

entitled to a hearing before a hearing officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the hearing officer. The DOE introduced 45 exhibits into the record of this proceeding. The individual introduced 37 exhibits, and presented the testimony of five witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Exhibit 1.³ Under this criterion, the LSO cited the fact that the individual filed Chapter 13 Bankruptcy Petitions in April 1999, July 2002, February 2006, and October 2010. The Notification Letter also cited the individual's failure to report his 2002, 2006, and 2010 bankruptcy filings within the time period required by relevant DOE directives.⁴

The above information adequately justifies the DOE's invocation of criterion (l), and raises significant security concerns. The failure or inability to live within one's means, satisfy debts, and meet financial obligations, 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines), Guideline F. Further, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* In addition, conduct involving questionable judgment or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.* at Guideline E.

³ Paragraph (l) defines as derogatory information that an individual 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. § 708.8(l).

⁴ The Notification Letter includes an allegation that, during a 2004 PSI, the individual "stated he understood that he was required to report bankruptcies within a certain time." Exhibit 1 at 3. However, because I could find no such statement in the 2004 PSI, Exhibit 41, I conclude that this allegation is not accurate. *See* Tr. at 189; E-mail from DOE Counsel to Steven Goering, OHA (February 29, 2012) (confirming absence of such statement in 2004 PSI). The Notification Letter also makes allegations as to the individual's statements in a 2006 PSI. Exhibit 1 at 2-3. In an affidavit addressing the allegations in the Notification Letter, the individual states that certain of these allegations are incorrect. Exhibit JJ at 3, 5 (disputing allegations in paragraphs A(3) and B(2) of Notification Letter). However, the transcript of the 2006 PSI does contain the statements attributed to the individual. Exhibit 40 at 11, 51-52 (regarding whether he was aware of DOE's reporting requirements for bankruptcy and whether he had tried means other than bankruptcy to satisfy his delinquent accounts). Thus, I find these allegations to be valid. Nonetheless, the individual is correct that the Notification Letter assumes, without basis, that the individual had an *accurate* understanding of the reporting requirements when, as discussed below, it is not clear that he did. Exhibit JJ at 5, 6; *see, e.g.*, Exhibit 1 at 3 ("*Despite this knowledge*, he failed to report his October 12, 2010 Chapter 13 Bankruptcy until August 8, 2011."). Aside from the above, the allegations set forth in the Notification Letter are not in dispute. *See* 10 C.F.R. § 710.27(c) (requiring hearing officer to "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter.).

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a hearing officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

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.” 10 C.F.R. § 710.27(d). 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).

IV. ANALYSIS

The individual does not dispute that he has filed for bankruptcy four times, in 1999, 2002, 2006, and 2010, and that he failed to notify the LSO of the last three filings within the time period required, verbally within two working days followed by written confirmation within the next three working days. DOE O 472.1B (March 24, 1997) at 18-19; DOE O 472.1C (March 25, 2003) at 19-20; DOE M 470.4-5 (August 26, 2005) at IV-3. He has, however, offered some evidence of progress toward resolving the concerns raised by the allegations. Nonetheless, as discussed below, though the individual has taken genuine steps toward better managing his finances, he has not yet established a sustained pattern of financial responsibility, and certain circumstances that contributed to his difficulties appear likely to continue into the future. This, combined with unresolved concerns raised by his failure to report his bankruptcies as required, leads me to conclude that the individual’s clearance should not be restored at this time.

First, regarding his failure to timely notify the LSO of his bankruptcy filings, the individual testified at the hearing that he “understood that it was sufficient to report” his bankruptcies on the Questionnaire for National Security Positions (QNSP) that, as a participant in DOE’s Human Reliability Program (HRP), he was required to file annually. Hearing Transcript (Tr.) at 10.⁵ It would, in fact, be difficult to find that the individual was trying to conceal from the DOE the

⁵ The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions afforded access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. *See* 10 C.F.R. § 712.1. Among the numerous requirements for participation in the HRP are a level “Q” DOE security clearance and the annual submission of a QNSP. *See* 10 C.F.R. § 712.11(a).

bankruptcy filings at issue, as each appears to have come to the attention of the DOE because of the individual's self-report, and in each case within less than one year of the respective bankruptcy filing. Exhibit 1.

Still, it is perplexing that the individual would not have complied with the relevant reporting requirements. At the hearing, the individual acknowledged that he receives annual security refresher training, though he stated that he did "not recall seeing those specific reporting requirements in the trainings." Tr. at 94. The individual, however, does not dispute that the requirements were covered in the annual trainings, and the DOE Counsel has submitted copies of the current training materials and those used in 2005, both of which include the reporting requirements for bankruptcy filings. Exhibits 44, 45.

Knowledge of reporting requirements for clearance holders is fundamental to the personnel security process, as compliance with these requirements ensures that relevant security officials can become aware of potentially derogatory information in a timely manner and take appropriate action to protect the national security. It is disturbing, therefore, that the individual, who had held a security clearance since 1988, Tr. at 9, would not be familiar with these requirements. What is more troubling yet is that, after filing for bankruptcy in 1999 and three times thereafter, the individual never specifically noticed the requirements pertaining to the reporting of bankruptcy filings, despite the fact that these requirements were presented to him yearly in security refresher briefings.

At the hearing, the individual offered no explanation for his failure to understand the reporting requirements that applied to him, though he recognizes that he "made a serious mistake." Tr. at 229. It is clear that he is now aware of the requirements for reporting bankruptcy filings, *id.* at 10, and he testified that he was

going to read over the annual security refresher briefing again at work when I get a chance and I want to go through the HRP packet again, the training, and be sure that I, from here on out, that I read things thoroughly and understand, you know, if I have to ask a question to someone relevant to the training or whatever, not forget to ask questions and definitely read more thoroughly and try to get a better understanding of what is the correct manner in these situations.

Id. at 229.

This testimony is somewhat reassuring, and I find it unlikely that the individual will run afoul of the relevant reporting requirements in the future, at the very least not with respect to the requirement to report bankruptcy filings. But the individual's repeated failure to take seriously the need to familiarize himself with these most basic requirements raises larger questions about his judgment going forward. This pattern of behavior continued over a period of more than 10 years, and only ended recently. 10 C.F.R. § 710.7(c) (requiring consideration of "nature, extent, and seriousness of the individual's conduct" as well as its "frequency and recency"). Thus, despite testimony that he had demonstrated his ability to follow rules in the workplace, *see, e.g.*, Tr. at 178 ("stickler for the rules"), I cannot find resolved the legitimate concern that the individual is at risk for, even if only through negligence, failing to comply with other applicable rules and regulations in the future.

The other dimension of concern under criterion (1) stems from the underlying financial problems that led the individual to file for Chapter 13 bankruptcy protection on four occasions within a 12-year period. First, to the extent that the individual's problems resulted from irresponsible financial behavior, those problems may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Adjudicative Guidelines at ¶ 18. On the other hand, even where an individual encounters financial difficulties through no fault of his own, there is a separate concern noted in the Adjudicative Guidelines, that "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." *Id.* Such a concern exists independent of the circumstances leading to an individual's financial distress.

Here, any concern that the individual's financial problems were due to his irresponsibility are mitigated, at least in part, by the fact that his daughter suffers from a rare genetic disorder that has caused recurrent medical problems requiring frequent intervention, including surgery on a number of occasions. Tr. at 24-26, 31-38; *see* Adjudicative Guidelines at ¶ 20(b) (potential mitigation of security concerns where "conditions that resulted in the financial problem were largely beyond the person's control . . . , and the individual acted responsibly under the circumstances"). The LSO, despite the individual's prior bankruptcy filings, noted these circumstances in deciding previously to continue the individual's access authorization. Exhibit 16 (March 6, 2003, case evaluation sheet) at 5; Exhibit 11 (December 27, 2005 case evaluation sheet) at 3; Exhibit 8 (July 17, 2006 case evaluation sheet) at 1; Exhibit 7 (September 7, 2010, case evaluation sheet) at 1.

Aside from these circumstances, however, the individual acknowledged that he had not taken an active role in managing his family's finances, instead leaving this to his wife. "I have not taken the role that I should have to help her and I feel bad about that and I should have taken more of a role in my finances." Tr. at 57. He stated he was learning to "be more active" by working with a financial counselor. *Id.* at 57-58.

This counselor, whom the individual and his wife began to work with in January 2012, testified at the hearing in this matter. Tr. at 129-53. The individual and his wife entered into this counseling voluntarily, as opposed to the mandatory education and counseling required by the bankruptcy courts, which the individual and his wife have also completed in the past, most recently in October 2010. Tr. at 113; Exhibits V, W. In her testimony, the counselor opined as to what led the individual to file for bankruptcy repeatedly, citing medical expenses as the "obvious" reason, but adding that "they haven't been intentional in their money and that is a very human natured thing. We do not come out of the womb knowing what to do with money." Tr. at 146.

A staff psychologist who participated in evaluation of the individual under HRP also testified at the hearing and acknowledged having concerns regarding the individual's judgment due to his repeated bankruptcy filings. "[A]s a psychologist, one of the things that I know is that people can have less adequate judgment in certain circumscribed areas of their life and good judgment in other areas. Clearly, he didn't have the best judgment financially, which worried me." *Id.* at 160-61. The psychologist testified that it was her "assessment that he and his family kind of used the bankruptcies as a budgetary means. They managed to get everything paid off and then they build up debt again and then they get it all paid off by the bankruptcies." *Id.* at 161.

In their testimony, the individual and his wife stated that they had, in the past, purchased from rent-to-own stores and obtained cash advances on paychecks, which they both acknowledged were not wise financial practices. *Id.* at 60-61, 198. When I asked the individual's wife whether one of the

factors that led to their financial troubles was spending money on things they did not need, she frankly admitted, “Yeah, I mean, we would just see something, you know, it is okay, get it, and didn’t realize what the consequences were.” *Id.* at 230.

Viewed more positively, the individual’s recognition of past mistakes can be seen as a necessary step in establishing a new, more responsible, pattern of managing his family’s finances. Indeed, the insight he has gained appears to be in large part a product of his interaction with their financial counselor. *See, e.g., id.* at 57-63, 69-71, 78, 87-88. The counselor has also equipped the individual and his wife with tools to use moving forward, the most concrete of which takes the form of a computer spreadsheet, which not only takes stock of their current financial status, but also provides a timetable projecting the payoff of the approximately \$6,000 in debt that was not included in their current Chapter 13 bankruptcy plan. Exhibit KK (post-hearing submission of electronic spreadsheet file reflecting data as of March 5, 2012).

I commend the individual for taking these first steps, which may mark the beginning of a sustained pattern of financial responsibility and movement toward being free of debt. However, it is simply too soon to find that the financial concerns in this case have been sufficiently mitigated, for two reasons. First, these concerns are rooted in a long-standing pattern of financial problems and behaviors that have only recently changed. In prior cases involving financial issues, 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, e.g., Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009).

Thus, for example, while the individual has pledged to take an active role in managing his family’s finances, Tr. at 68-69, he made similar statements in his 2004 PSI, acknowledging that he had let his wife handle the bills in the past, Exhibit 13 at 33, but that his future intentions were, “as husband and wife, to work together . . . to see that all these bills are paid on time” *Id.* at 60. Though the individual now appears to have more support and education than he did in the past, more time is needed to determine whether this will make the necessary difference in his behavior going forward.

The second reason that the financial concerns in this case remain yet unresolved is that, even assuming that the individual exercises impeccable financial management in the future, he is still responsible for the care of his daughter, and this puts him at risk of incurring unexpected medical expenses in the future. The individual has submitted a budget that sets aside \$130 per month to cover regular medical expenses, such as prescription drugs and copays. Exhibit KK. However, when I asked about these expenses at the hearing, the individual and his wife calculated that they had a total of \$125 per month in prescription drug expenses alone. Tr. at 220-24. Thus, their budget, as is, would allow for only five dollars per month to cover copays for visits to doctors, not including emergencies and/or hospitalizations.

The individual testified that he had to call an ambulance to take his daughter to a hospital two weeks prior to the hearing and that “she is going to have to go back in the middle of next month for some more surgery.” *Id.* at 107-08. The individual and his wife both acknowledge that they would need to have an emergency fund for such incidents. *Id.* at 110, 209-10. The most recent budget submitted by the individual sets aside \$200 per month for building up such a fund, which in time will add up,

but which will total less than \$700 at the end of April 2012, and this would appear to be before accounting for any expenses due to the medical emergency two weeks prior to the hearing and the surgery set for the month after. Exhibit KK.

Even though this ongoing situation does not reflect upon the individual's financial responsibility, being due to circumstances out of his control, any future event that would leave the individual financially overextended would put him "at risk of having to engage in illegal acts to generate funds." Adjudicative Guidelines at ¶ 18. As with the lingering concerns caused by financial irresponsibility, this separate concern can only be sufficiently mitigated given adequate time, in this case for the individual to build the necessary savings to handle at least those medical expenses that, while not regular, would not be entirely unexpected given his daughter's medical history and condition. In sum, with respect to both concerns, while the individual appears to be on the right path financially, I cannot find that he is far enough down that path at this time such that the financial concerns in this case have been adequately resolved.

V. 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 there is not sufficient evidence at this time to adequately mitigate the security concerns at issue. 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.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: April 24, 2012