

employer's employee assistance program (EAP). Transcript at 145 – 146. The EAP counselor recommended that the individual consult an external counselor who specialized in treatment of trauma. Exhibit 12.

Following receipt of information about the state tax warrant, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on December 4, 2013. *See* Exhibit 15. During the 2013 PSI, the individual disclosed her meetings with the EAP and her intent to meet with a trauma specialist, which was scheduled for the following day. *Id.* at 19 – 20. The LSO referred the individual for an evaluation by a DOE consulting psychologist, which occurred on February 25, 2014. *See* Exhibit 11. The DOE psychologist diagnosed the individual with Post-traumatic Stress Disorder (PTSD) and opined that, for the individual, an area of judgment significantly affected by her PTSD is finances. *Id.* at 7.

On April 23, 2014, the LSO advised the individual in a letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding her 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 two potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (hereinafter referred to as Criterion H and Criterion L, respectively).² *See* Exhibit 1.

Upon her receipt of the Notification Letter, the individual exercised her 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. The LSO introduced 18 numbered exhibits into the record of the case and presented the testimony of one witness, the DOE consulting psychologist. The individual introduced 11 lettered exhibits (Exhibits A – K) into the record and presented testimony of ten witnesses, including that of herself and her financial counselor. 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.³

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

² See Section III below.

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her 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). An individual is afforded a full opportunity to present evidence supporting his or her 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.

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 two criteria as the basis for suspending the individual’s security clearance, Criterion H and Criterion L. Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” See Guideline I 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). Conduct influenced by such psychological conditions can raise questions about an individual’s ability to protect classified information. With respect to Criterion H, the LSO relied on the evaluation by a DOE consulting psychologist which concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association Fifth Edition (DSM-5)* criteria for PTSD and that her PTSD is a mental illness which causes, or may cause, a significant defect in the individual’s judgment and reliability. Ex. 1 at 1; Ex. 11 at 7.

Criterion L concerns information that an individual has engaged in conduct “which tends to show that the individual is not honest, reliable, or trustworthy....” 10 C.F.R. § 710.8(i).

Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an “individual’s reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at Guideline E. With respect to Criterion L, the LSO alleges, *inter alia*, that the individual: (1) failed to make payments under a payment plan established with the Internal Revenue Service (IRS) for unpaid federal taxes in tax years 2007 and 2008, which aggregated \$6,842 at the time of the 2010 PSI⁴ with the individual; (2) owes federal income tax in excess of \$6,842, as the individual acknowledges owing taxes for additional years and is uncertain as to which years she has filed her returns or paid her taxes; (3) has outstanding state student loans aggregating \$80,736, which are all delinquent and in collection status; (4) has outstanding federal student loans aggregating \$68,442, which are all delinquent and in collection status; (5) has five additional collection accounts aggregating \$2,787; and (6) has five charged-off accounts aggregating \$2,567. Ex. 1 at 1 – 2.

In light of the information available to the LSO, the LSO properly invoked Criterion H and 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; Tr. at 178 – 179. During the hearing, the individual focused on the treatment that she has received for PTSD, the progress that she has made in resolving her financial delinquencies and her commitment to future financial responsibility.

In October 2013, the individual received notice from her employer that the state tax authorities had served her employer with a Warrant of Levy, garnishing the individual’s wages for unpaid state income taxes for the tax years 2007 and 2010. Ex. 15 at 7 – 10; Tr. at 151 – 152. Following notice of the impending garnishment, the individual satisfied the state income tax debt and the levy was released prior to her wages being garnished. Ex. 14; Ex. 15 at 7 – 10. Tr. at 151 – 152.

The individual recognized that her finances were in disarray and believed this contrasted with her organization and the responsibility she demonstrated in other areas of her life. Ex. 15 at 19 – 20. She met with a psychologist at her employer’s EAP, who provisionally diagnosed her as having PTSD. *Id.*; Ex. 12 at 2. The EAP counselor associated the individual’s financial issues with an abusive early environment and recommended she seek counseling through an external trauma specialist. *Id.* at 2 – 3. The individual was evaluated by the trauma specialist on December 5, 2013, who confirmed the PTSD diagnostic impression and noted that the individual’s “PTSD symptoms have been significantly, but not completely[,] ‘encapsulated’ to her financial behavior.” Ex. A at 3, 6. The individual has been in treatment with the trauma counselor on a weekly basis since that time and expects to continue such treatment.⁵ *Id.* at 4; Tr. at 130, 193 – 194.

⁴ The LSO conducted a PSI with the individual on June 8, 2010. *See* Ex. 16.

⁵ The individual’s counselor, who was unable to testify at the hearing due to her employer’s guidelines which prohibit counselors within its organization from providing testimony in administrative hearings,

On February 25, 2014, the DOE consulting psychologist evaluated the individual and diagnosed her with PTSD. She further opined that the individual's "financial problems stem from her psychological condition of PTSD and appropriate treatment of that condition could address her money management." Ex. 11 at 7. The DOE consulting psychologist opined that the individual's PTSD is a mental illness which causes, or may cause, a significant defect in the individual's judgment and reliability and that the individual's finances was an area of judgment significantly affected by the individual's condition. *Id.* The sources of the individual's underlying trauma are her childhood cancer diagnosis and treatment; the contemporaneous death of a parent; and the subsequent physical and emotional abuse by her surviving parent. *Id.* at 6.

Following receipt of the state tax notice of garnishment, the individual sought and received assistance on managing her financial affairs (including tax and account delinquencies) from a sibling, who is an accountant. Ex. 15 at 20, 24, 29.

In March 2014, the individual attended a financial management program offered by an organization that she learned about through the counseling center where she is receiving psychological treatment for her PTSD. Tr. at 149. After completing a one-day program, she enrolled in a follow-up course, which met for two hours per evening for six weeks. *Id.* at 26. Believing that the process taught by the program could assist her with her financial management, the individual re-took the six-week course and enlisted members of her inner circle of friends and family to take the course with her, in part so that she would have a network to support her in a revised way of managing her finances. *Id.* at 27, 72 – 73, 150. She has continued to meet with the financial counselor who directs the program on a weekly basis, in individual sessions, and both have committed to continue their sessions for one year. *Id.* at 14, 34.

With respect to specific financial matters noted in the Notification Letter, I make the following findings:

- *Federal Income Taxes.* At the time of the 2010 PSI, the individual acknowledged outstanding tax debt of \$6,842 for the tax years 2007 and 2010, for which the individual had established a payment plan with the IRS. Ex. 16 at 22 – 23. She failed to make the payments under that payment plan. Ex. 15 at 17. As of the 2013 PSI, the individual was unclear as to which years she had failed to file her federal tax returns and which years she filed her returns but failed to pay her taxes. *Id.* at 22 – 26.

As of April 15, 2014, the individual had filed all of her federal tax returns through the tax year 2013. Tr. at 137. Together with a tax specialist affiliated with her financial management counselor, she has consulted with the IRS. She owes \$30,776 in delinquent taxes. *Id.* at 137 – 138. She has entered the IRS's "Fresh

submitted a written report dated July 28, 2014. See Ex. A. Between December 5, 2013, and July 28, 2014, the individual had participated in 26 individual therapy sessions with the counselor. *Id.* at 4.

Start” program and is scheduled to make her first monthly payment thereunder in September 2014. *Id.* at 138, 143. She has authorized automatic, direct payments from her checking account for payments under her new tax payment agreement to comply with the requirements of the Fresh Start program and to assure on-going compliance with the tax payment agreement. *Id.* at 141.

- *Student Loans.* At the time of the 2013 PSI, the LSO noted that the individual’s credit report showed 17 student loans, aggregating approximately \$150,000, all delinquent and in collection account status.⁶ Ex. 1 at 2. She began automatic monthly payments on both her federal and state student loans in November 2013 and her loans are currently classified as being in “rehabilitation.” Tr. at 131 – 134. As of the date of the hearing, the individual had approximately \$167,000 outstanding in federal and state student loans, all in “rehabilitation.” *Id.* at 134. After 12 consecutive payments, the loans will be considered rehabilitated and a new payment will be negotiated. The individual believes this will occur in November 2014. *Id.* at 184 – 186.
- *Collection Accounts.* At the date of the 2013 PSI, the LSO noted on the individual’s credit report six collection accounts aggregating \$2,787. Ex. 1 at 2; Ex. 13 at 1 – 2, 13. As of the hearing, the individual had researched those accounts and believes that she has either paid in full or settled all of them. Tr. at 154 – 162. (The only uncertainty with respect to the six accounts enumerated in the Notification Letter is that the individual was unable to verify whether two of the accounts listed in the Notification Letter for an aggregate of \$329 corresponded to the \$429 that she paid to a factoring company on the assumption that that amount represented those accounts with accrued interest and fees. *Id.* at 156 – 157, 159.) Additionally, the individual’s research revealed a seventh collection account in the amount of \$1,794; she settled that account as well. *Id.* at 163.
- *Charged-Off Accounts.* At the time of the 2013 PSI, the LSO noted that the individual had three charged-off accounts aggregating \$2,567. Ex. 1 at 2; Ex. 13 at 2. The individual has made attempts to identify the current holders of these accounts, with limited success. She acknowledges her liability for such accounts, but on the advice of her financial counselor has made resolving those accounts a lower priority. These accounts remain outstanding. Tr. at 44 – 45, 164 – 166, 172 – 174.
- *Proceeds from Former Employer’s Benefit Plans.* During the 2010 PSI, the individual represented that she would use proceeds from her former employer’s 401(k) Plan and accrued leave to pay her then existing accounts. She failed to do so. Ex. 1 at 2; Ex. 15 at 41 – 42; Tr. at 186 – 187, 179.

⁶ Due to entries that seem duplicative on the credit report cited by the LSO in the Notification Letter, the exact number of the individual’s student loans and the aggregate outstanding balance of such loans can be definitively calculated without additional supporting documentation. *See* Ex. 13 at 2 – 10. The individual does not dispute the accuracy of the numbers cited in the Notification Letter. Tr. at 178 – 179.

The DOE consulting psychologist was present at the hearing and testified as the final witness, having heard the testimony of all of the other witnesses. She testified that she is familiar with the individual's trauma counselor and has the highest regard for her work. *Id.* at 199. The DOE psychologist noted the counselor's written report, which detailed the individual's treatment program and the counselor's prognosis for the individual as being very good, and her own evaluation of the testimony presented during the hearing. On that basis, the DOE psychologist updated her diagnosis of the individual as of the date of the hearing as follows: although the individual continues to meet some criteria for PTSD, she has been without psychological symptoms for six months or more and no longer has an illness or mental condition which causes or may cause a significant defect in her judgment or reliability, including with respect to finances. *Id.* at 197 – 201.

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)⁷ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The individual did not contest the accuracy of the information in the Notification Letter. She acknowledged the correctness of the diagnosis of the DOE's consulting psychologist at the time it was made and the accuracy of the financial matters noted by the LSO. Ex. 2; Tr. at 178 – 179. Further, she acknowledged that she has actively avoided her financial affairs for many years without understanding her inability to address her finances and welcomed the PTSD diagnosis as providing an explanation and a path forward. *Id.* at 170 – 171.

In mitigation of the security concerns raised by the LSO, the individual points to her proactive approach in addressing her financial deficiencies, which commenced following notification from her employer of the Warrant of Levy for state tax debt and prior to the 2013 PSI. *See* Ex. 14. She sought psychological counseling, initially through an EAP at her place of employment, to try to explain her financial dysfunctions. *See* Ex. 12. With the identification of untreated PTSD as affecting her financial affairs, she has followed all treatment recommendations, including active participation in weekly individual

⁷ 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.

counseling sessions. Ex. A. She intends to continue her psychological counseling and expects to follow the recommendations of her counselor with respect to future treatment. Following any termination of treatment, she anticipates engaging in some form of “after-care” with a counselor. Tr. at 130, 193 – 194. Her counselor has concluded that her prognosis is very good. Ex. A at 6.

In further support of her mitigation of the security concerns, the individual points to her recognition that she needed to seek specialized assistance to address her financial disarray and that she needed to develop a new skill set in order to properly manage her finances in the future. As a result, she has taken financial management training and, in order to assure that she has support for her revised approach to her finances, she requested that a sibling and a close friend (amongst others in her circle) attend the same training. Tr. at 26 – 27, 149. For several months preceding the hearing, she met weekly, on an individual basis, with the financial counselor who directs the program from which she received training; they have both committed to continue their work together on the individual’s finances for one year. *Id.* at 14, 34. Both believe that she has learned new financial management skills and she has integrated the financial management principles into her daily life. *Id.* at 31 – 33. She has discontinued certain prior activities (e.g., working with a trainer) and only incurs discretionary expenses after consulting her budget to assure the availability of funds. She actively engages a sibling and friends in discussions of her financial decision making. *Id.* at 73 – 76, 100 – 101, 169.

The individual points to the progress she has made since first learning of the state tax levy: she paid all delinquent state income taxes (Ex. 14; Tr. at 182 – 183); she filed all past due federal tax returns and filed her 2013 federal tax return on a timely basis (*id.* at 137); she has entered the IRS’s Fresh Start program and has negotiated automatic, monthly payments under a tax payment agreement commencing September 2014 (*id.* at 137 – 138); she has made monthly payments on her federal and state student loans and expects that they will be deemed rehabilitate by November 2014 (*id.* at 131 – 134, 184 – 186); she had paid or settled all of her collection accounts (including one not identified by the LSO) (*id.* at 154 – 163); and she is paying on a current basis unexpected medical expenses which arose during the months prior to the hearing due to surgery (*id.* at 166 – 167).

The individual argues in support of mitigation that she has recognized the need for a professional and personal network to support her with respect to her PTSD and the associated financial problems that arose from it and she believes that she has effectively developed that network. Since the mental health professionals believe that she has successfully addressed her PTSD symptoms, she believes she has also addressed the associated financial matters that triggered security concerns under Criterion L, has reformed her financial behavior and now has the ability to maintain her financial affairs in a responsible manner.

B. Administrative Judge Evaluation of Evidence

Criterion H Security Concerns. With respect to the Criterion H security concerns, the LSO relies upon the diagnosis by the DOE consulting psychologist in February 2014 that the individual has PTSD which causes or may cause a significant defect in her judgment and reliability. Such an illness constitutes a disqualifying security concern under 10 C.F.R. § 710.8(h). Subsequent to the DOE psychologist's February 2014 evaluation, the individual has participated in psychological counseling and treatment with a trauma specialist with whom she commenced working in December 2013. Ex. A at 3 – 4. Additionally, the DOE psychologist had specifically noted in her evaluative report that an area of defective judgment arising from the individual's PTSD was financial, and the individual has subsequently undertaken to develop financial management skills through training and individual sessions with a financial counselor. Ex. 11 at 7; Tr. at 27, 72 – 73, 150. The individual demonstrated through the credible testimony of herself and others, as well as through presentation of her financial planning and budgeting documents, that, in addition to educating herself about financial management, she has been able to implement those skills in her behavior. *Id.* at 73 – 76, 100 – 101, 169.

Based on the information presented at the hearing, the DOE psychologist provided an updated diagnosis at the conclusion of the hearing. She concluded that while the individual still meets some criteria of PTSD, she manifested no psychological symptoms in the prior six months and no longer has an illness or mental condition which causes or may cause a significant defect in her judgment or reliability. *Id.* at 197 – 201. This conclusion is supported by the written report of the individual's treating counselor that the individual's prognosis is very good. Ex. A at 6.

Based on the foregoing, I find that the individual has sufficiently mitigated the security concerns arising under Criterion H. *See* Adjudicative Guidelines at Guideline I ¶ 29(e) (security concerns arising from psychological conditions may be mitigated when there is no indication of a current problem).

Criterion L Security Concerns. With respect to the Criterion L security concerns, the LSO points to the individual's sustained pattern of financial irresponsibility: delinquent tax returns; delinquent tax debt; delinquent student loans in collection; additional collection accounts; charged-off accounts; and failure to maintain representations previously made to the LSO. Absent mitigation, this pattern constitutes a disqualifying security concern under 10 C.F.R. § 710.8(l).

To mitigate an established pattern of financial irresponsibility, an individual must demonstrate reformation of the financially irresponsible behavior, which is ordinarily accomplished through demonstrating a sustained pattern of financial responsibility. *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).

While the individual has made laudable progress in resolving her financial affairs since October 2013, she has yet to demonstrate a sustained pattern of financial responsibility. Such absence, however, need not be singularly determinative of her eligibility for access authorization. The Part 710 regulations recognize that a decision with respect to access authorization should not be made by the automatic application of a single standard, but require that any decision be reached only after a comprehensive, common-sense evaluation of all relevant information. 10 C.F.R. § 710.7(a). Similarly, the Adjudicative Guidelines counsel that evaluations thereunder need to be made in the context of the whole person. Adjudicative Guidelines at ¶ 2(c). In the context of the individual, any comprehensive evaluation needs to recognize that the genesis of her financially irresponsible behavior was her untreated PTSD, which originated during her childhood with her cancer treatment and the contemporaneous loss of a parent. DOE's own consulting psychologist noted in her initial evaluation that the individual's "financial problems stem from her psychological condition of PTSD." Ex. 11 at 7.

When the individual received notice of the Warrant to garnish her wages for state tax debt, she recognized that she may have had psychological issues that prevented her from addressing her finances and she initiated a psychological evaluation. She has been diligent and aggressive in seeking psychological treatment, developing new skills (including those relating to financial management), retaining a financial counselor, and building a network to support her.

The treatment recommended by DOE's consulting psychologist has been undertaken and, at the hearing, she opined that the individual no longer has an illness or mental condition that causes a defect in her judgment or reliability regarding financial matters. Tr. at 197 – 201. The individual has received and is continuing psychological counseling for the problem underlying her financial irresponsibility (i.e., PTSD), and she has received and is continuing to receive financial counseling with respect to resolving past financial matters and managing her finances in the future. The Adjudicative Guidelines recognize the appropriateness of mitigation of security concerns arising from financial considerations under these circumstances. Adjudicative Guidelines at Guideline F ¶ 20(c) (mitigation of security concerns arising from financial considerations is possible where the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control).

Similarly, the Adjudicative Guidelines additionally recognize the appropriateness of mitigation where financially irresponsible behavior occurred under such circumstances that it is unlikely to recur and does not cast doubt on an individual's current reliability, trustworthiness or good judgment. *Id.* at Guideline F ¶ 20(a). Here, the behavior occurred due to untreated PTSD, which has now been treated in a manner that has allowed DOE's consulting psychologist to conclude that the PTSD no longer creates a defect in the individual's reliability or judgment. *Cf. Personnel Security Hearing, Case No. PSH-14-0067 (2014)* (Criterion L security concerns arising from criminal conduct (misuse of prescription medication) mitigated in partial reliance upon the conclusion of a DOE consulting psychiatrist that the individual had evidenced adequate reformation of his opioid dependence).

Based on the foregoing, I find that the individual has sufficiently mitigated the security concerns arising under Criterion L.

VI. 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 H and 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 brought forth sufficient evidence to mitigate the security concerns associated with Criterion H and Criterion L. Accordingly, I have determined that the individual's access authorization should 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.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: October 03, 2014