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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	October 4, 2012)	
)	Case No.: PSH-12-0121
)	

Issued : January 23, 2013

Hearing Officer Decision

Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXX (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 that she hold a DOE security clearance. In June 2011, the individual’s employer notified the Local Security Office (LSO) that it had been served with a court order garnishing the individual’s wages to satisfy a judgment creditor. The LSO conducted a personnel security interview (PSI) with the individual on September 7, 2011, to address concerns about the individual’s finances. The individual provided the LSO with certain assurances regarding her finances. *See* Exhibit 10. In June 2012, the individual’s employer notified the LSO that it had been served with an additional court order garnishing the individual’s wages to satisfy a different judgment creditor. As a result, the LSO conducted an

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.

additional PSI with the individual on July 31, 2012, to address the new information about the her finances and to review the assurances that she had made during the prior PSI. *See* Exhibits 9.

On September 11, 2012, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created substantial doubt regarding her 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 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 her receipt of the Notification Letter, the individual exercised her 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, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented the testimony of four witnesses, including herself. The LSO submitted ten numbered exhibits into the record; the individual tendered 12 exhibits (Exhibits A-L). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.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 her 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

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.

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). 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 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 notes, *inter alia*, (1) the individual's collection accounts totaling \$35,340; (2) the individual's charged-off accounts totaling \$10,398; (3) the garnishment of the individual's wages for an unpaid judgment with a balance of \$10,785; (4) the failure of the individual to make any payments on delinquent debt following the PSI in 2011; (5) the individual's failure to file her 2010 income taxes notwithstanding a filing extension which had expired; and (6) the individual's failure to file her 2011 income taxes or request an extension. The individual's failure or inability to live within her means, satisfy her debts and to meet her financial obligations, raises a security concern under Criterion L because her 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. 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

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

Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. 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 testified that she is the sole provider for her family. Tr. at 78. Her partner is disabled and receives Social Security disability benefits; in the recent years, her partner has had several surgeries in an effort to enter the workforce and participate in the family's finances. *Id.* at 44, 48, 88. The individual and her partner have four children, at least two of whom are still residing at their home. At the time that the individual began to live with her partner, her partner lived in a home owned by the partner's mother. *Id.* at 64, 72. The individual incurred mortgage debt when she purchased the home from her mother-in-law; the property seemed not to have had an agreed upon purchase price other than the individual agreeing to satisfy outstanding debts of her mother-in-law, not all of which were known at the time the individual took ownership of the property. *Id.* at 55, 64 – 69. The property was subsequently refinanced when additional debt of her mother-in-law became known; this debt may or may not have been secured by the property. *Id.* at 64 – 69.

The house was expanded to accommodate the size of the individual's family and, following the birth of their youngest son, substantial upgrades were made to address concerns that arose from his ill health during his first months – for example, the house had no source of heat other than a pellet stove and heating and cooling systems were installed in the house. *Id.* at 40, 41. These improvements were financed through various loans and credit cards. *Id.* at 42, 63.

When the individual purchased the home and made the improvements, she was able to service all of the debt she incurred; however, this was a period of time during which she was working substantial overtime. *Id.* at 40, 63. In 2008, overtime opportunities were drastically reduced at the individual's place of employment and she found that she was unable to pay all of her debts. *Id.* at 61, 62. The household income was also reduced when the father of her partner's two oldest children died in 2008 and, as a result, child support payments for these children ceased and the individual assumed greater financial responsibility for these children. *Id.* at 54, 55, 73.

The individual explored the possibility of filing for bankruptcy, but was slowed from doing so because she was negotiating a loan modification with her mortgage lender who cautioned that a bankruptcy filing would derail the loan modification. Ex. 8 at 13 – 17. Her mortgage modification was recently completed and, subsequently, the individual filed for bankruptcy. *See* Ex. A; Ex. C. At the time of the hearing, the individual expected

conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

that her debts would be discharged by the bankruptcy court on January 14, 2013. Tr. at 91, 92.

B. Hearing Officer Evaluation of Evidence and Findings of Fact

I start my analysis by noting that none of the essential facts alleged by the LSO in the Notification Letter is contested by the individual. *Id.* at 61. With respect to bankruptcy proceedings, a discharge of a person's indebtedness by a bankruptcy court does not eliminate any security concerns which arise from the circumstances which led to the bankruptcy petition. *See Personnel Security Hearing*, Case No. VSO-0414 (2001); *Personnel Security Hearing*, Case No. TSO-0217 (2005). I am required to analyze the manner in which the person reached the point at which it became necessary to seek help from the bankruptcy court. *See Personnel Security Hearing*, Case No. VSO-0288 (1999); *Personnel Security Hearing*, Case No. TSO-0217 (2005).

In assessing possible mitigation of the security concerns arising from the individual's indebtedness, I note that at the time of the hearing the individual's bankruptcy petition was still pending and that she had substantial delinquent consumer and federal tax debt which was outstanding. She testified that she had not paid on her delinquent consumer debt since 2010. Tr. at 62. These financial irregularities were not infrequent or distant in time. (*Cf.* Adjudicative Guidelines at Guideline G, ¶20(a) which states mitigation of financial considerations may be considered if "*the behavior happened so long ago, was so infrequent ... and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*" (emphasis added).)

In seeking to understand whether the individual's indebtedness resulted from situations which were beyond her control, the individual was questioned about whether these debts arose from or were impacted by healthcare expenses of the individual's partner. The individual testified that those expenses were not a significant aspect of the individual's financial situation. Tr. at 45, 74. Additionally, I asked about the availability of documentation that linked the individual's outstanding debt to home improvements, with a specific concern on those that might have been undertaken to alleviate her son's medical conditions. The individual testified that those expenses were undertaken five or six years ago and documentation is no longer available. *Id.* at 64, 91. Based on the record of this case, I am unable to find that the individual's financial situation arose from circumstances beyond her control. (*Cf.* Adjudicative Guidelines at Guideline G, ¶20(b) which states mitigation of financial considerations may be considered if "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., ... *unexpected medical emergency ...*) and the individual acted responsibly under the circumstances" (emphasis added).)

The individual incurred debt without a plan or the ability to repay it based on her actual salary. When overtime opportunities were drastically reduced, she discontinued payments to a substantial number of her creditors and delayed petitioning for bankruptcy as those creditors went unpaid. She testified that these creditors have not been paid since 2010. Tr. at 62, 77, 78. There is no evidence that the individual made any good faith effort to her overdue creditors. *Cf.* Adjudicative Guidelines at Guideline G, ¶20(d).

The individual testified that, with the exception of the debt that she expects to be discharged by the bankruptcy court, she is now living within her means and has been living on a cash basis for the last several years. Tr. at 75 – 77. While I do not doubt that the individual sincerely believes she has established a pattern of living within her means, her inability to pay her federal income taxes for 2010 and 2011 suggests that she continues to be unable to live within her means. For each of those years, the individual owed and has been unable to pay in excess of \$1800 in federal income taxes. *Id.* at 81, 82; Ex. 8. She offered no explanation as to why her withholdings were insufficient for those years and, as of the date of the hearing, had not entered into a payment plan for satisfying her past due federal taxes. Her explanation that the Internal Revenue Service would not negotiate a payment plan while her bankruptcy petition was pending does not address her failure to negotiate a payment plan prior to her filing for bankruptcy on October 11, 2012. *See* Tr. at 82; Ex. A. I cannot find that the individual has brought her financial patterns under control. *Cf.* Adjudicative Guidelines at Guideline G, ¶20(c).

In addition to having failed to pay her federal taxes in 2010 and 2011, the individual also failed to file her income tax returns on a timely basis. At the time of the 2011 PSI, the individual had filed an extension for her 2010 tax returns. Notwithstanding that in the PSI the LSO stressed the importance of the individual filing her taxes prior to the expiration of her extension, the individual failed to file her 2010 returns prior to the extension deadline. At the time of her 2012 PSI, the individual had still not filed her 2010 taxes and had failed to either file or request an extension to file her 2011 taxes. *See* Tr. 78, 79; Ex. 9; Ex. 10. Only after the 2012 PSI, did the individual file her delinquent tax returns. *See* Ex. 8. Additionally, the individual's state tax refunds for those years exceeded \$1200 and presented an opportunity for the individual to reduce her outstanding indebtedness to the federal government; however, the individual testified that only \$400 of the state tax refunds has been put aside while the remainder was diverted to other expenses. Tr. 81.

From the record in this case, it appears that the individual's financial irresponsibility led to the need for the individual to seek bankruptcy protection. 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-12-0103 (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). Here, the individual has exhibited a sustained pattern of financial irresponsibility for several years and has begun to address these issues only recently. She is still waiting for discharge of substantial consumer debt by the bankruptcy court and has substantial federal tax debt outstanding without a payment plan in place. At this point, it is not possible to find that the individual has demonstrated a sustained period of financial responsibility for a significant period of time relative to her demonstrated financial irresponsibility.

The failure to file tax returns and pay taxes raises concerns beyond those associated with other patterns of financial irresponsibility. Failures to file taxes are also failures to comply with government rules and regulations, which implies a lack of respect for governmental authority or suggests willingness to disregard rules and regulations when compliance is not personally convenient. Selective compliance with the law is inconsistent with the trustworthiness necessary for access authorization; the ability and willingness to comply with rules and regulations is essential for those people with access authorization. *See Personnel Security Hearing*, Case No. PSH-12-0103 (2012). The individual failed to file her taxes for two consecutive years and only filed those tax returns after her second PSI. Hearing Officers have held in other tax delinquency cases that “the lack of interest and effort, over a lengthy period, in dealing with taxes is incompatible with the standards required of those who hold an access authorization.” *See Personnel Security Hearing*, Case No. TSO-01078 (2011); *Personnel Security Hearing*, Case No. TSO-0457 (2007); *Personnel Security Hearing*, Case No. TSO-0378 (2006); *Personnel Security Hearing*, VSO-0538 (2002).

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 at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Hearing Officer
Office of Hearings and Appeals

Date: January 23, 2013