

clearance was suspended and that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for an access authorization.

The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director appointed me as the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding. The Individual introduced two exhibits and presented the testimony of five witnesses in addition to her own testimony.³

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

The Part 710 regulations require that I “make specific findings based upon the record as to the validity of each of the allegations” in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L). Ex. 1.⁴ The Individual does not dispute, for the most part, the factual accuracy of the Criterion L derogatory information described in the Notification Letter. I set forth my factual findings below.

Pursuant to two background investigations, the LSO obtained credit reports in September 2011 and October 2012 which indicated that the Individual had three accounts in collection – one for \$12,372 relating to the sale of her home, and two credit accounts of \$1,832 and \$2,039. Ex. 8 at 13, 17-28, 28-36. Ex. 4; Ex. 5. During an October 2011 Office of Personnel Management (OPM) interview for her initial clearance, she stated that she intended to contact these creditors with the aim of arranging some type of payment plan. Transcript of Hearing (Tr.) at 132. Six months later, the Individual was promoted to a new position and needed to apply for a new security clearance, Tr. at 131-32. In the subsequent PSI, the Individual explained that in 2004, she overextended herself by purchasing a home and charging various items. Ex. 8 at 11-18, 73. She stated that she had not made any payments on these accounts although she has been employed since 2006. Ex. 8 at 17-18, 22. The Individual’s failure to make payments was caused by her lack of discretionary funds to make such payments. Ex. 8 at 63-68, 74. Additionally, she stated that she had not yet contacted the holder of the three collection accounts to arrange for a repayment plan despite her stated intention to do so after the OPM interview. Ex. 8 at 24-25; Tr. at 132.⁵

³ One of the Individual’s exhibits, a “financial snapshot” of her current financial status, was included by the DOE as part of Exhibit 2. The other exhibit, an authorization letter permitting the DOE Counsel or myself to contact the single firm holding the three collection accounts at issue in this case, is marked as Exhibit A.

⁴ Criterion L refers to information indicating that an individual has “[e]ngaged 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.” 10 C.F.R. § 710.8 (l).

⁵ The Notification Letter also alleges that the Individual did not make any attempt to contact the debt holder for three collection accounts since 2006. After reviewing the PSI, it appears that the Individual, in fact, stated that she had not contacted the holder of the debts in the year previous to the date of the PSI. Ex. 8 at 22-24. Further, the Individual testified at the hearing that she had made several attempts between 2006 and the year prior to the PSI to set up a payment plan to resolve these accounts. Tr. at 132-33.

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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs*, The White House (December 29, 2005) (*Adjudicative Guidelines*), Guideline F. Given the Individual's three accounts in collection status, I find that the LSO had sufficient grounds to invoke Criterion L.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 and unfavorable, that has a bearing on the question of whether granting the individual 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). In considering these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

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). 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. ANALYSIS

After reviewing the evidence before me, I find that the Individual has resolved the Criterion L concerns raised by her accounts in collection. The Individual testified that the origins of the three collection accounts lay in her decision to purchase a small two-bedroom house in May 2003 at the age of 21. Tr. at 76, 134. At this time, the Individual was earning approximately \$25,000 a year. Tr. at 145. The Individual shared this house with her significant other, but she paid all expenses associated with this house and living expenses. Tr. at 137. Because the house was somewhat crowded, (four people - the Individual, her significant other, and two children - were living in the house) the Individual took out a second mortgage on the house based upon her significant other's promise that he would financially contribute. Tr. at 136. Despite his stated commitment, the significant other provided few financial resources to cover the extra expenses. Tr. at 78, 136. The Individual also used two credit cards to purchase various furniture and other items for the house and for her daughter. Tr. at 76-77, 138, 149. These purchases ultimately

resulted in the two smaller collection accounts at issue in this case. While living at this house, the Individual was able to remain current on her debts and believed that her income was sufficient to cover her expenses. Tr. at 76-77, 136.

Later, around 2005, the significant other decided to purchase his own home. Tr. at 76, 137. It was agreed that the Individual and her child would live in this home, along with the significant other and his child, and that the Individual would be responsible for one-half of all expenses including the mortgage payment. Tr. at 137-38. The Individual and her child moved into the significant other's home and the Individual believed that she needed to sell her house quickly because of the new financial obligations arising from living in her significant other's house. Tr. at 138. Consequently, in 2005 she accepted an offer for her house at her home's appraised value. Tr. at 138; Ex. 8. That amount, however, was not sufficient to cover what she still owed on the house and the second mortgage. Tr. at 138. As a result, the Individual owed approximately \$9,000 after the sale. Tr. at 138. This second mortgage debt was converted into a personal loan and now amounts to approximately \$12,000. Tr. at 138, 144.

The Individual testified that, until 2006, she was able to pay on all her debts notwithstanding the fact that her significant other did not contribute any financial resources despite his being employed. Tr. at 136. During 2006, the Individual stopped making payments on the three accounts at issue because, on her salary of approximately \$25,000 per year, she had little money remaining from her pay check after paying her half of the mortgage, her car payment, and her child's expenses. Ex. 8 at 19-20. Further, after 2006, the Individual attempted to contact the collection account holders to set up a payment plan but was rejected because the Individual's proposed monthly repayment plan was not large enough. Tr. at 133. In 2011, the Individual left her significant other, whom she had married in 2010, and moved to an apartment. Tr. at 82-83. She has continued to reduce her expenses to a minimum and has always paid her taxes in a timely manner. Tr. at 83.

During the OPM interview, the Individual was asked what her intention was with regard to the three collection accounts. Tr. at 150. She replied that her intention was to eventually pay these debts. Tr. at 150; *see* Ex. 8 at 24. She did not recall promising the OPM investigator that she was going to contact the debt holder.⁶ Tr. at 151-52. The Individual believes that she was distracted from contacting the debt holder because shortly after applying for a security clearance, she was asked to take another position which required a different security clearance and she had to begin the investigation process all over again. Tr. at 152.

In light of the concerns raised by the three collection accounts, the Individual sought the advice of a financial counselor (Counselor) and in April 2013 took classes sponsored by the Counselor's organization regarding personal finance. Additionally, the Individual set up a payment plan regarding the two smaller collection accounts. Tr. at 129. With regard to the \$12,000 credit account, she has been unable to get the holder of the debt to agree to any type of payment plan. Tr. at 129-30.

The Individual's Counselor testified that he has a master's degree in accounting and has licenses for providing financial advice and financial counseling. Tr. at 68. The Individual has established a program to help people manage their finances more effectively as part of a spiritual ministry program. Tr. at 69. The Individual has just completed the six-week program where the Individual

⁶ The OPM investigatory report regarding the Individual was not submitted into evidence in this case.

and others attending the program (“Money Academy”) went to classes and completed homework assignments to improve their money management skills. Tr. at 98. As part of the program, the Counselor asked the Individual to review her financial documents and complete a form (a “financial snapshot”) detailing all of her expenses and income. Tr. at 100. In the Counselor’s opinion, the Individual’s “financial snapshot” fairly represents the Individual’s financial condition. Tr. at 100. Unlike the majority of the people he helps, the Individual has a positive monthly money balance of approximately \$250 a month after all expenses. Tr. at 84. In evaluating the Individual’s participation in the classes and her acceptance of the financial concepts taught in the program, the Counselor rates her as a “9” of a scale from 1 to 10 (with 10 being “outstanding”). Tr. at 118.

The Counselor testified that firms, such as the one that owns the three collection accounts at issue, are less likely to establish a payment plan for accounts that exceed \$10,000 and that this practice explains the Individual’s problems in coming to a settlement regarding the \$12,000 collection account. Tr. at 92. In the Counselor’s opinion, the firm that owns the \$12,000 debt will eventually settle for a lesser amount. Tr. at 94-95.

The Counselor also testified as to his opinion regarding the Individual’s future financial responsibility. He believes that the Individual, as a very young person, made a couple of isolated financial mistakes in 2004 in purchasing the house and then obtaining a second mortgage. Tr. at 109, 118. Nonetheless, the Individual has demonstrated a significant period of financial responsibility since 2004. Further, the Individual has completed his training course and will be meeting with him once every 90 days for a review of her finances. Tr. at 98. As part of the training program, the Individual gives each participant his cell phone number and encourages them to call him anytime between 9 a.m. and 9 p.m. with questions about their finances. Tr. at 98-99. Overall, the Counselor believes that his “Money Academy” program provides a better opportunity for long-term financial success than a standard three-day personal finance class. Tr. at 99. Because the Counselor and the other volunteer counselors try to establish a relationship with the participants in the program, individuals are more likely to implement their financial advice. Tr. at 107. The Counselor now believes that the Individual has integrity and is a solid financial decision-maker. He believes that the chances of the Individual continuing to be financially responsible are excellent. Tr. at 109-10, 115. Further, he also believes that the \$12,000 collection account will eventually be resolved and that any settlement payment plan will not disturb the Individual’s overall financial condition. Tr. at 111.

A friend of the Individual (Friend) testified that she has known the Individual for approximately 13 years and has been especially close to the Individual for the last two and a half years. Tr. at 12, 16. She has always observed the Individual living within her means and has not seen the Individual make any purchases she believes are extravagant. Tr. at 15-16. She and the Individual will share school clothes with each other’s children and share meals together to make ends meet. Tr. at 24. She has observed the Individual under great financial stress since she left her significant other but the Individual has never lived beyond her means. Tr. at 17. The Friend confirmed the financial arrangement the Individual described in her testimony. Tr. at 20-21. She also testified that, while the Individual was living with her significant other, the Individual struggled to ensure that the Individual’s daughter’s expenses, such as medical expenses, were paid despite the fact that the significant other made considerably more money than the Individual. Tr. at 21.

A supervisor and a former supervisor testified that the Individual was an excellent worker and exercised good judgment in all of the decisions she was required to make in the financial program where they work. Tr. at 41, 56. The former supervisor testified that the Individual was placed in a position of trust with regard to money and financial systems and could have manipulated the systems for personal gain but has always been very responsible in performing her duties. Tr. at 40-42. Additionally, the former supervisor testified that the Individual is very proactive in suggesting ways to accomplish the mission with less cost. Tr. at 43. He also testified that, since he has known her beginning in 2008, the Individual exercised caution with regard to her personal financial affairs and did not seek to have the latest or nicest personal items. Tr. at 40, 46-47. Both testified as to their high opinion as to the Individual's judgment and integrity. Tr. at 45, 58-59.

Based upon the evidence in the record and the testimony provided at the hearing, I find that the Individual has mitigated the Criterion L concerns raised by the derogatory information contained in the Notification Letter. In evaluating the testimony of each of the witnesses at the hearing, I find that each witness was convincing. The record indicates that the Individual's financial difficulties originated with her purchase of a house and furniture in 2004. At the time of these purchases, the Individual was young and I find that her youth and the passage of time since these errors are mitigating factors in this case. *See Adjudicatory Guidelines, Guideline G ¶ 20(a)* (one mitigating factor regarding financial irresponsibility is that 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). As another mitigating factor, I find that the Individual has lived in a financially prudent manner for the past eight years since her initial financial errors and has not incurred additional debt. *See Personnel Security Hearing, Case No. PSH-12-0069 (2012)* (individuals need to demonstrate a sustained pattern of financial responsibility to mitigate a concern raised under Criterion L for financial irregularities). Further, the Individual has been able to establish payment plans for two of the three collection accounts and is negotiating for a plan regarding the remaining account. *See Adjudicatory Guidelines, Guideline G ¶ 20(d)* (mitigating factor related to whether the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). The Individual has also performed in a trustworthy manner regarding her duties relating to financial affairs at the DOE facility. Given the Individual's employment of a financial counselor to assist her, when needed, and her previous track record of living within her means, I find that the risk of the Individual acting in a financially irresponsible manner in the future is low. *See Adjudicatory Guidelines, Guideline G ¶ 20(c)* (mitigating factor referencing whether the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control). Consequently, I find that the Individual has mitigated the Criterion L security concerns raised by the financial information listed in the Notification Letter.⁷

⁷ The Notification Letter asserts that the Individual gave an "assurance" to the OPM Investigator that she would contact the debt holder regarding the collection accounts and failed to honor that assurance. There is no record of the actual conversation between the Individual and the Individual. Further, the PSI interviewer referred to the Individual's statement to the OPM investigator as the Individual's "intention" to contact the debt holder. This is confirmed by the Individual's testimony described above. Given the evidence before me, I do not find that the Individual made a promise or assurance to contact the debt holder. Further, even if the Individual's intention could be deemed an "assurance," I could not find that this incident would disturb my finding of mitigation. In this regard, I find the Individual's testimony convincing that she was distracted from contacting the debt holder by the need to reapply for another clearance and that her failure to contact the debt holder represent an isolated event and not a significant indication of poor reliability or trustworthiness.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the DOE's security concerns under Criterion L. Therefore, the Individual has demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should restore the Individual's access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: July 3, 2013