

criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criteria F and L, respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented his own testimony and that of one other witness, his wife. The DOE counsel did not present any witnesses. The individual and the DOE submitted a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 denial"); *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 his 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 her 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 personnel 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.

B. Basis for the Hearing Officer's Decision

2/ Criterion F concerns information that the individual has "misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive Positions, Personnel Qualification Statement, a Personnel Security Interview, written or oral statement made in response to an official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . ." 10 C.F.R. § 710.8(f). Criterion L relates, in relevant part, to information that a person 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. . . ." 10 C.F.R. § 710.8 (l).

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. Finding of Fact

On April 12, 2010, the individual signed a Questionnaire for National Security Positions (QNSP) certifying that all of the information he provided was true, complete and correct. However, in a PSI conducted in February 2012, he admitted that he failed to list thirteen delinquent financial accounts on his April 2010 QNSP. DOE Exh. 1. In addition, on November 21, 2011, the individual signed a QNSP certifying that all of the information provided was true, complete and correct. However, again, in his February 2012 PSI, he admitted that he failed to list twenty-one delinquent financial accounts on his November 2011 QNSP. *Id.*

In addition to the individual's omissions on two QNSPs, the individual, in his February 2012 PSI, admitted that he has made no attempts to satisfy two charge-off accounts totaling \$1,915 which he stated he intended to satisfy in a letter of interrogatory (LOI) response dated June 9, 2010. *Id.* He also admitted that he has made no attempts to satisfy a number of collection accounts totaling \$10,545. In addition, the individual admitted that he currently owes the Internal Revenue Service (IRS) over \$6,000 in back personal income taxes. According to the individual, he stated that he has not made arrangements to pay his delinquent federal tax debt because he has been waiting for the IRS to contact him. *Id.* During his February 2012 PSI, the individual also stated that he was not aware that records from his state revenue department indicated that he had not filed personal income taxes for the 2008 tax year. He admitted that in 2011 he had two tax liens stemming from past personal income tax debts to his state, has had one judgment and a wage garnishment. *Id.*

IV. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 3/ After due deliberation, I have determined that the individual's access authorization should not be granted at this time. I cannot find that granting the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding her conduct, to include knowledgeable participation, the frequency and recency of her conduct, the age and maturity at the time of the conduct, the voluntariness of her participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for her conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

A. Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites two potentially disqualifying criteria as bases for denying the individual's security clearance, i.e., Criteria F and L. To support its reliance on Criterion F, the LSO states that on April 12, 2010 and November 21, 2011, the individual signed QNSPs certifying that all of the information he provided was correct. Despite these certifications, during a PSI conducted in February 2012, the individual admitted that he failed to list a vast number of delinquent financial accounts.

From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Adjudicative Guidelines*).

To support its reliance on Criterion L, the LSO states that the individual has established a pattern of financial irresponsibility and has demonstrated an unwillingness or inability to satisfy his debts. The LSO cites a number of collection accounts totaling \$10,545 and the individual's admission that he has made no attempts to satisfy these debts. Failure or inability to satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all which also call into question the individual's reliability, trustworthiness and ability to protect classified information. See Guideline F, *Adjudicative Guidelines*.

B. Mitigating Evidence

At the hearing, the individual addressed his omissions on his April 2010 and his November 2011 QNSPs. He testified that when completing these questionnaires, he was not aware of all of the delinquent financial accounts, i.e., the thirteen accounts he failed to list in 2010 and the 21 accounts he failed to list in 2011, on his credit report and further stated that he did not obtain a copy of his credit report prior to completing the questionnaires. Transcript of Record (Tr.) at 52. However, upon questioning, the individual acknowledged that the LSO informed him of his outstanding accounts in June 2010 and that he began calling some of the companies. *Id.* at 51. He admitted that he did not contact all of the companies because he was afraid of getting harassed and because he did not have the ability to pay. *Id.* Despite these acknowledgments, he testified that he did not intentionally omit the information from his QNSPs. The individual further testified that he felt rushed when completing his QNSPs. *Id.* at 54. He acknowledged that he made a mistake by not checking into his outstanding accounts. *Id.* at 56. The individual indicated that he does not have a computer at home, but admitted that he could have used a computer at a public library in order to check this information. *Id.* at 56.

During the hearing, the individual acknowledged his past pattern of financial irresponsibility. However, he testified that he now considers himself to be financially responsible. *Id.* at 40. He

asserted that his financial problems in the past resulted from not earning enough money. The individual further asserted that he intends to pay all of his debts and has made significant strides at doing so. He stated that his mother has loaned him about \$8,000 which has allowed him to resolve a number of his delinquencies. *Id.* at 44. Although the individual stated that he has an agreement to repay his mother, she has not asked to be repaid. According to the individual, he allots a small amount of his check, about \$60 a month, to his mother through direct deposit to repay this loan. *Id.* at 46. He testified that he does not gamble or spend money on lavish vacations. *Id.* at 47.

The individual acknowledged that he has not created a budget nor has he sought credit counseling. He, however, testified that he has resolved a number of the delinquencies, cited by the LSO in the Notification Letter. During and after the hearing, he submitted documentary evidence to confirm that he has paid in full a number of these delinquent accounts. *See* Exhs. A-D. He also submitted documentary evidence to confirm that he has made payment arrangements with the IRS and his State taxation and revenue department. *Id.* However, there still remains a number of delinquent accounts that have not been resolved. The individual testified that he disputes these accounts and is working on resolving them. *Tr.* at 41.

The individual's wife testified that the individual has been working hard to resolve their debt. When questioned, however, she stated that she was not aware of many of the delinquent accounts listed in the Notification Letter. *Id.* at 19. She testified that she is aware that the individual has borrowed money from his mother to pay outstanding bills and has made payment arrangements with the IRS and the State. *Id.* at 20. The individual's wife testified that she has several health issues and was unemployed for about five years ago due to a surgery. She stated that these health issues have contributed to their financial hardship. *Id.* at 24 and 25. According to the wife, she and the individual have made significant efforts to reduce their bills since they were made aware of the DOE's security concerns.

C. Hearing Officer Evaluation of Evidence

1. Criterion F

The key issue under Criterion F is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual's omissions was serious. The individual's lack of candor concerning his financial problems could increase his vulnerability to coercion or blackmail and raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful. This important principle underlies the criteria set forth in 10 C.F.R. § 710.8(f).

The individual steadfastly maintains that he did not intentionally omit information regarding his delinquent financial accounts from his QNSPs. He testified that he was not aware of these delinquencies when completing his QNSPs, but admitted to being informed of his delinquent accounts in June 2010 and not addressing them. The individual also admitted that once he was informed of his delinquent accounts, he did not contact the companies because he did not have the ability to pay at the time.

After considering all of the evidence before me, I find that the individual has not mitigated the security concerns arising from his omissions on his 2010 and 2011 QNSPs. First, the testimonial evidence adduced at the hearing does not convince me that the individual did not deliberately omit this information from his QNSPs. Although the individual asserted that he was not aware of his delinquencies, it is difficult to believe that once being informed of his delinquent accounts in June 2010, he was not aware of these delinquencies when he completed his 2011 QNSP. I did not find this testimony to be credible. Second, it is also difficult to believe that the individual did not receive multiple written communications in the mail regarding these numerous delinquent accounts. His admission that he was afraid of being harassed leads me to believe that the individual was well aware of his financial situation and simply did not want to deal with it. In the end, I find that the requisite element of “deliberateness” has been met under Criterion F in this case. For this reason, I find that the individual has not mitigated the security concerns associated with Criterion F.

2. Criterion L

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that he is reliable and trustworthy, and that he is no longer subject to pressure, coercion, exploitation or duress. For the reasons set forth below, I find that the individual has not provided sufficient information to resolve the Criterion L concerns at issue.

Although the individual has initiated a good-faith effort to address most of his delinquent debt, the individual’s behavior with respect to his financial issues is recent and frequent. During the hearing, the individual acknowledged his pattern of financial irresponsibility and admitted that he could have done more to address his financial issues. He testified that he had not done a budget and did not seek credit counseling. The individual further testified that he did not take the time in 2010 to contact the companies regarding his delinquent accounts because he was afraid of getting harassed and he did not have the ability to pay. It was not until after his PSI in February 2012, and before the hearing that the individual began to make significant efforts to address his delinquencies. As of the date of the hearing, the individual provided testimonial and documentary evidence that he has resolved a number of the delinquencies cited by the LSO. Although, there are still a smaller number of accounts that the individual disputes and that have not been resolved. Despite the individual’s acknowledgment of his financially irresponsible behavior and his assurances from his efforts to recover, I believe the individual’s recent good-faith efforts to resolve his debt have not yet withstood the test of time. Furthermore, given the individual’s pattern of financially irresponsible behavior, I am not convinced that the changes of a return to his previous behavior are acceptably low. After considering the “whole person,” I am not convinced that the DOE can rely on the individual’s ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines* at (2)a. I therefore cannot find that the individual has sufficiently mitigated the LSO’s concerns under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and L. After considering all the

relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria F and L. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: September 13, 2012