

The Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization. The Individual requested a hearing on this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced 13 exhibits into the record of this proceeding. The Individual, through her attorney, submitted 16 exhibits and presented the testimony of four witnesses, in addition to testifying herself.

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).

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); *see Personnel Security Hearing*, Case No. VSO-0013 (1995), *aff’d*, OSA, 1995.^{2/} 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 she is “honest, reliable, and trustworthy.” 10 C.F.R. § 710.8(l); *see also* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005, by The White House (Adjudicative Guidelines) ¶ 19 (c) (a history of not meeting financial obligations).

^{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>.

The record indicates that the Individual has filed for bankruptcy three times: in 1979, in 1989, and most recently, in 2011. The Individual's recent bankruptcy is sufficient to support a Criterion L security concern. Accordingly, I find that the LSO properly raised a security concern under Criterion L.

B. Possible Mitigation of Criterion L Concerns

When a person files for bankruptcy, a security concern arises not from the bankruptcy filing *per se*, but rather from the circumstances surrounding a person's bankruptcy and his or her attendant financial problems. *See Personnel Security Hearing*, Case No. VSO-0509 (2002); *Personnel Security Hearing*, Case No. VSO-0414 (2001), *aff'd*, OSA, (2001). When reviewing the access authorization of a person who has filed for bankruptcy relief, I must focus on how the person reached the point at which it became necessary for him or her to seek the help of the bankruptcy court in order to regain control of his or her financial situation through the legal discharge of his or her debts. *See Personnel Security Hearing*, Case No. VSO-0288 (1999), *aff'd*, OSA (2000). Thus, in this case I must consider whether legitimate financial hardship necessitated the individual's multiple bankruptcy filings or whether the three bankruptcy filings result from the individual's irresponsible behavior.

In evaluating the evidence presented by the individual, I note that once a pattern of financial irresponsibility has been established, it is the individual's burden to demonstrate a new pattern of financial responsibility. *See Personnel Security Hearing*, Case No. VSO-0509 (2002); *Personnel Security Hearing*, Case No. VSO-0108 (1996), *aff'd* OSA (1997). Based on the record before me, I find that, although the Individual has challenged some of the detail in the Notification Letter,^{3/} the Individual has not presented sufficient evidence to mitigate the security concerns that her bankruptcy resulted from a pattern of financial irresponsibility.

The Individual testified that she filed for bankruptcy in 1979, 1989, and 2011. DOE Ex. 1 at 1. She testified that the first two bankruptcies were filed during her first marriage. Tr. at 45, 47. The Individual testified that her first husband worked sporadically and also abused drugs and alcohol. Tr. at 45-46. She stated that, during the marriage, he spent all the money he earned and took money from her when he could. Tr. at 46. The 1989 bankruptcy occurred right before she and her first husband divorced. Tr. at 47.

^{3/} At the hearing and in her response to the Notification Letter, the Individual claimed that some of the allegations listed in the Notification Letter were misleading. DOE Ex. 2 at 1; Tr. at 58. She stated that the Notification claimed she made a budget in July 2011 which showed she was spending more than her income, yet she continued to purchase items, including a \$5,000 weight-loss program. DOE Ex. 1 at 1. The Individual testified, and provided an exhibit that showed that the weight-loss program was purchased in April 2010, over a year prior to her alleged budget. Tr. at 58; Ind. Ex. E. The Individual testified that despite what was alleged in the Notification Letter, the credit cards that she used to get rewards were opened prior to her budgeting process in July 2011 and that she stopped using them thereafter. Tr. at 59, 65.

The Individual claims that her recent bankruptcy, which was discharged in December 2011, is the result of the massive housing decline in her community, rather than a pattern of financial irresponsibility. Tr. at 47, 52-53. The Individual and her husband own two houses, each of which carries a mortgage. She married her husband in 2005 and they moved into her house. Tr. at 110; DOE Ex. 10 at 4. They retained his residence as a rental property. The rental property was refinanced in 2004, right before they married. Tr. at 109. Her property was refinanced in 2007. Tr. at 109. Both houses are currently valued at amounts less than the mortgages on them.^{4/} Tr. at 52. She claimed that she refinanced her houses expecting to sell them within one year of the refinance, but because the housing market declined, she could not sell the houses to cover her mortgages. As discussed below, I believe her financial problems are deeper than the decline in the housing market.

The Individual's financial problems were exacerbated by the fact that she withdrew money from her retirement plan to pay off some bills and help her family, including purchasing a car for her grandson, who needed it to get to a job, and paying for two family funerals. DOE Ex. 12 at 15; Tr. at 76. She realized tax consequences of over \$9,000 owed to the IRS and her home state. Tr. at 56, 83. The Individual testified that as soon as she realized the tax consequences she entered into a payment plan with both the IRS and the state, both of which are currently paid in full. Tr. at 108. She admitted that she carried extensive credit card debt, which is also evidenced by her credit report and the fact that she used the money from her retirement fund to pay off credit card bills. DOE Ex. 8. I find that, in 2010, when she used the withdrawal from her retirement plan to pay off some of the credit card bills, she should have realized that she had a problem with her finances. Yet it took her another year to finally realize she was in financial difficulties, and then apparently only after receiving bills from the IRS and her state for taxes related to the retirement fund withdrawal. Accordingly, I find that the circumstances surrounding the Individual's financial problems indicate a pattern of financial irresponsibility.

The Individual has shown that she has taken positive steps toward financial stability. She has paid off both the IRS and her state, as of the time of the hearing. Tr. at 108. In addition, she has closed all but one of her credit cards. Tr. at 87. Also, her present budget shows a surplus of approximately \$2,000 a month. She stated that to achieve that surplus, she eats out less frequently, reduced her utility bills, and no longer is paying finance charges on her credit cards. Tr. at 84-86. Also, the mortgages on both houses adjust yearly, which has led to a lower interest rate on both mortgages. Tr. at 80, 82. This has improved her financial situation. The Individual submitted a statement of her intention to not gamble in the future. Tr. at 71; Ind. Ex. P.

Despite the evidence that the Individual has taken positive steps to conduct her financial affairs in a responsible manner, I cannot make a predictive assessment at this point that the Individual will remain financially responsible in the future. Since the Individual's most recent bankruptcy filing, only six months has passed. A person who has filed for bankruptcy protection three times,

^{4/} The Individual stated that her husband's house was valued at \$310,000 when they refinanced and is now worth \$75,000. She continued that her house was valued at \$533,000 when they refinanced and is now worth \$180,000. DOE Ex. 3. She stated that the mortgage payment on the rental property is \$940, but they only receive rent of \$900. DOE Ex. 3.

most recently due to financial irresponsibility, needs to demonstrate a lengthy, sustained period of meeting all her bills and financial obligations in order to mitigate the security concerns. *Personnel Security Hearing*, Case No. TSO-0217 (2005). In this case, the bankruptcy was discharged in December 2011, a period of less than four months.

I find that the Individual has not mitigated the concerns raised by her financial problems. Although she appears to be on the way to financial stability, she filed her third bankruptcy in September, less than six months prior to the hearing date. In addition, the bankruptcy was only discharged in December 2011, less than four months prior to the hearing date. I find that she has not presented a sufficient pattern of financial stability. Accordingly, I find that the Individual has not mitigated the security concerns raised under Criterion L in regard to her financial difficulties.

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: May 10, 2012