



The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge.<sup>3</sup> The DOE introduced eight exhibits into the record of this proceeding. The individual introduced 26 exhibits and presented only his testimony at the hearing. Furthermore, after the hearing, the individual filed a post-hearing submission.

## 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, an Administrative Judge 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 subsections (l)<sup>4</sup> and (f)<sup>5</sup> of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Ex.

1. Under criterion (l), the LSO relied on two credit reports of the individual dated February 10,

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<sup>3</sup> Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (Aug. 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1, n.1.

<sup>4</sup> Criterion (l) defines as derogatory information when 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).

<sup>5</sup> Criterion (f) defines as derogatory information when an individual has “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31.”

2012, and December 20, 2012, showing several delinquent accounts. The LSO cited the following from the credit reports: (1) the individual's 20 outstanding debts, 13 of which were in collection and one that resulted in a judgment against him; (2) the individual's failure to pay his federal income taxes for 2008; and (3) the lien on his property that the individual reported was due to his failure to pay taxes. Ex. 1. Under criterion (f), the LSO cited the individual's deliberate failure to report on his security form 16 of his outstanding debts and that he was a defendant in several non-criminal court cases regarding his delinquent accounts. *Id.* Moreover, the LSO cited the individual's statement during his May 22, 2012, Office of Personnel Management (OPM) background investigation that his responses on his SF-86 were correct, even though he failed to provide complete and accurate responses on this security form. *Id.*

The above information adequately justifies the DOE's invocation of criteria (l) and (f), 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 is 55 years old and began working for the DOE in March 2012. Tr. at 10. On May 22, 2012, OPM completed its background investigation of the individual. As the investigation uncovered some derogatory information, DOE summoned the individual for a PSI on June 28, 2012. Ex. 7 at 3-4.

##### **A. Criterion L: Financial Irresponsibility and Unwillingness or Inability to Satisfy Debts**

During the hearing, the individual testified that from 2000 through 2008, he was employed by the local government. Tr. at 47. He voluntarily left that job in January 2008 after deciding to enter into the real estate market and start his own business. *Id.* Before leaving his job with the local government, he spent about a year and a half starting his real estate company, and he stated that he did not have any concerns about being able to satisfy his financial obligations. Tr. at 48. At the time, he had several expenses for properties that he owned, including a timeshare that he purchased sometime in 2006-2007 and the mortgage from a bank (Bank #1) on his personal residence. Tr. at 48. However, after the real estate market collapsed in March 2008, the individual's business suffered and consequently, he had to shut it down in 2009. *Id.* He then could not afford to make payments on his mortgages and he began working part time in 2010 and 2011, earning just a few thousand dollars. Ex. 8 at 22; Ex. 7 at 118.

Including his debt concerning his personal residence and timeshare, the individual had the following mortgages: \$70,930 home equity line of credit from a bank (Bank #2) for a condominium that he rented out ("first rental property") that is past due over 120 days for \$4,000; \$87,163 home equity line of credit from Bank #2 for another rental property ("second rental property") that was listed as

being in collection for the full amount; \$246,552 account balance with Bank #1 for the individual's personal residence that is past due over 120 days for \$35,000; and \$52,515 for his timeshare that is past due over 120 days of \$37,000.<sup>6</sup> Ex. 1. These past due amounts are from the credit report dated December 20, 2012.

The individual presented evidence challenging the accuracy of six of the debts listed in the Summary of Security Concerns, listed in Paragraph IA, subsections d, f, h, j, p and t.<sup>7</sup> After carefully reviewing the evidence, I find that he has mitigated the concerns associated with those six debts. *See* Guideline F, Paragraph 20(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"). He also presented credible evidence showing that he satisfied eight debts listed in Paragraph IA, subsections e, i, k, m, n, o, q, and s, before the hearing in this matter. *See* Ex. E, I, K, M, N, O, Q and S. Accordingly, I find that the individual has mitigated the security concerns connected with those debts.

While I find that the individual sufficiently challenged some of the debts listed in the Summary of Security Concerns and that he made payments on many of his other debts, it is unclear whether or not he paid off other outstanding debts that he claims have been settled. Tr. at 61. For example, according to paragraph I.A.r. of the Summary of Security Concerns, the individual owes \$1,300 to Bank #3 that is in collection. At the hearing, the individual said that he worked out a payment plan with Bank #3 where he paid about \$110 a month starting in 2012, and that his final payment to Bank #3 was on December 24, 2013 for \$332.51. Tr. at 60; Ex. R. Thus, he claims that he no longer owes any payments to Bank #3. He further testified that he expects to receive documentation from Bank #3 by January 24, 2014, indicating that he made all of his payments; however, to date, I have not received documentation confirming that such payments were made and that he no longer has any outstanding debt with Bank #3. Tr. at 61. While the exhibit indicates that the individual withdrew \$110 for 14 months and made a payment of \$332.51 on December 24, 2013, from a bank account, it is not apparent to whom those payments were made. Ex. R. Without more, I cannot conclude with certainty that he satisfied his outstanding debt with Bank #3.

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<sup>6</sup> At his PSI, the individual stated that he took out the home equity line of credit on his first rental property in order to pay for his children's private school. Ex. 7 at 49-50. He also admitted that he did not make any payments towards the mortgage on his personal residence with Bank #1 for over two years. Ex. 7 at 54.

<sup>7</sup> First, as to the high credit balance reported in I.A.j of \$32,392 for his car, the individual provided a letter from the creditor, dated May 5, 2011, indicating that his car payments were completed. Ex. J. The creditor stated: "We have received your final payment. Subject to a final accounting and receipt of good funds, your account will be considered as paid in full." Ex. J. In that same letter, the creditor stated that it was enclosing the certificate of title or a similar lien release document. Ex. J. Indeed, the individual's second credit report dated December 20, 2012, indicates that the account was closed and that his last reported delinquencies were in April 2011 and December 2010. Ex. 3. Second, as to the debt listed in I.A.d. for a returned check that was past due for \$104, the individual presented a letter from the creditor indicating that his credit reports should be amended to reflect that he paid off his debt, and that the claim regarding his outstanding debt was closed on June 6, 2012. Ex. D. Third, regarding the debt listed in I.A.f. with a balance of \$1,289 that was past due \$105, the individual presented a letter dated September 13, 2012, from the creditor indicating that his account with them has been settled in full. Ex. F. Fourth, as to the debt listed in I.A.h. for a past due amount of \$317 that was in collection, the individual provided a letter from the creditor indicating that his account was settled in full on October 18, 2012. Ex. H. Fifth, as to the debt listed in I.A.p. for which the individual had a collection account balance of \$279, the individual provided a letter dated December 27, 2010, from the creditor stating that the amount he owed was considered paid in full. Ex. P. Finally, he provided a letter regarding the \$1,500 debt listed in I.A.t. that was in collection, indicating that his account with the creditor was settled in full on January 10, 2013. Ex. T.

Moreover, at the hearing, the individual testified that in 2010 he paid off a \$4,227.94 judgment to a condominium association for failure to pay his dues, as listed in I.A.a. of the Summary of Security Concerns. Tr. at 11-13. Yet, at his PSI on June 28, 2012, the individual stated that he paid off only \$2,700 of what was owed for that judgment, indicating that he still owed money at the time. Ex. 7 at 43-44. When asked to clarify these inconsistent statements, he could not explain why he stated at his PSI that he was still making payments towards the judgment, which he later claimed was already paid off in 2010. Tr. at 16-17. He believed that his judgment was paid off in 2010 because he recalls that the firm representing the condominium association withdrew funds from his bank account; while he claims he was not provided any warning about the withdrawals, he knew about it after his check bounced. Tr. at 17. However, a review of the docket entries of the civil action filed by the condominium association that resulted in the \$4,227.94 judgment against the individual demonstrates that the court issued a Writ of Garnishment of Property as late as February 23, 2012, suggesting that the civil court action was still ongoing and that the full judgment amount was not yet collected on by the condominium association. Ex. 5. Thus, based on the information in the docket and the individual's inconsistent statements at the hearing and his PSI, I am unable to find his testimony on the satisfaction of his this debt credible. The record simply does not support the individual's assertions that he paid off that debt entirely in 2010, or at all.

However, the same condominium association that had the \$4,227.94 judgment against the individual subsequently filed another lawsuit against him for his past dues, and the individual countersued because of damages to his unit. Tr. at 13-14. The individual and the condominium association then entered into a Settlement Agreement on December 5, 2013, whereby the association agreed to pay the individual \$15,000. Ex. A. When asked what he did with the money, the individual explained that he used \$5,000 to pay attorney's fees and then paid off four of his other debts with the settlement money. In total, he used approximately \$8,540 of the \$15,000 to pay off those bills and debts. Ex. Y.

While I commend the individual for making efforts to pay off some of his debts as well as sufficiently disputing some of the listed delinquent debts in the Summary of Security Concerns, he still has not adequately demonstrated such good-faith efforts for his current debts related to his real estate, which constitute the bulk of his indebtedness. *See* Guideline F, Paragraph 20(c) ("the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"). Specifically, the individual still has high outstanding debts with Bank #2, timeshare creditor and Bank #1 for which he has not made payments in a few years.

With regard to the amount that the individual owes to Bank #2 on the first rental property unit, he stated that he is in the process of negotiating for a modification. Tr. at 21; Ex. B. That account has a balance of \$70,930, which is past due over 120 days in the amount of \$4,000. Ex. 1. The individual provided a copy of his January 3, 2014, application to Bank #2 to determine his eligibility for the modification. Ex. B. At the hearing, the individual did not indicate that he made any payments towards that debt as he is still negotiating a modification.

As for his second rental property, which the LSO stated is past due in the amount of \$87,163, the individual testified that there was a lawsuit by the condominium association that resulted in a deficiency judgment against him on May 17, 2012, for \$18,100.93 plus interest. Tr. at 24-25; Ex. C. Thus, he contends that he does not owe \$87,163 to Bank #2. As indicated by the court docket for

that case, the condominium association brought the civil action against the individual to initiate a foreclosure on his property and the court ratified a foreclosure sale on January 23, 2012, which resulted in a deficiency judgment of \$18,100.93 against the individual on May 17, 2012. Ex. C. However, it is still unclear why both credit reports lists two separate account balances with Bank #2 of \$70,930 and \$87,163. At the hearing, the individual's attorney explained that the individual took out one home equity line of credit on two properties – the first rental property and the second rental property – but then conversely, the individual testified that he took out two separate home equity loans. Tr. at 28; 30. His attorney, however, argued that the home equity line of credit was reported twice and that they could not find any documentation that there is a separate obligation of \$87,163, in addition to the \$70,930, explaining “we can't find anything that supports what was in the credit report about a present amount due of 87,163. We can't find it anywhere.” Tr. at 30; 32. The individual also claimed that prior to the foreclosure sale of the second rental property, he may have owed \$87,163, but then after the foreclosure of the unit, he only owed the deficiency judgment amount of \$18,109.93, plus interest.<sup>8</sup> Tr. at 32. Notably, the individual could not provide any documentation from Bank #2 indicating that he only took out one home equity line of credit or that he only owes Bank #2 \$70,930, or that amount plus \$18,109.93. See 10 C.F.R. § 710.27(b) (“In reaching the findings, the Hearing Officer shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or *lack of evidence on any material points in issue*) (emphasis added). In summary, it appears that the individual is confused as to the amount that he is indebted to Bank #2 and how many home equity lines of credits he took out, suggesting he has yet to understand his debts and financial obligations.

With regards to his timeshare, for which the individual's payments are past due in the amount of \$37,000, the individual testified that he is trying to speak with the attorney to resolve the debt. Tr. at 41; 45. He stated that he stopped making payments towards the timeshare when he lost his business in 2009. He tried to sell the timeshare, but was unsuccessful because it was new and “they had not finished the development at that point in time.” Tr. at 41. The individual testified that for months he has tried to reach the attorney to set up a payment plan, which he has not been able to do as of the date of the hearing. Tr. at 42. He stated that his priority after getting a job was to apply for a modification of the mortgage on his primary residence, and then afterwards, he will try to settle the issues regarding the timeshare payments. Tr. at 46. Thus, he has yet to make payments towards his timeshare debt or enter into a payment plan.

Finally, the Summary of Security Concerns indicates that the individual's account with Bank #1 has a balance of \$246,552 that was past due in the amount of \$35,000 for his primary residence. He testified that he purchased his primary residence in 1998, and stopped making regular payments on his home after he became unemployed over two years ago. Tr. at 56; Ex. 7 at 52-54. Soon after he began working for the DOE, in June 2012, he applied for a modification of his mortgage with Bank #1, which was denied on December 3, 2013, due to the determination that his income was sufficient to make his mortgage payments. Tr. at 55; Ex. L. Currently, the individual is in the process of appealing Bank #1's denial of his request for a modification and he has not made any payments towards his home mortgage. Tr. at 56-57. The individual testified that he first contacted Bank #1 for

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<sup>8</sup> Moreover, the individual argued that he was not receiving any of the documents from the lawsuit as they were not getting delivered to him in the mail, and that accordingly, he was not given an opportunity to object, which resulted in a judgment against him. Tr. at 34. Indeed, in support of the individual's testimony, the docket indicates that the mail the court attempted to send to the individual was returned. Ex. C.

mortgage assistance when he stopped working, which is why he believes they did not initiate foreclosure proceedings against him even though he was not making payments on his mortgage. Tr. at 58.

In addition, the DOE cited the individual's failure to pay his federal income taxes for 2009, which the individual later corrected was for 2008, in the amount of \$2,000. During the hearing, the individual stated that he made the payments on his taxes, and started making them in April 2012, a month after he started working again. Tr. at 64. He also presented a copy of his account transcript from the IRS indicating that he paid off his 2008 taxes. Ex. U. He explained that the reason he owed taxes was because he forgot to report money that he had in a fund. Tr. at 65. Since then, he has been regularly paying his taxes on time. Tr. at 67. Accordingly, I conclude that the individual has mitigated the concerns associated with his failure to pay his 2008 federal taxes.

Regarding the tax lien on his first rental property that was listed in I.B.b., the individual stated that he is actually current on his taxes and that during the PSI when he reported that there was a tax lien, he explained that "I'm just kinda talking off the top of my head, the \$5,000 was tied to back taxes and that was an amount that, at that time, I believe, I guess I owed." Tr. at 67. The individual provided a property tax inquiry document for the first rental property to demonstrate that he is current on his taxes through 2013. Ex. X. Hence, the individual has mitigated the concerns regarding the tax lien on his property.

Finally, in regards to his budget, the individual stated that his monthly income, combined with his wife's income is approximately \$6,814 and his expenses total about \$5,565, so the individual is able to save approximately \$1,249 a month. Ex. Z. He further stated that he is able to save about \$1,000 monthly and that as of the time of the hearing, he had approximately \$6,000 in his savings. Tr. at 114.

In prior cases involving financial considerations, Administrative Judges 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 the individual has satisfied many of his debts and saves approximately \$1,249 a month, he still has not established a *sustained pattern* of financial responsibility. His debts to the timeshare creditor, Bank #1 and Bank #2 are still outstanding, and he has yet to make payments on his past due accounts, which, at this point, have been past due for several years. 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. Of primary concern is that the individual is not familiar with the status of his debts and cannot recall how many mortgages he took out with Bank #2 on his properties. In fact, even in his testimony at the hearing, he was not clear on the status of his debts; yet, he still argued that the credit report mistakenly listed an additional obligation to Bank #2 for \$87,163. In addition, based on the record before me, it appears that he only recently contacted Bank #2, in January 2014, to modify his payment plan, while he had defaulted on his payments years earlier.

While I appreciate the financial difficulties that the individual faced with the downturn of the real estate market, the fact is that he decided on his own to leave his job with the local government to start his own company. His financial problems did not result from circumstances beyond his control. He was not laid off or terminated and therefore, he did *have* some control over the circumstances that led to his financial hardship. *See* Guideline F, Paragraph 20(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”). While he contends that he struggled because his business failed, he only entered the business by choice when he left his previous job in 2008, and just a year later, faced his financial issues.

Based upon my evaluation of the record and the individual’s testimony at the hearing, it is simply too soon to find that he has established a sustained pattern of financial responsibility. Given that he is still trying to enter into payment plans or modify his loans with the timeshare creditor, Bank #1 and Bank #2, and that he has not provided documentation of his total account balance with Bank #2, 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, despite his assertions, the individual has not adequately demonstrated that he has satisfied the debts listed on I.A.a. and I.A.r. Hence, I cannot conclude that the likelihood of recurrence of his financial struggles is low, particularly as he does not have a sufficient grasp on his total indebtedness and financial obligations. Nor can I conclude that the individual sufficiently mitigated the concerns with regards to his financial irresponsibility.

#### **B. Criterion F: Deliberate Omission of Significant Information on a Security Form**

The individual was cited for his deliberate failure to provide information on his SF-86 form, dated January 30, 2012. Specifically, the LSO stated that the individual failed to list 16 of his delinquent debts and several civil court actions. In his SF-86, he only listed the following delinquent accounts: 1) \$4,200 that he owed for the first rental property from a judgment, 2) \$80,000 that he owed to Bank #2 for his second rental property, 3) \$26,000 that he owes for the timeshare, and 4) \$21,000 that he owed to Bank #1 for his primary residence. Ex. 6. In response to the question in the SF-86 asking whether in the last 10 years he was a party to any public record civil court action not listed elsewhere on the form, he responded “No.” *Id.*

The individual stated that he listed the four real estate transactions that he was aware of and that he did not list the Bank #2 account regarding the first rental property because he already listed the \$80,000 that he owed to Bank #2 in his SF-86. Tr. at 82-84. The individual argued that the operative question on the SF-86 asks for the name of the organization to which debt is owed, and he answered that question correctly by listing Bank #2. Tr. at 87. He claimed that he did not intend to hide the fact that he had a home equity line of credit from Bank #2 that concerned his first rental property. Tr. at 90.

Moreover, the individual claimed that when he completed the SF-86, he was not aware of his other delinquent accounts as they were not as significant as his four real estate transactions. Tr. at 90. He further asserted that if he had a copy of his credit report, he would have been able to provide complete responses to the questions in the SF-86. Tr. at 91. He also claimed that he could not afford to purchase a credit report at the time. Tr. at 89. The individual also asserted that he was not aware

to whom he owed money to for his other debts as they were sold to other companies and his creditors did not inform him of who owned his debts. Tr. at 93-94.

Furthermore, the individual argued that he did not know about the non-criminal court actions because he never received notification of them until after he completed his SF-86 on January 30, 2012. Tr. at 84; Ex. V. In its exhibits, DOE provided a list of six civil court actions involving the individual. Ex. 5. At the hearing, the individual explained that he was not properly served for these cases. He indicated that for some of the civil actions, orders and pleadings that the court and plaintiffs purported to serve on him, they were returned in the mail or some of the affidavits of service actually described another individual who was served and not him. Tr. at 96-109; Ex. V. Other cases were dismissed, which the individual also claimed that he did not know about before completing the SF-86. Furthermore, he claimed that he did not list the court actions because the question on the SF-86 asked for information regarding civil court actions that were not listed elsewhere on the form; he believes that he correctly responded to that question as he listed the debts related to the first and second rental properties, both of which were subjects of the civil court actions. Tr. at 100. Moreover, when asked whether or not he recalled ever being served for a court proceeding, the individual stated that he remembers being served once in the last ten years, for the \$4,200 judgment by the condominium association. Tr. at 106. I am convinced that the individual may not have known about the various civil court actions, except for the \$4,200 judgment, as he recalls being served for that matter and he listed the judgment in Section 26 of his SF-86. Thus, he has mitigated the concerns with regards to not listing his non-criminal court actions in his security form.

Based on the following, however, I cannot conclude that the individual has mitigated the remainder of the concerns associated with not listing his other outstanding debts in his SF-86. I find that his incomplete and misleading answers regarding his outstanding debts raise concerns as he omitted significant information from the questionnaire. 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 or 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.

None of the possible mitigating factors set forth above apply in this case. Hence, the individual has failed to convince me that he did not deliberately omit information regarding his delinquent debts in his security form. First, I find it hard to believe that the individual could not afford to purchase his credit report in order to truthfully and accurately complete his SF-86. Second, I find it not credible that he failed to ascertain the status of his debts and financial obligations while completing his SF-86, especially considering the grave consequences for providing false and misleading answers in the questionnaire. It is this lapse in judgment and lack of reliability that raises serious concerns. For all these reasons, I cannot find that the individual has 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 Criteria (f) and (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 all of 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 should not be granted access authorization. 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  
Administrative Judge  
Office of Hearings and Appeals

Date: February 21, 2014