

and that the individual had a number of unpaid debts. Because this information raised security concerns, the LSO summoned the individual for an interview with a personnel security specialist in May 2012. After reviewing the transcript of this Personnel Security Interview (PSI) and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 15 exhibits into the record of this proceeding. The individual introduced a number of exhibits and was the only witness who testified at the hearing.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (l) defines as derogatory information indicating that the individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." Such conduct includes, but is not limited to, "a pattern of financial irresponsibility." 10 C.F.R. § 710.8(l). As support for this criterion, the Letter alleges that the individual:

1. Has two collection accounts totalling \$1,928;
2. Has nine charged off accounts totalling \$52,894;
3. Owes federal, state and county taxes totalling \$68,800;
4. Failed to live up to a payment agreement negotiated with the IRS for tax debt in 2010, which resulted in the IRS issuing a levy in 2011 against the individual's property;

5. Admitted during his 2012 PSI that his financial difficulties were due to excessive credit card debt, living beyond his means, purchasing, in 2004, and continuing to live in a house that he cannot afford, paying \$60,000 for landscaping, and paying for expensive vacations, a car for his wife's daughter, and for his wife's use of her employer's corporate credit card for personal purchases;
6. Stated during that same PSI that despite having borrowed approximately \$200,000 from his mother-in-law, which he has used to pay off credit card debts, his current delinquent credit card debt is \$54,822;
7. Failed to pay his federal taxes, which resulted in the Internal Revenue Service's (IRS) placing a levy on his wages in 2012, despite being informed of the DOE's concerns regarding finances; and
8. Acknowledged during a 2010 PSI that he had delinquent accounts totalling \$60,290, federal tax debt totalling \$14,000, and property tax debt totalling \$25,885. Despite stating his intent to resolve these accounts and avoid future financial difficulties, he has not resolved these debts and has incurred more delinquent debt, currently totalling approximately \$123,622.

The LSO correctly determined that these allegations raise serious security concerns. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline F.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. The Individual’s Testimony

At the hearing, the individual testified about his financial problems and what he has done to resolve them. He said that he discussed the “challenges of reducing the credit card debt” with a money management and credit card debt service, and then contacted his creditors directly to begin paying the debts off. Hearing Transcript (Tr.) at 11. As a result of these efforts, all of the credit cards have been paid off, with the exception of three that are on payment plans. Tr. at 12. With regard to his tax debt, the property and state income taxes have been paid, and he is attempting to negotiate an agreement with the IRS whereby they would agree to accept in settlement of his debt an amount that is lower than the actual amount of money that the individual owes. *Id.*

The individual then testified that the catalyst for his financial problems was a large federal tax bill that he received in 2008. He explained that after the first full year that he was employed by the DOE contractor, he got a very large tax refund. In order to reduce the amount of money withheld from his salary, he began claiming 20 exemptions. For the next 20 years, he would continue to get an annual tax refund, generally ranging between a few hundred and a few thousand dollars. Tr. at 17. However, in 2008, he got a \$13,000 tax bill. The individual claims that this was the result of pay raises that he and his wife received in 2007, which put them in a different tax bracket. *See* Individual’s Response to Statement of Charges, Department of Energy Exhibit (DOE Ex.) 2. Because he did not have \$13,000, he entered into an agreement with the IRS in 2008 to pay the debt in installments. Making these payments meant that he could not satisfy some of his other financial obligations, such as paying his property taxes and credit card bills, and his financial problems “just kept snowballing, until recently when we were able to restructure our budget, borrow a little bit of money from my wife’s 401(k), change my withholdings so that I don’t get hit with a huge tax bill every year, and start paying off some of these debts.” Tr. at 18. Because he was unable to change the number of his withholdings due to the decrease that would ensue in his take-home pay, he also incurred significant

tax debt in 2009 and 2010 and was unable to remain current on his payments. Believing that his failure to remain current on his payments voided the agreement with the IRS, he stopped making payments until a new agreement could be negotiated. The IRS placed a levy on their property to protect their interests in the tax debt. The individual has since changed the number of his withholdings from 20 to zero to avoid future large tax liabilities. Tr. at 19-20. He therefore had to renegotiate the installment agreement because he was unable to remain current on his payments.

The individual then discussed the allegations in the Notification Letter with which he disagrees. He said that the claim in the Letter that he was living beyond his means is inaccurate, and reiterated that his financial problems were due to the unexpectedly large tax bills that he received in 2008, 2009, and 2010. Tr. at 21. Regarding his house, he said that, while it is more expensive than the house he used to have, it is not more than he can currently afford, and was not more than he could afford when he bought the house in 2004. Tr. at 21, 27. He explained that the mortgage loan that he originally thought that he qualified for did not go through, and the loan that he actually received required a larger down-payment and larger monthly payments. The individual testified that this “put a strain on” his family’s budget, and put them in a position such that “rather than having a lot of extra cash flow, which we would have had under the original mortgage, we were in a position where we had a few hundred dollars every month, rather than, say, \$1,500 a month.” Tr. at 22, 27. He added that it was his tax bills, and not his mortgage payments, that put them in a position where they could not pay their other creditors. Tr. at 30. The individual went on to state that he and his wife “have not considered selling our house.” Tr. at 48. He also disagreed with the allegation in the Statement of Charges concerning his wife’s work-issued credit card, stating that while he did assist her with her credit card debt, he did not believe that he had helped her to pay the bill for her corporate card. Tr. at 22.

B. Hearing Officer’s Evaluation of the Evidence

After reviewing this testimony and the record as a whole, I find that there are a number of discrepancies between the individual’s testimony at the hearing and his statements during his 2010 and 2012 PSIs. These discrepancies cast serious doubt upon the individual’s credibility.

As indicated above, the individual testified that he did not believe that he had helped his wife pay the bill for her work-issued credit card. He made a similar statement in his response to the DOE’s Statement of Charges. DOE Ex. 2. Yet, during his 2012 PSI, which occurred approximately two months before the date of the individual’s response and less than five months prior to the hearing, the following exchange occurred.

Individual: And so I ended up not getting \$40,000, but getting about \$23 or \$24,000. . . .

Q: So what did you do with that money?

Individual: Started paying off bills. I paid off [his wife's mother], paid off [his wife's] credit card.

Q: How much was that?

Individual: \$5,000.

Q: Which credit card?

Individual: Her [work-issued] credit card.

Q: Are you talking about the corporate card -

Individual: Yes

Q. Did she use it for personal stuff?

Individual: Uh, I don't knowI would guess that since it wasn't reimbursed by [her employer] that she had. . . .But she needed \$5,000 to pay it off, . . . so we used some of the money to pay that off.

DOE Ex. 13 at 18-19.

The individual's previous statements also contradict his testimony at the hearing that he and his family were not living beyond their means, that they could afford the house they purchased in 2004, and that their financial problems were caused by the large tax bills they unexpectedly received in 2008, 2009, and 2010. On no fewer than seven occasions during his 2012 PSI, the individual stated that he and his family had lived beyond their means. He characterized this, and not his tax situation, as being the biggest reason for his family's financial problems. DOE Ex. 13 at 42.³ He later stated that they had been living beyond their means for years, and were probably still living beyond their means because of their house. *Id.* at 45. *See also* DOE Ex. 13 at 28, 53, 54, 59, 67.

Concerning the question of whether the individual could afford the house that he purchased in 2004 at the time he purchased it, he said that they "were really in financial trouble" until they were able to negotiate a mortgage modification, *Id.* at 29, that buying the house had been a mistake because it had put them in a financial position that they weren't able to maintain, *Id.* at 36, that buying the house had put them in an "initial financial hole," *Id.* at 43, "in a horrible situation," *Id.* at 44, and in a position where they had to exhaust their savings and borrow from their respective retirement accounts to pay the mortgage and their bills. DOE Ex. 14 at 24. The individual had to borrow \$200,000 from his mother-in-law after buying the house in an attempt to remain current on all of his financial obligations. Finally, during his 2010 PSI, the individual said that he was behind on some

³ During this same PSI, the individual did say that his tax problems were "sort of the straw that broke the camel's back," but added that "the camel's back was really in trouble" anyway. DOE Ex. 13 at 42.

of his payments before he received the large tax bills. DOE Ex. 14 at 11. At the hearing, the individual had no satisfactory explanations for these discrepancies.

I note that the record in this matter does contain substantial mitigating evidence. The individual has made a concerted effort to pay off his creditors and reduce his indebtedness. Most of his creditors have been paid off, and the individual has negotiated or is negotiating payment plans regarding his remaining debt. *See* Individual's Exhibits A1a, A1b, A2b, A2e - A2h, A3b, A3c. Moreover, the individual has received counseling regarding his finances. Nevertheless, the inconsistencies outlined above cast serious doubt upon the trustworthiness of representations made by the individual for which he has not submitted supporting evidence, such as those concerning his current budget and expenses. Moreover, I find that they are so extensive as to call into question the individual's honesty and reliability, as those terms are employed in criterion (1).

Even in the absence of these discrepancies, I would be unable to conclude that the individual has adequately addressed the DOE's concerns regarding his finances. The individual has exhibited a history of poor financial decision-making dating back at least to 2004, when he purchased a house that he could not afford. Symptomatic of this pattern of financial irresponsibility was his decision to borrow \$60,000 to landscape his property when he was exhausting his savings and borrowing from his retirement plan merely to pay his mortgage and his existing bills, and his decision to spend \$5,000 to send his stepson to Jamaica for a week as a graduation present in 2009, presumably after the receipt of the first of his unexpectedly large tax bills. Although I find that the individual has behaved in a financially responsible manner since he adopted a "stringent" budget in May 2012, Tr. at 38, his four months of responsible behavior, as of the date of the hearing, are insufficient to convince me that the chances of a return to the behavior of the preceding eight years are sufficiently remote to justify restoring his access authorization.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not successfully addressed the DOE's security concerns under criterion (1). I therefore conclude that he has not demonstrated that restoring his access authorization 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 at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: November 16, 2012