

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of:      Personnel Security Hearing    )  
  )  
Filing Date:            April 9, 2012   )  
  )  
\_\_\_\_\_ )

Case No.:      PSH-12-0035

Issued: August 1, 2012  
\_\_\_\_\_

**Decision and Order**  
\_\_\_\_\_

David M. Petrush, Hearing Officer:

This Decision considers the eligibility of XXXXX (the individual) to hold an access authorization<sup>1</sup> 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 is employed in a position that requires him to maintain a DOE access authorization, which he had been granted. *See Ex. 3 at 1.* On an August 2011 Questionnaire for National Security Positions (QNSP), the individual disclosed a June 2007 vehicle repossession and a March 2010 wage garnishment for \$2,000 that stemmed from a debt to the Internal Revenue Service (IRS). *Ex. 4 at 8.* He also disclosed a 2011 citation for No Proof of Registration. *Id.* at 7. In December 2011, the local security office (LSO) invited the individual to a personnel security interview (PSI) to explain his finances and his disclosures. *See Ex. 18.*

In February 2012, 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

---

<sup>1</sup> 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.

an access authorization. Ex. 1. In an attachment, the LSO explained that the derogatory information falls within the purview of the potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8; subsections (l) (Criterion L) and (f) (Criterion F).<sup>2</sup>

After the individual received the Notification Letter, he invoked his right to an administrative review hearing under the Part 710 regulations. Ex. 2 at 1-2. On March 20, 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 his bankruptcy attorney and two co-workers. Each side offered several exhibits.

## **II. The Notification Letter and the Security Concerns**

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

- At a PSI in November 2008, the individual had stated that he would settle his delinquent accounts. Despite this representation, he had failed to arrange payments with the seven collection accounts and six charged off accounts that he had in 2008 and went on to incur five new collection accounts and two new charged-off accounts. His collection debt now totals \$18,283, and his charged-off debt now totals \$65,155;
- In March 2010, the IRS garnished the individual's wages to pay \$2,096 in back taxes;
- In October 2010, the individual responded to a Letter of Interrogatory stating that he understood the DOE's concerns with financial responsibility. Yet, he has not done anything to improve his finances; and
- In December 2010, a bank foreclosed on his home, which had an outstanding mortgage of \$248,000.

Ex. 1 at 2-4.

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

---

<sup>2</sup> 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). Criterion F relates to information that a person "has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire." *Id.* at § 710.8(f).

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 [hereinafter ADJUDICATIVE GUIDELINES].

The LSO supported its Criterion F security concern with the following allegations of deliberate misrepresentations, falsifications, or omissions:

- At a PSI in November 2008, the individual acknowledged the DOE's concerns about falsification. Yet:
  - He omitted a May 2005 traffic citation from three QNSPs, one in August 2009, a second in August 2010, and a third in August 2010.
  - He omitted a July 2006 traffic citation and a December 2007 traffic citation from five QNSPs: January 2008, August 2008, August 2009, August 2010, and August 2011;
  - He omitted a March 2010 traffic citation from a QNSP dated August 2011; and
- The individual omitted a March 1988 charge for Minor in Possession (MIP) from ten QNSPs, i.e., those he executed in November 2001, May 2004, August 2005, August 2006, August 2007, January 2008, August 2008, August 2009, August 2010, and August 2011.

Ex. 1 at 1-2.

I find that the above information constitutes derogatory information that raises questions under Criterion F. "Conduct involving . . . dishonesty . . . can raise questions about an individual's reliability, trustworthiness[,] and ability to protect classified information." Guideline E, ADJUDICATIVE GUIDELINES at 7.

### **III. Regulatory Standard**

An administrative review under Part 710 is not a criminal matter, where the government must prove the defendant guilty beyond a reasonable doubt. Rather, the standard places the burden on the individual because it protects 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 granting or restoring 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)<sup>3</sup> (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.

# **IV. Findings of Fact**

## **A. Financial Irresponsibility**

In 2003, the individual bought a home. Tr. at 31; Ex. 18 at 111; Ex. 19 at 73. He financed a thirty year, fixed-rate mortgage at \$1,500 a month. Ex. 18 at 112; Ex. 19 at 83.

In 2005, the individual increased his expenses. He married a woman with two children. Tr. at 32; Ex. 19 at 73-74. She did not work, which left him to support her and her children. Ex. 19 at 52-53, 74. In March 2005, the individual purchased more than \$6,000 of jewelry. Ex. 14 at 4. In April 2005, he took \$20,000 of equity out of his house to finish his backyard so that the children would have a place to play. Tr. at 32-33; Ex. 14 at 2; Ex. 18 at 112-13. In July 2005, he spent \$22,000 on a truck. Ex. 14 at 3; Ex. 18 at 135-36; Ex. 19 at 50. At the same time, he bought his wife a luxury car for \$32,000. Ex. 14 at 3; Ex. 18 at 135-37; Ex. 19 at 50-51. She was supposed to pay half of the \$600

---

<sup>3</sup> These factors include 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 for 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).

monthly payment, but she could not because she was still out of work. Ex. 18 at 137-38; Ex. 19 at 51. (She worked on and off. Tr. at 35.)

By 2006, the individual could not afford his monthly payments on the home equity loan. Ex. 18 at 115. He could not afford to keep both vehicles, either. He decided to allow a voluntary repossession of the truck, which was taken in mid-2007. *Id.* at 139-41. Also in 2007, the individual bought a time share and took a cruise. *Id.* at 48; Ex. 19 at 164.

By 2008, the individual's family expenses forced him to have to choose which bills to pay. Tr. at 113; Ex. 19 at 58. He would pay his mortgage, his car, and then his utilities. If any money was left, he would pay other bills. Ex. 19 at 59, 62. Then he fell at least \$2,000 dollars behind on his mortgage, before he caught up at the end of the year. *Id.* at 75-76, 81, 85. After the 2008 PSI, the individual incurred at least two new collection accounts: an account regarding a gym membership (which fell delinquent after September 2010) and an account regarding water delivery (which fell delinquent after October 2010). *See* Ex. 18 at 82-85, 92.

By February 2010, the individual fell behind again. He did so because his wife was out of work, and she spent a lot. Tr. at 35, 48; Ex. 18 at 123-125. The next month, she moved to another city in hopes of finding a job. Tr. at 38; Ex. 18 at 34-35. She could not find a job, so the individual had to cover her living expenses. Tr. at 36-38; Ex. 18 at 34-36. The individual's wife found a job in November 2010, but when she was out of work, the individual could no longer afford to keep the house. Tr. at 38-39; Ex. 18 at 32. He had not paid the mortgage from February to June 2010 and then made only one more payment. Ex. 18 at 124-25. The lender started foreclosure proceedings, and in December 2010, the individual moved out of his residence and began renting. *Id.* at 125-27. The house was foreclosed on a month later. *Id.* at 127. His wife never returned. *Id.* at 36.

During the last third of 2010, the individual experienced a recurring medical issue. Tr. at 40, 44; Ex. 18 at 9-10, 101. He had three surgeries in January 2011 and a fourth surgery in April 2011. Tr. at 44; Ex. 18 at 18, 102; Ex. E. Complications required him to miss work to recuperate. Tr. at 45; Ex. 18 at 18-19. In February 2011, he ran out of leave and had to take leave without pay until April 2011. Tr. at 46, 108; Ex. C.

By March 2011, the individual had cut expenses. He ate out less. Tr. at 111-12. He had also cancelled a cell phone service, gym membership, and water delivery. *Id.* at 49-50, 62-63, 67, 110-11, 127. Eventually, however, the individual had trouble paying his rent. *Id.* at 70.

By December 2011, the individual had fallen behind on many other bills. He owed more than \$8,000 in back taxes. Tr. at 121. He also had twelve collection accounts totaling more than \$18,000 and five charged-off accounts totaling more than \$43,000. Ex. 1 at 2-3; Tr. at 162, 164-66. (The individual does not owe on his foreclosed house. Tr. at 87-88, 144.) All of the debt belongs to the individual. *Id.* at 141. The individual handled the finances, and the wife shared none of the individual's accounts. *Id.* at 47, 86, 109-10.

The individual had tried to contact some of his creditors, including the IRS, a bank, a mortgage lender, a time share provider, a credit card, his phone provider, his water provider, and a collection agency. Tr. at 113-14; Ex. 18 at 46, 49, 151-52; Ex. 19 at 47, 79. The individual has a payment plan that will resolve his tax debt by mid-2014. See Tr. at 158-59. Some of his creditors would not negotiate; they wanted the full amount due. *Id.* at 53-54, 57-58. At least one creditor told him that they no longer owned his account. Ex. 19 at 68. He lost track of at least one other. Ex. 18 at 98.

The individual filed a Chapter 7 bankruptcy on May 29, 2012. Ex. A at 2. The bankruptcy will discharge all of his collection and charged-off accounts. Tr. at 159, 167. It includes a budget that he will use. Ex. A. (Before the bankruptcy, the individual had not used one. Tr. at 115). In May and June 2012, the individual took two bankruptcy-required courses that covered debt avoidance, insurance, employment, and personal finance. *Id.* at 77; Ex. B; Ex. D. The bankruptcy should be finalized in August 2012. Tr. at 181.

The individual's expenses have stabilized. He does not plan to spend any more money on his wife or her children because he and his wife separated in October 2011. Tr. at 82-83, 111; Ex. 18 at 35. He pays no alimony or child support. Tr. at 197. The individual paid off his car, and his health has improved. *Id.* at 47, 116.

## **B. Falsification**

The following table represents the individual's QNSPs and reportable events. The first event is a 1988 charge for MIP. Ex. 20: 25-26. The remaining events are an instance of military discipline, traffic citations,<sup>4</sup> a vehicle repossession, and a wage garnishment. The shading down each column represents the QNSPs where he was required to report the event. Each "X" marks a QNSP where he did so. The individual was obligated to report the 1988 MIP on each QNSP because the charge is alcohol-related. The individual was required to report the other events for only seven years. An asterisk marks each event not included in the Summary of Security Concerns.<sup>5</sup>

---

<sup>4</sup> Each traffic citation included in the Summary of Security Concerns imposed a fine above the \$250 threshold that requires reporting to the LSO.

<sup>5</sup> These events are nonetheless included in the table to show patterns in the individual's conduct.

*Reportable Events (and QNSP Questions Requiring Disclosure):*

<i>QNSP:</i>	1988 MIP (23(d))	02/98 Disc.* <sup>6</sup> (23(e))	06/04 Cit.* <sup>7</sup> (23(d))	05/05 Cit. (23(f))	09/05 Cit.* <sup>8</sup> (23(f))	07/06 Cit. (23(f))	06/07 Repo.* <sup>9</sup> (27(b))	12/07 Cit. (23(f))	03/10 Cit. (23(f))	03/10 Garn.* <sup>10</sup> (27(b))	2011 Cit.* <sup>11</sup> (23(f))
11/2001 (Ex. 13)											
05/2004 (Ex. 12)											
08/2005 (Ex. 11)			X								
08/2006 (Ex. 10)				X							
08/2007 (Ex. 9)											
01/2008 (Ex. 8)				X			X				
08/2008 (Ex. 7)				X							
08/2009 (Ex. 6)					X						
08/2010 (Ex. 5)									X	X	
08/2011 (Ex. 4)							X			X	X

**V. Analysis**

**A. Financial Irresponsibility**

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.

---

<sup>6</sup> Ex. 20 at 15.

<sup>7</sup> Ex. 11 at 7.

<sup>8</sup> Ex. 6 at 7. The September 2005 citation may be the same as the May 2005 citation – the individual may have confused the dates. He first disclosed the September 2005 citation four years after it happened (the individual disclosed most citations within a year), and he did so in a year in which he did not disclose the May 2005 citation.

<sup>9</sup> Ex. 4 at 8; Ex. 8 at 33; Ex. 19 at 28.

<sup>10</sup> Ex. 4 at 8.

<sup>11</sup> Ex. 4 at 7.

At the outset, I note that the individual has displayed an astounding lack of sophistication in handling his finances. He was not aware that if he canceled his cell phone or gym membership agreements, he would incur \$400 and \$1,500 fees. Tr. at 51, 62-63. As recently as 2008, he did not know how to access his credit report or where he might obtain advice on handling his finances. Ex. 19 at 139, 180. Also, he did not realize that his mortgage lender would hold him in arrears if he paid less than the full monthly payment. Ex. 19 at 75-76. As recently as 2011, he was not aware that he could negotiate with creditors. Ex. 18 at 105-06. At the hearing, he referred to a debit card as a credit card linked to his checking account. Tr. at 75.

Despite the individual's limited sophistication, he did make general attempts to cut back on his expenses and contact creditors. His bankruptcy attorney reviewed the individual's finances with him and vouched for his openness. Tr. at 151, 155, 193, 211-12.

The individual's lack of sophistication, however, caused him to lose track of his finances and fail to understand his financial picture. At the 2008 PSI, he could not recall when he fell delinquent on a credit card or when he had made the last payment. Ex. 19 at 57-60. At the 2011 PSI, he was not sure how his foreclosure affected the balance of his home equity loan. Ex. 18 at 118. At the hearing, he did not know the years for which he owed taxes and the liability for each year. Tr. at 121-23. He testified that he had not incurred new debt after the 2008 PSI, when he said that he would resolve each account. *Id.* at 76-77. He did, however, incur at least two more charged-off accounts. He also testified that after 2008, he had tried to resolve each particular account. *Id.* at 55. But at the 2011 PSI, he acknowledged having overlooked at least one account. Lastly, at the hearing, the individual could not approximate when his attorney filed his bankruptcy or what balances it included. *Id.* at 72-73, 121.

The individual testified that his debt stemmed from his wife's unemployment and his lost income due to his unemployment during a recurring medical problem. Certainly these problems worsened his finances. But his poor financial condition ultimately stemmed from overspending and poor management. For example, in 2005, when the individual's wife was out of work, he bought jewelry and a luxury car. In 2007, when he faced continuing financial pressures, he went on a cruise and bought a time share. He did not use a budget to help him plan his spending. Tr. at 115.

In May 2012, the individual filed for bankruptcy, which is an important step towards taking control of his finances. The individual now has a budget, he need no longer spend money on his wife and her children, and he has taken two courses to learn the basics of personal finance. But the bankruptcy is not yet final. Also, once an individual has shown a pattern of financial irresponsibility, he or she must show a new, sustained pattern of financial responsibility long enough to demonstrate that a recurrence of the past pattern is unlikely. *Personnel Security Hearing*, PSH-11-0015 (Feb. 9, 2012).<sup>12</sup> Since the individual has not had time after his bankruptcy to show such a pattern, I find that he has not mitigated the LSO's allegations of financial irresponsibility.

---

<sup>12</sup> OHA decisions are available through the online search engine at [http://www.oha.doe.gov/main\\_search.asp](http://www.oha.doe.gov/main_search.asp).



## **B. Falsification**

To determine whether the individual has mitigated the allegations – and therefore resolved the security concern – I will consider the relevant factors from 10 C.F.R. § 710.7(c) and the relevant mitigating conditions from Guideline E of the Adjudicative Guidelines – Personal Conduct.

### 1. Traffic Citations

The LSO alleges that the individual intentionally omitted four citations from several QNSPs, as illustrated by the table above. Regarding his May 2005 citation, the individual testified that he disclosed it on a number of QNSPs and then forgot about it. Tr. at 21-22. Similarly, regarding the March 2010 citation, the individual testified that he had disclosed it on one QNSP and did not disclose it on the next QNSP because he had forgotten about it. *Id.* at 99-100. Regarding his July 2006 and December 2007 citations (which he had not disclosed on any QNSP), the individual testified that he had called the LSO to disclose them. *Id.* at 98. He also testified that at the 2011 PSI, when said that he had already disclosed them on a QNSP, he had not thought about each specific citation. *Id.* at 104-05, 127-28. He also testified that he omitted his various citations because he had not kept track of them. *Id.* at 103. I find that the individual did not intentionally omit his citations.

First, the individual's seven citations would be a lot for anyone to keep track of. A reasonable person may lose track of them if they did not actively manage a list of citations, which the individual did not do. Tr. at 17-18.

Second, the individual's patterns of disclosure suggest no motive to conceal his citations. Of his citations, repossession, and garnishment, he reported six of those nine events on the first or second QNSP following the event. That pattern suggests that he reported the events close in time to their occurrence and then may or may not have recalled them again. He gained nothing by disclosing his May 2005 citation and June 2007 repossession, failing to disclose them on one or more QNSPs, and then disclosing them again. Similarly, he gained nothing by failing to disclose his May 2005 citation and June 2007 repossession in the first QNSPs following those events, only to disclose them in the next ones.

As for the citations that he had not disclosed at all – July 2006 and December 2007 – his disclosure patterns suggest that he had not omitted them intentionally. If he had sought to hide further citations, he had nothing to gain from disclosing the March 2010 citation. And the record includes no information about the severity of the July 2006 and December 2007 citations to suggest that the individual had more reason to hide them than the March 2010 or other citations.

Third, the individual's checkered pattern of disclosures reflects the routine lack of attention to detail with which he handled his finances and completed the QNSPs. As noted above, for example, the individual incurred stiff cancellation fees when he mishandled his cell phone contract and gym membership. On one QNSP, he forgot to list an address. Ex. 20 at 10-11. On another, he forgot to disclose foreign travel. Ex. 19 at 165-66. On at least one other, he forgot to disclose delinquencies. Ex. 18 at 201. On still others, he intermittently forgot to disclose his complete history of investigations. Compare Ex. 10 (August 2006 QNSP disclosing June 2003 investigation) with Ex. 12 (May 2004 QNSP omitting June 2003 investigation) and Ex. 11 (August 2005 QNSP also omitting June 2003 investigation) and Ex. 8 (January 2008 QNSP omitting June 2003 investigation but disclosing June 1996 investigation).

## 2. Charge for Minor in Possession

The LSO alleges that, as illustrated by the table above, the individual intentionally omitted a 1988 charge for MIP from a number of QNSPs. I cannot find that the individual has mitigated this allegation.

First, the individual has not provided a consistent explanation for why he omitted the charge. At the 2003 PSI, he said that he thought that he did not have to disclose it because he had been under 18. Ex. 20 at 27. Then he said that he thought it had been stricken from his record. *Id.* Next he said that he had read the question the wrong way because he did not realize that the question also called for events stricken from his record. *Id.* at 28. Then he said that he did not know that he had been arrested because he had not been read his rights. *Id.* at 29. And he did not know that he had been charged because he thought that "charged" meant being arrested. *Id.* at 29-30. (He has not had any legal training. Tr. at 96.) At the 2011 PSI, the individual gave a new reason – that he thought that he had to report the event for five or seven years, only. Ex. 18 at 193. When given the chance to mention other reasons, he did not mention not having been arrested or any of the other reasons that he gave in 2003. Ex. 18 at 194. At the hearing, the individual looped back to the fourth reason that he gave in 2003 – that he had not reported the MIP because he had not known that he was arrested. Tr. at 12-17. He reiterated that he had not thought that he was arrested because he had not been read his rights. *Id.* at 12.

Second, I find the individual's evolving explanations improbable. At the 2011 PSI, he gave an explanation that he had not given in 2003. Then at the hearing, he focused on the fourth explanation that he had given in 2003 – that he did not know that he had been arrested. If this had been the reason why he had not disclosed his MIP, in 2003 he probably would have mentioned it first, not fourth.

Other details also raise doubt. At the hearing, the individual was reminded that in 2003, the DOE had told him to also report incidents where he had been charged. Tr. at 93. In response, he said that not having been read his rights caused him to think that he had not been charged. *Id.* That may be reasonable, at least in his mind, because he had said something similar at the 2003 PSI. But when pressed on whether he knew he had been charged, he admitted that when he stood in front of the judge and entered a plea, he knew

that he had been accused of doing something wrong. *Id.* at 97. Further, the MIP had been dismissed only after the individual had completed a diversion program. Ex. 20 at 26-27. By standing before the judge, entering a plea, accepting the court's diversion program, and completing it – he probably did know that he had been charged.

Third, the individual also waffled on a similar incident, which suggests that he knew that both incidents should have been disclosed and that he sought reasons to avoid doing so. The individual omitted a 1998 military disciplinary proceeding from a 2001 QNSP. Ex. 20 at 14-15. At the 2003 PSI, the individual provided several excuses: if he signed a statement of responsibility, he could avoid more serious punishment; he did not think of the proceeding as a “disciplinary proceeding”; he thought that he did not have to report it because he did not lose a rank; and, he did not read the question closely. *Id.* at 14-18.

## **VI. Conclusion**

Because the individual has not resolved the Criterion L and Criterion F security concerns, 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: August 1, 2012