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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 20, 2013)
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) Case No.: PSH-13-0035
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Issued: June 18, 2013

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This decision concerns the eligibility of XXXXXX (hereinafter referred to as "the Individual") to obtain a security clearance 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." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

This case involves an Individual with a pattern of failing to meet her financial obligations dating back to at least 2005. On August 7, 2012, the Individual's employer notified a Local Security Office (LSO) that the Individual's wages had been garnished because she had failed to comply with the terms of a repayment plan for delinquent local taxes. The LSO conducted a Personnel Security Interview (PSI) of the Individual on August 23, 2012.

Unable to resolve the security concerns raised by the Individual's continuing financial issues, and by the vague, incomplete, inconsistent and contradictory information provided by the Individual, the LSO initiated administrative review proceedings by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at

10 C.F.R. § 710.8, subsection (l) (Criterion L).¹

The Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded her request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on April 1, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, her spouse, her supervisor, her financial advisor (the Accountant), and a family friend. *See* Transcript of Hearing, Case No. PSH-12-0035 (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as DOE Exhibits 1 through 15, and the Individual submitted 17 exhibits, marked as Individual’s Exhibits A through Q.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting or continuation of 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). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FACTUAL BACKGROUND

¹ Specifically, the Notification Letter alleges that the Individual has:

Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility, . . . or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

The Individual has exhibited a longstanding pattern of financial distress dating back to at least July 2005, when she and her spouse entered into a debt management program with a debt management service.² Exhibit 1 at 1. In March 2006, her spouse individually filed a petition for relief under Bankruptcy Chapter 13. The Individual's spouse converted his Chapter 13 Bankruptcy Petition to a Chapter 7 Bankruptcy Petition, which the Individual joined on May 27, 2009. The Bankruptcy Petition indicates that the Individual and her spouse had \$170,539 in unsecured liabilities³ at the time of the petition. Exhibit 2 at 12. The Individual and her spouse received a discharge of their non-student loan unsecured debts on September 14, 2009. Exhibit G at 1.

During a November 9, 2009, PSI, the Individual opined that she was "a victim of circumstance." Exhibit 3 at 13. She explained that her spouse's income had declined because he now worked part-time. Exhibit 3 at 11-12. The Individual stated that she began to fall behind on her local taxes in 2005 or 2006, and was "probably" \$2,000 behind on her local taxes. *Id.* at 15-16. She stated that she had entered into an agreement to repay her delinquent local taxes by paying \$150 a month and was current on her payments. *Id.* at 16. The Individual stated that she was working two additional jobs in order to address her financial issues. Exhibit 3 at 8.

On November 10, 2009, the Individual submitted a Personal Financial Statement (PFS) to the LSO. The November 10, 2009, PFS contained a number of math errors. As a result, the LSO requested that the Individual submit a revised PFS. The Individual submitted a revised PFS on November 19, 2009. The November 19, 2009, PFS also contained math errors.

On July 30, 2012, the Individual's employer informed the LSO that the Individual's wages had been garnished in order to pay \$4,186.63 in delinquent local taxes and court costs, for the years 2006, 2007, and 2008. Exhibit 6 at 1.

On August 23, 2012, the LSO conducted a PSI of the Individual. The Individual admitted that her wages had been garnished because she had set up a payment plan for the delinquent local taxes but missed three payments because her spouse had missed three months of work recovering from a knee replacement. Exhibit 7 at 4-5. When the interviewer advised the Individual that she was required to submit proof that she had made all but a few of the payments due on her payment plan, the Individual admitted she did not know how many payments she had missed.⁴ *Id.* at 5. The Individual initially claimed that she had filed her local tax returns for the years 2009, 2010, and 2011 and had paid her local taxes for those years, but subsequently admitted she

² The Individual claims that the debt management program ended when the debt management service's offices were destroyed in a hurricane. Exhibit 1 at 1. The Individual asserted that six weeks passed before she was informed that the debt management service had discontinued payments on her behalf and claimed that these events caused her to become delinquent in paying her debts once again. *Id.*

³ \$34,706 of this unsecured debt was in the form of student loans incurred on behalf of their two children. Exhibit 2 at 13.

⁴ A letter from a local tax collection authority to the LSO, dated September 5, 2012, indicates that the Individual only made 16 of these monthly payments during the period beginning in December 2009, and continuing through August 2012. Exhibit 9 at 1-2.

did not know if she had filed her local taxes for those years because her accountant does her taxes. *Id.* at 11-12, 16-17. The Individual admitted that she purchased a \$55,000 motor vehicle in 2009. *Id.* at 13. Her payments were \$628 a month. *Id.* at 15. The Individual admitted that she did not have a budget. *Id.* at 41. She indicated that she had been paying some of her mother's bills because her mother suffers from dementia. *Id.* at 41-42. She admitted that she was on a payment plan for delinquent federal taxes, estimating that she owes the Internal Revenue Service (IRS) \$3,000 or \$4,000. *Id.* at 47-49.

In a September 4, 2012, memorandum to the LSO, the Individual attributed her failure to honor her repayment plan for delinquent local taxes to her "husband's health condition." Exhibit 8 at 1. She noted that her husband had missed two months of work in 2010, due to treatment for a blood disorder, and three months of work in 2012, due to a knee replacement. *Id.* She further stated that she has agreed to a payment plan for her 2010 and 2011 local taxes. *Id.* The Individual also notified the LSO that she had made arrangements for her and her spouse to begin attending credit counseling. *Id.* The Individual also submitted a PFS on September 4, 2012, which indicated that she was paying all of her creditors as agreed. *Id.* at 2-4. On September 4, 2012, the Individual submitted IRS account transcripts for the tax years 2008, 2009, 2010, and 2011. These records show that the Individual filed her federal taxes in a timely manner in each of these years. Exhibit 8 at 7-15. These records also show that the Individual and her spouse's adjusted gross income steadily increased during that time period: from \$91,884 in 2008, to \$95,853 in 2009, to \$100,283 in 2010, and to \$109,278 in 2011.

The Individual and her spouse have begun credit counseling sessions, the first of which occurred on March 1, 2013, and have developed a creditor payment plan and monthly budget. Exhibit A at 1-3; Exhibit B. A credit report dated April 16, 2013, shows that the Individual and her spouse are current on 34 accounts and delinquent on one account. Exhibit L.

IV. DEROGATORY INFORMATION AND SECURITY CONCERNS

The record shows that the Individual has a pattern of financial irresponsibility. The Individual's pattern of financial irresponsibility raises significant security concerns under Criterion L. The Revised Adjudicative Guidelines state in pertinent part:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . [and] (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis. . . .

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶¶ 18, 19. In addition, the inconsistencies in the information provided by the Individual in her PSIs, and at the hearing, raise questions about the Individual's judgment and reliability. The Adjudicative Guidelines state in pertinent part: "Conduct involving questionable judgment . . . can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at ¶ 15.

V. ANALYSIS

At the hearing, the Individual argued that her financial problems resulted from a number of circumstances which she believes were out of her control. She further contended that she has restored her family's financial stability. She testified that her financial problems began in 2006, when her spouse sold his interest in a family business.⁵ Tr. at 16. She testified that her spouse was out of work for two months and then found employment at a reduced wage. *Id.* However, she admitted that she and her spouse had accumulated some debt prior to his sale of his interest in the family business, which she estimated at \$8,000. *Id.* at 37, 39. She testified that her spouse sold his share of the family business for \$90,000, but received his payments over a period of time. *Id.* at 38.

The Individual testified that her finances had been affected by her spouse's hospitalization and treatment for a blood disorder and by his knee replacement. *Id.* at 20. She estimated that they had incurred about \$1,100 in out-of-pocket medical expenses as a result of her spouse's blood disorder, and \$800 of out-of-pocket medical expenses as a result of his knee replacement. *Id.* at 117-118. She testified that these financial setbacks caused her to fall behind in making payments required by the repayment plan she had entered into in order to repay her delinquent local taxes. *Id.* She also cited the costs of putting her two children through private school and then college and helping her elderly mother as contributing factors to her financial problems. *Id.* at 20-21.

The Individual testified that she had taken a number of actions to address her financial problems. She testified that she had obtained two part-time jobs in order to supplement her income. *Id.* at 26. She and her spouse have obtained credit counseling and have enrolled in a financial management program. *Id.* at 30. She is no longer having her wages garnished, and she has entered into a repayment plan for her delinquent local taxes. *Id.* She has obtained financial counseling from the Accountant, and has lowered her car payment by \$250 a month, by replacing her motor vehicle with a less expensive model. *Id.* She has consolidated her debts and had made three payments in her debt consolidation plan. *Id.* at 31. She no longer uses credit cards. *Id.* at 32. She testified that her family now has a budget and that they have been adhering to this budget. *Id.* at 110. The Individual testified that as a result of these actions, she has been able to live within her greatly decreased salary (which resulted from her clearance being suspended) without slipping further into debt. *Id.* at 85. She testified that she, within the past month, entered into a repayment plan for her local taxes for the years 2010 and 2011. *Id.* at 92-93.

⁵ Other more reliable information in the record indicates that her husband sold his interest in the business in May 2005. See e.g., Exhibit 1 at 1.

The Individual's testimony also revealed some troubling aspects. The Individual admitted that her and her spouse's income increased substantially from 2006 until 2012, and had most of their debts discharged in 2009. However, she could not explain how she continued to struggle financially since 2009. *Id.* at 90-91. Moreover, I was further concerned by the Individual's testimony that she is delaying paying off some of her high-interest accounts because her son is getting married this summer. *Id.* at 96. I was deeply concerned by the Individual's testimony that she does not know how much she presently owed her creditors. *Id.* at 122.

When the Individual was asked why she had not paid her local taxes in 2004 and 2005, she could only state: "we just fell behind." *Id.* at 48. She testified that she had filed her local tax returns every year, but had fallen behind in her payments. *Id.* at 52. She further testified that she did not realize she had fallen behind in her payments until the local tax collectors had sent a letter. *Id.* She subsequently testified that she was not aware she owed any local taxes because the local tax authorities had not contacted her until 2009.⁶ *Id.* at 72, 74. The Individual could not meaningfully explain how she came to owe \$119,000 in 2009, other than the \$34,000 in student loans she obtained on behalf of her children. *Id.* at 63-68. The Individual testified that she began making payments on her delinquent local taxes in 2009. *Id.* at 81. She admitted that she missed payments because her spouse had become sick and her mother was having problems. *Id.* She testified that she was never late in filing her federal taxes, and that she was current on all of her payment plans. *Id.* at 33. The Individual subsequently admitted that she and her spouse owe the IRS about \$8,500, because she and her spouse were not having enough money withheld from their social security and paychecks. *Id.* at 96-97.

The Individual's spouse testified on her behalf at the hearing. He testified that he was bringing home about \$3,000 a month when he was part-owner of the family business. *Tr.* at 139. He received a down payment of \$30,000 when he sold his interest in the business in 2005. *Id.* at 140. The rest of the \$90,000 was to be received in monthly payments for the next three years. *Id.* When they received the down payment, they used it to pay off some debts, including department store debts, house payments and tuition. *Id.* at 141-142. After he sold his interest in the business, he was out of work for three or four months. *Id.* at 144. He found a job which paid \$7.50 an hour, for 20 hours a week. *Id.* He now makes \$14.50 an hour, and works 20 to 25 hours a week. *Id.* at 145-146. He also receives social security. *Id.* He testified that the Individual and he were attending credit counseling and "hopefully, within two years . . . our head will be above water." *Id.* at 160.

The Accountant testified on the Individual's behalf at the hearing. He testified that he prepared a financial statement on behalf of the Individual and her spouse. *Tr.* at 179. He testified that in order to prepare a financial statement, he obtained and reviewed a credit report on the Individual and her spouse, which showed that the Individual and her spouse were current on 34 accounts and delinquent on one account. *Id.* at 180-182. The one delinquent account was a mortgage payment which the note holder had agreed to allow them to pay late. *Id.* at 183. The Accountant testified that the local tax collection system had been in disarray and that a lot of tax payers and professional tax preparers had been confused by it. *Id.* at 189-192.

⁶ The Individual's spouse testified that his accountant would tell him how much state, federal and local tax he owed, "but, at the time, most of the times, we weren't in shape to pay the taxes, in the last few years." *Tr.* at 171.

The Individual is a hard working and generous person. However, the record shows that she and her spouse have been unable to manage their financial affairs in a prudent and effective manner since at least 2005, when the record shows that they sought the assistance of a debt management program. Four years later, in 2009, they filed for bankruptcy relief with \$170,539 in unsecured debt. During that same year, the Individual purchased a \$55,000 motor vehicle. By the next year, 2010, the Individual began missing payments that she had agreed to make towards her delinquent local taxes. Three years later, in 2012, the Individual's paychecks were garnished by the local tax collection authority.

The Individual has taken a number of constructive steps to address her financial issues: she has taken a second job, traded her motor vehicle in for a less expensive model, discontinued assisting her mother financially, entered into repayment plans with her creditors, obtained credit counseling, discontinued the use of credit cards, created a family budget, enrolled in a financial management program, and obtained the services of a skilled financial advisor. These efforts have resulted in a much improved financial picture for the Individual. Specifically, for each of her outstanding debts, she is now either current, or has entered into a repayment plan. Her family has been able to live within a greatly reduced budget for several months now (the Individual has been unable to work for her DOE contractor employer while her clearance has been suspended).

While the Individual's efforts have provided significant mitigation of the security concerns raised by the Individual's longstanding pattern of financial irresponsibility, significant unresolved doubts remain. While the Individual's financial condition is much improved, it still remains somewhat precarious. The Individual continues to borrow money in order to meet her needs.⁷ More importantly, the Individual shows remarkably little insight into the causes of her financial difficulties. At the hearing, the Individual admitted that she did not know how much she owed her creditors. She repeatedly described herself as a "victim of circumstance" claiming that her financial issues resulted from her spouse's unemployment and health issues, when in fact the record shows that their financial problems preceded these occurrences and that their income increased substantially from year to year despite these setbacks. Moreover, throughout the present proceeding, the Individual has provided vague, inaccurate and contradictory information to the LSO and in the hearing, which brings into further question the Individual's trustworthiness, judgment and reliability.

For the reasons discussed above, I find that the security concerns under Criterion L raised by the Individual's financial conduct remain unresolved.

VI. CONCLUSION

After carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criterion L. Therefore, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance

⁷ At the hearing, the Individual's former sister-in-law testified that she had recently cosigned on a \$2,500 loan on behalf of the Individual in order to provide for expenses associated with the present hearing. Tr. at 208-209.

should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: June 18, 2013