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

In the Matter of Personnel Security Hearing)

Filing Date: June 25, 2012)

Case No. PSH-12-0076)

Issued: October 26, 2012

Hearing Officer Decision

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization 1/ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual’s access authorization should not be granted.

I. Background

The individual is an applicant for a DOE security clearance. In March 2012, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about the individual’s falsification and financial irresponsibility. On May 11, 2012, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criteria F and L, respectively). ^{2/}

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented his own testimony. The DOE counsel did not present any witnesses. The DOE submitted a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his 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 individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a

^{2/} Criterion F concerns information that the individual has "misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive Positions, Personnel Qualification Statement, a Personnel Security Interview, written or oral statement made in response to an official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . ." 10 C.F.R. § 710.8(f). Criterion L relates, in relevant part, to information that a person has "[e]ngaged 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. . . ." 10 C.F.R. § 710.8 (l).

person'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). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. Finding of Fact

On November 9, 2011, the individual signed a Questionnaire for National Security Positions (QNSP) where he listed a delinquent account for \$15,000 as satisfied. DOE Exh. 1. However, the company had filed a judgment against him for the amount owed. The individual explained that he listed the account as satisfied because he did not intend to pay the debt. *Id.*

In addition to the individual's misrepresentation on his QNSP, the individual, in his March 2012 PSI, admitted that he currently owes up to \$15,000 on a judgment filed against him by a credit card company. *Id.* He also admitted that he is currently past due up to \$23,000 on a home equity loan and admitted that he stopped paying his mortgage in December 2010. He did not try working with the creditor before the home went into foreclosure. The individual further admitted that he currently owes \$13,179.80 on a judgment filed against him in 2009 for rent owed and owes \$1,000 on a judgment filed against him for breaking a lease agreement. Despite receiving notifications from the creditors regarding the debt, the individual has not responded to the notification and has no intention to pay. *Id.* The individual currently owes approximately \$172,108 to various creditors. *Id.*

IV. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 3/ After due deliberation, I have determined that the individual's access authorization should not be granted at this time. I cannot find that granting the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites two potentially disqualifying criteria as bases for denying the individual's security clearance, i.e., Criteria F and L. To support its reliance on Criterion F, the LSO states that on November 9, 2011, the individual misrepresented information on a QNSP regarding a delinquent credit card account.

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding her conduct, to include knowledgeable participation, the frequency and recency of her conduct, the age and maturity at the time of the conduct, the voluntariness of her participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for her conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See* Guideline E of the *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*).

To support its reliance on Criterion L, the LSO states that the individual has established a pattern of financial irresponsibility and has demonstrated an unwillingness or inability to satisfy his debts. The LSO cites a number of delinquent outstanding debts totaling \$172,108 and the individual's admission that he has made no attempts to satisfy these debts. Failure or inability to satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all which also call into question the individual's reliability, trustworthiness and ability to protect classified information. *See* Guideline F, *Adjudicative Guidelines*.

B. Mitigating Evidence

At the hearing, the individual addressed his misrepresentation on his November 2011 QNSP. He testified that when he completed his 2011 QNSP he initially stated that there was "no action taken" on the form with respect to a delinquent credit card account in the amount of \$15,000. Transcript of Hearing (Tr.) at 25. The individual further testified that after the LSO advised him that his response would not be acceptable, he indicated "debt satisfied" on the form. According to the individual, the debt was a loan that had been charged off and which he believed meant the debt was "technically" satisfied. He testified that he did not intentionally omit or misrepresent information on his QNSP. *Id.* at 37.

During the hearing, the individual acknowledged his pattern of financial irresponsibility and failure to meet his financial obligations and attempted to address these issues. *Id.* at 13. He testified that in 2009, he and his wife made a conscious decision to allow his home to go into foreclosure. The individual explained that he had purchased a house in 2003 when his job relocated. *Id.* After getting married in 2008, his wife lost her job and she decided she wanted to live in a different state closer to her daughter. *Id.* The individual, who mostly traveled for work, testified that he could not financially maintain three households (the home he lived in while working, the home his wife lived in and another home he owned). *Id.* He testified that he thought about placing the home up for sale, but at the time the real estate market was on the downturn and he did not want to be an absentee landlord since his job required him to travel. *Id.* With respect to a \$13,179 judgment filed against the individual for rent owed, the individual explained that in 2009 he executed a lease for a year with a landlord, and after six months, the landlord asked him and his wife to move out. According to the individual, the landlord and her husband wanted to move back in the property. *Id.* at 16. Because of his work, the individual testified that it was not feasible for he and his wife to look for another place to live and that it took six months to find another home. *Id.* Soon after, the landlord sued the

individual for back rent. *Id.* at 18. During the hearing, the individual testified that this judgment is in dispute and he is trying to determine what needs to be done to resolve this issue. As of the date of the hearing, the individual has still not paid the judgment. *Id.* at 20.

As for the other delinquent debt cited by the LSO in the notification letter, including a past due \$23,000 home equity loan and the \$15,000 delinquent credit card account, the individual acknowledged that he had not made arrangements to pay the debt. *Id.* at 22. With respect to the credit card account, the individual testified that before the account went into default, he tried to make some payments, but the interest rate was raised to 40 percent and he could no longer make payments. *Id.* at 21. He reiterated that he assumed that the debt had been charged off and stated that he had no intention of paying it. *Id.* Likewise, with respect to the home equity loan, the individual testified that since the equity line was based on the foreclosed property, he assumed that the debt had been charged off and had no intention to pay it because no one had contacted him to pay it. *Id.* When questioned about a 1998 judgment filed against him for \$1,000 for breaking a lease agreement, the individual stated that he “must have paid it,” but stated that he has no documentation that it was paid. After the hearing, the individual submitted documentation stating that he had recently contacted these companies, but was unable to reach a contact person who could set up a payment plan or in the case of the \$1,000 judgement verify that the debt had been plan. He stated that he was, however, successful in setting up a \$25 a month payment plan for a judgment filed against him for rent owed, and he indicated that he has paid two smaller debts, \$69 and \$30.45. He also submitted a monthly budget. Ind. Post-Hearing Submission, Exh. A.

C. Hearing Officer Evaluation of Evidence

1. Criterion F

During the hearing, the individual maintained that he did not intentionally misrepresent information regarding a delinquent account for \$15,000 on his 2011 QNSP. However, the testimonial evidence adduced at the hearing does not convince me that the individual did not deliberately misrepresent this information on his QNSP. The individual testified that, since the loan was unsecured and charged off, he believed that the debt was “technically” satisfied. I did not find this testimony to be credible. During the hearing, the individual acknowledged that he allowed his credit card to default and that he stopped making payments when the credit company raised the interest rate. It is difficult to believe the individual’s interpretation of a debt being “satisfied” when it is unsecured and charged off by the creditor. Rather, I believe the individual fully understood the consequences of the credit card going into default and had no intention of paying it based on his personal circumstances at the time. In the end, I find the requisite element of “deliberateness” has been met under Criterion F in this case.

The key issue under Criterion F is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual’s misrepresentation was serious. The individual’s lack of candor concerning his financial problems could increase his vulnerability to coercion or blackmail and raises important security concerns. The DOE must rely on individuals

who are granted access authorization to be honest and truthful. Hearing Officers have generally taken into account a number of factors, including whether the individual came forward voluntarily to renounce his falsifications, the timing of the falsification, the length of time the falsehood was maintained, whether a pattern of falsification is evident, and the amount of time that has transpired since the individual's admission. *Personnel Security Hearing*, Case No. TSO-0307 (2007), and cases cited therein. ^{4/} None of these mitigating factors, nor any of those set forth in the relevant Adjudicative Guideline, *Adjudicative Guidelines* at Guideline E, apply in the present case. Considering this, and the entirety of the record, I must conclude that the very serious concerns raised under Criterion F have not been resolved. *Adjudicative Guidelines* at Guideline E.

2. Criterion L

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that he is reliable and trustworthy, and that he is no longer subject to pressure, coercion, exploitation or duress. For the reasons set forth below, I find that the individual has not provided sufficient information to resolve the Criterion L concerns at issue.

Although the individual has initiated an effort to resolve his delinquent debt, the individual's behavior with respect to his financial issues is recent and frequent. During the hearing, the individual acknowledged his pattern of financial irresponsibility, but stated that his life circumstances, i.e., being unable to financially maintain three households or afford high interest rates, did not allow him to address his delinquencies. The individual further acknowledged that he had no intention to pay debt that was unsecured and had been charged off by the credit companies. Although he later, during the hearing, stated that he would try to contact the companies and attempt to find out what he needs to do to resolve the delinquencies. As of the date of the hearing, the individual had paid and resolved only a couple of smaller delinquencies cited by the LSO. Despite the individual's acknowledgment of his financially irresponsible behavior and his assurances that he is now living within his means, I believe the individual's recent efforts to resolve his debt have not yet withstood the test of time. Furthermore, given the individual's pattern of financially irresponsible behavior, I am not convinced that the chances of a return to his previous behavior are acceptably low. After considering the "whole person," I am not convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines* at (2)a. I therefore cannot find that the individual has sufficiently mitigated the LSO's concerns under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner,

^{4/} 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>.

including weighing all the testimony and other evidence presented at the hearing, I find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria F and L. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: October 26, 2012