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

In the Matter of: Personnel Security Hearing)
)
Filing Date: January 27, 2012)
)
_____) Case No.: PSH-12-0007

Issued: May 4, 2012

Decision and Order

David M. Petrush, Hearing Officer:

This Decision considers the eligibility of XXXXXXXX (the individual) to hold an access authorization¹ under the regulations at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As I explain below, the Department of Energy (DOE) should not restore the individual's access authorization.

I. Background

The individual began working at a DOE site in March 1992. Tr. at 87. In September 1999, his employer requested an access authorization for him. Ex. 8. Around then, the individual had completed a Questionnaire for National Security Positions (QNSP), which showed that he had a judgment of \$6,000 and four delinquent accounts totaling \$5,068. Ex. 9 at 1. In October 1999, the individual's credit report showed that he also had five charged-off accounts totaling \$4,576 and one collection account totaling \$179. *Id.* In February 2000, the local security office (LSO) mailed the individual a Letter of Interrogatory (LOI) to request specific information about his finances. *Id.* at 2. The individual failed to respond to the LOI, so in May 2000, the LSO discontinued processing his application for an access authorization. *Id.*

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.

In April 2001, the individual's employer again requested an access authorization for him. Ex. 9 at 2. An April 2001 QNSP showed continued financial problems, this time with a wage garnishment that began in September 2000. Ex. 8 at 2; Ex. 9 at 2. In May 2001, the LSO sent the individual another LOI. Ex. 9 at 2. By October 2001, the individual had still not responded to the LOI, so the LSO again discontinued processing his application for an access authorization. Ex. 8 at 1.

In September 2002, the individual's employer submitted a third request for an access authorization for the individual. Ex. 8 at 2. An August 2002 QNSP showed continued financial problems, as did a November 2002 credit report. *Id.* In February 2003, at a Personnel Security Interview (PSI), the individual told the LSO that he had paid the judgment against him as well as three accounts that were in collection or had been charged off. *See* Ex. 7 at 2. In March 2003, the LSO granted the individual an access authorization. *Id.* at 3.

In June 2011, as part of a routine background investigation, the individual completed another QNSP. *See* Ex. 13. In it, he disclosed that he had "misused credit cards," that he was more than 120 days delinquent on a debt, and that in the last seven years, he had had a debt turned over to a collection agency. *Id.* at 36-37. A June 2011 credit report and an October 2011 PSI also reflected continued financial problems. *See* Ex. 10; Ex. 15.

In December 2011, the LSO issued the individual a Notification Letter advising him that it possessed reliable information that created a substantial doubt about his eligibility to hold an access authorization. Ex. 1. In an attachment, the LSO explained that the derogatory information falls within the potentially disqualifying criterion in the security regulations at 10 C.F.R. § 710.8 (l) (Criterion L).²

After the individual received the Notification Letter, he invoked his right to an administrative review hearing under the Part 710 regulations. Ex. 2. On January 30, 2012, the Director of the Office of Hearings and Appeals (OHA) appointed me Hearing Officer, and I conducted the hearing. The individual testified on his own behalf and called two co-workers, his religious leader, and his mother. Each side offered several exhibits.

² Criterion L includes "unusual conduct" and "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." *Id.* at § 710.8(l).

II. The Notification Letter and the Security Concerns

The LSO supported its Criterion L security concern with the following allegations of financial irresponsibility:

- The individual owes \$4,376 to a collections account with a credit card, \$829 to a collections account with a telephone provider, and \$50 to a collections account from a medical bill;
- The individual has \$802 in past-due debt with a second credit card and \$234 in past-due debt with a third credit card;
- During an October 2011 PSI, the individual admitted that he is financially over-extended:
 - In 1978, he took out a \$1,500 student loan and never repaid it;
 - In 1992, he began spending compulsively and living beyond his means;
 - He used credit cards to pay bills when he did not have the money;
 - In June 1999, a financial services company had a \$6,000 judgment entered against him, which he has not paid;
 - Around 2000, he sought medical help for debt-related stress;
 - To handle his stress, he made purchases as an escape;
 - In a 2003 PSI, the LSO advised him of the DOE's concerns over his finances; and
 - In 2007 and 2008, he took \$41,000 in loans from his 401(k) and against his car to make purchases and to travel.

Ex. 1.

I find that the above information constitutes derogatory information that raises questions under Criterion L. 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 obey rules and regulations. These can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Guideline F, STEPHEN J. HADLEY, THE WHITE HOUSE, ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION (2005) 9.

III. Regulatory Standard

An administrative review 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 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 standard implies a presumption against granting or restoring an access authorization. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

A. The Individual’s Burden

The individual must present evidence to convince the DOE that granting an 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 Part 710 regulations permit the individual wide latitude to present evidence to mitigate the security concerns. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h).

B. The Basis for the Hearing Officer’s Decision

The Hearing Officer must issue a Decision that reflects his or her comprehensive, common-sense judgment, after considering all relevant evidence, favorable and unfavorable, whether the granting or continuing of an individual’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). The Hearing Officer must resolve doubt in favor of the national security. *Id.*

To reach a common-sense judgment, the Hearing Officer must consider the factors listed in 10 C.F.R. § 710.7(c)³ (the “whole person concept”) and the Adjudicative Guidelines. The Adjudicative Guidelines contain “conditions” or circumstances that may mitigate the allegations supporting each type of security concern.

³ These factors include witness demeanor and credibility; the authenticity and accuracy of the documentary evidence; the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledge and participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavior changes; the motivation of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *Id.* at § 710.7(c).

IV. Findings of Fact

In March 1992, the individual began his DOE-related job, which gave him a stable and predictable income. Tr. at 87; Ex. 17 at 156. Soon thereafter, he began living beyond his means. Tr. at 80; Ex. 15 at 42, 58. He bought “little things,” like clothes and meals, and paid household bills. Ex. 15 at 16-17; Ex. 16 at 9-10; Ex. 17 at 153. He also bought larger things. In 2007 and 2008, for example, he bought an expensive TV and a computer when he did not need them and could not afford them. Tr. at 80; Ex. 15 at 15, 26, 30. He spent compulsively, without “thinking about the future” because he wanted the newest and nicest things. Ex. 15 at 42, 53; Ex. 17 at 75. Once he spent his rent money on a new computer. Tr. at 82.

The individual financed his spending a variety of ways. He used credit cards to make purchases, take cash advances, and pay other cards. Ex. 15 at 25, 51; Ex. 16 at 8-9; Ex. 17 at 75. In 1999, he received a \$3,000 unsecured loan from a financial institution. Ex. 16 at 9-10. In 2006, he took a \$30,000 withdrawal from his 401(k) for the down payment on his parents’ house. Tr. at 76; Ex. 15 at 6, 9; Ex. 17 at 75. He took part-time retail positions in 1998, 1999, 2003, 2007, 2008, and 2009. Ex. 17 at 72, 154.

As early as 2000, the individual began to face the consequences of his spending. His wages had been garnished to pay a judgment from the unsecured loan. Ex. 15 at 41, 48; Ex. 16 at 10. His finances caused him to doubt whether he would receive an access authorization and keep his job. Ex. 17 at 152. By May 2000, the individual was so stressed that he absconded from work for one week and took sick leave for three more. Ex. 15 at 45; Ex. 17 at 152-53. He was referred to a mental health professional, whom he saw from August to October 2000. Ex. 17 at 98. By November 2002, the individual had four accounts in collection: a telephone bill, two dental bills, and a credit card. Ex. 11 at 1-2. He also had had seven credit cards charged off. *Id.* at 2. The balances on seven open credit cards totaled \$4,302. *Id.* at 3-4. In 2006, he owed the IRS taxes on \$10,000 of the \$30,000 that he withdrew from his 401(k) for the down payment. Ex. 15 at 6.

The individual has satisfied some of his debts. By March 2001, he had paid the judgment against him stemming from the unsecured loan. Tr. at 44-45, 63; Ex. M-1; Ex. M-2, and Ex. M-3. In 2007, he withdrew \$10,000 from his 401(k) and paid taxes and penalties. Ex. 15 at 7. In 2007 and 2008, he borrowed \$41,000 from his 401(k) to pay bills, including balances on three credit cards. *Id.* at 7-12, 37. (He has also used his tax refunds to pay down what he could. *Id.* at 28.) In June 2010, he paid a \$50 medical bill. Tr. at 52-53; Ex. 18 at 1; Ex. G. In November 2011, the individual’s parents gave him \$2,300 so that he could settle a debt with a fourth credit card. Tr. at 31-33, 93-94; Ex. F. By March 2012, he had paid the \$829 that he owed to his cell phone provider. Tr. at 50-51; Ex. 18 at 1; Ex. D; Ex. K.

The individual still pays other debts. The following table lists his debts, as reflected on his March 2012 credit report, and their repayment status:

<i>Amount:</i>	<i>Type:</i>	<i>Opened:</i>	<i>Status:</i>	<i>Repayment:</i>
\$3,746	Credit Card	7/2007	Charged Off	\$150 a month Ex. 18 at 1; Tr. at 29-30, 93; Ex. B; Ex. C
\$3,668	Credit Card	11/2007	Closed	\$117 a month Ex. 18 at 2; Tr. at 26, 28-29; Ex. A
\$3,472	Installment Account	11/2011	Open	\$160 a month Ex. 18 at 2; Tr. at 35-36
\$3,290	Credit Card	7/2007	Closed	\$103 a month Ex. 18 at 2; Tr. at 25-27
\$2,547	Auto Loan	5/2008	Open	\$50 a week Ex. 18 at 2; Tr. at 49

The individual owes several debts that are not reflected on his credit report.⁴ Every week he repays \$150 on the loans from his 401(k). Tr. at 18, 47-48; Ex. I; Ex. J. He still owes his parents \$2,000. Tr. at 33. (They told him that he should pay other debts first. *Id.*)

The individual's personal growth has helped him to manage his finances. In January 2009, he became religious. Ex. 15 at 47. He believes that he had been buying things to cope with stress and to fill the void in his life that only God can fill. Tr. at 46, 79, 86; Ex. 15 at 15, 54. He feels that God helps him to control his impulses, which he keeps in check. Tr. at 46; Ex. 15 at 34, 56. The individual no longer feels the need to buy the latest consumer goods; he now asks whether he needs something and can afford it. Tr. at 85; Ex. 15 at 54, 57, 65. He wishes to pay back his charged-off debts; he views not paying as stealing. *Id.* at 24, 33.

The individual realizes that before 2009, he had been disorganized and had lacked a plan for managing his finances. Tr. at 17. Now he has specific repayment plans with each creditor. *Id.* at 18. Around October 2011, he created a monthly budget (although he only wrote it down during the week of the hearing). *Id.* at 88-89. His budget includes money for debt service, gasoline, auto insurance (including coverage for his niece), television and internet service, cell phone service, and tithes to his church. *Id.* at 20; Ex. L. (He lives with his mother and father, who buy most of the food and pay the mortgage. Tr. at 38, 58-59.) Each month he has \$244 left. *Id.* at 38. Out of this, he saves \$10 a week for

⁴ In 1978, the individual took out a \$1,500 student loan. Ex. 15 at 33. At the hearing, he testified that he paid it in 1987. Tr. at 41. After the hearing, he claimed that he contacted the bank, and it told him that it had no record of the loan. E-mail from the Individual to the Hearing Officer and the DOE Counsel, April 20, 2012. Without verification, I cannot find that the individual has satisfied this debt.

a church trip. *Id.* at 50, 70. (Now he has \$80 in savings. *Id.* at 70.) In the past five months he feels that he got “a handle” on his finances. *Id.* at 75. “For the first time in a long time,” he said, “I actually feel in control.” *Id.* at 77. (He has not, however, sought out credit counseling. *Id.* at 15.) In March 2012, he opened a low-limit, secured credit card so that he can make small purchases to rebuild his credit. *Id.* at 57-58.

Since 2009, the individual has continued to face financial difficulties. In 2010, he entered a payment plan with a credit card. *Tr.* at 72-73. He made only two payments. *Id.* at 73. He said, “I just can’t say why it didn’t work out.” *Id.* at 74. In April 2011, the individual could not keep up with two of his credit card payments. *Id.* at 71-72, 95-96. In December 2011, the individual opened an installment account to buy holiday gifts. *Id.* at 37, 47. (He had previously opened installment accounts in June 2011, May 2010, December 2009, May 2009, October 2008, February 2008, May 2007, November 2006, December 2005, and September 2004. *Ex.* 18 at 2-6. He uses the installment accounts as “emergency” loans that he “just can’t seem to pay off.” *Tr.* at 35.) As recently as March 2012, the individual had been two months behind on his internet and TV bill, and he had to borrow money to pay. *Id.* at 67. He had not paid it because he had been distracted with other things – the same reason that he had delayed paying his \$50 medical bill. *Id.* at 69, 71.

V. Analysis

To determine whether the individual has mitigated the LSO’s allegations of financial irresponsibility, I will consider the relevant factors from 10 C.F.R. § 710.7(c) and the relevant mitigating conditions from Guideline F of the Adjudicative Guidelines – Financial Considerations.⁵

The individual has shown signs of financial responsibility. He acknowledged that he had spent beyond his means, and he has made good-faith efforts to repay his debts. He contemplated the reasons for his overspending, and his actions now reflect increased care

⁵ Guideline F contains the following relevant mitigating conditions:

- (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; [or]
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]

and thought in handling his finances. The individual drafted a monthly budget and set a savings goal, however modest. He recently cut back on his internet service. Tr. at 24. He knew that one credit card payment would increase from \$150 to \$175, so he budgeted \$175. *Id.* at 30. He knew that his niece might not pay him for her share of the auto insurance, so he budgeted all of it. *Id.* at 20-21, 23. Lastly, he opened a secured credit card to start rebuilding his credit.

I find, however, that despite these praiseworthy steps, the individual has not resolved the LSO's security concern. First, the individual's financial difficulties happened under no unique circumstances to suggest that they were beyond his control. He overspent on consumer items, not unforeseen emergencies. He fell into debt not suddenly, but steadily, over 20 years of his adult life, while receiving a stable, predictable income.

Second, the individual has suffered recent financial difficulties. In March 2012, he was in arrears on his internet and cable bill. In December 2011, he drew upon his "emergency" line of credit, and he also accessed that line of credit as recently as June 2011.

Third, the individual has not yet demonstrated financial competency. He has little time living under a written budget – less than a week. He has faced the problems that might be expected of a person with his limited budgeting experience. He neglected to include an expense for his medications. Tr. at 39. His monthly surplus income totals just over \$200 (assuming he saves \$10 a week for his church trip), an unrealistically low sum to pay for unanticipated expenses, entertainment, and special occasions – he used his December 2011 line of credit to cover holiday expenses.

Fourth, the individual has not sought financial counseling, and his history suggests that no consequences will inspire him to manage on his own. His debt has required him to take second jobs, to shuffle debt between credit cards, and to drain his retirement savings. Even the specter of losing his job could not curb his spending. In 2002, his credit card balances totaled \$4,302. Around this time (2000 and 2003), the LSO notified him that it would review his finances, which triggered personal and professional crises. In a follow-up PSI in 2003, the individual indicated that he would live within his means and would not build more credit card debt. Ex. 16 at 22, 24. In an interview in 2006, he said that the access authorization process was a "wake-up call." Ex. 17 at 153. Yet, by 2012, including his installment account, his balances had ballooned to \$16,723.

VI. Conclusion

Because the individual has not resolved the Criterion L security concern, I find that he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the DOE should not restore his access authorization.

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

David M. Petrush
Hearing Officer
Office of Hearings and Appeals

Date: May 4, 2012