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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: January 5, 2012) Case No.: PSH-12-0005
)
_____)

Issued: May 17, 2012

Decision and Order

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXX (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/} For the reasons set forth below, I conclude that the Individual's access authorization should be restored.

I. Procedural History

The Individual is employed by a Department of Energy (DOE) contractor. Based upon the receipt of derogatory information, the Local Security Office (LSO) called the Individual in for a Personnel Security Interview (PSI). DOE Ex. 12. After the PSI, the LSO informed the Individual that derogatory information created a substantial doubt concerning his eligibility for access authorization. Notification Letter dated December 22, 2011; DOE Ex. 1; 10 C.F.R. § 710.8(l) (Criterion L).

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

^{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.

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 nine exhibits into the record of this proceeding. The Individual, through his attorney, submitted 21 exhibits and presented the testimony of four witnesses, in addition to testifying himself.

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 he 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); Adjudicative Guidelines ¶ 16(d) (combined information showing questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations).

^{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>.

At the time of the Notification Letter, the Individual was overdue on a number of credit accounts, including his student loans. DOE Ex. 1 at 1. In addition, the Individual had traffic offenses and related court matters leading to questions about his personal conduct. DOE Ex. 1 at 1-2. Accordingly, I find that the LSO properly raised a security concern under Criterion L.

B. Possible Mitigation of Criterion L Concerns

1. Unpaid Financial Obligations

The Adjudicative Guidelines list a number of conditions that the Individual could use to mitigate the concerns raised under Criterion L regarding his financial difficulties. The conditions are:

- a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Adjudicative Guidelines ¶ 20 (a)-(e).

The Individual testified that his financial difficulties began after he graduated from college. Prior to graduation, he was working for the DOE as a student intern. Tr. at 53. When he graduated, he found a paid position with another company. Tr. at 54. After about six months, the company could no longer afford to pay him. Tr. at 54. He stated that he did not seek unemployment benefits, because he did not feel right about doing so. Tr. at 55. He was unemployed for over one year. Tr. at 54-55. He lived with his family and paid for his day-to-day expenses by doing odd jobs. Tr. at 54. In March 2011, he was able to get a position as a student intern with the DOE again, when he registered for his Masters Degree. Tr. at 56. In December 2011, he was hired in a full-time position with the DOE. Tr. at 57. When he was hired full-time, the Individual began correcting his financial irregularities.

At the hearing, the Individual testified that, except for his student loans, he has paid all his outstanding debts in full. Tr. at 59, 60, 62, 63; Ind. Ex. K, H, S, T, U. He did not believe all of the outstanding debts on the credit report and listed in the Notification Letter were his, but he paid them after a credit bureau confirmed that they were. Tr. at 59, 83-85. As to the

Individual's student loans, he testified that he has entered into two payment plans. Tr. at 63-65; Ind. Ex. J, I. The Individual stated that he did not include one loan in a federal consolidation with the other student loans, because the state in which he took out the loan had a better payment program than the federal plan. Tr. at 63. He testified that he is current on both the consolidated federal plan and the individual state plan. Tr. at 64, 66.

I find that the Individual has mitigated the concerns raised in the Notification Letter. As an initial matter, the Individual has demonstrated that his financial delinquencies arose as the result of his lack of employment, rather than a pattern of financial irresponsibility. Moreover, the Individual began to address his delinquencies as soon as he obtained employment and prior to the issuance of the Notification Letter. Ind. Ex. H, K, S, T, U. Indeed, there is evidence that the Individual tried to deal with his delinquent student loans beginning in 2009. DOE Ex. 9 at 96. Finally, the Individual fulfilled two conditions which can mitigate a concern raised by an Individual's financial delinquencies. *See*, Adjudicative Guidelines ¶ 20(c), (d). The Individual has been successful in his efforts to resolve his financial irregularities. All his outstanding bills have been paid, except for his student loans, which have been consolidated into two payment plans. He is current on both those plans. There is no evidence that the Individual is not current on his present living expenses. The Individual's girlfriend testified that he is responsible about his bills. Tr. at 33. She also testified that the Individual has a budget and "lives within it." Tr. at 33-34. Therefore, I find that the Individual has mitigated the concerns raised by his financial difficulties raised in the Notification Letter.

2. Personal Conduct

The Adjudicative Guidelines list a number of conditions that the Individual could use to mitigate the concerns raised under Criterion L regarding his personal conduct. The conditions relevant to my decision are:

- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

Adjudicative Guidelines ¶ 17 (d), (e). One of the automobile-related citations mentioned in the Notification Letter occurred in 2006, when the Individual was approximately 20 years old. That citation was for a broken headlamp. The other citations occurred in 2011: a March citation for exceeding the speed limit^{3/}, a July citation for lapsed insurance, and an October citation for the resulting expired registration. DOE Ex. 1 at 1-2. The Notification Letter also indicates that the Individual was arrested on a bench warrant for failure to appear in regard to the speeding violation. DOE Ex. 1 at 2.

^{3/} The Individual testified that he was exceeding the speed limit by five to six miles per hour. There is nothing in the record to contradict his statement

With respect to the 2006 traffic citation and related arrest, the Individual testified that he fixed the headlamp and intended to go to court to challenge the citation, but his hearing date was during a week when he had college exams. Tr. at 67. Because he missed the court date, he was arrested on a bench warrant. Tr. at 67-68. With respect to the missed court date for the speeding citation, the Individual testified that he missed the court date because of the August 2011 kidnapping and murder of his father. Tr. at 75. The Individual testified that “everything got put on hold for me. You know, like I said, I lost focus of what I was supposed to be doing. I just took off, and I came back about a month later to start sorting out my business again.” Tr. at 75. He also presented evidence that he subsequently went to court, paid the speeding citation, and demonstrated that he had obtained insurance, resulting in the dismissal of the July 2011 and October 2011 charges. Tr. at 76-77; Ind. Ex. L.

I find that the Individual has mitigated the Criterion L security concerns raised by his personal conduct. The first offense occurred six years ago when the Individual was 20 years old. Although he did not deal with the 2011 citations properly at the time, there were extenuating circumstances--his father’s kidnapping and murder. The Individual testified that his life “got put on hold” after his father’s murder. Tr. at 75. I found the Individual to be sincere in his testimony. Also, in addition to his sincere and honest testimony, I found his witnesses to be sincere when they all testified that he is trustworthy and honest. Tr. at 14, 22, 31, 45. One of his witnesses stated that the Individual is “one of the most solid [people] he has met.” Tr. at 44. Based on the hearing testimony and records in this case, I find that the Individual has mitigated the Criterion L security concerns.

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 presented sufficient information to resolve those concerns. Therefore, I 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 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, 17, 2012