOE psychiatrist and on his 2010 QNSP. The DOE further contends that the individual failed to report his 2009 arrest for disorderly conduct and his 2011 bankruptcy, as required by DOE security rules.<sup>3</sup>

At the hearing, the DOE psychiatrist testified that during his June 2012 evaluation, he asked the individual whether “there were any other legal issues” than his December 2011 DUI arrest. Hearing transcript (Tr.) at 67. It is undisputed that the individual indicated that there were no other such issues. The DOE psychiatrist further inquired as to whether the individual had any “financial issues prior to 2008,” Tr. at 71, and the individual indicated that there were not.

The individual testified that he did not mention his speeding tickets because he did not think that they qualified as “legal issues” within the meaning of the DOE psychiatrist’s question. Tr. at 221. He further stated that he did mention the assault that he committed in 1996 while in the military, but that he did not mention his 2009 arrest for disorderly conduct because the DOE psychiatrist “never asked me about it.” *Id.* Regarding his finances, the individual reiterated that he did not have any problems in this area prior to 2008, and stated that he was not trying to be deceitful during the DOE psychiatrist’s evaluation. Tr. at 244.

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<sup>3</sup> At the hearing, the DOE and the individual stipulated that the October 24, 2007, “arrest” listed in section II.A of the Summary of Security Concerns appended to the Notification Letter was in fact a speeding citation, that the Disorderly Conduct arrest happened in 2009, not 1999 as indicated in that section, and that the March 22, 2009, speeding citation never occurred. Tr. at 139.

Based on this testimony and the record as a whole, I find that the individual did improperly omit significant information from his responses to the DOE psychiatrist's questions. Although the individual's contention that he did not consider his multiple speeding citations to be "legal issues" as that term was used by the DOE psychiatrist may be reasonable, the same cannot be said about his failure to mention his arrest for disorderly conduct. Such an occurrence constitutes a "legal issue" under any reasonable definition of that term. Regarding the individual's finances, the record in this matter indicates that he had delinquent debt for each year from 2002 to 2004, in amounts ranging from \$13,054 to \$36,548. On at least three occasions during those years, DOE security determined that the individual's financial problems were so significant that they warranted summoning the individual for PSIs. *See* DOE Exs. 42, 46 and 47. One of those problems was the repossession of a vehicle in 1996. Contrary to the individual's assertions, both to the DOE psychiatrist and at the hearing, it is evident that the individual was, at times, experiencing significant financial difficulties prior to 2008. I conclude that the individual was not completely candid during his psychiatric evaluation.

Regarding the individual's December 2010 QNSP, the Letter alleges that the individual failed to provide complete and accurate information about his financial delinquencies and civil court actions. Item number 27 on the 2010 QNSP asked, "In the last 7 years, have you had any judgments entered against you that have not been paid?" Item number 29 asked, "In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?" The individual answered both questions in the negative. DOE Ex. 27. However, according to a credit report dated August 22, 2011, a civil court judgment in the amount of \$2,090 was entered against the individual on March 10, 2010, for an unpaid furniture bill. DOE Ex. 22; DOE Ex. 21 at 16-17. This judgment was included in the individual's 2011 Chapter 13 bankruptcy, DOE Ex. 21 at 16, and was therefore unpaid when the individual completed the 2010 QNSP. Moreover, at the hearing, the individual stated that in September 2007, he "went to court to acquire rights to my children and legitimize them." Tr. at 231. Admirable as this action was, the individual did not list it, or the civil action that resulted in the judgment against him, on his 2010 QNSP.<sup>4</sup> The record in this matter establishes that the individual provided incomplete and misleading information on his 2010 QNSP.

It is also evident that the individual did not report his 2009 Disorderly Conduct arrest and his 2011 bankruptcy to DOE security. The individual claimed that he did not report his 2009 arrest or list it on his 2010 QNSP because the fine for this offense did not meet the \$250 reporting threshold applicable at that time. However, that threshold applied only to traffic citations. DOE Exhibit 27, Item 23. The individual was required to report any arrest to DOE security within five days of the arrest. DOE Ex. 47 at 28. The individual also stated that he reported his bankruptcy to his employer, but not to DOE security. DOE Ex. 21 at 9.

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<sup>4</sup> The individual also failed to list his civil court proceedings on his May 2008, November 2008, and December 2009 QNSPs. DOE Exs. 30, 31 and 37.

One or two omissions or misrepresentations on the part of the individual could perhaps be attributed to a faulty memory or a misunderstanding about the information that was required of him, and might not, by themselves, raise a security concern. However, the pattern described above of false or incomplete information provided by the individual is indicative of either an intention to deliberately mislead the DOE, or of a reckless disregard for the DOE's reporting requirements, and of his obligation to answer the DOE's inquiries truthfully and completely. In either case, I conclude that significant security concerns remain regarding the individual's honesty and trustworthiness. These concerns are exacerbated by the fact that the omissions occurred after the individual committed to list all required information on his DOE forms and after he committed to report all arrests within five days. DOE Ex. 47 at 27-28.

### **B. The Individual's Behavior**

The Letter further alleges that the individual has exhibited a pattern of behavior marked by repeated violations of the law and of his employer's rules and regulations. At the hearing, the individual testified about his arrests and citations. The Assault occurred in 1996, while the individual was in the military. He said that he discovered his wife in bed with another man, whom he assaulted. He was given an "Article 15," or non-judicial punishment, which, according to the individual, was later reduced, and then "thrown out." Tr. at 225. The 1999 Bogus Check charge also happened while the individual was in the military. The individual testified that his checkbook was stolen, and multiple checks were written on his account in multiple cities. He was required to provide the police with a sample of his signature, which was then compared to the signatures on the checks. Because the signatures did not match, he was exonerated of any wrongdoing. Tr. at 225-226.

The individual further stated that he got the citation for "Loud Music and Tinted Windows" in 2000, when he drove to a local stereo store to have an audio system installed in his vehicle. After the installation, the individual and the shop owner were testing the system when a police officer drove up and accused the individual of "riding around playing loud music." Tr. at 227. Despite the store owner's explanation that he was just conducting business with the individual, the officer cited him for noise pollution and having tinted windows that were too dark. The individual testified that the windows were not improperly tinted. Tr. at 226-227.

Regarding the 2009 arrest for Disorderly Conduct, the individual said that he was supposed to meet his stepson at a local restaurant for dinner, but when he didn't appear, the individual called him on his cell phone. The stepson told the individual that he was "down the street," "watching these cars race." Tr. at 228. Because he knew that watching an illegal auto race was itself illegal, he told his stepson to leave the area. When the stepson failed to do so, the individual went to the location of the street racing to pick up the stepson. Soon after he reached the scene, the local police also arrived, and arrested everyone at the location. *Id.* The individual admitted to having been arrested for DUI in December 2011 and registering a .17 on his Breathalyzer examination. Tr. at 220.

The individual also testified about his alleged violations of his employer's rules and policies. First, he discussed the written warning<sup>5</sup> that he received for failure to complete an assigned run within the designated time period.<sup>6</sup> He said that when he was selected to perform the run, he had an injury that turned out to be a hernia, for which he underwent surgery in 2010. He informed management of the injury, and made the run one day after the 30-day deadline. Tr. at 235.

The individual then discussed the written reprimand that he was given in September 2010 for leaving his post without supervisory approval. He said that, at the time, he was caring for his son who had the flu. At around two or three p.m., he started to feel ill, and walked outside to the parking lot. He got into his car, started it, and turned on his air conditioner because he started to feel over-heated. At that time, his supervisor discovered him and asked for an explanation. Although the individual explained that he was not feeling well, the supervisor gave him the reprimand, anyway. Tr. at 236-237.

Regarding the written warning that the individual received for missing a scheduled weapons re-qualification training, the individual testified that he was never informed of the date of that training. Tr. at 239. He further claimed that he should not have received a warning for being late to work four times within a 90-day period because one of those occurrences was excused due to his appointment with the DOE psychiatrist. Tr. at 240.

Next, the individual testified about his 2012 suspension for leaving his assigned work station without permission. He explained that he was operating the exit lanes at one of the gates to the facility at which he worked early one morning, when he decided to lower the exit "arm," leave the exit lanes and go to the "low cam" entrance lanes at the same gate.<sup>7</sup> He did this, he said, in anticipation of the arrival of "pump house trucks," which usually arrived between 3:15 and 3:30 each morning to "pump out the urinals." Tr. at 243. While he was at the "low cam" lanes, a vehicle pulled up in the exit lanes at that gate and had to wait approximately two minutes before the individual returned to his assigned post and allowed the vehicle to exit. Although he explained his reasoning to his supervisor, the individual admitted that "there's little bitty guidelines" stating that if you do not stay within 20 feet of your assigned area, you have left your post. Tr. at 244. The individual was suspended for this violation.

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<sup>5</sup> The individual's employer imposes four levels of discipline. The first, and least severe, is a written warning. The next is a written reprimand, followed by a suspension, and then by termination.

<sup>6</sup> In order to ensure that SPOs remain in good physical condition, they are periodically required to complete a designated run within a designated time. They are given a 30-day "window" to complete this run. The DOE is alleging that the individual failed to complete this run within the 30-day time period.

<sup>7</sup> "Low cam" lanes are entrance lanes where cameras are used to check the undersides of trucks and other vehicles for explosives and other banned objects.



In evaluating these incidents, I note that, for the most part, the individual's accounts are not supported by any independent evidence. For the reasons described in Section IV.A, I harbor substantial doubts about the reliability of those accounts, and I therefore conclude that they are insufficient to allay the DOE's legitimate security concerns regarding his behavior. However, even if I believed the individual's testimony in its entirety, I would still conclude that he has exhibited a disturbing inability or unwillingness to conform his behavior to legal and workplace requirements.

Discounting the 1996 assault as an understandable response to an alleged extreme provocation, and accepting as true the individual's testimony about the bad check and tinted windows charges, since 2000, the individual has been arrested twice, in 2009 for Disorderly Conduct and in 2012 for DUI, Running a Red Light and Failure to Maintain Lane, and cited seven times, once for Loud Music and six times for speeding. Both of the arrests and all of the speeding citations occurred while the individual was holding a DOE security clearance and after he committed during a 2003 PSI to abide by all federal and state laws. DOE Ex 47 at 26.

Again, discounting the workplace infractions for which the individual has presented reasonable, if unsupported, explanations, since 2010 the individual has received written reprimands for missing required training and leaving his post without supervisory approval, and a 2012 suspension for leaving his post. Regarding the 2010 incident during which the individual left his post, there was uncontradicted testimony at the hearing from a management figure that there was an established procedure for personnel who fell ill during working hours to follow, which the individual did not do. Tr. at 155.

Many of these incidents, when considered separately, would not be of sufficient importance to give rise to a valid security concern. However, when considered together, they indicate that the individual has a cavalier attitude toward his obligation to conform his behavior to legal and work requirements and to honor his commitments that ill-befits a security clearance holder. The individual has not adequately addressed the DOE's security concerns regarding his personal conduct.

### **C. The Individual's Mental And Emotional Condition**

In his report, the DOE psychiatrist diagnosed the individual as suffering from Depressive Disorder, Not Otherwise Specified, and he concluded that this condition could cause a significant defect in his judgment or reliability. DOE Ex. 11. At the hearing, he testified about the bases for this diagnosis. He testified that the individual informed him that he had experienced a decrease in energy, a problem sleeping, and decreased appetite. Tr. at 37, 43. His primary care physician had prescribed Trazodone, which is an anti-depressant, and the individual said that this had been helpful. Tr. at 37. The DOE psychiatrist went on to state that the individual's primary care physician had diagnosed the individual as suffering from shift work syndrome and low testosterone, and that the symptoms of shift work syndrome (low energy and trouble sleeping) can mimic those of Depression. However, the DOE psychiatrist believed that a Depressive Disorder was

more likely, because the individual also complained of having “the blues” surrounding his inability to work overtime and his financial issues. Tr. at 38.

The individual’s psychologist also testified. He testified that after administering a battery of tests, he was unable to diagnose the individual with any mental or emotional disorder. While he found that the individual may have under-reported his symptoms, the under-reporting was not egregious and did not invalidate the test results. Tr. at 90, 92, 97.

Later in the hearing, the DOE psychiatrist was recalled. He testified that the individual’s Depressive Disorder appeared to have improved between the DOE psychiatrist’s evaluation in June 2012 and the individual’s psychologist’s evaluation approximately nine months later. The psychologist found no evidence of a lack of energy or of a general feeling of malaise, or “the blues.” However, the DOE psychiatrist testified that the psychologist still reported a problem with the individual’s appetite, that he was taking a prescription sleep aid, and that problems with eating and sleeping are symptoms of depression. Tr. at 280-281. While the individual reported at the hearing that he was no longer experiencing any problems with his eating, sleeping, or energy level, Tr. at 266-267, the DOE psychiatrist discounted this testimony because of doubts about the individual’s trustworthiness and candor. Tr. at 286. He concluded that the individual continues to suffer from a mental disease or defect that could cause a significant defect in his judgment or reliability. Tr. at 285.

After reviewing this testimony and the record in this matter as a whole, I attribute greater weight to the testimony of the DOE psychiatrist than I do to the testimony of the individual’s psychologist. As an initial matter, the individual’s psychologist did not have access to the individual’s PSIs and other work-related records when he performed his evaluation. The individual’s psychologist also did not have access to the DOE psychiatrist’s report at that time. Consequently, the psychologist’s evaluation was based primarily on information obtained from the individual. The reliability of this information was, to a certain extent, questioned by the psychologist himself. In his report, the psychologist said that “the results of the psychological testing portion of this report may not be used with complete confidence due to possible under-reporting.” He went on to conclude that “as a result, there is little diagnostic information available.” Individual’s Exhibit 1 at 4. At the hearing, the individual’s psychologist explained that, in order to be ethical and honest, he had to acknowledge that there was “a little bit of under-reporting,” but he concluded that his finding that the individual had no diagnosable disorder was still valid. Tr. at 100, 107. However, the psychologist’s report noted that, at the time of the evaluation, the individual was still experiencing problems with weight loss, and was taking sleep medication. Given these factors, I have greater confidence in the DOE psychiatrist’s diagnosis than I do in the conclusion of the individual’s psychologist that the individual is not suffering from a diagnosable psychiatric disorder. The individual has not adequately addressed the DOE’s security concerns about his mental and emotional state.

#### **D. The Individual's Finances**

Finally, the Notification Letter alleges that the individual has a history of failing to meet his financial obligations. In support of this allegation, the Letter cites seven credit reports covering the period of time from 2002-2012, showing delinquent debt on each report ranging from \$133 to \$36,548. The Letter also cites the individual's 2011 Chapter 13 bankruptcy.

At the hearing, the individual testified that the delinquent debt was due primarily to unpaid child support. He attributed this delinquency to two factors. First, in 2007, he went to court to legitimize his children and to assume responsibility for them. Tr. at 231. This resulted in an increase in his child support expenses. Second, he testified that the payments ordered by the court were based on his being able to work overtime. However, when his job classification changed as a result of losing his Human Reliability Program certification, he was no longer able to work overtime. Tr. at 271-272. These same factors contributed to his bankruptcy, along with the individual having to go on disability due to medical issues, and falling behind on his mortgage payments. Tr. at 270.

Based on this testimony and the record as a whole, I find that the individual has adequately addressed the DOE's concerns regarding his finances. I base this conclusion on two factors. First, the individual has made a concerted effort to pay off his delinquent debt. His credit reports show that his delinquent debt fell from \$36,548 in 2002 to \$26,519 in April 2003, to \$17,942 in August 2003, and continued to decline on each of his subsequent credit reports.<sup>8</sup> This steady decline was caused by the individual paying off his delinquent child support. Tr. at 269. The individual testified that he is now up to date with his child support and also with his Chapter 13 debt repayment. Tr. at 233. Second, there is little evidence of financial irresponsibility by the individual. Instead, his distress in this area appears to be largely due to factors over which he had limited or no control, such as his loss of overtime and his having to go on disability due to a surgical procedure. No valid security concerns remain regarding the individual's finances.

#### **V. CONCLUSION**

For the reasons set forth above, I find that the individual has adequately addressed the DOE's security concerns regarding his finances, but that valid concerns remain regarding his honesty and reliability and his personal conduct. He has therefore failed to mitigate the DOE's security concerns under criterion (l). I further conclude that the individual has failed to adequately address the DOE's concerns under criterion (h). Consequently, he has failed to convince me that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time.

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<sup>8</sup> The sole exception is his August 2011 credit report, which shows a delinquent debt amount that is larger than the one on the previous report. This amount included a debt owed to a store for his children's bedroom furniture, which was included in the 2011 bankruptcy.

Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: May 20, 2013