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

Issued: July 20, 2012

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility and has possessed a security clearance on various occasions since 1978. Exhibit (Ex.) 8 at 2. In December 2011, the Individual reported to the Local Security Office (LSO) that his wages were being garnished for back federal taxes. Ex. 13 at 1. Consequently, the LSO conducted a personnel security interview (PSI) with the Individual in January 2012. Ex. 15. Because the PSI and further investigation indicated that the Individual had not filed state and federal tax returns for several years and had a number of delinquent financial accounts, the LSO informed the Individual in a March 2012 notification letter (Notification Letter) that derogatory information existed which raised security concerns under 10 C.F.R. § 710.8 (l) (Criterion L) and that his security clearance was suspended. Ex. 1.

The Individual requested a hearing on this matter. At the hearing, the DOE counsel introduced 15 exhibits into the record (Exs. 1-15) but did not present any witnesses. The Individual

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

presented his own testimony, as well as the testimony of three co-workers. *See Transcript of Hearing, Case No. PSH-12-0044* (hereinafter cited as “Tr”). The Individual additionally submitted six exhibits (Exs. A-F) into the record.

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, 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). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (*Adjudicative Guidelines*).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 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.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id; see generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criterion L

1. Failure to file Tax Returns and Delinquent Accounts

The facts of this case are essentially undisputed. Tr. at 30. A credit report obtained by the LSO in December 2011 indicated that the Individual had 17 credit accounts in collection which totaled \$14,662. Ex. 11. Additionally, the Individual had four credit accounts, totaling \$24,562, where the holder of the account charged-off the amount due. Ex. 11. The credit report also indicated that the Individual had an \$8,115 state tax lien filed against him in March 2008. Ex. 11; *See* Ex. 10 at 1.

During the PSI, the Individual admitted that he had not filed federal tax returns for the years 2002 through 2007 and 2009 and that he had not filed state tax returns for the years 2002 through 2007. Ex. 15 at 13, 68. The Individual explained at the PSI that the primary reason he did not file tax returns was that he was concerned as to the amount of his financial liability.² Ex. 15 at 19, 69. At the time of the interview, the Individual stated that \$3,000 of his biweekly wages was being garnished because of an estimated federal tax debt of approximately \$300,000. Ex. 15 at 7.

The Individual admitted in the PSI that in 2008 or 2009 a judgment was filed against him for an approximately \$5,000 in delinquent debt on a credit card. Ex. 15 at 36-38, 52. The Individual also admitted that, as of the date of the PSI, he had not satisfied that judgment. Ex. 15 at 36-38. The Individual went on to disclose that he had improperly used a corporate credit card by charging \$4,000 in personal purchases and charging more than the credit card limit. Ex. 15 at 57-59. During the PSI, the Individual stated that his purchase of a vacation house and a new car, along with a failure to properly budget, were factors in creating his current financial problems. Ex. 15 at 75, 77-78.

2. The Associated Security Concerns

Criterion L concerns circumstances tending to show that an 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. § 710.8(l). Unwillingness to abide by rules and regulations, such as the requirement to file income tax returns, can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. *Adjudicative Guideline F*, ¶ 19(g); *Personnel Security Hearing*, Case No. TSO-1072 (October 17, 2011). Additionally, failure to honor debts may indicate a questionable judgment and reliability. *Adjudicative Guideline F*, ¶ 18; *Personnel Security Hearing*, Case No. PSH-12-0010 (March 5, 2012). Given the information indicating that the Individual has a history of financial delinquencies and has failed to file state and federal tax income returns for a number of years, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

At the hearing, the Individual presented his own testimony and that of three co-workers to establish that he is now addressing his tax and financial problems and that he has consistently demonstrated good judgment and reliability. This testimony is summarized below.

The Individual testified that his financial problems originated with some problematic decisions he and his wife made in the past. Tr. at 30. Contributing to this errant decision-making was some “dysfunction” in the Individual and his spouse’s relationship and the Individual’s tendency to focus on work and not on personal matters. Tr. at 30, 52. The Individual’s spouse typically handled paying their bills and the Individual did not exercise oversight as to whether the bills were being paid. For a number of the overdue accounts, the Individual assumed that his health insurance would cover the expenses. Tr. at 30. Other factors, such as buying a more expensive

² This tax liability resulted from the Individual inheritance stock worth approximately \$600,000 in the year 2000 and his subsequent sale of the stock in the following years through 2003 or 2004. Tr. at 46-48.

house, moving to a higher-cost of living state, the failure to budget for extra expenses, and his spouse's loss of her full-time employment also contributed to their financial difficulties. Tr. at 30-31.

Regarding his failure to file tax returns, the Individual testified that he became overwhelmed when he realized the large amount of tax liability he accrued because of the sale of his stock. Tr. at 48-51. The Individual, in January 2012, employed a tax lawyer to settle his federal tax issues. Tr. at 34. As a result of his lawyer's intervention, the Internal Revenue Service (IRS) has determined that the Individual's actual tax liability is approximately \$39,000, not \$300,000 as he previously reported. Tr. at 34-35. The Individual has now filed federal tax returns for the years in question and has filed a request with the IRS to enter into an installment plan to pay off his tax debt. *See Ex. C, E, and F; Tr. at 56.* However, the Individual has not yet filed his delinquent state income tax returns. Tr. at 85. Nonetheless, he has contacted one State's revenue department to resolve the \$8,000 tax lien. Tr. at 85; Ex. D. As of the date of the hearing, the Individual has not contacted his creditors about resolving his outstanding debts. Tr. at 43-46. However, with regard to his misuse of the corporate credit card, the Individual testified that he paid the resulting indebtedness approximately 18 months ago. Tr. at 71.

The Individual has also contacted his employer's financial counseling program to get help in resolving his financial problems. Tr. at 36-37. The Individual testified as to his intention of personally paying his family's bills and has submitted a copy of his personal budget that he will be using for his household. Ex. B; Tr. at 39-40, 88. The budget includes installment payments to the IRS and an allotment of \$750 per month to resolve his outstanding debts. Tr. at 40-41.

All three co-workers testified as to the Individual's excellent work record and the fact that the Individual did not have any disciplinary actions taken against him as an employee. Tr. at 14-15, 22-23, 60-61. None of the co-workers could recall any security incidents involving the Individual. Tr. at 12, 18-19, 23, 25, 63. The co-workers also testified as to their opinion that the Individual's character was excellent and that his judgment and reliability were superior. Tr. at 19-20, 23-24, 62-63, 65.

In deciding whether an individual has mitigated the security concerns, a Hearing Officer must consider all relevant factors having a bearing on an individual's fitness to obtain or retain a security clearance. *See 10 C.F.R. § 710.7(c).* According to the *Adjudicative Guidelines*, among the factors that may serve to mitigate security concerns raised by an individual's financial problems or his failure to file required tax returns, are that the conduct happened long ago or was infrequent; the financial problems were largely beyond the person's control and the individual acted responsibly under the circumstances; or that an individual has initiated a good faith effort to repay his or her outstanding creditors. *Adjudicative Guidelines*, Guideline F, ¶ 20; *see Personnel Security Hearing*, Case No. TSO-0971 (March 1, 2011) (individual filed tax returns once he received necessary information from bankruptcy trustee); *Personnel Security Hearing*, Case No. TSO-1072 (October 17, 2011).

After reviewing the evidence before me, I cannot find that the Individual has mitigated the security concerns raised by his history of financial delinquencies. As of the date of the hearing, the Individual has not yet begun to resolve his outstanding debts. Tr. at 75 (Individual's

testimony that he is planning to resolve his debts); *see* Tr. at 40-41 (new budget with \$750 per month debt repayment drawn up one week before hearing). Additionally, in the absence of a sustained period of financial responsibility, I cannot find that the Individual's relatively recent repayment of the misused corporate credit card provides any mitigation of the concerns raised by that incident. In sum, the Individual has not presented sufficient evidence to mitigate the security concern raised by his financial delinquencies.

I also find that the Individual has not mitigated the security concern raised by his recent, repeated, failure to file state and federal income tax returns. The Individual has presented some mitigating factors on his behalf – his recent filing of his federal tax returns, his recent increased attention to his financial matters, his excellent work record and general character. However, the Individual's admitted lapse in judgment – his failure to file tax returns for a period of five years – is relatively recent and extensive. The severity of this lapse in judgment is highlighted by the fact that, at the hearing, the Individual admitted that an Office of Personnel Management investigator in 2006 questioned the Individual about his failure to file taxes yet the Individual failed to take any action. Tr. at 52.

The record indicates that the Individual is a hardworking and dedicated employee who has not been involved any type of security lapse at work. Nonetheless, the Individual has demonstrated a significant lapse in judgment in failing to file tax returns and has only recently begun to remedy his tax issues. Absent a longer period where the Individual demonstrates compliance with his legal and financial responsibilities, I cannot find, as of the date of the hearing, that the Criterion L concerns have been resolved. *See Personnel Security Hearing*, Case No. PSH-11-0036 (March 28, 2012) (despite individual's excellent record in security matters at work, individual's recent repeated failure to comply with the law by filing tax returns is such to require non-restoration of clearance).

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise 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 the concerns raised by the Criterion L derogatory information. Therefore, I cannot conclude that restoring the Individual's suspended access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended access authorization at this time.

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

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: July 20, 2012