

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Hearing Officer in this case. The DOE introduced ten exhibits into the record of this proceeding. The individual introduced eight exhibits,³ and presented the testimony of four witnesses in addition to his own testimony.

II. 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 and unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would not endanger the common defense and be clearly consistent with the national interest. 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). 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).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L). Exhibit 1.⁴ To support this criterion, the LSO cited the following: (1) the individual’s admission in his January 2013 PSI that his wages were being garnished in the amount of \$150 weekly to satisfy a federal income tax debt of approximately \$11,000, and that he owed approximately \$3,600 in back state income taxes; (2) his failure to file a 2010 state income tax return; (3) collection accounts totaling \$15,443, a charged-off account of \$1,242, and a 60-day delinquency in payments on a vehicle; (4) his failure to resolve past due accounts despite his intentions expressed in a 2010 PSI; and (5) his statement in the January 2013 PSI that that he did not feel that he was living within his means and that he was overextended financially. Exhibit 1.

The above information adequately justifies the DOE’s invocation of Criterion L, and raises significant security concerns. The failure or inability to live within one's means, satisfy debts, and meet financial

³ The individual introduced Exhibits A through G at the hearing in this matter, and submitted additional documents after the hearing that I have labeled, collectively, Exhibit H.

⁴ Criterion L defines as derogatory information that an individual 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. § 708.8(1).

obligations, including the failure to file tax returns as required, 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) [hereinafter *Adjudicative Guidelines*] at ¶ 18. Further, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. FINDINGS OF FACT AND ANALYSIS

The individual has not disputed the allegations set forth in the Notification Letter. Exhibit 2. He has, however, offered some evidence of progress toward resolving the concerns raised by the allegations. Nonetheless, as discussed below, I cannot find that the individual has sufficiently resolved the concerns raised by his federal and state income tax delinquencies, nor has he established a pattern of financial responsibility that would resolve the concerns raised by his past financial irresponsibility.

A. Federal and State Income Tax Obligations

At the hearing, the individual submitted a letter from the Internal Revenue Service stating that it had accepted the individual's offer for an installment agreement covering taxes owed for 2008, 2010, and 2011. Exhibit F. The agreement requires monthly payments of \$300.⁵ Subsequent to the hearing, the individual submitted a copy of two installment agreements with a state revenue authority, covering a balance of \$8,832.08, and requiring payments totaling \$150 per month, to be made through January 2018. Exhibit H.

That the individual has entered into these installment agreements is certainly a step in the right direction, as he now has in place a plan to address his delinquent income tax liability. *Adjudicative Guidelines* at ¶ 20(d). Whether the individual will follow through and honor his commitment to pay his past and ongoing tax obligations is another matter.

In making this finding, I considered that the LSO had already raised the issue of income taxes with the individual during an October 2010 PSI, clearly putting him on notice that this was an issue of concern to the DOE. Exhibit 9 at 45-49. At that time, the individual stated that he did not know how much he owed to the IRS, but that he was sending payments to the agency. *Id.* at 47. That the individual still, nearly three years later, owed back income taxes for 2008 indicates that he did not take his obligation seriously enough to address until the issue was brought to his attention again in the January 2013 PSI, after which he entered into his February 2013 installment agreement with the IRS. Going forward, this raises legitimate concerns as to whether, once the pressure of DOE's current scrutiny has abated, he can be relied upon to fulfill his obligations under his installment agreements with either the federal or state government.

Further, I am not convinced that the individual takes his legal obligation to pay taxes sufficiently seriously, given both his past behavior and statements made in his January 2013 PSI. When asked why he did not resolve his 2008 tax issues after the October 2010 PSI, the individual speculated that he could have forgotten about it, and noted that "it's been a little rough, you know, trying to, uh, send my kids to

⁵From the documents in the record, it is not clear how much the individual currently owes in delinquent federal income taxes, nor how long it will take the individual to pay off the entire federal income tax debt. It is reasonable, however, to assume that, as of January 2013, the balance was somewhere between the \$11,000 the individual admitted owing in his January 2013 PSI, Exhibit 8 at 31, and \$16,210, the amount of the writ of garnishment issued to the individual. *See* Exhibit 3.

college and my two younger daughters in high school, you know, and they're bo -- two of 'em in sports and, you know, it's been, it's been hard.” Exhibit 8 at 17. Later in the PSI, discussing the fact that he owed federal income taxes for three prior years, he acknowledged that he knew he owed money to the government, but that he was trying to “borrow some to try to take care of that debt. And, uh, like me and, um, millions of people in the United States I can't afford to do some things with raising their own family, you know.” *Id.* at 21.

In addition, my concern regarding whether the individual will properly prioritize his legal obligations is amplified by the fact that I am not convinced that the individual will be sufficiently responsible to be able to live within his means in the future, an issue discussed in more detail below.

B. Financial Responsibility

As with the payment arrangements made regarding his delinquent income taxes, the individual has taken the step of consolidating what appears to be approximately 80 to 90 percent of his outstanding debt through an agreement with a debt settlement company. Exhibit A. Under this agreement, the individual is to make monthly payments of \$272 for 42 months. Again, this is a positive step, in that it provides a simplified plan for resolving a large portion of the individual's outstanding debt. *Adjudicative Guidelines* at ¶ 20(d).

However, even assuming the individual's willingness to meet the obligations of this new agreement, along with those of his installment agreements to pay his back taxes, there are reasons for prudent skepticism until such time that the individual can demonstrate that he is able to do so. According to an April 2010 credit report, the individual's delinquent debt at that time totaled between \$11,000 and \$12,000. Exhibit 5. By the time of the individual's January 2013 credit report, his delinquencies had risen to \$17,000. Exhibit 4. In the interim, the individual's wife earned a salary of \$57,000 per year, and then \$82,000 in the last five months before she lost her job in 2012. Tr. at 59. The individual's wife testified at the May 2013 hearing in this matter that she had found a new job, in which she had been working for five weeks. Tr. at 42. However, her new salary is \$32,000, *id.* at 57, significantly less than her previous salary.

Given that the individual was not able to live within his means with his previously higher household income, it is difficult to have confidence that he will be able to do so now. I note here that a large portion of the individual's outstanding debt is in the form of past due medical bills, and that some of these expenses were due to circumstances beyond his control. Tr. at 30-31; 66-67; *see Adjudicative Guidelines* at ¶ 20(b). However, this fact only partly mitigates the concern raised by individual's delinquent debts, which were also the product of clearly discretionary spending beyond his means.

Thus, despite not paying their medical bills, and with a substantially higher income that he currently has, the individual and his wife were, according to his wife's testimony, not able to spend less than their income such that they could accumulate savings. Tr. at 61. The individual's wife attributed this to an unexpected need for household repairs, but also to new construction on the home, a discretionary expense. *Id.* at 61-62; *see also id.* at 68 (testimony of individual that he “should have waited on adding onto our home and concentrated more on our debts, our bills, before trying to add onto our home”).

Thus, the individual and his wife have a difficult task ahead of them. They now will be required to make payments totaling \$722 a month toward their back taxes and other outstanding debt, over and above the normal expenses they faced from 2010 to 2013. And they will need to do so despite a precipitous drop of at least \$25,000 in yearly gross household income, due to the individual's wife's lower salary.

In prior cases involving financial considerations, Hearing Officers have held that “[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” *See, e.g., Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009).

Here, a plan is in place that will allow the individual to resolve the debts that were, at least in part, due to irresponsible spending and a failure to prioritize legal obligations. I cannot find, however, that the individual has yet established a sustained pattern of financial responsibility sufficient to resolve the concerns raised in this case. Thus, at this point in time, there remain significant doubts as to whether the individual will act responsibly in the future and, as noted above, the regulations governing this proceeding 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).

V. 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 Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns at issue. I therefore cannot find that restoring the individual’s access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual’s access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: June 10, 2013