

subsection (l).¹

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 September 16, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his fiancée, his supervisor, and a DOE Personnel Security Specialist. *See* Transcript of Hearing, Case No. TSO-1110 (hereinafter cited as “Tr.”). The LSO submitted seven exhibits, marked as Exhibits 1 through 7, 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 LSO's investigators obtained a copy of the Individual's credit report dated March 30, 2011.²

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 March 30, 2011, credit report indicated that the Individual had six delinquent medical accounts with balances totaling over \$5,000. Exhibit 3 at 1. These accounts had been in collection status for over four years. *Id.* The March 30, 2011, credit report further indicated that the Individual had two unpaid balances totaling almost \$19,000 in nonmedical collection accounts. *Id.* In addition, one creditor had obtained a \$1,067 judgment against the Individual in April 2006. *Id.*

That same day, on March 30, 2011, the LSO conducted a Personnel Security Interview (PSI) of the Individual.³ The information provided by the Individual during this PSI did not resolve the security concerns raised by the Individual's unpaid debts. Moreover, the Individual's statements during this PSI raised additional concerns about his trustworthiness, reliability and judgment.

During this PSI, the Individual was asked how his financial difficulties arose. The Individual stated he started a trucking business in 2003 that failed in 2006.⁴ Exhibit 2 at 3. During an ensuing discussion of the trucking business, the Individual stated that his trucking business used a semi-truck that the Individual's mother had purchased on his behalf. *Id.* at 5-6. The Individual's characterization of his ownership interest in this semi-truck changed during the PSI. When the Individual thought it would be advantageous to characterize the semi-truck as an asset, he claimed that the semi-truck was really his and that he would be entitled to any proceeds upon its sale. When the interviewer began to question why the Individual had not sold the semi-truck in order to pay his debts, the Individual began to emphasize that his mother held title to the semi-truck. Exhibit 2 at 5-8, 37-38. The Individual stated that he had an agreement with his mother to eventually pay her back for the semi-truck. *Id.* at 7-8. He initially indicated that he intended to sell the semi-truck and give the proceeds to his mother in order to pay her back. *Id.* at 8. Later on during the PSI, when the Individual was asked how he planned to pay his creditors back, he indicated that he was planning to sell a house (the House) or the semi-truck. *Id.* at 37. The Interviewer then noted that his mother owned the semi-truck and asked if she was entitled to the proceeds upon its sale. The Individual responded by stating that he had paid her back for the semi-truck. *Tr.* at 38.⁵ At the hearing, the Individual testified that his mother had purchased the semi-truck with the understanding that he would pay her back. *Id.* at 110. The Individual further testified that he had repaid his mother for the semi-truck by allowing her to live with him without paying rent. *Id.* The Individual initially testified that the semi-truck was not his to sell. *Id.* at 111. He then testified that he would receive any proceeds if the semi-truck were to be sold. *Id.* at 111-112.

During the PSI, the Individual was asked about information indicating that the Individual was

² A copy of the March 30, 2011, credit report appears in the record as pages 1-2 of Exhibit 3.

³ A copy of the transcript of this March 30, 2011, PSI appears in the record as Exhibit 2.

⁴ The Individual was unable to recall his yearly income level during the period in which he operated his trucking business. Exhibit 2 at 10.

⁵ When the Individual was asked why he had not previously sold the semi-truck to pay his outstanding debts, he claimed that he still used the truck from time to time. Exhibit 2 at 50. At the hearing, however, the Individual's fiancée testified that he had not started the semi-truck for four years. *Tr.* at 92-93.

making mortgage payments on a house that he neither occupied nor owned. The Individual went on to provide a rather convoluted account of how he came to be making a \$1,300 a month mortgage payment on a property that he did not live in, while at the same time, he was failing to pay his other creditors. The Individual explained that he owned the House, even though it was titled in his father's name. *Id.* at 27, 31. According to the Individual, the House was purchased in his father's name because his father had a better credit rating than the Individual. *Id.* at 28-29. However, the Individual denied that there was any problem with his credit at the time that the House was purchased. *Id.* at 28-29. The Individual said that he and his father had a verbal agreement to have his father eventually put the House in the Individual's name. *Id.* at 28. The Individual attempted to show that he was about to resolve his financial problems, by stating that he planned to sell the House so he wouldn't have to continue the \$1,300 monthly mortgage payment. *Id.* at 31. The Individual stated that he owed \$165,000 on the House, which, he claimed, was recently appraised at \$200,000. *Id.* at 32. However, the Individual admitted that the House was not on the market or listed with a realtor. *Id.* at 33. At the hearing, the Individual testified that, after the PSI, his father backed out of the verbal agreement to allow the Individual to take title to the House.

The Individual enrolled in a debt assistance program with the hope of consolidating his debts. Exhibit 2 at 17; Exhibit D. However, he claims he discontinued the program when his required payments increased from \$500 a month to \$1,500 a month. Exhibit 2 at 17. He admitted that after he discontinued the debt assistance program he did not: 1) have a concrete plan to address his unpaid debts, 2) contact his debtors to work out other arrangements, 3) make further payments, and 4) resolve his financial issues. *Id.* at 19-20. The Individual admitted that he didn't have money in his budget to pay back his creditors. *Id.* at 26. When the interviewer asked the Individual if he intended to declare bankruptcy, he said he did not intend to do so. *Id.* at 44. During the PSI, the Individual was asked why he had not previously addressed his unpaid debts. The Individual responded that he had only been able to work on a sporadic basis. Exhibit 2 at 50. The interviewer then asked, "You've not had a steady income prior to this?" The Individual responded by stating, "I have had a steady income, just not that good of an income." *Id.* at 51. The Individual indicated that a creditor offered to settle an \$18,000 debt for around \$4,500 but he could not take advantage of this opportunity because he did not have the \$4,500. *Id.* at 23-24.

When asked about his future intentions concerning his debts, during the PSI, the Individual repeatedly indicated that he was working with an attorney (the Attorney) who was consolidating the Individual's debts and working with his creditors to resolve his debts. *Id.* at 24-25, 44-45, 48. When the Individual was asked for specifics, the Individual claimed that he was waiting for the Attorney to "get back with me." *Id.* at 25. He further claimed that the Attorney was contacting each of his creditors to negotiate payment terms. *Id.* A letter dated June 24, 2011, from the Attorney on behalf of the Individual, indicates that he met with the Individual "for a free consultation sometime in mid-2010." Exhibit 4 at 3. During this consultation the Attorney and the Individual discussed the Individual's financial situation and his options. *Id.* Apparently, the Individual sought to avoid bankruptcy. The Attorney recommended that the Individual contact the debt assistance program. *Id.* The Attorney indicated that he and the Individual discussed the option of having the Attorney handle direct negotiations with each creditor, but this option was placed on hold while the Individual explored other options including the debt assistance program. *Id.* The letter concludes by stating: "the consultation was some time ago

and case notes are not kept on file.” *Id.*

On July 6, 2011, the LSO’s investigators again obtained a copy of the Individual’s credit report.⁶ It was essentially similar to the credit report obtained on March 30, 2011.

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; (c) a history of not meeting financial obligations; . . . ; (d) deceptive or illegal financial practices such as . . . intentional financial breaches of trust; [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. In addition, the inconsistencies in the information provided by the Individual, in his PSI, raise questions about the Individual’s honesty, candor and trustworthiness. The Adjudicative Guidelines state in pertinent part:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Adjudicative Guidelines at ¶ 15. As the discussion above illustrates, the record shows that several of the financial conditions that could raise security concerns identified by the Adjudicative Guidelines apply to the Individual.⁷ As for possible mitigating factors, I find that

⁶ The July 6, 2011, credit report appears in the record as pages 3 and 4 of Exhibit 3.

⁷ 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;

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 2003, and has not been resolved. The manner in which the Individual has conducted his financial affairs 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 the failure of his business, the pattern of failing to meet his financial obligations began several years prior to the start of his unsuccessful enterprise. Moreover, the irresponsible manner in which the Individual has reportedly 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 yet implemented a family budget or a financial plan which could reasonably be expected to resolve his financial issues. Tr. at 98, 134. The Individual has presented insufficient 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 decided to declare bankruptcy.⁸ 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.

Moreover, the Individual's provision of less than credible information in his PSI raises doubts that he cannot be trusted to provide truthful information to DOE security officials. The Individual's lack of candor continued at the hearing, showing that he continues to exhibit poor judgment, and cannot be relied upon or trusted.

The DOE security program is based on trust. *Personnel Security Hearing*, Case No. TSO-0920 (2010). If the DOE cannot fully trust an individual, then it cannot allow them access to classified information or special nuclear materials. Accordingly, I find that the security concerns under Criterion L raised by the Individual's inconsistent statements remain unresolved.

For all the reasons set forth above, I find that the Individual has not mitigated the security

(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 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.

⁸ At the time of the hearing, the Individual had not actually filed for bankruptcy.

concerns associated with his documented financial irresponsibility and lack of candor during his security clearance investigation. Thus, I find that he has not resolved the security concerns raised under Criterion L, raised by longstanding pattern of financial irresponsibility and lack of candor during his security clearance investigation.

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 granting 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 granted. 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: December 13, 2011