

\* 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: May 10, 2012 )  
 ) Case No.: PSH-12-0053  
 )  
\_\_\_\_\_ )

Issued: August 3, 2012

**Hearing Officer Decision**

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.<sup>1</sup> 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 employed by a DOE contractor and has held a DOE access authorization since 1980. DOE Exhibit (Ex.) 6. In October 2006, after reviewing the Individual’s credit report during a routine reinvestigation in connection with her security clearance, the Local Security Office (LSO) requested that the Individual participate in a Personnel Security Interview (PSI) in order to discuss concerns raised by the Individual’s finances. DOE Ex. 14. The Individual’s security clearance was continued at that time. DOE Ex. 6. During a subsequent routine reinvestigation of the Individual’s security clearance in 2011, concerns regarding the Individual’s delinquent accounts and outstanding judgments surfaced. The LSO to request that the Individual participate in two PSIs in February 2012 (DOE Exs. 12, 13) with the Individual, to discuss issues pertaining to her finances. During the PSIs, the LSO also learned that the Individual had omitted an outstanding judgment on her August 2011 Questionnaire for National Security Positions (QNSP). DOE Exs. 11, 13. After reviewing the Individual’s personnel security file, the LSO

<sup>1</sup> 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.

informed the Individual in a May 2011 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (f) and (l) (Criteria F and L, respectively). *See* Notification Letter, March 29, 2012. The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed as Hearing Officer. At the hearing, the Individual presented her own testimony, as well as the testimony of three friends. The Individual submitted five exhibits (Indiv. Exs. A-E). The DOE counsel presented no witnesses, and submitted fourteen exhibits into the record (DOE Exs. 1-14). *See* Transcript of Hearing, Case No. PSH-12-0053 (hereinafter cited as “Tr.”).

## **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) (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**

The facts in this case are essentially undisputed. The Individual married at a young age, and her husband handled the family’s finances. Tr. at 92-93. When the Individual and her husband separated in 1994 after 18 years of marriage, the Individual became responsible for her family’s

finances for the first time. Tr. at 93-, 96-97. As a single parent, the Individual was under financial strain. Tr. at 93. She did not feel she had anyone to turn to for guidance or advice on how to handle her finances. Tr. at 95.

Following her separation from her husband, the Individual's debts increased and, ultimately, several creditors secured judgments against her. Currently, the Individual has three outstanding judgments in the amounts of \$4,135.36 (Creditor 1), \$ 3,264.00 (Creditor 2), and \$4,019 (Creditor 3). Tr. at 137-39; *see also* DOE Ex. 8. The Individual has two collection accounts – one to which she owes \$421 (Creditor 4) and another to which she owes \$1,898.00 (Creditor 5).<sup>2</sup> Tr. at 142 ; DOE Ex. 8 She owes \$2,300 to a delinquent account (Creditor 6). Tr. at 146-46; DOE Ex. 8 Finally, the Individual owes over \$4,000 in state income taxes for tax years 2008 and 2010, and she owes over \$10,000 in federal taxes for tax years 2009 and 2010. Tr. at 148-49; DOE Ex. 8.

The Individual makes monthly payments to both the state tax authority and the Internal Revenue Service in an effort to pay off her tax debts. Tr. at 136; Indiv. Ex. A. She entered into a payment plan to pay her tax debt in order to avoid garnishment of her wages. Tr. at 160. She has also increased her payroll deductions in an effort to minimize her future tax liability. Indiv. Ex. A. The Individual has not settled her outstanding debts with Creditors 5 and 6, but intends to address those accounts once she has paid her tax debt. Tr. at 142, 148; Indiv. Ex. A. The Individual has taken no action with respect to the outstanding judgments obtained by Creditors 1, 2, and 3. Tr. at 140. She indicated that the judgments will be the last debts she addresses because the creditors are not currently pursuing payment and she wants to pay her taxes and settle her accounts with Creditors 5 and 6 first. Tr. at 137-40; Indiv. Ex. A. She has not yet contacted any of the pertinent creditors to make arrangements to pay the outstanding debts. Tr. at 140.

The Individual characterizes her financial difficulties as the product of “financial immaturity,” rather than financial irresponsibility. Tr. at 92, 104. She maintains that she does not understand finances, and was unaware of financial education programs until recently. Tr. at 102-03. The Individual acknowledged that she stated during her PSIs that she would address her outstanding debts. Tr. at 99. She intended to do so, but was unable to handle her finances on her own. *Id.* With respect to her current finances, the Individual does not have credit cards, and she spends little money on herself. Tr. at 94, 157. She estimates that her current monthly income is approximately \$3,800.00, and her current monthly expenses are approximately \$3,400. Indiv. Ex. B.

Finally, the Individual attributed her omission of Creditor 2's judgment on the August 2011 QNSP to confusion and poor record-keeping. Tr. at 118-20, 130. The Individual acknowledged that she knew Creditor 2 had secured a judgment against her, but because she did not receive any

---

<sup>2</sup> The Individual disputed the validity of the debt to Creditor 4. According to the Individual, her daughter paid that debt and, after the hearing, the Individual submitted a document purporting to show that the debt noted on her credit report was either paid or was an error. Tr. at 142-45; *see also* Indiv. Ex. E. After examining the document, I find that the nature of the debt, and whether it has been satisfied, remains unclear. Because the Individual has not submitted information to rebut the validity of the debt, nor evidence that it has been paid, I must find that the concern raised by this debt remains unresolved.

further information and Creditor 2 did not pursue payment, she “wasn’t sure exactly what that meant.” Tr. at 121. She also noted that when she completed the QNSP in 2011, her debt to Creditor 2 “slipped [her] mind.” Tr. at 130.

#### **IV. ANALYSIS**

##### **A. Criterion F**

Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual’s eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such statements raise serious doubts regarding an individual’s honesty, reliability, and trustworthiness. 10 C.F.R § 710.8(f). *See* Adjudicative Guidelines, Guideline E, ¶¶ 15, 16(a); *see also, e.g., Personnel Security Hearing*, Case No. TSO-0727 (2009).<sup>3</sup> In light of the Individual’s omission of an outstanding judgment on her August 2011 QNSP, I find that the LSO properly invoked Criterion F.

Having considered the testimony regarding the Individual’s honesty and character, I find it unlikely that the Individual deliberately attempted to conceal or withhold information. The Individual testified that she is an honest person and stated that she did not intend to lie or conceal information on her QNSP. Tr. at 122. The Individual’s witnesses each testified that the Individual is honest and always tells the truth. Tr. at 32, 74, 77, 107. While the Individual’s omission of the judgment on her QNSP appears to be a product of lax or haphazard approach to completing the QNSP on the part of the Individual, I find that it was not a “deliberate” falsification of the form. *See Personnel Security Hearing*, Case No. TSO-0983 (2011) (lack of “the requisite element of ‘deliberateness’” by individual in providing incorrect responses on security questionnaire sufficient to mitigate Criterion F concern). Consequently, I find that the Individual has mitigated the Criterion F concern.

##### **B. Criterion L**

Criterion L concerns conduct tending to show that the Individual was “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). In this case, the Criterion L concerns arise from the Individual’s purported financial irresponsibility. *See* Adjudicative Guidelines, Guideline F, ¶ 19 (“[An] inability or unwillingness to satisfy debts,” “a history of not meeting financial obligations,” and a “failure to file annual Federal, state, or local income tax returns as required” raise security concerns). *See also Personnel Security Hearing*, Case No. TSO-1005 (2011); *Personnel Security Hearing*, Case No. TSO-0916 (2010). Given the Individual’s longstanding pattern of delinquent debts, collection accounts, and judgments against her, the LSO had ample grounds to invoke Criterion L.

---

<sup>3</sup> 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>.

Among the factors that may serve to mitigate security concerns raised by an individual's financial problems are that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," "the conditions that resulted in the financial problem were largely beyond the person's control ... and the individual acted responsibly under the circumstances," "the [individual] 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," and "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]" Adjudicative Guidelines, Guideline F, ¶ 20.

In this case, I am also unable to conclude that the Individual has resolved the Criterion L concerns raised by her longstanding pattern of financial irresponsibility. The Individual has made some progress in addressing her finances by setting up a payment plan to pay her outstanding taxes. Tr. at 136. She also has begun to seek assistance in managing her finances by speaking with her close friends and researching financial education courses. Tr. at 50, 102-03. Finally, the Individual has a plan for settling her accounts and intends to follow through with it and ultimately pay all of her debts. *See, e.g.,* Individ. Ex. A. While these are positive steps, the Individual is a long way from financial stability. Although, the DOE first made the Individual aware of its concerns regarding her pattern of financial irresponsibility in 2006, with the exception of entering into a payment plan to pay her delinquent taxes and avoid garnishment of her wages, the Individual took little to no action to settle her judgments or delinquent accounts, and it remains unclear when and if she will do so. Although she was overwhelmed by her finances and did not understand how to manage them, she did not seek out assistance or attempt to obtain the information she needed to begin to straighten out her finances until shortly before the hearing. Finally, although the Individual prepared a budget outlining her income and expenses, she admitted that it was an approximation and that it did not match the reality of her financial situation each month. Tr. at 149.

In prior cases involving financial irresponsibility, Hearing Officers have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *See Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0732 (2009); *see also* Adjudicative Guidelines, Guideline F, ¶ 20. Given these factors, I cannot conclude at this time that the Individual's financial situation is stable at this time or that her financial difficulties are in the past and unlikely to recur and, therefore, do not cast doubt on her current reliability, trustworthiness, or good judgment.

#### IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria F and L of the Part 710 regulations, and I find that there is sufficient information in the record to mitigate the Criterion F concern. However, I find that the Individual has not presented sufficient information to fully resolve the security concerns raised under Criterion L. Therefore, I cannot conclude that

restoring the Individual 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.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: August 3, 2012