

that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8(l) (Criterion L).² *See* DOE Ex. 1 (Notification Letter, March 26, 2014).

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual, represented by counsel, offered her own testimony as well as the testimony of five additional witnesses: three work colleagues, her accountant, and her personal assistant. In addition, the Individual submitted eighteen exhibits into the record (Indiv. Exs. A1-A5, B-J, K1-K4). The DOE counsel presented no witnesses, and tendered ten exhibits (DOE Exs. 1-10). *See* Transcript of Hearing, Case No. PSH-14-0047 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including “the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable 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 behavioral 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,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* *See generally* *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531

² Criterion L concerns conduct tending to show that the Individual was “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. § 710.8(l).

(1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

During the 2008 reinvestigation of her clearance, the Individual discussed her delinquent accounts and her failure to file her income taxes for tax years 2005 through 2007. DOE Ex. 10. The Individual attributed her failure to pay her delinquent accounts largely to her health problems, noting that she was unable to organize her accounts as she was recovering from serious medical issues. Specifically, the Individual stated that her delinquent accounts were largely medical bills and she did not have the energy to sort out what she owed and to dispute various debts with her health insurance company. *Id.* at 35, 83-84. Similarly, she indicated that, while she was in the midst of her medical crises, she was unable to make completing her taxes a priority. DOE Ex. 10 at 15-19. She also stated, with respect to her delinquent taxes, that she was unaware that she was required by law to file her returns. *Id.* at 24-25. The Individual stated that she intended to resolve her outstanding accounts, file her delinquent tax returns, and complete her taxes on time in the future. *Id.* at 19, 31, 89-90. In light of the Individual’s assurances, her security clearance was continued at that time.

The 2013 reinvestigation of the Individual’s security clearance revealed that the Individual continued to have unpaid collection accounts and had not filed her Federal and state income taxes for tax years 2010, 2011, and 2012. DOE Exs. 4-9. As stated above, the LSO issued a Notification Letter in March 2014 informing the Individual that the DOE possessed derogatory information which raised doubts regarding her continued eligibility to hold a DOE access authorization. According to the Notification Letter, this information raises security concerns under Criterion L of the Part 710 regulations. DOE Ex. 1. As a basis for its Criterion L concerns, the LSO cited the following information regarding the Individual’s finances: (1) the Individual failed to file her Federal and state income tax returns for tax years 2010, 2011 and 2012; (2) the Individual stated during the January 2014 PSI that she was not aware that she was required by law to file her income taxes, despite the fact that she was informed of the requirement during the July 2008 PSI; and (3) the Individual had six unpaid collection accounts totaling \$814 which, according to the LSO, demonstrated her unwillingness to satisfy her debts.³ *Id.*

It is well-settled that 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,” which, in turn, may call into question an individual’s reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F, ¶ 18. Among the behaviors which may give rise to security concerns related to an individual’s financial irresponsibility are a “failure to file annual Federal, state, or local income tax returns . . .,” a “history of not meeting financial obligations,” and an “inability or unwillingness to satisfy debts.” *Id.* at ¶ 19(a), (c), (g). Given the cited information which indicated that the Individual did not file required Federal and state income tax returns for tax years 2010 through 2012 and had several unpaid collection accounts, I find that the LSO properly invoked Criterion L.

³ The Individual’s unpaid collection accounts were each for relatively small amounts. The unpaid balances on the six accounts were \$250, \$204, \$141, \$91, \$89, and \$39, respectively.

IV. FINDINGS OF FACT AND ANALYSIS

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

The facts in this case were essentially undisputed. The Individual, currently seventy-one years of age, has a history of various serious medical problems. *Indiv. Ex. F.*; *DOE Ex. 10* at 14-19, 28-29. The Individual acknowledged that she was informed at the 2008 PSI that she was legally required to file her income taxes and she intended to do so. *Tr.* at 112-13. However, according to the Individual, her health worsened as she suffered "one problem after another." *Tr.* at 114. In retrospect, the Individual believed that she "was being overly optimistic [in 2008] about being able to file [her] taxes" on her own. *Tr.* at 121. After her 2013 PSI, the Individual recognized that she needed assistance. *Tr.* at 121-22. She hired a personal assistant who worked with her to organize her household, particularly her finances and accounting system. *Tr.* at 122-28. According to the Individual, she, her personal assistant and her accountant have a plan in place in which they will work together to ensure that the Individual's taxes are completed and timely filed in the future. *Tr.* at 128. In addition, the Individual has turned over responsibility for her day-to-day bills to her personal assistant to ensure that the bills are timely paid regardless of the current state of her health. *Tr.* at 133. At the hearing, the Individual established that she had paid all of her outstanding collection accounts and had filed the delinquent income taxes. *Tr.* at 110-11; *Indiv. Exs. A1-A3, B-C, I, K1-K3*. She also timely filed her tax returns for tax year 2013. *Tr.* at 92; *Indiv. Exs. A5, K4*. The Individual's accountant and her personal assistant largely corroborated the Individual's testimony, including their roles in helping the Individual to ensure that all of her financial obligations – including the filing of required tax returns – are met in the future. *Tr.* at 47-54, 82-84, 103.

Among the factors that may serve to mitigate security concerns raised by an individual's failure to file tax returns financial problems is that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," *Adjudicative Guidelines, Guideline F, ¶ 20*. In this case, upon consideration of the entire record of this proceeding, including the hearing testimony and documentary evidence submitted by the parties, I find that the Individual has not presented sufficient evidence to fully resolve the Criterion L concerns cited in the Notification Letter.

As of the hearing, the Individual recognized the importance of timely filing her tax returns and remaining current on her financial obligations. She also appears to have recently established a plan, with the assistance of her accountant and personal assistant, to help her in her efforts. These are positive factors. However, the Individual has demonstrated a pattern of behavior with respect to these matters that weighs against mitigation. Specifically, it is concerning that the Individual again did not file her income taxes for three years – for tax years 2010 through 2012 – despite having been questioned by the LSO in 2008 about her previous failure to file her income taxes for

tax years 2005 through 2007. Similarly, despite the Individual's assurances in 2008 regarding her outstanding debts, she continued to have unpaid collection accounts and only resolved her delinquent accounts in the months prior to the hearing. The Individual testified at the hearing that she intends to remain current on all of her financial obligations, and she has recently implemented a plan to address her delinquent taxes and financial accounts that she believes will prevent a recurrence of those incidents in the future. Nonetheless, in light of the Individual's prior assurances and subsequent behavior, at this early stage, doubts remain regarding whether she will follow through with her plan.

In prior cases involving financial irresponsibility, we 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 Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0732 (2009); *see also* Adjudicative Guidelines, Guideline F, ¶ 20. In this case, it is simply too soon since the Individual resolved her outstanding financial obligations and adopted a new path forward to allow me to conclude that the conduct at issue in this proceeding is sufficiently in the past or happened under such circumstances that it is unlikely to recur and, therefore, does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment. Consequently, I cannot conclude at this time that the security concerns cited under Criterion L regarding the Individual's pattern of financial irresponsibility have been fully resolved.

V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to fully resolve the Criterion L concerns. Therefore, I am unable to conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization at this time.

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

Diane DeMoura
Administrative Judge
Office of Hearings and Appeals

Date: August 27, 2014