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United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	
Filing Date:	March 20, 2012	
		Case No.: PSH-12-0023

Issued: June 27, 2012

Decision and Order

David M. Petrush, Hearing Officer:

This Decision considers the eligibility of XXXXXXX (the individual) to hold an access authorization[1] under the regulations at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As I explain below, the Department of Energy (DOE) should not restore the individual's access authorization.

I. Background

The individual is employed in a position that requires him to maintain a DOE access authorization, which he was granted in August 2007. *See* Tr. at 10; Ex. 8; Ex. 16 at 9.

On an October 2011 Questionnaire for National Security Positions (QNSP), the individual disclosed delinquent debts, a home foreclosure, and a wage garnishment. Ex. 14 at 8-9. (Similarly, an October 2011 credit report showed more than $2,000 in collection accounts, more than $1,600 in charged-off accounts, and a home foreclosure of more than $155,000. Ex. 3 at 1-2; Ex. 12 at 1-3.) In November 2011 and January 2012, the local security office (LSO) invited the individual to personnel security interviews (PSI), where he described a history of financial problems. *See* Ex. 16; Ex. 17.

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

In February 2012, the LSO issued the individual a Notification Letter advising him that it possessed reliable information that created a substantial doubt about his eligibility to hold an access authorization. Ex. 1. In an attachment, the LSO explained that the derogatory information falls within the potentially disqualifying criterion in the security regulations at 10 C.F.R. § 710.8 (l) (Criterion L).[2]

After the individual received the Notification Letter, he invoked his right to an administrative review hearing under the Part 710 regulations. Ex. 2 at 1-2. On March 20, 2012, the Director of the Office of Hearings and Appeals (OHA) appointed me Hearing Officer, and I conducted the hearing. The individual testified on his own behalf and called his financial counselor, his wife, and two co-workers. Each side offered several exhibits.

II. The Notification Letter and the Security Concerns

The LSO supported its Criterion L security concern with the following allegations of financial irresponsibility:

- The individual owes $2,435 to six collection accounts, $1,696 to three charged-off accounts, and $2,378 of student loan debt that is 120 days past-due;

- At an April 2007 PSI, the individual acknowledged the DOE's concerns with his finances and stated that he intended to pay his outstanding bills. Yet, in July 2010, his house was foreclosed on for non-payment;

- At a September 2010 PSI, the individual said that he would settle all of his delinquent accounts. Yet, by January 2012, he had failed to contact or arrange to pay three collection accounts totaling $2,029, three charged-off accounts totaling $1,696, and another collection account for a $5,369 auto loan (In 2005, the car had been repossessed for non-payment); and

- At a January 2012 PSI, the individual admitted that he is not financially responsible.

Ex. 1 at 1-2.

I find that the above information constitutes derogatory information that raises questions under Criterion L. 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 obey rules and regulations. These can raise questions about an individual's reliability,

[2] Criterion L includes "unusual conduct" and "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." *Id*. at § 710.8(l).

trustworthiness, and ability to protect classified information. Guideline F, STEPHEN J. HADLEY, THE WHITE HOUSE, ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION (2005) 9.

III. Regulatory Standard

An administrative review under Part 710 is not a criminal matter, where the government must prove the defendant guilty beyond a reasonable doubt. Rather, the standard places the burden on the individual because it protects national security interests. This is not an easy burden for the individual to sustain. The standard implies a presumption against granting or restoring an access authorization. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

A. The Individual's Burden

The individual must present evidence to convince the DOE that granting an 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 Part 710 regulations permit the individual wide latitude to present evidence to mitigate the security concerns. Even appropriate hearsay evidence may be admitted. *Id*. at § 710.26(h).

B. The Basis for the Hearing Officer's Decision

The Hearing Officer must issue a Decision that reflects his or her comprehensive, common-sense judgment, after considering all relevant evidence, favorable and unfavorable, whether granting or restoring an individual'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). The Hearing Officer must resolve doubt in favor of the national security. *Id*.

To reach a common-sense judgment, the Hearing Officer must consider the factors listed in 10 C.F.R. § 710.7(c)[3] (the "whole person concept") and the Adjudicative Guidelines. The Adjudicative Guidelines contain "conditions" or circumstances that may mitigate the allegations supporting each type of security concern.

[3] These factors include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledge and participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavior 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. *Id*. at § 710.7(c).

IV. Findings of Fact

The individual encountered financial problems around 2002. He was in school and lost a source of financial aid. Tr. at 53. Then his stepdaughter developed a brain tumor, had three surgeries, and became legally blind. *Id*. at 83-84; 87-88; Ex. 16 at 10-11, 40. The individual fell behind on her medical expenses because her public assistance did not cover everything. Tr. at 45, 84, 95; Ex. 16 at 10, 19. (His financial difficulties had not stemmed from lavish spending. *See* Tr. at 87-88; 103-04.) Personal loans were used to pay bills. *Id*. at 28-29; Ex. 17 at 18-20, 23.

The individual's financial problems grew.[4] In 2005, his vehicle was repossessed. Tr. at 33. By 2007, the individual could no longer afford his student loan payments, which went into default. *Id*. at 29, 31; Ex. 16 at 34. (He had graduated in May 2004. Tr. at 55.) Also in 2007, his wife was laid off, he had knee surgery, and his insurance did not cover his physical therapy. *Id*. at 20-21, 85; Ex. 16 at 9. By 2008, he was delinquent on his mortgage. Ex. 17 at 28. (He had moved into the house in December 2006. Tr. at 55; Ex. 16 at 14.) He refinanced in 2009, but he could not afford the payments when they went from $1,260 to $1,600. Ex. 16 at 15; Ex. 17 at 12, 28-29. He made two or three payments and let the house go into voluntary foreclosure. Tr. at 84; Ex. 18 at 19-20. He moved out in July 2010 and now rents for $975. Tr. at 24; Ex. 16 at 15, 63; Ex. 18 at 21.

By October 2011, the individual had six collection accounts totaling $2,435 and three charged-off accounts totaling $1,696. Ex. 3; Ex. 12 at 1-2. He also owed $5,369 for a repossessed vehicle and $36,967 in student loans. Ex. 3; Ex. 13 at 2. The individual's wife had handled their bills, and he thought that she was paying them. Tr. at 36; Ex. 16 at 30; Ex. 19 at 13-14.

The individual began to take control of his finances in January 2012, when he approached a consumer credit organization because he needed the help. Tr. at 22, 36, 40. He spearheaded the effort and took his wife. *Id*. at 50, 82. The organization did not provide credit counseling. *Id*. at 46. It did, however, help the individual to draft a budget. *Id*.; *see* Ex. D. His budget lists his income after all taxes and deductions. Tr. at 54. His budget expenses include his stepdaughter's medical costs. *Id*. at 45, 96. Sometimes those costs run $50 over, but he has extra money because he no longer has one budget expense, tool rental, that had been included for $336 a month. *Id*. at 39, 45.

The organization also helped the individual draft a debt management plan. Tr. at 46; *see* Ex. D. Under the plan, the organization works with six creditors listed in the Summary of Security Concerns. They include the creditors owning the debts for $1,085, $896, $517, $408, $406, and $290. Tr. at 13-14, 20, 25, 27. The individual pays the

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[4] The individual filed for bankruptcy in 1999, and it was discharged around 2000. Ex. 17 at 12, 45; Ex. 19 at 7. The bankruptcy stemmed from his divorce from his previous wife. Ex. 18 at 33. I make no finding about the bankruptcy because the LSO does not include it as a basis for its security concern.

organization $159 a month, and the organization pays the creditors. *Id*. at 42, 69. He began paying in February 2012 and has paid on time each month through May 2012. *Id*. at 40, 70, 79; Ex. L.

The individual has addressed all of his remaining liabilities outside of his debt management plan. The sale of his house covered the mortgage. Tr. at 84; Ex. C. (In May 2012, his credit report had listed a mortgage balance, but he filed a dispute. Tr. at 58; Ex. 21 at 3.) The individual's wages are garnished $450 a month to pay child support, which he will pay until September 2012. Tr. at 53, 97; Ex. 16 at 58-60; Ex. 17 at 46. He has made three consecutive student loan payments of $250. Tr. at 29, 42-43, 57; Ex. B. After nine payments, his student loans will be returned from default. Tr. at 29-31, 57. In March 2012, he paid his vehicle debt with a loan from his 401(k), for which he pays $100 a month. *Id*. at 33-34, 61-63; Ex. A. He has extra money in his budget for this because, as noted above, he no longer rents tools. *Id*. at 63. In March 2012, he also paid the creditors owning the two smallest debts on the Summary of Security Concerns, the debts for $70 and $67. *Id*. at 11-13; Ex. D. He waited until March 2012 to settle the vehicle loan and the small debts because he could not have paid his bills otherwise. Tr. at 35. The individual disputed the only other debt listed in the Summary of Security Concerns, the debt for $392. *Id*. at 26, 48; Ex. G; Ex I.

Since going to the consumer credit organization in January 2012, the individual has taken an increased role in managing his finances. Tr. at 49. His wife still helps manage, but now the two communicate more openly. *Id*. at 51. They evaluated all of their expenses and listed them in monthly spreadsheets. *Id*. at 36, 89, 93. They lowered expenses where they could, such as reducing their cell phone plan, and decided not to take on any more expenses. *Id*. at 39, 88-91. They continue to confer on expenses every week, and when she pays the bills, he is present. *Id*. at 93-94, 98. They also established a savings account. *Id*. at 39-40, 92.

The individual's increased involvement has given him a greater awareness of his bills, when they are paid, and exactly where his money goes. Tr. at 37, 50. His greater awareness has allowed him to stick with his budget, which he has found to work well. *Id*. at 41, 44, 87, 92-93. Because he sticks with his budget, since adopting it, he has not had to take a personal loan to pay his bills. *Id*. at 37, 44. To stay on track, each month, the individual follows-up with the organization counselor via telephone or e-mail. *Id*. at 71, 77, 91. Also to stay on track, in May 2012, he took a webinar on understanding credit scores and reports. Ex. M.

If the individual continues to stay on track, he will become debt-free in April 2014. Tr. at 17, 75. He intends not to over-extend himself again. *Id*. at 40.

V. Analysis

To determine whether the individual has mitigated the LSO's allegations of financial irresponsibility, I will consider the relevant factors from 10 C.F.R. § 710.7(c) and the relevant mitigating conditions from Guideline F of the Adjudicative Guidelines – Financial Considerations.[5]

At the outset, I find that before January 2012, the individual showed an astounding lack of sophistication in handling his finances, despite having earned an MBA in December 2010. Ex. 16 at 31-32. He had little or no role in managing his own finances. His inexperience, in turn, caused his financial problems to snowball from temporary circumstances or unique circumstances that were out of his control – such as his stepdaughter's medical problems and his own medical problem – into financial problems that stemmed from poor choices and his inability to manage his money. For example, in 2006, he took out a mortgage when he was already behind on the major financial obligation of his vehicle payment. In 2009, he thought that his refinanced mortgage rate was fixed, but it was not – which ostensibly defeated the purpose of refinancing. Ex. 18 at 19-20. By November 2011, after the individual's house was foreclosed on because he could not afford the payments, he did not know the outcome of the foreclosure sale. Ex. 17 at 30-31. As recently as that time, he also did not even know when his student loans and personal loans had become delinquent. *Id*. at 20, 23-26.

The individual presented evidence to show improved financial management. He recognized that he needed help and sought it by reaching out to a consumer credit organization, which helped him draft a budget that includes the significant expense of his stepdaughter's care, which had greatly contributed to his financial instability. The organization also helped him create a debt management plan to pay his creditors. He has

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[5] Guideline F contains the following relevant mitigating conditions:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not case 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 problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue[.]

ADJUDICATIVE GUIDELINES at 10.

shown good faith efforts to follow through on the debt management plan by making four monthly payments through the consumer credit organization. He also settled or addressed each debt not included in his debt management plan, which required diligence, attention to detail, and persistence.

The individual has also shown signs of financial responsibility by living within his budget since January 2012, summarizing and reviewing his expenses, cutting expenses, better communicating with his wife, and taking advantage of an online resource to educate himself on the basics of personal finance. His progress showed in the remarkable, comprehensive level of organization of his exhibits and the sense of ease and confidence that he projected at the hearing. His financial counselor testified that his competency has improved and that she does not hear him express frustrations in the monthly handling of his finances. Tr. at 77, 79. Indeed, she testified, the individual will probably continue his newfound financial stability because those who survive the first few months often maintain their stability. *Id*. at 74.

I find, however, that the individual has not yet resolved the LSO's security concern. Hearing Officers have held that once an individual has shown a pattern of financial irresponsibility, he or she must show a new, sustained pattern of financial responsibility long enough to demonstrate that a recurrence of the past pattern is unlikely. *Personnel Security Hearing*, PSH-11-0015 (Feb. 9, 2012).[6] For the following reasons, the individual has not sustained a pattern of financial responsibility long enough.

The individual's financial recovery has just begun. After more than ten years of mismanagement and indifference, only in March 2012 could he finally pay relatively modest debts without further destabilizing his finances. His student loan status also shows only a tentative recovery; he must make several more payments before his loans come out of default. By that time, he will no longer be under a court order to have his wages garnished for child support. And with more time, he may solidify his financial recovery and competently handle not only modest debts and his student loans, but the unexpected expenses and budget adjustments that he will inevitably face.

To handle inevitable challenges, the individual will need to continue to develop his skills. The consumer credit organization has set the individual on the right path to do so. It provided the invaluable contribution of helping him draft a budget and implement a debt management plan, as noted above, but it provided no actual counseling in personal financial management. It does offer webinars to teach nuts and bolts topics, but the individual has only taken one training session. That is an important step, but still an early one.

[6] OHA decisions are available through the online search engine at http://www.oha.doe.gov/main_search.asp.

VI. Conclusion

Because the individual has not resolved the Criterion L security concern, I find 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. Therefore, I find that the DOE should not restore his access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

David M. Petrush
Hearing Officer
Office of Hearings and Appeals

Date: June 27, 2012