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United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing )

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Filing Date: January 2, 2014 )

Case No.: PSH-14-0025

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Issued: July 1, 2014

**Administrative Judge Decision**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should be restored.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. During a background investigation of the individual, the local security office (LSO) obtained information that raised security concerns. To

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<sup>1</sup>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. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov> . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

address those concerns, the LSO summoned the individual for an interview with a personnel security specialist in October 2013. After this Personnel Security Interview (PSI) failed to resolve the concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It 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 an Administrative Judge 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 Administrative Judge. The DOE introduced 13 exhibits into the record of this proceeding. The individual introduced 37 exhibits and presented the testimony of his accountant, in addition to testifying on his own behalf.

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

As indicated above, the LSO concluded in the Notification Letter that derogatory information exists that creates a substantial doubt as to the individual's eligibility to hold a security clearance. That information pertains to paragraph (I) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (I) refers to information indicating that the individual has engaged in unusual conduct or is subject to 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 national security. Such conduct includes, but is not limited to, a pattern of financial irresponsibility. The Notification Letter refers to two separate concerns under this criterion: that the individual has not been financially responsible, and that he omitted significant information about his financial difficulties from a 2013 Questionnaire for National Security Positions (QNSP). Regarding the individual's finances, the Notification Letter alleges that he:

- Owes \$52,975.05 in unpaid federal taxes for the years 2007, 2009 and 2012;
- Owes \$3,016 in unpaid state taxes for the years 2007, 2009, 2010 and 2012;
- Has had three foreclosures for past due amounts totaling \$72,199;
- Has two unpaid collection accounts totaling \$4,444 in unpaid debt;
- Admitted during the October 2013 PSI that he has been financially irresponsible; and
- Failed to pay his state and/or federal taxes for the years 2007, 2009, 2010 and 2012, despite having been advised of the DOE's security concerns concerning financial irresponsibility during PSIs conducted in 2007 and 2009.

The Notification Letter further alleges that during his October 2013 PSI, the individual admitted that he failed to disclose the following information on his 2013 QNSP:

- That a court judgment in favor of a local bank had been entered against him in 2008;
- That his wages were garnished in 2008 to satisfy this judgment;

- That the Internal Revenue Service (IRS) placed a lien on his property in 2011 for failure to pay his 2007 federal taxes; and
- That he had four collection accounts.

These circumstances adequately justify the DOE's invocation of criterion (l), and raise significant security concerns. Conduct involving lack of candor or dishonesty can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Moreover, 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 (December 19, 2005), Guidelines E and 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, 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 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. ANALYSIS

At the hearing, the individual attempted to establish, through his testimony and that of his accountant, that his financial problems were caused by factors that were largely beyond his control, that he has successfully addressed the financial issues cited in the Notification Letter, and that his omissions from the 2013 QNSP were inadvertent and do not reflect accurately on his

honesty and trustworthiness. For the reasons that follow, I find that the individual has sufficiently mitigated the DOE's security concerns under criterion (I).

### **A. The Individual's Finances**

As an initial matter, I find that, despite his somewhat equivocal admission of financial irresponsibility during the 2013 PSI, the individual's difficulties have primarily been caused by factors that were largely beyond his control.<sup>3</sup> At the hearing, the individual testified that his wife had a "nervous breakdown" in November 2003, and was hospitalized for approximately 11 days. When she was released from the hospital, she was put on disability, and then fired in 2004. Hearing Transcript (Tr.) at 81-82; Individual's Exhibit (Ind. Ex.) 32. The individual's accountant testified that she was diagnosed with bi-polar disorder and was not allowed to go back to work. After her long-term disability expired, she started receiving Social Security disability. In all, the accountant continued, the wife's illness resulted in a loss of approximately \$30,000 in annual income, the difference between her salary before her termination and her current income from Social Security. *Tr.* at 82.

The individual further testified that he and his wife separated in 2006 for almost two years. During this separation, unbeknownst to the individual, she withdrew large amounts of money from her retirement account without having taxes withheld and "ran up credit cards to survive on." *Id.* at 86-87. The individual later withdrew money from his retirement account, with taxes withheld, to pay bills that his wife had incurred during their separation. This resulted in a large amount of taxable income for the couple, at a time when their income was severely diminished due to the wife's disability, and their expenses were elevated due to the wife's spending and the maintenance of two households. The individual's tax problems began at this time. *Id.* at 85-86. The record in this matter is devoid of any evidence of extravagant or irresponsible spending by the individual. Instead, it supports my finding that the individual's financial problems were caused primarily by his wife's illness and her resulting loss of income, their separation, and questionable financial decisions made by his wife during that separation, which were likely caused, at least in part, by her mental condition. *See Adjudicative Guideline F*, ¶ 20 (b) (that the conditions that resulted in the financial problem were largely beyond the person's control (*e.g.* loss of employment, unexpected medical emergency, divorce or separation), and the individual acted responsibly under the circumstances, is a potentially mitigating condition).

The record further indicates that the individual has made substantial progress in resolving his financial issues. As an initial matter, the individual has satisfied his state tax indebtedness. *Tr.* at 14; *Ind. Ex.* 13. Regarding his federal taxes, the individual's accountant testified that, as a result of discussions with the IRS, the individual submitted a check for \$26,500 as a settlement of his federal tax indebtedness. Although the amount remitted was suggested by the IRS, the accountant testified that a formal decision as to whether that amount would be satisfactory would not be made until August of 2014. *Tr.* at 17; *Ind. Exs.* 14, 23, 24, 33. The accountant testified

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<sup>3</sup> When asked by the analyst "Do you think that you've been irresponsible at all in the last few years . . . regarding your finances," the individual replied, "Um, um, probably in some sense." DOE Exhibit (DOE Ex.) 11 at 171.

that if that amount is accepted by the IRS, it will resolve all of the individual's remaining federal tax problems. Tr. at 36.

The individual has also provided significant mitigating evidence regarding the three foreclosures and the two collection accounts alleged in the Notification Letter. One of the "foreclosures" concerned a mortgage held by bank number one on the individual's residence. The individual's accountant testified that that mortgage has been modified, that the past-due amount and interest have been included in the new mortgage, and that the individual is up to date on these payments. Tr. at 42, Ind. Ex. 30. The other two foreclosures referenced in the Notification Letter actually relate to a single mortgage, one held by bank number two on the individual's previous residence and later sold to bank number three. Tr. at 70-72. Bank number three received a full price offer for the property and the individual's liability has been extinguished. Ind. Ex. 37. Regarding the two collection accounts, the individual testified that he reached a settlement with the first creditor and paid that account off, Tr. at 56-58; Ind. Ex. 30, and that his attempts to contact the second creditor, to whom he owed \$75, were unsuccessful. Tr. at 59.

I have also examined information concerning the individual's and his wife's current monthly income and expenses. That information indicates a positive monthly cash flow of between two and three hundred dollars per month. Ind. Exs. 36 and 37.

The individual obtained the funds to pay his back taxes and other debts through an unsecured loan for \$35,000 from a friend of the family. Tr. at 37. The promissory note for that loan (Ind. Ex. 25) calls for monthly payments of \$500, with a balloon payment due at the end of five years. The individual testified that his daughter and her husband are making the monthly payments "until everything is caught up," Tr. at 39, and the individual's accountant testified that the balloon payment will be made with funds obtained from the sale of a house that the individual's wife inherited from her mother, that is currently tied up in probate court. Tr. at 91.

## **B. The Individual's Omissions From His 2013 QNSP**

Finally, the individual discussed his omission of significant information from his 2013 QNSP, and the circumstances under which he completed that form. He testified that he completed the form at his worksite, in the midst of repeated interruptions during which he would have to leave the immediate area of his computer to perform his duties. The two questions that the individual answered incorrectly in section 26, "Financial Record," consisted of lists of financially adverse events, and the individual was supposed to indicate whether any of those events had happened to him. In his rush to complete the form, the individual testified, he inadvertently answered "No" to both questions, when he should have answered "Yes" because several of the specified events had happened to him within the previous seven years. Tr. at 78-79.

Given the totality of the circumstances, I find that the individual's omission of relevant information from his 2013 QNSP was inadvertent. As an initial matter, I found the individual to be open, honest and candid during the hearing about his financial difficulties. I further note that the omissions were an isolated event, as there is no indication in the record that there have been similar omissions during the individual's 20+ years as a DOE clearance holder. Also, since at least three of the four items omitted were previously disclosed to the DOE by the individual, I

find it unlikely that he was attempting to deceive the agency by omitting them from his 2013 QNSP. Finally, I find that the circumstances under which the individual completed the QNSP could easily have contributed to his two inaccurate answers. Hurried and distracted by constant interruptions, the individual could readily have missed items included in the lists contained in the two questions that should have triggered “Yes” responses.

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has adequately addressed the DOE’s concerns under criterion (1) regarding his finances and his honesty. The individual established at the hearing that his difficulties were primarily caused by his wife’s illness, their separation, and questionable financial decisions she made during this separation, and that he has made substantial progress in extricating himself from those difficulties. The individual further convinced me that the omissions from his 2013 QNSP were inadvertent, and did not represent an attempt to mislead the DOE. Consequently, he has 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 DOE should restore the individual’s security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: July 1, 2014