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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: November 30, 2011)

Case No.: PSH-11-0029

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Issued: March 21, 2012

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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." ¹ For the reasons set forth below, I conclude that the individual's security clearance should be restored. ²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. A routine reinvestigation of the individual revealed information concerning his finances that raised security concerns, and the local security office (LSO)

¹An 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.

²Decisions 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>.

summoned the individual for an interview with a personnel security specialist in August 2011. After reviewing the transcript of this Personnel Security Interview (PSI) and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They 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 17 exhibits into the record of this proceeding and the individual introduced 22 exhibits and presented the testimony of his ex-wife, his ex-landlord, a friend, and his girlfriend, 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 paragraph (1) 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 (1), information is derogatory if it indicates that the individual "has engaged in any unusual conduct or is subject to any 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 the national security." Such conduct includes, but is not limited to, "a pattern of financial irresponsibility." 10 C.F.R. § 710.8(1). As support for this criterion, the Letter alleges that the individual currently has outstanding collection accounts totaling \$30,928.94 due to 16 creditors, that he is currently over 120 days delinquent on repaying his student loans, with a past due balance of \$1,536, that he has two charged-off accounts totaling \$12,690, that he currently owes \$9,700 in back state and federal taxes and has previously had his wages garnished to pay back taxes, and that he has failed to repay four of his creditors despite having promised the DOE that he would do so.

This derogatory information adequately justifies the DOE's invocation of criterion (1), and raises significant security concerns. An individual who is financially overextended is at risk of having to engage in illegal activity to generate funds. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines), Guideline 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 *Adjudicative Guidelines* set forth factors that could mitigate security concerns raised by allegations of financial irresponsibility. Among those factors are “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, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” and “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” *Adjudicative Guidelines*, Guideline F, ¶ 20(b), (d). After reviewing the testimony at the hearing and the record in this matter as a whole, I find that both of these factors apply to the case at hand.

There is substantial evidence in the record indicating that the individual's financial dilemma was caused in large part by his divorce, which was finalized in 2007, and by his adherence to the terms of a lease he signed in 2009 during his cohabitation with another woman. The individual's ex-wife testified that from October 2005, when the couple separated, until 2011, the individual paid her an average of \$500.00 per month in combined spousal and child support for herself and their eight-year old son. Hearing Transcript (Tr.) at 16-19. ³ The payments stopped, at least temporarily, in 2011 because the individual began to concentrate on paying off his overdue bills. Tr. at 19. For a period of time after their separation in 2005, the individual was paying both her rent and his own housing expenses. Tr. at 17.

In 2009, the individual began cohabiting with a woman with ten children. The individual's ex-landlord testified that in February of that year, the individual and the woman signed a one-year lease on a house where they all lived, with a monthly rent of \$1,800.00. Tr. at 34, 36. Although problems in the relationship caused the individual to move out of the house that July, he continued to make payments of approximately \$1,300 per month until the lease expired the following year. Tr. at 37. Consequently, for a period of time, the individual was paying approximately \$500 per month to his ex-wife and \$1,300 per month to his ex-landlord, in addition to having to cover his own living expenses. According to the individual, this made paying his bills "almost impossible." Request for Administrative Review at 2.

Based on the testimony at the hearing, I find that the individual acted responsibly under trying financial circumstances. In addition to the above, his friend testified that the individual did not use his income to live extravagantly. Tr. at 55. Instead, the individual supported his ex-wife and son, fulfilled his legal obligation to his ex-landlord, and later began paying off his debts.

At the hearing, the individual testified that as a result of this effort to resolve his indebtedness, he has fully paid off 10 of the 18 collection accounts and charged off accounts alleged in the Notification Letter, and is in the process of paying off two others. Tr. at 62-80. ⁴ The individual further stated that he has been in contact with the IRS, with state tax authorities, and with the creditor

³ There was no court order of support entered as a result of the divorce. According to the ex-wife, the individual made these payments voluntarily, on an as-needed basis. Tr. at 18, 23.

⁴ Of the remaining six collection or charged off accounts, four appear to have been sold to a new creditor and are listed twice in the Notification Letter, the individual is actively disputing a fifth, and he contacted the sixth alleged creditor, who informed the individual that it did not have a record of his account. The individual testified that he was also unaware of what this alleged debt was for. Tr. at 70.

who holds his student loans. He has begun making payments to the IRS and to the state, and has arranged a payment schedule for his student loans. Tr. at 97; Individual's Exhibit 18. I have thoroughly examined the comprehensive documentation submitted by the individual, including statements from creditors, cancelled checks, and credit reports, and have determined that his testimony about his repayment efforts is accurate. Finally, the individual testified that, with the exception of his two largest debts, for his student loans and for a vehicle that was repossessed, he anticipates that he will be debt-free within one year, and that the circumstances that led to his financial dilemma were unique and unlikely to recur. Tr. at 97, 102.

After the hearing, the individual submitted a projected budget for 2012, showing his monthly income of \$4,076.00 and projected expenses, including payments to creditors, for each month. Individual's Exhibit 22. The exhibit shows a surplus for each month, ranging from \$2,415.00 to \$3,840.00. I therefore conclude that the individual has the resources to repay his creditors and to return to good financial health.

V. CONCLUSION

As set forth above, I find that the individual's financial problems were largely caused by factors that were beyond his control, that he acted responsibly under the circumstances, and that he has made a concerted and largely successful effort to resolve his indebtedness. I further conclude that these mitigating factors are sufficient to address the serious security concerns under criterion (I) that are set forth in the Notification Letter. I therefore conclude that the individual has demonstrated 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 individual's security clearance should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: March 21, 2012