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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: May 21, 2014 )  
 ) Case No.: PSH-14-0057  
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Issued : September 10, 2014

**Administrative Judge Decision**

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored at this time.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization. As a holder of access authorization, the individual is subject to periodic reinvestigations to determine his continued eligibility to maintain access authorization. During the most recent reinvestigation of the individual, information was received with respect to several collection accounts and the individual’s failure to file and pay his federal and state income taxes. *See* Exhibit 3. Upon receipt of this information, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on February 25, 2014 (PSI). *See* Exhibit 7.

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<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

On April 11, 2014, the LSO advised the individual in a letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup> See Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. See Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented testimony of one witness, himself. The LSO introduced seven numbered exhibits into the record; the individual tendered eight lettered exhibits (Exhibits A-H). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>3</sup>

## **II. Regulatory Standard**

### **A. Individual’s Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward with evidence to convince the DOE that granting his 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 individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.doe.gov/search.htm](http://www.oha.doe.gov/search.htm).

## **B. Basis for the Administrative Judge's Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited one criterion as the basis for suspending the individual's security clearance, Criterion L. To support its allegations, the LSO notes (1) the individual having four collection accounts totaling \$1,268 and (2) the individual acknowledging during the PSI that he is aware of his obligation to file income taxes but admitting that he had not filed his federal or state income taxes for the tax year 2012. *See* Ex. 1. An individual's failure or inability to live within his means, satisfy his debts and to meet his financial obligations raises a security concern under Criterion L because his actions 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* Guideline F of the *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). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

In light of the information available to the LSO, the LSO properly invoked Criterion L.

## **IV. Findings of Fact**

The individual does not contest the accuracy of the allegations set forth in the Notification Letter at the time of its issuance. Ex. 2. During the hearing, the individual focused on the progress that he has made in resolving his financial difficulties since his receipt of the Notification Letter and the solidity of his family's financial plan moving forward.

*Collection Debt.* Two of the collection accounts identified in the Notification Letter were listed as being owed to debt factoring companies and, at the time of the hearing, the individual was uncertain as to the original source of that debt.<sup>4</sup> Ex. 1; Tr. at 33 – 40. Those debts appeared to have had the same original amount and it was discussed at the hearing that both accounts might relate to a single debt. Ex. 4 at 5, 7; Tr. at 52 – 53, 65.

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<sup>4</sup> The individual credibly testified that, following receipt of the Notification Letter, he attempted to resolve one of these debts but, upon contacting the factoring companies listed in the Notification Letter, he was informed by each of those companies that it could locate no record of the debt. Tr. at 33, 34, 39.

Subsequent to the hearing, the individual ascertained that both accounts related to a single debt, which he then settled in full. Ex. F.

The two other debts identified in the Notification Letter (one with a medical facility and one with a municipal waste agency) were both paid in full by the individual prior to the hearing. Ex. C; Ex. G; Tr. at 41 – 43. Anticipated fees payable to the municipal waste agency through the end of the calendar were prepaid by the individual when he paid his arrearages. *Id.* at 30, 43.

The LSO has presented no information on any other financial accounts of the individual as being delinquent or in collections. The individual credibly testified that he believes that no such accounts exist.<sup>5</sup> *Id.* at 53.

*Income Taxes.* For the calendar years 2005 through 2012, the individual filed his federal and state income tax returns late, usually one to three years following the deadline for filing such returns.<sup>6</sup> *Id.* at 24. He and his wife have consistently owed money on their delinquent filed taxes, which they have paid by withdrawing money from a retirement account which the individual established during a prior employment. *Id.* at 14, 22 – 24.

Following the PSI, the individual filed his federal and state tax returns for 2012 although they were filed approximately one year late. Ex. 2; Tr. at 11 –12. The individual's 2013 federal and state tax returns were filed on time. *Id.* at 13, 25. He has entered into tax payment plans with both the federal and state tax authorities for his unpaid taxes for 2012 and 2013, the only years for which he had outstanding tax debt. Ex. A; Tr. at 11, 26, 30. The individual commenced payments pursuant to those tax payment plans in June 2014; all payments due under those plans have been paid on time. Ex. B; Ex. D.

The individual has adjusted his tax withholdings to increase the amount being withheld from his pay for taxes. As a result, he expects to eliminate or substantially reduce the amount of taxes due when submitting his tax returns in the future. Tr. at 16, 18, 49 – 50.

The individual submitted a budget showing his household income and expenses, including the increased tax withholdings and their payments under their tax payment plans with the federal and state tax authorities. Based on that budget, the individual and his wife have an \$800 monthly surplus after paying their monthly expenses and liabilities.<sup>7</sup> Ex. H.

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<sup>5</sup> The individual submitted a credit report as a post-hearing submission; however, that report was not subject to examination at the hearing and I have given it limited weight in my findings of fact. *See* Ex. E.

<sup>6</sup> The individual's tax problems predate this period, beginning around 1997 – 1998. Additionally, the PSI reflects that the individual acknowledged in a letter of interrogatory dated March 31, 2004, that he had not filed his federal or state income taxes for 2001 and 2002. Ex. 7 at 68 – 69; Tr. at 31 – 33.

<sup>7</sup> The budget appears to contain an arithmetic error in summing the individual's and his wife's incomes. In reaching my findings, I have corrected the total of the household income relying on the accuracy of the itemized incomes which are consistent with the earnings statements accompanying the budget. *See* Ex. H.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>8</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### A. Mitigating Evidence

Although the individual was unable to identify two of the four collection accounts listed in the Notification Letter, he did not contest the accuracy of the facts alleged in the Notification Letter. Rather, the individual focused on the progress he and his wife have made in resolving their financial situation and their ability to meet all of their financial obligations in the future.

With respect to the two collection accounts that the individual was unable to identify, he retained a legal consultant to establish the accuracy of the amounts due. Tr. at 35 – 36, 39 – 40. Although that process was in progress at the time of the hearing, the individual was able to establish subsequent to the hearing that those accounts related to a single debt and, upon identifying the appropriate entity to pay, the individual satisfied the debt in full. Ex. F.

The Notification Letter listed only two additional collection accounts and those were satisfied prior to the hearing. Ex. C; Ex. G.

With respect to income taxes, the individual testified that he has never attempted to avoid his tax obligations. Tr. at 24. The Notification Letter cited only the individual's failure to file his 2012 federal and state tax returns. He has subsequently filed his 2012 tax returns, although delinquent. Ex. 2; Tr. at 11 – 12. His 2013 tax returns were filed in a timely manner. *Id.* at 13, 25. His tax debt with respect to earlier years has been paid in full and he has entered into tax payment agreements with respect to his outstanding 2012 and 2013 taxes. Ex. A; Tr. at 11, 26, 30. He testified that he had the financial ability to pay his outstanding tax debt for 2012 and 2013, in full; however, he decided it was more financially prudent to retain those funds to provide for financial security for his family in the event that his present employment does not continue. *Id.* at 26 – 28. Moving forward,

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<sup>8</sup> Those factors include the following: 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 at the time of the conduct, the voluntariness of his 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.

the individual has increased his tax withholdings to reduce or eliminate the need to make tax payments when he files his tax returns. *Id.* at 16, 18, 49 – 50, 62.

The individual and his wife have reduced their expenses so that their present income is \$800 per month in excess of their present expenses, including their increased tax withholdings and their tax payment plans. Ex. H; Tr. at 17, 57 – 58. The individual believes that this will allow him to meet his financial obligations on a current basis going forward.

## **B. Administrative Judge Evaluation of Evidence**

The individual's documented progress on his finances is laudable: he has paid or resolved all of his outstanding collections debt, he has filed all of his income tax returns and he is current on his tax payment agreements with the federal and state tax authorities for the two years for which he has outstanding tax obligations. Ex. A; Ex. B; Ex. C; Ex. D; Ex. F; Ex. G. Additionally, he has presented a budget illustrating his family's ability to meet their financial needs and obligations in the future. Ex. H. This significant progress and planning, for which the individual is to be commended, must be analyzed within the context of the individual's total financial situation.

The individual does not contest that he had collections debt at the commencement of the administrative review process. Ex. 2. The existence of such debt reflects that the individual has been either unable or unwilling to pay his debts in a timely manner and demonstrates financial irresponsibility, which is a disqualifying security concern under Criterion L. *See* Adjudicative Guidelines, Guideline F ¶ 19(a).

While the Notification Letter only cited tax concerns with respect to the individual's failure to file his 2012 federal and state tax returns, I cannot ignore the record which reflects that the individual was delinquent in filing his tax returns in 2001, 2002, and 2005 through 2012, tending to file one to three years late. Ex. 7 at 68 – 69; Tr. at 24, 31 – 33. That the individual's tax withholdings were insufficient to satisfy his tax liabilities upon filing his income tax returns *and* that he has withdrawn funds from a retirement account in order to pay those taxes (delinquent) since at least 2005 demonstrates that the individual has been consistently living beyond his means. *Id.* at 14, 22 – 24. All of these factors are disqualifying under Criterion L. *See* Adjudicative Guidelines, Guideline F ¶ 19(c), ¶ 19(e), ¶ 19(g). Even though the individual has entered into tax payment plans with the federal and state taxing authorities for 2012 and 2013, those plans do not negate that he still has outstanding tax obligations for those years upon which he commenced payments only in June 2014. *See* Ex A; Ex. B; Ex. D.

The concern is whether this pattern of financial irresponsibility will recur. In prior cases involving financial irresponsibility, 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 Personnel Security Hearing*, Case No. PSH-13-0046 (2013); *Personnel Security Hearing*, Case No. PSH-12-0103 (2012); *Personnel Security Hearing*, Case No. PSH-11-0015 (2011);

*Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). As of the date of the hearing, the individual was still resolving his collections debt (although he subsequently succeeded in doing so), had made only his initial monthly payments on two years of delinquent taxes and had increased his tax withholdings only three weeks earlier. Ex. B; Ex. D; Ex. F; Ex. G; Tr. at 18. While his actions in resolving his collections debt, filing his taxes and commencing payments on his delinquent taxes demonstrate resolve in correcting a sustained pattern of financial irresponsibility, the individual has not yet demonstrated a pattern of financial responsibility. Indeed, as of the date of the hearing, the individual had not yet resolved certain of the financial irregularities cited in the Notification Letter. *Cf.* Adjudicative Guidelines, Guideline F ¶ 20(a) (mitigation possible if the behavior happened so long ago, was so infrequent or occurred under such circumstances that it is unlikely to recur).

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion L.

## **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 associated with Criterion L. 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 at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals  
Date: September 10, 2014