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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: June 27, 2012)

Case No.: PSH-12-0078)

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Issued: November 8, 2012

Decision and Order

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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/} After carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's access authorization should not be restored.

I. Background

The Individual has held a Department of Energy (hereinafter referred to as the DOE) security clearance for 26 years. Based upon the receipt of derogatory information relating to his finances, the Local Security Office (hereinafter referred to as the LSO) called the Individual in for a Personnel Security Interview (hereinafter referred to as the PSI). DOE Ex. 22. 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 29, 2012; DOE Ex. 1. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one of the criteria set forth in the DOE personnel security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).^{2/} DOE Ex. 1 at 1-2.

^{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.

^{2/} Criterion L concerns information indicating that an 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

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

II. Regulatory Standards

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 denials”); *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 restoring 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 his 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

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. Such a decision must consider whether granting or restoring a person's access authorization will not endanger the common defense and

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 criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, 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).

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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites one criterion as the basis for denying the Individual's security clearance, Criterion L. To support the allegations, the LSO lists nine outstanding collection accounts totaling \$52,984, and seven unresolved charged-off accounts totaling \$53,730. *Id.* In addition, the LSO references the Individual's failure to pay his delinquent consumer debts after assuring the LSO in 2009 and 2011 that he would rectify the situation. The Individual's failure or inability to live within his means, to satisfy his debts, and to meet his financial obligations raises security concerns under Criterion L. Such actions 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. Guideline F 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). Moreover, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* Accordingly, based on the derogatory information listed above, I find that the LSO properly raised security concerns under Criterion L.

IV. Findings of Fact

As early as 2006, the LSO met with the Individual regarding his financial difficulties. Tr. at 29. The Individual was also questioned by the LSO in both 2009 and 2011 about his debts. Tr. at 30-31; DOE Ex. 1 at 2. The Individual assured the LSO in 2006, 2009, and 2011 that he would rectify his financial situation. Tr. at 30-31; DOE Ex. 1 at 2. In March 2012, the Individual had nine outstanding collection accounts totaling \$52,984, and seven unresolved charged-off accounts totaling \$53,730. DOE Ex. 1 at 1-2. Just prior to the hearing, the Individual's credit report showed a significant number of outstanding debts. DOE Ex. 26.

V. Analysis

I have thoroughly considered the record of 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/} and the Adjudicative Guidelines. After due

^{3/} Those factors include the following: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity at the time of the conduct; the voluntariness of his participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral

deliberation, I have determined that the Individual's access authorization should not be restored. I cannot find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is 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.

A. Mitigating Evidence

The Individual does not deny that 11 debts remain unresolved. He testified that has not had a credit card since 2006. Tr. at 35. The Individual claimed that the majority of the debts were incurred in repairing and maintaining his rental properties. Tr. at 31. The Individual stated that he sold two rental properties in March 2012, and used the proceeds to pay off one debt, in the amount of \$6,273.77. Tr. at 16. This debt was satisfied in response to a judgment entered against him. Tr. at 18. He also testified that he paid off four more debts in September 2012, in the amounts of \$846.14, \$1,290, \$1,875.27, and \$2,287.56. Tr. at 17-18. These four debts were not paid in full, but rather at a reduced rate. Tr. at 17-18.

The Individual also testified that he has retained three rental properties that he could sell in order to pay the remainder of his outstanding debts. Tr. at 18-21, 27. He has been reluctant to sell the properties because they have lost 50 percent equity in recent years. Tr. at 23. The Individual testified that he has had inquiries about his rental properties, and he has someone interested in one or two of those properties. Tr. at 23, 76. However, he also testified that he had not listed the properties with a real estate agent. Tr. at 74-75. In addition to his reluctance to sell the properties because of his loss of equity, when questioned why he had not sold them prior to the hearing, the Individual testified that he has been hesitant to sell the properties and pay off his debts until the outcome of the hearing. Tr. at 26, 28, 88. He was also questioned as to why he has \$20,000 in savings, as shown on his financial statement, yet still has 11 unresolved debts. Tr. at 28. The Individual stated:

Well, at the current time, depending on the outcome of this hearing -- I haven't paid off a lot of the debt, because if I do lose my job, I've still got mortgages, I have taxes coming up; and in order to kind of live, in the event that I do lose my job, I haven't spent all the money, so that that way I could have some money set back in the event that I have to find another job and give me some time. But my intention is to sell everything and pay off all of my debt.

Tr. at 28.

B. Hearing Officer Evaluation of the Evidence

The Adjudicative Guidelines suggest four possible conditions which are relevant to the Individual's situation to mitigate the DOE's security concerns: 1) the frequency and recency of the debt; 2) the origin of the debt; 3) the effort to repay or resolve the debt; and 4) the legitimacy

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.

of the debt. Adjudicative Guidelines ¶ 20 (a)-(b), (d)-(e). As I find below, the Individual has not met his burden to establish any of the mitigating factors.

First, the Individual's financial irresponsibility has spanned a period of at least six years and continues as of the date of the hearing. Although the Individual paid off five debts during 2012, he still has eleven debts remaining. DOE Ex. 26. As a result, I find no mitigation of the security concerns at issue here under paragraph 20 (a) of the Adjudicative Guidelines.

Second, during the hearing, the Individual was asked about the origin of the credit card debt and whether it resulted from a catastrophic event such as a medical illness or business downturn. While the Individual did testify that his wife is presently unable to work because of a medical condition, at no time did he allege that the credit card debt was due to her illness. Rather, he related that the credit cards were used to make improvements to his rental properties. The Individual's present unpaid debts demonstrate that his financial problem remains unresolved. As a result, I do not find mitigation of the security concerns under paragraph 20 (b) of the Adjudicative Guidelines.

Third, the Individual has initiated an effort to repay some of his overdue creditors. Tr. at 17-18. He paid one overdue debt in March 2012 after the company prevailed on a judgment in court and four other overdue debts one week before the hearing. The objective of waiting until the outcome of this decision to repay some of his creditors is too vague to constitute a repayment plan. As a result, the Individual has failed to mitigate the security concerns at issue here under paragraph 20 (d) of the Adjudicative Guidelines.

Finally, the Individual did not dispute the legitimacy of any of the debts listed in the Notification Letter. As a result, I find that the Individual has failed to mitigate the concerns at issue here under paragraph 20 (e) of the Adjudicative Guidelines.

Finally, our prior case law states 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. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (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 the present case, the Individual has not even begun rectifying his financial difficulties, so he has not yet demonstrated a pattern of financial stability. Based on the foregoing, I find that the Individual has not mitigated the Criterion L security concerns.

VI. 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.

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

Date: November 8, 2012