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June 9, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 10, 2011

Case Number: TSO-1005

This decision concerns the eligibility of XXXX X. XXXXX (hereinafter referred to as "the Individual") to maintain a security clearance 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." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

This case involves an Individual with a longstanding pattern of failing to meet his financial obligations. After obtaining information indicating that the Individual had several debts that were over 180 days delinquent, the LSO conducted an investigation of the Individual's financial circumstances. This investigation revealed that the Individual's longstanding pattern of failing to meet his financial obligations was continuing.

Unable to resolve the security concerns raised by this derogatory information, the LSO initiated administrative review proceedings by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (I).¹

¹ Specifically, the Notification Letter alleges that the Individual has:

Engaged in any unusual conduct or is subject to any 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on February 11, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony only from the Individual. *See* Transcript of Hearing, Case No. TSO-1005 (hereinafter cited as “Tr.”). The LSO submitted 27 exhibits, marked as Exhibits 1 through 27, and the Individual submitted four exhibits, marked as Exhibits A through D.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF FACT

The Individual does not dispute that he has exhibited a longstanding pattern of failing to meet his financial obligations. In 1987, the Individual's motor vehicle was repossessed. In 1992, the Individual's home was foreclosed. He has declared bankruptcy on at least three occasions, in 1997, 2005, and again in 2011. A credit report dated October 1, 2010, indicated that the Individual had charged off accounts totaling \$5,138. Exhibit 12. During a Personnel Security Interview (PSI) conducted on November 3, 2010, the Individual admitted being at least six months past due on credit accounts totaling \$10,389.65. Exhibit 12; Exhibit 13; Exhibit 22 at 42-44, 52-53, 55-57, 62-65, 67-69, 71, 80-81, 106-108, 110, 112-113. The Individual also admitted that he was \$3,030 past due on his mortgage.

On at least five occasions, on May 19, 1992, July 24, 1997, December 16, 2004, October 20, 2005, and November 3, 2010, the LSO conducted PSIs of the Individual inquiring about his

financial circumstances.² Exhibits 22, 23, 24, 25, and 26. In each of the Individual's PSIs the Individual was made aware of the DOE's security concerns about his financial issues. During each of these PSIs, the Individual stated his intent to resolve his financial issues.

IV. ANALYSIS

The record shows that the Individual has engaged in a pattern of financial irresponsibility. The Individual's pattern of financial irresponsibility raises significant security concerns under Criterion L. The Revised Adjudicative Guidelines state in pertinent part:

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 abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . [and] (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

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) at ¶¶ 18, 19. As the discussion above illustrates, the record shows that several of the financial conditions that could raise security concerns identified by Guideline F apply to the Individual.³ As for possible mitigating factors, I find that the

² The transcript of the November 3, 2010, PSI appears in the record as Exhibit 22. The transcript of the October 20, 2005, PSI appears in the record as Exhibit 23. The transcript of the December 16, 2004, PSI, appears in the record as Exhibit 24. The transcript of the July 24, 1997, PSI appears in the record as Exhibit 25. The transcript of the May, 19, 1992, PSI, appears in the record as Exhibit 26.

³ Conditions that could mitigate security concerns arising from financial irresponsibility include:

(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

Individual has not met any of the conditions set forth at ¶ 20(a) of Guideline F. His failure to exercise good judgment, honesty and reliability in his financial affairs has been a long-term problem dating back to at least 1997, and appears not to have been resolved. His behavior casts doubt on his current reliability, trustworthiness, and judgment. I also find that the Individual has not met the conditions set forth at ¶ 20(b) of Guideline F. While the Individual testified that his financial setbacks have resulted, in part, from several work stoppages and providing assistance to family members, including his mother who was stricken by cancer and his son and granddaughter after his son had lost his job, the pattern of failing to meet his financial obligations began several years prior to these challenges. Moreover, the irresponsible manner in which the Individual has responded, over the years, or in some cases failed to respond, to his financial set-backs has raised significant security concerns. In addition, the Individual has not met the conditions set forth at ¶ 20(c) of Guideline F. While the Individual has sought credit counseling assistance, he has not shown that such counseling has been effective. At the hearing, the Individual admitted that he has not even begun to implement a family budget or a financial plan which could reasonably be expected to resolve his financial issues. Tr. at 51, 77. The Individual has presented no evidence to allow me to conclude that he is able to exert and maintain control over his finances. The Individual has similarly failed to meet conditions set forth at ¶ 20(d) of Guideline F, since the Individual has only recently entered into repayment plans with many of his creditors. Finally, the Individual has not met the conditions set forth at ¶ 20(e) of Guideline F. He has not shown that he has any reasonable basis to dispute the legitimacy of his past-due debts and has not provided documented proof to substantiate that he has taken sufficient action to resolve his financial issues.

For all the reasons set forth above, I find that the Individual has not mitigated the security concerns associated with his documented financial irresponsibility. Thus, I find that he has not resolved the security concerns raised under Criterion L.

V. CONCLUSION

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criterion L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: June 9, 2011

problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Guideline F at ¶ 20.