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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	June 18, 2014)	
)	Case No.: PSH-14-0063
)	

Issued : September 15, 2014

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ 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.

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 financial matters, including delinquent federal and state income tax debt, non-filing of state income tax returns, and existence of collection and delinquent financial accounts (including his mortgage on the home in which he resides, which has not been paid since 2006). *See* Exhibits 3 – 6. Upon receipt of this information,

¹ 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.

the Local Security Office (LSO) requested written information from the individual; when the individual's responses to the LSO's interrogatories did not resolve the security concerns arising from the individual's finances, the LSO conducted a personnel security interview (PSI) with the individual on September 11, 2013 (2013 PSI). *See* Exhibit 17.

On May 8, 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).² *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 19 numbered exhibits into the record; the individual tendered nine lettered exhibits (Exhibits A-I). 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 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).

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

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.

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 one criterion as the basis for suspending the individual's security clearance, Criterion L. To support its allegations, the LSO noted, *inter alia*, the individual's (1) delinquent federal tax debt for 2010, 2011, and 2012 aggregating \$4,566;⁴ (2) non-filing of his state tax returns for 2011 and 2012; (3) delinquent state tax debt for 2003, 2006, 2007 and 2008 aggregating \$1,624; (4) seven collection accounts aggregating \$2,764; (5) failure to pay his mortgage since 2006 with delinquent payments aggregating \$236, 270.49; and (6) three bankruptcy filings between 1998 and 2007. *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

At the hearing, the individual contested several details contained in the Notification Letter. In each case, I have carefully considered the arguments presented by the individual in reaching the findings of fact set forth below.

⁴ The LSO erroneously listed the individual's outstanding income tax liability for 2011 as \$759; the correct amount is \$769, which is reflected in the aggregate amount cited above. Ex. 1; Ex. C at 5; Tr. at 26.

Income Taxes. The individual did not file his federal tax returns for 2010, 2011 or 2012 until February 19, 2014, which was substantially after the filing deadline for those returns and after the LSO had conducted the 2013 PSI with the individual regarding his finances. Ex. B at 1; Ex. C at 1; Ex. D at 1. The individual had unpaid tax liability on each of those returns, aggregating \$4,566, which continues to be outstanding. The individual testified that any payments that he may have made with respect to those tax years would not have reduced those liabilities because he continues to owe the federal tax authorities for unpaid taxes from 2003. Tr. at 21, 25. Based on the individual's testimony (which varied through the hearing), I find that he also has outstanding federal tax liability for the years 2003, 2006, 2007, and 2008. *Id.* at 21, 25, 84 – 86. The amount of those delinquent federal income taxes is unknown.

Additionally, the individual did not file his 2013 federal tax return until July 15, 2014, which was after the filing deadline for that return. Ex. F at 1; Tr. at 23. He had not filed for an extension of the filing deadline. *Id.* at 23 – 24. For 2013, he owed a balance of \$2,410 on his taxes, which remains unpaid. Ex. E at 2; Tr. at 83.

Although the individual testified that he requested a tax payment plan with respect to his delinquent federal taxes, none had been established as of the date of the hearing. *Id.* at 22.

The individual did not file his state tax returns for 2011 and 2012 until approximately April 2014, which was substantially after the filing tax deadline for those returns. Ex. F. at 1; Tr. at 29. Those returns were not introduced into the record; however, I find that he owes at least \$567 in delinquent state taxes for those years. *Id.* at 31 – 32. For 2013, the individual owes \$476 in unpaid state income taxes and interest. Ex. I.

At the hearing, the individual testified that a customer service representative of the state tax authority informed him that his total outstanding state income tax liability is \$30. Tr. at 33 – 35. No documentation was submitted to support this testimony. He furthered testified that a wage garnishment by the state tax authority in January 2011 in the amount of \$563 extinguished all of his unpaid tax liability for earlier years. *Id.* at 34 – 37. Similarly, no documentation was submitted to support this testimony. I find that the individual owes an aggregate of \$1624 for unpaid state income tax liability for the years 2003, 2006, 2007 and 2008. Ex. 10.

Delinquent and Collection Debt. The individual owes an aggregate of \$2,764 to seven collection creditors. Ex. 11 at 1 – 2; Ex. 14 at 1; Ex. 16 at 1; Tr. at 39 – 45.

The individual owns his home, subject to a mortgage on which no payments have been made since 2006 – approximately eight years. *Id.* at 47, 49 – 51, 67. As of September 2013, the outstanding principal balance on the residence was \$301,137, past due amounts aggregated an additional \$236,270 and additional late charges and fees totaled \$22,357.⁵ Ex. 12 at 1. The past due amounts include \$32,393 for amounts the lender has advanced for the individual's real estate taxes and insurance, for which the individual has made no

⁵ Amounts actually due to the mortgage lender are greater since no payments have been made to the lender since the lender's September 2013 account statement. Tr. at 67.

contribution since 2006. *Ibid.*; Tr. at 70 – 71. The approximately fair market value of the residence is \$159,000. *Id.* at 68.

On December 3, 2013, the individual and his wife were approved for participation in a federal home mortgage relief program at a substantially reduced mortgage payment. The program required that the first three monthly payments be made on time. Their first payment was due January 1, 2014, but was not made until approximately the end of January 2014. Their eligibility for the program was thereafter terminated. *Id.* at 47 – 48, 74 – 76.

Current Budget. The individual and his wife maintain separate finances, each taking responsibility for certain personal and family expenses. At the hearing, the individual submitted a current budget that reflected that he presently pays no housing expenses (i.e., he is living in a house on which he has not made any mortgage, real estate tax or insurance payments for approximately eight years). The individual's current monthly expenses exceed his monthly income by \$485. Ex. H; Tr. at 57 – 59, 65 – 66.

Bankruptcy Filings. The individual does not dispute that he has petitioned for bankruptcy protection three times: in 1998 or 1999; 2003; and 2007. His 2007 petition was dismissed in January 2008, after he failed to confirm the plan. *Id.* at 52; 73.

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)⁶ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. 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

To mitigate the security concerns, the individual's testimony at the hearing largely focused on the following factors: (1) his wife managed most of their financial matters and he was largely unaware of their financial disarray (Tr at 15 – 18); (2) the delinquent state income tax matters have been largely resolved (*Id.* at 33 – 34, 36 – 37); (3) the collection accounts are either with unknown creditors or include disputed amounts (*Id.* at 39 – 45);

⁶ 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.

(4) their mortgage problems began following a refinancing in 2005, in which they had been subject to predatory lending (*Id.* at 46); (5) their attorney advised them to continue to reside in their home without making payments until the lender foreclosed (*Id.* at 50 – 51); and (6) their mortgage lender commenced foreclosure proceedings in May 2014 and, following the foreclosure, their financial liability to the lender will be reduce to \$0 (*Id.* at 48, 67).

B. Administrative Judge Evaluation of Evidence

Although I commend the individual for his candor respecting his finances during the administrative review process, I was unpersuaded by his proffered mitigation. While the individual may have relied upon his wife to manage all or portions of their finances, that does not negate his personal responsibility for his financial affairs. This is particularly true in this situation where the LSO conducted a PSI, focused on financial matters, with the individual on January 29, 2009 (2009 PSI). *See* Ex. 18. As a result of the 2009 PSI, the individual was aware of the DOE’s concerns about his financial affairs.⁷

While the individual may have resolved certain state tax matters, he presented limited documentation to support those assertions. He testified that papers received from the state tax authorities were in the possession of his wife and he forgot to bring them to the hearing. Tr. at 30 – 32. Further, the customer service representative with whom he spoke could not provide written documentation of the information that she had provided him. *Id.* at 33 – 34. Given the opportunity to make a post-hearing submission of such documentation, the individual submitted a document that merely addressed his state tax liability for 2013, but was silent on earlier years. Ex. I; Tr. at 99. Additionally, that document created further concerns as it evidenced additional tax liability than had been previously disclosed while providing no evidence of payment of such liability. Ex. I. The security concern arising from the individual’s state income taxes was not mitigated. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 20 (a) (mitigation possible if behavior was long ago or infrequent). Similarly, the individual has substantial federal income tax delinquencies which continue to be unresolved.

With respect to the collection accounts, the individual testified that four related to medical expenses that he could not identify; one to a retail store that had no record of his having an account with it; and two to terminated mobile telephone accounts that included termination fees that he disputed. Other than the documentation previously submitted to the LSO, the individual presented no documentation at the hearing to substantiate any efforts to resolve the debts or have them removed from his credit reports. Tr. at 39 – 45. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 20 (e) (mitigation possible if individual presents documented proof to substantiate the basis of financial disputes or evidence of action taken to resolve the issue). Given the opportunity to make a post-hearing submission to substantiate his efforts on these matters, the individual submitted no additional evidence. Tr. at 99 – 100. With respect to the disputed mobile telephone

⁷ At the hearing, the individual testified that he did not “really recall” having discussed the importance of his upholding his financial obligations during the 2009 PSI. Tr. at 13. Any fair reading of the transcript of the 2009 PSI suggests that the individual’s testimony on this point was disingenuous. *See* Ex. 18

accounts, the individual has made no attempt to pay the undisputed amounts and acknowledges that the termination fees resulted when the carriers terminated the contract when he was 60 days or more late on payments. *Id.* at 39 – 41, 44. While an analysis of the validity of such termination fees is beyond the scope of this proceeding, such circumstances (*i.e.*, termination of mobile phone contracts due to delinquent payments) reinforce the pattern of financial irresponsibility demonstrated by the individual in other areas of his life. Further, the individual's failure to pay the undisputed amounts due to these carriers, shows a lack of good faith in dealing with his overdue creditors. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 20 (d) (mitigation possible if individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

With respect to the individual's nonpayment of his mortgage, I cannot find that he has mitigated the Criterion L security concerns. The individual testified that he and his wife had been subject to predatory lender practices when they refinanced their home and, thereafter, their mortgage payments subsequently increased. *Tr.* at 46. While I do not doubt that he and his family may have faced financial hardship when their interest rate adjusted, the record reflects that (1) the individual consulted legal counsel to potentially litigate against their lender for predatory lending practices but did not pursue that action⁸ and (2) prior to the refinancing in which the individual borrowed approximately \$50,000 in excess of his prior mortgage, the individual at times had been unable to pay his original mortgage on time and either "fell behind" or, in some instances, borrowed funds to pay the mortgage from a family member of his then-employer. *Id.* at 46, 54, 76 – 80. The individual submitted no documentation to substantiate any advice from an attorney that he should continue to live in his home indefinitely as his liability to his lender increased and he made no attempts to reduce that liability. Even had such documentation been presented, the individual's residing in his home without paying his mortgage, real estate taxes or insurance for eight years is not reasonable or financially responsible. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 20 (b) (mitigation possible if financial problem resulted from conditions beyond the control of the individual and he or she acted responsibly under the circumstances). Any argument that the individual may have had that he was attempting to resolve his mortgage problems in good faith is eroded by his failure to make a timely payment (after having paid \$0 for his housing for seven years) to a federal mortgage relief program and thereby losing his eligibility to participate in the federal program. *Tr.* at 47 – 48, 74 – 76. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 20 (d).

Further, the individual's argument that his mortgage problems arose as a result of a predatory refinancing (and subsequent payment increases) is seriously undermined by the fact that he fell behind on his prior mortgage and at times borrowed money from his prior employer's daughter in order to make certain payments on that earlier mortgage. His mortgage problems pre-dated his 2005 refinancing.

⁸ The lawyer whom the individual and his wife consulted died prior to any action being filed, and the individual chose not to retain an additional lawyer to pursue the matter afterwards. *Tr.* at 46. No suggestion was made that the individual intended to defend against the current foreclosure of his home for any reason, including predatory lending practices of the lender.

On the evidence presented, the individual has demonstrated a clear, consistent and sustained pattern of financial irresponsibility. The evidence does not support that the individual has reformed his pattern of financial irresponsibility. Even if the individual managed to resolve his existing financial irregularities, his own financial projections evidence that he will continue to have negative cash flow. Ex. H; Tr. at 57 – 59, 65 – 66. The extent of that negative cash flow will only increase if the individual’s mortgage lender forecloses and he thereafter incurs housing costs, something that he has avoided for eight years.

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, any period of reformation has yet to commence as the individual’s pattern of financial irresponsibility continues unabated.

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. 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 15, 2014