

DOE's security concerns and the reasons for those concerns. Exhibit 1. 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 an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced 11 exhibits into the record of this proceeding. The individual introduced five exhibits, and presented the testimony of two witnesses, in addition to his own testimony. The individual also submitted written statements by two individuals who were not able to testify at the hearing.

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 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). 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 information pertaining 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. Exhibit 1.³ Under this criterion, the LSO cited the following: (1) a warrant of levy was placed on the individual's wages by the IRS for \$46,325.26 for taxes that he owed for the years 2007, 2008 and 2009; (2) he has an outstanding medical collection for \$1,250.00; (3) he has three charge-off accounts totaling \$15,428; and (4) in his interrogatory responses on December 2011 and October 2009, and during two PSIs on July 13, 2011 and June 15, 2011, the individual stated that he was

³ Paragraph (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(l).

current on filing his taxes, but then admitted at his PSI on June 4, 2013, that he had not filed his federal or state taxes since 2003. 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 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*]. Moreover, the failure to provide truthful and candid answers during a security clearance process also raises questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.*, Guideline E.

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 resolved the concerns raised by his failure to resolve his outstanding debts; nor has he established a pattern of financial responsibility that would resolve the risk of a recurrence of his past financial irresponsibility. I also cannot conclude that the individual mitigated the concerns associated with his lack of honesty. For these reasons, I am unable to conclude that restoring the individual's suspended DOE 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).

A. Financial Irresponsibility and Unwillingness or Inability to Satisfy Debts

The individual is 46 years old and works for a DOE contractor. In the Notification Letter, the LSO characterized the individual's outstanding federal income tax liability as evidence of his "financial irresponsibility and established pattern of unwillingness or inability to satisfy debts." Exhibit 1. Specifically, the LSO cited the fact that in April 2013, a warrant of levy was placed on the individual's wages by the IRS in the amount of \$46,325.26 for federal taxes that he owed for 2007, 2008 and 2009. Exhibit 5.

The individual testified that he did not learn about the problems with his taxes until he received notice that his wages were garnished, because for years, he relied on his friends and ex-girlfriend to file his income tax returns as he was too busy from working overtime. Tr. at 44-46. In fact, he never filed his own income taxes until the problems with his taxes recently surfaced. Tr. at 57. At the hearing, the individual acknowledged that he did not follow up on the tax filings, and that he lost "track of time," stating "I am bad for not staying on top of it like I should have." Tr. at 42. Now he realizes that it is critical to understand how to file his income taxes instead of relying on others to do it for him. Tr. at 58. Also, in order to minimize any tax liability, he now claims zero exemptions on his taxes. Tr. at 38. Furthermore, the individual has sought the assistance of his girlfriend, who testified at the hearing that after his clearance was suspended, she assisted him in filing his federal income taxes and getting him on a payment plan with the IRS. Tr. at 19. She said that they filed his

federal income taxes for the tax periods that he failed to file his taxes within the week that his clearance was suspended. Tr. at 31.

Indeed, after his clearance was suspended, the individual contacted the IRS, to enter into an installment plan for his tax liability from 2003 through 2012,⁴ excluding 2006. Exhibit A. Based on the recent filings, the individual now owes the IRS \$110,682.17.⁵ Exhibit E. According to his IRS statement, he owes the following amounts for each year, not including interest and penalties: 2003: \$7,386.49; 2004: \$12,020.49; 2005: \$18,302.53; 2007: \$14,559.63; 2008: \$14,934.18; 2009: \$15,173.67; 2010: \$14,928.18; 2011: \$5,378.81; and 2012: \$4,574.84. Exhibit E. Pursuant to his payment plan with the IRS, the individual has to pay \$500.00 a month, with his monthly bill increasing to \$575.00 starting on December 28, 2013, and then \$1,271.00 on June 28, 2017. Exhibit A. His first payment was due September 28, 2013. Exhibit A.

Moreover, the LSO cited the individual's outstanding medical collection bill of \$1,250.00 and his three charged-off accounts with a credit union, for which, at that time, he owed a total of \$15,428. Exhibit 4.

To explain how he struggled with paying his medical bills and the credit union, the individual stated that he started facing financial difficulties in May 2011, when he was cited for Driving While Intoxicated (DWI). Tr. at 50. As a result of the DWI, he was suspended for four months and could not find part-time employment to assist him with paying his bills. Tr. at 43. He stated that he subsequently entered into an agreement with the credit union, to "try to get caught up and getting them paid up." Tr. at 50. However, soon after, in 2012, he got into a motorcycle accident and sustained severe injuries to his arms, head, leg and spleen, which exacerbated his financial struggles. Tr. at 43-44. He could not make payments to the credit union and they repossessed his car, camper, bike and truck. Tr. at 50. Moreover, as a result of that accident and his physical injuries, he was unable to work for approximately six months. Tr. at 28. When he subsequently returned to work, he was downgraded in his position because he could no longer meet the physical demands of his job and consequently, his income decreased. Tr. at 44.

He testified at the hearing that he had yet to make payments to the credit union because he was first trying to resolve the issues with his federal income taxes. Tr. at 62. However, after the hearing, the individual provided a copy of his Stipulated Agreement with the credit union, dated September 19, 2013, indicating that on September 27, 2013, he would start paying \$250.00 a month to the credit union to pay off his debt of \$17,587.85. Exhibit D. With regard to his medical collection bill, the individual presented a copy of a receipt, indicating that on September 12, 2013, he paid \$1,250.00 to satisfy that debt. Exhibit C.

Finally, the individual submitted a budget, showing that his monthly expenses, including his federal income tax payments and credit union payments, total \$8,950, and that his monthly income,

⁴ At his PSI on June 4, 2013, the individual admitted that prior to his wages being garnished, he did not file his state or federal income taxes from 2003 until the recent tax period; however, after his wages were garnished, he filed his federal income taxes from 2003 to the most recent period. Exhibit 8 at 11, 16-17.

⁵ At the hearing, the individual acknowledged that he has not yet filed his state income taxes because he first wanted to take care of filing his federal taxes. Tr. at 48.

combined with his girlfriend's income, is \$10,059. Exhibit B. Therefore, the individual avers that according to his budget plan, he would save approximately \$1,108 a month. *Id.*

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).*

While I commend the individual for paying his medical collection bill and making arrangements to pay off his federal tax and credit union debts, even with a monthly savings plan, he still has not established a *sustained pattern* of financial responsibility. His debts to the credit union and the IRS are still outstanding, and he only recently entered into the payment agreements after his clearance was suspended. In the meantime, there are also reasons to remain cautious as to the risk of a recurrence of the individual's past pattern of irresponsibility. For example, at the hearing, the individual acknowledged that he recently purchased a motorcycle in March 2013 and took out a loan for \$32,242 to finance that purchase. Tr. at 62. He stated that he bought the motorcycle before he knew about his wage garnishment. Tr. at 63. I find, however, that he should have known about his outstanding debt to the credit union at the time he purchased and financed the motorcycle. Thus, I would be hard pressed to conclude that he acted financially responsible when he borrowed money to purchase a motorcycle.

Based upon my evaluation of the record, it is simply too soon to find that the individual has established a sustained pattern of financial responsibility. Given that he has only recently entered into an installment plan with the IRS and the credit union, the concerns raised by his outstanding debt have not been resolved. *See* 10 C.F.R. § 710.7(c) (relevant factors include “recency of the conduct”). Moreover, as someone who has had to file income taxes for years, and even successfully filed them before 2003, he should have known to follow up on his income tax payments, particularly as he was filing individually and not jointly. While he relied on his friends and an ex-girlfriend to assist him in filing his taxes, he cannot skirt the requirements regarding his taxes. Ultimately, he is responsible for his own income taxes. Thus, I cannot conclude that the individual sufficiently mitigated the concerns with regards to his financial irresponsibility.

C. Failure to Provide Truthful and Candid Answers

During his PSIs on June 15, 2011, and July 13, 2011, the individual stated that he was current on his federal and the state taxes, and in his responses to two letters of interrogatories to the LSO in October 2009 and December 2011, the individual represented that he was current on his taxes. *See* Exhibits 6, 7, 9 at 47 and 10 at 48-49. Yet, the individual later admitted at his June 4, 2013, PSI that he in fact was not current on his state or federal taxes, specifically, that he owed back taxes to the IRS and that he did not file his state or federal taxes since 2003. Exhibit 8 at 11, 16-17. When asked at the hearing why he misrepresented the status of his tax filings and payments to the LSO, he replied that at the time, he was not aware of any issues with his federal or state taxes. Tr. at 63. He believed that he was current on his taxes, and that it was not until his wage garnishment in April 2013, that he discovered the issues. Tr. at 63. However, in light of his reliance on others to file his taxes and the lack of documentation from the IRS or the state regarding his taxes, I cannot

understand why the individual represented that there were no issues with his taxes when the consequences for not being truthful were so grave. Tr. at 63-64. The fact that the individual had neither paid taxes nor received a refund for those years reasonably should have alerted the individual that his tax returns had not been properly filed.

Nonetheless, in order to demonstrate that he is truthful and exercises good judgment, the individual presented testimony from a colleague at the hearing, and character letters from two other individuals regarding his character and work performance. Tr. at 13. However, even in consideration of their statements, I cannot conclude that the individual mitigated the concerns associated with his lack of honesty, reliability and trustworthiness.

Listed in Adjudicative Guideline E, are the following conditions that may mitigate concerns regarding an individual's questionable judgment, lack of candor, or dishonesty:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the fact;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the information cooperated fully and truthfully.
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability;
- (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Of the above-listed conditions, only (a) and (c) apply in this case. Even still, the individual has not met those conditions to demonstrate that he has mitigated the concerns associated with his judgment and lack of honesty. First, the individual has not indicated that he made any effort to correct his statements regarding his tax filings after he was confronted with the facts. Rather, he admitted during his PSI, *after* the issue already came to light with his wage garnishment, that he was not current on his taxes. Second, I cannot conclude that his dishonest statements were so minor or infrequent as he made them to the LSO on four separate occasions in a two-year time frame, and three times in 2011 alone. Finally, the individual perpetuated his untruthful statements until June 2013, when he admitted that he did not file his federal or state taxes since 2003. As June 2013 was only four months ago, I cannot conclude that enough time has elapsed for the individual to have demonstrated a strong commitment to candor. *See Personnel Security Hearings*, Case No. TSO-0396 (2006) (finding that six months since the individual was honest with DOE was insufficient to

mitigate the concern with his honesty). I am convinced that the individual was earnestly trying to be candid at the hearing. Yet, I still find that his false and misleading answers to the LSO about the status of his tax filings, that he provided with equal conviction despite his lack of understanding about his taxes, raise concerns about his reliability and judgment. For all these reasons, I cannot find that the individual mitigated the security concerns associated with his lack of honesty, reliability and trustworthiness.

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.

Shiwali G. Patel
Hearing Officer
Office of Hearings and Appeals

Date: October 10, 2013