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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	August 10, 2012)	
)	Case No.: PSH-12-0107
)	

Issued : November 26, 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. Since 2009, the individual has experienced financial difficulties, which resulted in the Local Security Office (LSO) conducting two personnel security interviews with him.

In July 2012, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented his own testimony and that of a co-worker and friend. The LSO submitted nine exhibits into the record; the individual tendered nine exhibits as well.³

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 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 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). Thus, 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

² Criterion L relates 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).

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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 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 suspending the individual's security clearance, Criterion L. To support its allegations, the LSO lists the individual's current delinquent debts of approximately \$53,000, and charged-off accounts with balances of about \$34,000, and chronicles a pattern of unwillingness or inability to satisfy delinquent debts that dates back to 2007. The individual's failure to live within his means, to satisfy his debts and to meet his financial obligations raises a security concern under Criterion L, because his actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information. *See* 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, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. Findings of Fact

In about 2007, the individual withdrew \$25,000 from a line of credit with his bank. He used about \$10,000 of that amount to pay a number of debts he had accumulated. Ex. 8 (Transcript of June 12, 2012, Personnel Security Interview) at 94. He used another \$5000 to gamble, and loaned the rest of it to his sister to help her fend off foreclosure of her home, an effort that was ultimately unsuccessful. *Id.* at 95-96. In late 2007 or early 2008, the individual began taking out payday loans to cover bills as they came due. Transcript of Hearing (Tr.) at 46.

From 2008 through 2010, the individual claimed 99 dependents on his federal tax exemption certificate. By doing so, he avoided having any federal taxes withheld from his paycheck, maximizing the amount of his take-home pay. *Id.* at 61-64. He did so to have more money to save and more money to spend. *Id.* at 45-46. Although he was earning good money working overtime, he was spending too much, some on his family, but more on partying. *Id.* at 46; Ex. 9 (Transcript of November 23, 2010, Personnel Security Interview) at 35. Claiming 99 dependents was a common practice among his co-workers. Ex. 8 at 61; Tr. at 14. He understood that the Internal Revenue Service (IRS) would allow him to enter into an agreement to pay any taxes due after he received a tax bill. Tr. at 60. He did not realize, however, that, unlike some of his co-workers, he could not claim sufficient legitimate deductions to reduce his tax liability to a manageable amount at the end of the year. *Id.* at 48. Consequently, when he filed his 2008 tax return in 2009, he owed about \$11,000 in unpaid taxes, as well as interest and penalties. *Id.* at 61; Ex. B. The IRS entered into a payment plan that permitted the

individual to pay his tax liability in installments. Ex. 8 at 61. He fell behind on his payments in 2010, because he was paying off other debts, and the IRS garnished his paychecks. *Id.* at 61-62. He ultimately hired an attorney and entered into another agreement with the IRS, by which he has been paying \$840 per month, to increase to \$1110 per month starting in 2013. *Id.* at 61.

Later in 2009, the individual was arrested for Driving Under the Influence of Alcohol, and his work hours were reduced. Tr. at 47, 57. Because his earnings were now reduced, he continued to claim 99 dependents to maximize his take-home pay, to build his savings. *Id.* at 48. He revised his tax exemption claim to zero dependents beginning with the tax year 2011. Ex. 9 at 6. For the three years during which he claimed 99 dependents, the individual incurred over \$49,000 of unpaid taxes, not including assessed interest and penalties. Ex. B. As of July 2012, he had paid off nearly \$11,000 of his debt, and still owed over \$41,000 to the IRS. *Id.* He stopped making his monthly payments when his security clearance was suspended, at which time he could no longer work at his position and began receiving unemployment benefits. Tr. at 26. He has calculated that he will fulfill his agreement in 40 months, once he resumes making payments. *Id.* at 34.

In addition to his IRS liabilities, the individual has about \$14,000 in current debts, all of which have gone into collection status. Ex. 4 (March 7, 2012, Credit Report). He also has accrued about \$64,000 in charged-off debt. Ex. A.

In July 2012, the individual sought the advice of counsel regarding filing bankruptcy. Ex. A. He received an online briefing on bankruptcy in September. Ex. I. He paid the requisite fees in October, and his chapter 7 petition for bankruptcy was, at the time of the hearing, expected to be filed in November. Exs. G, H. The proposed bankruptcy petition would discharge all of the individual's current debts, including his overdue bills and charged-off accounts, with the exception of (a) his IRS liability of roughly \$41,000 and (b) a payday loan that the individual has continued to repay at the rate of \$170 per month, which should be satisfied in May 2013. Ex. A; Tr. at 35.

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)⁴ and the Adjudicative Guidelines. After due 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

⁴ 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 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.

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

At the hearing, the individual and his friend testified about the circumstances that brought him to his present financial status. His friend stated that the individual had come to his present position from the military; he was young and was not accustomed to his increased earnings. Tr. at 17. As a result, he overspent. *Id.* The individual echoed those sentiments, adding that he was young and naïve about finances, and made a series of mistakes. *Id.* at 20. He accumulated debt through vehicle and credit card purchases starting in 2007. He also used some of his income to help out family members, but admitted that he spent more on partying. *Id.* at 46. This led to payday loans, which he now understands to be unwise arrangements, and then to overclaiming exemptions on his federal tax exemption certificate. *Id.* at 46-48.

The individual stated that he accepts responsibility for his financial irresponsibility and has taken a number of measures to resolve his errors. *Id.* at 23. He has always intended to satisfy his debts, and acknowledged that his earlier efforts were not well advised. *Id.* He testified that he is smarter now about his handling his finances. He will be more careful about the types of loans he takes, but mainly he is committed to living within his means. *Id.* at 23, 25. To that end, he has developed a budget and has initiated bankruptcy proceedings.

The individual testified that he only recently decided to enter into bankruptcy. As stated above, he has intended to pay all his debts. However, since his security clearance has been suspended, he can no longer work at his current position, and is receiving only unemployment as income. Without his customary income, he cannot consider paying off his debts, either individually or through debt consolidation. *Id.* at 52.

At the hearing, the individual presented a budget based on his earnings at his current position, assuming no voluntary overtime, and assuming his security clearance is restored. *Id.* at 33; Ex. C. He explained that he is living within this budget, and meeting all expenses. Tr. at 67. Because he is receiving only unemployment compensation for the time being, he is supplementing that income by withdrawing from his savings the difference between his unemployment payments and his usual earnings. *Id.* at 54.

B. Hearing Officer Evaluation of Evidence

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the individual has demonstrated a pattern of living beyond his means for a considerable length of time. The individual's overstated his tax exemptions beginning in 2008, which led to a substantial tax liability of which he became aware in 2009. Nevertheless, he continued to overstate his exemptions for two more years, increasing his debt to the IRS. Moreover, he accrued substantial debt, through credit card and vehicle purchases and through payday loans, before he began overstating his exemptions. At the hearing, the individual testified that he always intended to repay his

debts, and that he will never overstate his IRS tax exemptions in the future. Nevertheless, I cannot mitigate the security concerns at issue here under Guideline F at ¶ 20(a), which addresses behavior that occurred long ago or very infrequently, because, while the behavior is no longer current, it was ongoing for at least five years, and I cannot find at this point that the financial problems will not occur again. Initiating bankruptcy is in some cases, and possibly here, a wise decision, and not one that necessarily demonstrates poor financial judgment. Under these circumstances, however, it reflects the consequences of the individual's past pattern of financial irresponsibility and, as it had not yet been filed as of the date of the hearing, the individual cannot yet demonstrate a new pattern of improved financial judgment.

Second, though the individual and his friend testified that the individual's financial difficulties arose from his generosity toward his family, he admitted that he created more of the debt through partying. In addition, I find that much of financial crisis was caused by his unwise decision to take advantage of a scheme to increase the size of his paychecks at the expense of later substantial liability to the IRS, including interest and penalty charges. I find that none of these decisions were based on unavoidable circumstances, but rather on a lack of discipline. Based on these findings, I cannot mitigate the individual's financial issues under Guideline F at ¶ 20(b), *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control.

Third, I cannot find for purposes of Guideline F at ¶ 20(c) that there are clear indications that the financial problem is under control. The individual has only recently taken two serious steps to correct his situation. As for the bankruptcy, the petition has not yet been filed, and may or may not be approved as filed. The individual's budget represents a good-faith effort to live within his means. It lists his monthly expenses, and shows a surplus of \$1371, which he attributes to "Save/Debts/Emergency Fund." Ex. C. That amount must be reduced, however, by \$1110, the monthly payment he will be required to pay the IRS starting in 2013, leaving him with a cushion of less than \$300 to contribute to an emergency fund or savings. For each month he continues on unemployment, he is withdrawing about \$2800 to support his budget income. Obviously, this pattern cannot continue for long. Moreover, the budget is in my opinion overly austere, with no provision for any routine vehicle maintenance or replacement of worn clothing or household supplies, let alone occasional entertainment or dining out. Finally, the individual admitted at the hearing that any additional expenses, such as going to a restaurant, would have to come from his savings account. *Id.* at 68. Consequently, even if the individual's bankruptcy petition were approved, and he is excused from paying the debts listed in the petition, I am not convinced that he will be able to live within the budget he has created in good faith.

To his credit, the individual has shown that he has, over time, paid many of his creditors, including his school loans and his payday loans. Ex. 4. Thus, the record contains of his good-faith effort to repay overdue creditors. Guideline F at ¶ 20(d). The fact that many of his debts remain unpaid, including his IRS liability, which he incurred for purely selfish motives, limits the weight of this mitigating evidence.

I am convinced that the individual has informed himself about financial discipline through online counseling and self-education. Tr. at 43-44, 74-75. I am further convinced that the individual has no desire to find himself again in his present circumstances regarding his access authorization. *Id.* at 51-52. Nevertheless, I remain concerned about the individual's judgment regarding future financial decisions. While he may have every intention not to repeat his mistakes, too little time has passed for him to demonstrate his newly acquired knowledge and discipline.

In prior cases involving financial irresponsibility, Hearing 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. PSH-12-0058 (2012); *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). At this point, it is simply too early for me to find that the individual has demonstrated a sustained pattern of financial responsibility for a significant period of time relative to his lengthy past period of financial irresponsibility.

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion L.

C. 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 Criterion 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 have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with Criterion L. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: November 26, 2012