

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXs.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing)
)
Filing Date: June 6, 2012) Case No.: PSH-12-0069
)
)
_____)

Issued: August 30, 2012

Decision and Order

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (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 access authorization should not be restored.

I. Procedural History

The Individual is employed by a Department of Energy (DOE) contractor in a position that requires a DOE security clearance. Based upon the receipt of derogatory information, the Local Security Office (LSO) called the Individual in for a Personnel Security Interview (PSI). DOE Ex. 14. After the PSI, the LSO informed the Individual that derogatory information created a substantial doubt concerning his eligibility for access authorization. Notification Letter dated May 3, 2012; DOE Ex. 1; 10 C.F.R. § 710.8(l) (Criterion L).

The Notification Letter 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, and I was appointed the

^{1/} 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.

Hearing Officer. I conducted a hearing within the required regulatory time frame. At the hearing, the DOE introduced 16 exhibits into the record of this proceeding. The Individual submitted 26 exhibits and presented the testimony of three witnesses, in addition to testifying himself.

II. Regulatory Standards

Under Part 710, certain types of information raise concerns about whether an individual is eligible for access authorization. In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, both favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” *Id.* § 710.27(a).

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See 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).

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.” *Id.* § 710.27(d). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* *See generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials.”) 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).

III. Findings of Fact and Analysis

A. Criterion L Concern

Criterion L applies where an individual has engaged in conduct casting doubt on whether he is “honest, reliable, and trustworthy.” 10 C.F.R. § 710.8(l); The Adjudicative Guidelines list criteria under Personal Conduct that support a Part 710 Criterion L Concern. Adjudicative Guidelines ¶ 16(e) (personal conduct that creates a vulnerability to exploitation, manipulation, or duress). In addition, the Adjudicative Guidelines list criteria under Financial Considerations that also support a Criterion L Concern. Adjudicative Guidelines ¶ 19(a) (inability or unwillingness to satisfy debts). Financial issues raise a Criterion L concern because they can indicate an unwillingness to follow rules and also brings into question whether an individual is honest, reliable, and trustworthy in his financial dealings.

At the time of the Notification Letter, the Individual and his wife were in substantial debt to a number of lenders. DOE Ex. 1 at 1-2. Accordingly, I find that the LSO properly raised a security concern under Criterion L.

B. Possible Mitigation of Criterion L Concerns

The Adjudicative Guidelines list a number of conditions that the Individual could use to mitigate the concerns raised under Criterion L regarding his financial difficulties. The conditions are:

- (b) 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;
- (c) 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

Adjudicative Guidelines ¶ 20 (b), (c), (d).

Security concerns arise in these types of cases where an individual has engaged in a pattern of financial irresponsibility. Even in cases involving bankruptcy, the security concern arises not from the bankruptcy filing *per se*, but rather from the circumstances surrounding a person's bankruptcy and his attendant financial problems. *See Personnel Security Hearing*, Case No. VSO-0509 (2002); *Personnel Security Hearing*, Case No. VSO-0414 (2001), *aff'd*, OSA, (2001).^{2/} Once a pattern of financial irresponsibility has been established, it is the individual's burden to demonstrate a new pattern of financial responsibility. In prior cases involving financial irresponsibility, Hearings Officers have held that “[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” *See Personnel Security Hearing*, Case No. TSO-1078

^{2/} 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>.

(2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009); *Personnel Security Hearing*, Case No. TSO-0732 (2009).

In addition to a substantial number of overdue debts, the Notification Letter raises the issue that during a November 2009 PSI, the Individual stated that he would contact his creditors for the delinquent accounts, which totaled \$51,800 in October 2009, but his debts had increased three years later as of March 2012, when his current credit report showed debts of \$75,889. DOE Ex. 1 at 2. While some of this amount can be attributed to the new car that was purchased in 2011, there is an additional amount unaccounted for. The Individual speculated at the hearing that the additional amount, over the amount of the car loan, must have been interest on the credit card accounts, which he consolidated in 2008. As an example, he noted that the credit limit on one of the cards is \$2,500, yet it showed a balance of over \$4,000.

Included in the debts referenced by the Notification Letter was an amount previously owed to his state for taxes, which was paid by garnishing his wages. DOE Ex. 1. The Individual and his wife explained that when they filed their taxes for tax year 2010, they owed a substantial amount to their state, which they could not afford to pay given their financial situation. They were advised to pay a small amount and wait for a tax bill. Tr. at 43. Somehow, both the Individual and his wife missed the bill. Tr. at 43. They received a notice that their wages were being garnished. Tr. at 43. The tax bill is now paid in full. Tr. at 43.

The Individual and his wife testified that they believe a series of salary decreases led to their financial difficulties. The Individual's wife testified that between September 2005 and November 2008, she was employed sporadically and often only in a part-time position. The wife testified that she was self-employed until September 2005, when her business ceased to exist. Tr. at 9-10. She was unemployed for a couple of months and then found a part-time job in March 2006. Tr. at 10. She was laid off from that position in December 2007. Tr. at 11, 21. In February 2008, she got a part-time job in her current occupation and was hired on in a full-time position in November 2008. Tr. at 12, 21. The Individual testified that, in addition to his wife's employment difficulties, in September 2008, his hours were substantially decreased, leading to a decrease in pay. Tr. at 15, 40. Also, because of his loss of security clearance, he moved to a different position, which also caused a decrease in pay. Tr. at 40. The Individual's two co-workers, who are also friends, testified that the Individual is honest and reliable. Tr. at 26, 68. Neither of them has seen him spend extravagantly. Tr. at 26, 68. The Individual's co-workers, both of whom have known him for over 10 years, attributed the Individual's bankruptcy filing and difficulty with his finances to his loss of salary due to his job changes. Tr. at 25, 67.

The Individual and his wife testified that beginning in early 2008, they realized they were having financial difficulties. Therefore, they consolidated their credit card debt in June 2008. Tr. at 13, 37. The Individual and his wife testified that they have not used a credit card since June 2008. Tr. at 13, 37. In March 2009, although they had not incurred any additional credit card debt, they again had trouble paying their bills. Tr. at 13. They did not testify as to what steps they took at that time to rectify the situation.

The Individual and his wife testified that they have been attempting to solve their financial situation for over two years. They consulted an attorney about filing for bankruptcy in March 2010. Ind. Ex. X at 1; Tr. at 58. The attorney submitted an affidavit stating that the couple consulted her in March 2010, at which time she told them to consult with her again after the loan modification on their existing residence was completed. Ind. Ex. X at 1. According to the exhibits submitted by the Individual, the loan modification was completed in December 2010. Ind. Ex. W. In July 2011, the Individual and his wife met with the bankruptcy attorney again. At that time, the loan modification was completed and she reviewed the "Means Test" calculations and determined that they did not qualify for Chapter 7 bankruptcy. Ind. Ex. X at 1. At the July 2011 meeting, the Individual and his wife informed the attorney that they wanted to purchase a new car because their car had high mileage and their child would be driving in the near future. Ind. Ex. X at 2. The attorney advised them that such a purchase seemed reasonable to her and that it would be easier to make the purchase prior to filing bankruptcy, rather than after the bankruptcy discharge. Ind. Ex. X at 2. When the Individual and his wife purchased the new car in late summer 2011, they signed a reaffirmation agreement, stating that they would not put the new car loan into bankruptcy, should they decide to file. Ind. Ex. X at 2. When the Individual and his wife next met with the attorney in April 2012, they informed her that they would be willing to include their family residence in the bankruptcy because their debt had become overwhelming. Ind. Ex. X at 2. They signed and filed a Chapter 7 bankruptcy petition on May 17, 2012. Ind. Ex. X at 2. The bankruptcy was discharged on August 22, 2012. Ind. Ex. Z at 1.

The Individual and his wife stated that in an attempt to correct their finances, they are living within a budget. Tr. at 33. They only purchase items they need for themselves or their children. Tr. at 33. They last made a payment on their house in January 2012. Tr. at 36. They have not used a credit card since June 2008. Tr. at 37. They will save \$200 in fuel costs when they move out of their house and closer to work. Tr. at 51. They know that they can only afford \$1,500 in rent. Tr. at 51. Their older vehicle will be paid off in four months. Tr. at 53.

I find that the Individual has not mitigated the concern raised under Criterion L. The Individual has a pattern of financial irresponsibility dating back prior to 2008, a period of over four years. He testified that he consolidated his credit card debt in June 2008 and stopped using credit cards at that time. When that did not solve the situation because of his and his wife's salary decreases, he consulted an attorney about filing for bankruptcy. He followed his attorney's advice regarding the bankruptcy filing, but without any apparent urgency. The Individual and his wife first consulted with an attorney in March 2010 but were told to wait until their mortgage loan modification was completed. The loan modification was completed in December 2010, over nine months after first consulting with the attorney. After the loan modification was completed, they did not consult with the attorney again until July 2011, over six months after the loan modification was completed. Ind. Ex. W; Ind. Ex. X. In addition, although on the advice of counsel but while still heavily in debt, they purchased a new vehicle. I find that this does not show a sustained pattern of financial responsibility. In addition, I am concerned that they are not living within their budget. The Individual stated that they can afford \$1,500 in rent payments going forward. Tr. at 51. They have not paid their mortgage since January 2012, a period of six

months. Yet, he testified that they have only \$5,000 in savings. To extrapolate, six months of \$1,500 rent payments would lead to \$9,000 in savings, not \$5,000.

But most importantly, as stated above, after a showing of a pattern of financial irresponsibility, our case law requires an individual to demonstrate a sustained pattern of financial responsibility to mitigate a concern raised under Criterion L for financial irregularities. *See Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009); *Personnel Security Hearing*, Case No. TSO-0732 (2009). The Individual has not yet established a sustained pattern of financial stability. The bankruptcy was filed on May 17, 2012, after he received the Notification Letter, and discharged on August 22, 2012. Ind. Ex. Z. As of the time of the hearing, the Individual was not yet living within a budget. He was not paying either a mortgage or rent, a substantial payment for most individuals. His savings do not reflect that he and his wife have been saving an amount equivalent to their projected rent payment. I find that as of the time of the hearing, the Individual had not shown a sustained pattern of financial stability. Therefore, I find that the Individual has not mitigated the Criterion L security concern.

IV. Conclusion

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve those concerns. Therefore, I cannot conclude that restoring 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). Consequently, it is my decision that the Individual's access authorization should not be restored at this time. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: August 30, 2012