



purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (Criteria H and L, respectively).<sup>2</sup> See Ex. 1 (Summary of Security Concerns). The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the security concerns. *Id.*

The individual requested a hearing on this matter. Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE Counsel tendered ten numbered exhibits into the record in advance of the hearing, and the individual produced six exhibits before the hearing and two following the hearing, which I have labeled as Exhibits A through H. At the hearing, the individual represented herself, and offered her own testimony as well as the testimony of her treating counselor. The DOE Counsel presented the testimony of the DOE psychologist.

## **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

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<sup>2</sup> Criterion H concerns arise from derogatory information that the individual has an illness or mental condition which, in the opinion of a psychiatrist or license clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion L concerns conduct tending to show that the individual is "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).

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 (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**

As stated above, the LSO issued a Notification Letter informing the individual that the DOE possessed derogatory information that raises doubts under Criteria H and L regarding her eligibility to hold a DOE access authorization. Ex. 1. The LSO supported its Criterion H concern by alleging that the DOE psychologist evaluated the individual and concluded that the individual has a lack of remorse, a mental trait found in anti-social personality disorders, that, when coupled with her lack of financial responsibility, forms a serious mental trait or condition that has caused and is likely to continue to cause significant defects in judgment and reliability. *Id.* I find that the above information constitutes derogatory information that raises questions about the individual’s conduct under Criterion H. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines, Guideline I at ¶ 27.

As the basis for its Criterion L concern, the LSO cited the individual’s history of financial irresponsibility. Ex. 1. In its Notification Letter, the LSO enumerated the individual’s collection accounts and charged-off accounts, and her pattern of unwillingness or inability to satisfy her debts. The Letter listed as evidence of her unwillingness or inability to satisfy her debts the individual’s 2009 commitment to the LSO, and subsequent failure, to keep her expenses below her income level; and her incurring of unnecessary expenses, including trips to Europe and elective surgeries, even after she realized she could not meet all of her financial obligations. *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 at ¶ 18. Among the behaviors that may give rise to security concerns related to an individual’s financial irresponsibility are “inability or unwillingness to satisfy debts” and “a history of not meeting financial obligations.” *Id.* at ¶ 19(a), (c). In light of the information cited, I find that the LSO properly invoked Criterion L.

### **IV. FINDINGS OF FACT**

The individual is an only child of a single mother. Ex. 4 (Psychological Evaluation) at 2. Although the mother appears to have been very controlling of her daughter, even after the daughter was fully mature, they had a very close relationship. *Id.* at 3. Neither ever had much money, and they helped each other through financial difficulties. Tr. at 61. A 2004 hospitalization of the mother caused the individual great anxiety and depression, and the mother’s death in early 2008 hit the individual hard. The individual was extremely depressed. Ex. 4 at 2-3.

Five months after her mother's death, however, she took a trip to Europe with a friend, and found herself to be elated while there, spending excessive amounts on souvenirs, and having racing ideas. *Id.* at 3. The individual also began to spend money with little regard for the debt she was accumulating, buying what she wanted, not what she needed. *Tr.* at 57. She sought help from a psychiatrist, who diagnosed her with "low-grade" bipolar disorder, discontinued one of the antidepressants her physician had prescribed, and prescribed other medications to treat the condition. *Ex.* 4 at 3.

By 2009, she was delinquent on several financial accounts, but reassured the LSO that she would be able to keep her expenses below her income in the future. *Id.* at 5. She ultimately took three trips to Europe between 2008 and 2012. *Tr.* at 26-27. In 2012, she began seeing a counselor to address her financial difficulties, which the counselor identified as a disorder, as well as an eating disorder. *Id.* at 38 (testimony of counselor). In those weekly sessions, which the counselor sees continuing for at least another year, they have addressed her eating and spending behaviors, which are manifestations of impulse control issues. *Id.* at 42, 47. According to the counselor's testimony, when the individual began counseling, she had stopped spending excessively and "was well on her way to figuring out what to do about it." *Id.* at 44. They worked through a plan to repay the debts, but the individual was unable to comply with it; the counselor then encouraged her to put in place a plan—a consumer credit counseling service—that would exert external controls over her repayment goals. *Id.* at 41.

In his evaluative report, the DOE psychologist diagnosed the individual with Cyclothymic Disorder rather than "low-grade" bipolar disorder, determined that the condition was being properly treated, and stated that as long as she takes her prescribed medications, it will not cause significant defects in her judgment or reliability. *Id.* at 8. He did, however, express his opinion that her lack of remorse for incurring debts and failing to repay them demonstrated a troublesome psychological trait that, while it did not support a diagnosis of antisocial behavior, was nevertheless a condition that could cause a significant defect in judgment or reliability. *Id.*

At the hearing, the counselor stated that she disagreed with the DOE psychologist's finding that the individual has any antisocial personality traits. She testified that the individual is to the contrary very rule-abiding, but has instead impulsive and addictive behaviors regarding spending and eating. *Tr.* at 45. In contrast to the DOE psychologist's determination that the individual lacked remorse over her poor financial decisions, the counselor stated that, in her opinion, the individual has demonstrated remorse throughout the course of her treatment. *Id.* at 43. She also stated that the individual deliberated for long periods before ultimately deciding to address each of her impulsive behaviors, by obtaining Lap Band surgery and by enrolling with the debt consolidation service. *Id.* at 44.

The individual testified that she started taking action regarding her debts early in 2014. *Id.* at 21. By the time of the hearing, she had worked with the debt consolidation service and made three or four monthly payments to the service; the service allocates portions of each monthly payment to the creditors the individual had identified. *Id.* at 10-14, 59. Through questioning at the hearing, the individual became aware that several of the debts listed in the Notification Letter had not been incorporated into her repayment plan. *Id.* at 17. She committed to informing the debt

consolidation service and having her monthly payment adjusted to incorporate those debts as well. *Id.* at 17, 65.<sup>3</sup>

After hearing the testimony of the individual and her counselor, the DOE psychologist testified. While he acknowledged the counselor's opinion that the individual had impulsive behaviors, he focused more on the individual's poor judgment in deciding to incur substantial expenses—trips to Europe, elective surgeries—when she was already in significant debt. *Id.* at 79. He expressed his opinion that the individual exhibited two traits that concerned him: the lack of remorse on which the LSO had relied in its Notification Letter and deceitfulness, which he had also identified in his evaluative report. He explained that the individual's lack of remorse presented itself through the individual's failure to take action to resolve her accumulated debts, which she attributed to continued mourning over her mother's death. *Id.* at 80, 85-86. He viewed deceitfulness in two of the individual's behaviors. The first was the individual's failure to carry through with her commitment to the LSO in 2009 that she would keep her expenses lower than her income. *Id.* at 79. The second stemmed from the individual's accusation that the DOE psychologist made inappropriate comments to her during his evaluation of her and made factual errors in his report, in an effort to make him look bad. *Id.* at 90-91. *See* Ex. A at 1, 5-8. Both behaviors, in his opinion, rendered her unreliable. *Id.* at 91. Finally, he concurred with the counselor that the individual's spending issues were impulsive in nature, and expressed his opinion that it was too early in her treatment to judge whether she had acquired the ability to control her impulses. *Id.* at 79, 86.

## V. 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 an access authorization to the individual "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

### A. The Individual's Mitigating Evidence

#### 1. Criterion H: Mental Condition

The DOE psychologist determined that the individual meets the DSM-5 criteria for Cyclothymic Disorder: briefly, numerous periods of hypomanic and depressive symptoms that do not rise to the level of hypomanic or depressive episodes. Ex. 4 at 8, 11. He further determined that, provided she takes her medications, there is little likelihood that the disorder will cause significant defects in the individual's reliability or judgment. *Id.* at 8. "It is her personality trait of being self-indulgent without remorse or internal motivation to inhibit that tendency that is apt to continue to keep her in debt and thereby cause significant defects in her judgment and

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<sup>3</sup> Following the hearing, she did so, at least with respect to some additional debts. A letter from the debt consolidations service that the individual submitted after the hearing acknowledges that her monthly payment will increase. Ex. G at 4-5. A spreadsheet, despite a few inaccuracies, indicates that the increased monthly payment reflects inclusion in her consolidation plan of all the outstanding debts listed in the Notification Letter. *Id.* at 1-3.

reliability.” *Id.* At the hearing, the individual testified that she indeed felt remorse for incurring excessive debt in the years following her mother’s death. Tr. at 56. Her counselor echoes that sentiment, explaining that in their sessions, the individual talked about her debt, acknowledging its full extent, in contrast to other patients who tend to downplay their indebtedness. *Id.* at 43. The individual’s treating psychiatrist did not testify at the hearing, but provided two letters in which she confirmed that the individual has expressed to her remorse over her accrual of debt. Ex. A at 19-20; Ex. H.

The DOE psychologist also determined that deceitfulness played a significant role in the individual’s behavior toward her finances. In his opinion, the individual attributed her failure to take action to resolve her debts, after promising the LSO in 2009 that she would do so, to her long-term mourning of her mother’s death. The counselor, who has met with the individual weekly for more than two years, rejected deceitfulness as the explanation for the individual’s inaction: “I have people promise all the time that they will do something and then they have a million reasons why they haven’t done it. I don’t see that as deceptive. I see that as a lack of awareness and self-knowledge of what their capabilities are. I see that as a pretty normal part of therapy.” Tr. at 51. Finally, as mentioned above, the DOE psychologist also found deceitfulness in the individual’s challenging remarks regarding his evaluative report. The counselor testified that, from her work with the individual, she had known her “to be a pretty accurate reporter, especially if something sort of startles her or upsets her.” *Id.* at 48-49, 52.

## 2. Criterion L: Financial Irresponsibility

At the hearing, the individual testified that, after her mother’s death in 2008, she began thinking rationally, about her finances and generally, three or four years ago. *Id.* at 19. In 2010, she gave up her apartment to save on rent, and moved into another person’s home, exchanging caretaking services for free housing. *Id.* at 24-25. The new housing arrangement freed up some of her income, some of which was needed for a series of emergency expenses, such as major vehicle repairs. *Id.* at 25-26. It took two more years before she sought therapy and even more time to decide she needed external assistance to resolve her outstanding debts. In any event, she now has engaged a debt consolidation service, to which she pays a single monthly amount to pay off her debts in an ordered fashion. *Id.* at 10; Ex. G. She now buys only necessities, lives within her means, and hopes to be debt-free within a few years. *Id.* at 57-58, 60, 71. She did, however, choose to have Lap Band surgery early in 2014 and is paying off those medical expenses not covered by insurance. Her counselor pointed out at the hearing that external forces also control her spending, for the time being: she now has a low credit score and that keeps her from obtaining more credit even if she were inclined to apply for it. *Id.* at 45. Finally, as stated above, the individual has accepted her responsibility for her outstanding debt, and in her opinion has demonstrated financial responsibility “[p]robably just this year.” *Id.* at 56, 59.

## B. Administrative Judge’s Evaluation of Evidence

### 1. Criterion H: Mental Condition

The DOE psychologist identified two personality traits that, in his opinion, constitute mental conditions that cause or may cause a significant defect in judgment or reliability, and as such

raises doubts under Criterion H regarding the individual's eligibility to hold a DOE access authorization. At the hearing, conflicting testimony was presented regarding each of these traits.

The DOE psychologist found that the individual's long-standing lack of action regarding her outstanding debts demonstrated a lack of remorse for having accrued the debts and for not repaying them in a timely manner. This lack of remorse, in the DOE psychologist's opinion, has caused and will continue to cause a significant defect in judgment. The counselor, on the other hand, testified that the individual had expressed her remorse in their sessions in ways the counselor did not generally observe in her patients: she always considered her entire indebtedness, not minimizing the issue by thinking only of the minimum monthly payment due on each debt. *Id.* at 43. The individual's psychologist's letters also mention the individual's sense of remorse. These professionals have long-standing relationships with the individual—while the DOE psychologist, by the very nature of his role in this proceeding does not—and I am convinced by the weight of their testimony and written statements that the individual has in fact felt remorse about her indebtedness.

The DOE psychologist also found that the individual presented a second trait that raises a concern under Criterion H. He observed that the individual displayed deceitfulness in two manners: first, by attributing her inaction regarding her debts to an extended period of mourning her mother's death; and second, by challenging the DOE psychologist's behavior during his evaluation of her and some of the factual findings in his report. This trait of deceitfulness, in the DOE psychologist's opinion, has caused and will continue to cause a significant defect in reliability. In her testimony, the counselor presented an alternative explanation for the individual's behavior, set forth in section V.A.1 above, that attributes her inaction to lack of awareness and self-knowledge of her capabilities. She also testified that she has never found the individual to be deceptive in their time working together, and on the contrary, has found her to be an accurate reporter of facts. Moreover, my observation of the individual's demeanor at the hearing supports the counselor's position regarding the individual's lack of deceitfulness. As it became clear at the hearing that her arrangement with the debt consolidation service had not included all of the debts that had raised concerns for the LSO, the individual did not attempt to shift the blame for that error or oversight to the debt consolidation service, but rather accepted the responsibility to correct the matter and, in fact, did so shortly after the hearing. *See Ex. G.* The DOE psychologist's second factual basis for finding the individual deceitful—his assertion that individual is intentionally misrepresenting what he said during the evaluation—is beyond my ability to assess. I have no evidence to consider other than his word against hers. Accordingly, I will make no finding as to whether the individual lied about what inappropriate comments, if any, were made in that private setting.<sup>4</sup>

Although I have concluded above that the evidence does not support the DOE psychologist's finding that the individual exhibits the two personality traits discussed above, there is consensus among the mental health professionals that the individual's behavior toward her finances is impulsive. The DOE psychologist has not affirmatively stated whether the individual's impulsivity is a mental condition that causes or may cause a significant defect in judgment or reliability. The record is silent on this matter and, consequently, I cannot conclude that the

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<sup>4</sup> I note, however, that if the DOE psychologist considered the individual's remarks to be *ad hominem* attacks on his professionalism, they may have tempered his analysis of the individual.

individual's impulsivity falls within Criterion H. Nor, for the same rationale, can I conclude that her impulsivity constitutes a disqualifying psychological condition under Guideline I of the Adjudicative Guidelines. Adjudicative Guidelines, Guideline I at ¶ 28(b).<sup>5</sup>

Consequently, after considering all of the evidence, I find that none of the individual's personality traits that the DOE psychologist attributed to the individual in his evaluative report or in his testimony presents derogatory information under Criterion H. The individual's impulsivity nevertheless contributed to her excessive spending behavior, which I will address in the following section.

## 2. Criterion L: Financial Irresponsibility

I also find that the individual has not sufficiently mitigated the LSO's Criterion L security concerns regarding her financial irresponsibility. Among the factors that may serve to mitigate security concerns raised by an individual's failure to satisfy debts and meet financial obligations 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 at ¶ 20(a). Although the individual accrued most of the debts listed in the Notification Letter in the past, has now arranged a plan for repaying them, and appears to be meeting her current expenses, these debts remain unresolved at this time. In addition, although she is receiving professional help for her financial disorder, her counselor recommends continued treatment for at least another year. I cannot find at this time that the circumstances under which she incurred her debts are unlikely to recur, though her proactive seeking of treatment and her enrollment in debt consolidation impress upon me that her financial situation is likely to improve in the future.

Nor can I find other conditions that might mitigate the LSO's concern with respect to the individual's financial irresponsibility. Although her financial hardship arose as the result of a death, I cannot conclude that the individual acted responsibly under the circumstances. *Id.* at ¶ 20(b). Even though the individual is receiving counseling for her financial problem, it is too early in the counseling process for me to conclude that that the problem is being resolved or under control. *Id.* at ¶ 20(c). She has, however, initiated a good-faith effort to repay her overdue creditors, but only recently. *Id.* at ¶ 20(d).

The individual has embarked upon an effort to resolve her financial problems by reducing her spending, obtaining professional treatment for her spending impulsivity, and recently engaging a debt consolidation service to repay her outstanding creditors. Nevertheless, in prior cases involving financial irresponsibility, Administrative Judges and Hearing Officers 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-14-0071 (2014); *Personnel Security Hearing*, Case No. PSH-

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<sup>5</sup> Even if I were to find that the individual's impulsivity fell within Criterion H, I would feel compelled to disallow it as derogatory information in this case on due process grounds. The LSO did not raise this trait as a basis for its Criterion H concern in its Notification Letter. Consequently, the individual had no notice of this concern and was not in a position to prepare a defense to, or demonstrate mitigation of, the concern at the hearing.

14-0050 (2014); *Personnel Security Hearing*, Case No. PSH-13-0098 (2013).<sup>6/</sup> At this point, the individual has not demonstrated a sustained pattern of financial responsibility for a significant period of time relative to her period of financial irresponsibility. I therefore cannot find that the individual has sufficiently mitigated the security concerns associated with Criterion L.

## 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 Criteria H and 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 security concerns raised under Criterion H are resolved, but that the individual has not presented sufficient information to fully resolve the security concerns raised under Criterion L. Therefore, I cannot conclude that restoring a security clearance to the individual "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 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.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: Issued: December 1, 2014

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<sup>6/</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).