

Report), 12 (August 2013 Credit Report), 14 (August 2013 QNSP). As a result, the Local Security Office (LSO) requested that the Individual participate in a June 2014 Personnel Security Interview (PSI) in order to discuss those matters. DOE Ex. 15. In October 2014, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (f), (l) (Criteria F and L, respectively).² See DOE Ex. 1 (Notification Letter, May 16, 2014).

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual, represented by counsel, offered his own testimony as well as the testimony of his wife, his daughter, his sister-in-law, his brother-in-law, his employer and his supervisor from his second job, and two individuals for whom he occasionally works as a handyman. In addition, the Individual submitted eleven exhibits into the record (Indiv. Exs. A-K). The DOE counsel presented no witnesses, and tendered eighteen exhibits (DOE Exs. 1-18). See Transcript of Hearing, Case No. PSH-14-0102 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

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

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including “the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

² Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual’s eligibility for access authorization, including responses given during personnel security interviews or on security questionnaires. 10 C.F.R. § 710.8(f). Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (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 which raised doubts regarding his continued eligibility to hold a DOE access authorization. According to the Notification Letter, this information raises security concerns under Criteria F and L of the Part 710 regulations. DOE Ex. 1. As a basis for its Criteria F and L concerns, the LSO cited information which called into question the Individual’s honesty, reliability, and trustworthiness. The LSO cited as additional security concerns under Criterion L information which raised doubts regarding the Individual’s willingness and ability to satisfy his financial obligations. *Id.*

In support of its concerns regarding the Individual’s honesty, trustworthiness or reliability, the LSO referred to certain responses that the Individual provided on the August 2013 QNSP. Specifically, the LSO cited the Individual’s responses that, in the last seven years: (1) he had not had a judgment entered against him, despite having had three judgments entered against him within the past seven years; (2) he had not had a lien placed against his property for failing to pay taxes or other debts, despite having had three liens placed against his property within the last seven years; (3) he had not had any bills or debts turned over to a collection agency, despite having had nine accounts turned over to a collection agency within the past seven years; (4) he had not had his wages, benefits or assets garnished or attached for any reason, despite having had his wages garnished for failure to pay a debt on four occasions within the last seven years; and (5) he had not failed to file or pay any Federal, state or other taxes as required, despite having failed to pay property taxes within the past seven years. *Id.* at 1, 3-6. According to the Adjudicative Guidelines, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s ability to protect classified information.” *Id.*, Guideline E, ¶ 15. Among the conditions regarding an individual’s conduct that may raise security concerns are “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” and “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative[.]” *Id.*, Guideline E, ¶¶ 16 (a), (b). In this case, given the Individual’s inaccurate responses on the August 2013 QNSP, the LSO properly invoked Criteria F and L with respect to the Individual’s candor.

With respect to its concerns regarding the Individual’s financial responsibility, the LSO cited the following: (1) the Individual’s current delinquent debts, including collection accounts totaling approximately \$1300, a charged off account, totaling approximately \$440; a civil judgment

entered against the Individual in July 2008 totaling approximately \$8000, and delinquent income and property taxes totaling between \$1600 and \$2000; (2) three tax liens secured against the Individual's property for nonpayment of taxes – a Federal tax lien filed in 2011, a Federal tax lien filed in 2012, and a state tax lien filed in 2012 – for approximately \$35,000, \$42,000, and \$7300, respectively; and (3) the Individual's purported pattern of financial irresponsibility, which includes wage garnishments, civil judgments, collection accounts, delinquent tax debts, and the reliance on payday loans. *Id.* at 1-3. It is well-settled that the failure or inability to live within one's means, satisfy debts, and meet financial obligations "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," which, in turn, may call into question an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F, ¶ 18. Among the behaviors which may give rise to security concerns related to an individual's financial irresponsibility are a "failure to file annual Federal, state, or local income tax returns . . .," a "history of not meeting financial obligations," and an "inability or unwillingness to satisfy debts." *Id.* at ¶ 19(a), (c), (g). Given the cited information regarding the Individual's finances, I find that the LSO had ample grounds to invoke Criterion L with respect to the Individual's purported pattern of financial irresponsibility.

IV. FINDINGS OF FACT AND ANALYSIS

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

A. Criteria F and L - The Individual's Omissions on the August 2013 QNSP

The Individual did not dispute that he failed to list certain required information on the August 2013 QNSP, as set forth in the Notification Letter. However, he maintained that the omissions were not deliberate attempts to conceal information from the DOE. Tr. at 169-70, 189-90. The Individual explained that he attempted to complete the form accurately, but was unaware of many of the delinquent accounts. *Id.* He acknowledged that his attempt to complete the form from memory rather than obtaining a recent credit report prior to completing the form was "bad judgment" on his part. Tr. at 170. However, he vehemently denied intentionally omitting required information from the form. In support of the Individual's testimony, all of the Individual's witnesses – people that he knows both personally and professionally – testified that the Individual is an honest, reliable, and trustworthy person who is unlikely to falsify information. Tr. at 14-15, 72-73, 103-04, 111, 121, 129-30, 141, 154-55.

As indicated above, deliberate omissions, concealments, or falsifications of information call into question an individual's honesty, reliability, and trustworthiness, and raise security concerns. Adjudicative Guidelines, Guideline E, ¶ 16(a). In this case, upon consideration of the hearing testimony and the entire record of this proceeding, I find it unlikely that the Individual deliberately attempted to conceal or withhold information. I base this finding not only on my own observations of the Individual's candor and demeanor at the hearing, but also on the extensive testimony from other witnesses regarding the Individual's honesty and character, as well as the

fact that the Individual has been generally candid and forthright in providing information to the DOE in the past. *See, e.g.*, DOE Exs. 5, 14-17. For example, contrary to the allegation in the Notification Letter that the Individual indicated on the August 2013 QNSP that “in the past seven years, he had not failed to file or pay any Federal, state or other taxes as required,” he did disclose in extensive detail on the form his previous failure to file and pay Federal and state income taxes, inadvertently omitting only his delinquent property taxes. *See* DOE Ex. 14; Indiv. Ex. A. Moreover, he established at the hearing that many of the delinquent accounts were the result of his wife obtaining credit without his knowledge or her failing to follow through on certain obligations that she had undertaken with respect to their finances. *See* § 4.B., *infra*. In addition, he did not recall certain debts and believed others were resolved and therefore need not be listed. *See, e.g.*, Tr. at 189; Indiv. Ex. A. The Individual’s omissions on the form appear to result from the Individual’s genuine lack of awareness regarding the state of his finances at the time he completed the QNSP, as well as his carelessness in ensuring that he had the information that he needed to complete the form, rather than from any deliberate intent on the part of the Individual to deceive.

However, my findings regarding the Individual’s candor aside, the Individual’s omissions on the QNSP also raise concerns regarding his reliability. Based on the evidence in the record, I conclude that the Individual has presented sufficient information to resolve those concerns. The Individual acknowledged that he exercised “bad judgment” in failing to ensure that he had the information that he needed to accurately complete the form. He is now aware of the extent of his delinquent accounts and other required information. He also recognizes the need to be more careful in completing the QNSP in the future. Tr. at 169-70. In addition, as noted above, the Individual has generally been reliable in providing information to the DOE in the past. Finally, the Individual’s witnesses each testified that he is a reliable and responsible person. Therefore, I find that to the extent that the Individual’s omissions on the August 2013 QNSP raised concerns regarding his reliability, the conduct underlying those concerns was a lapse in otherwise reliable behavior on the part of the Individual. Given that the Individual is now aware of the required information at issue, I find that it highly unlikely that he will make similar errors in the future.

Based on the foregoing, I conclude that the behavior at issue with respect to the Individual’s candor and reliability “happened under such unique circumstances that it is unlikely to recur,” and it does not, in and of itself, “cast doubt on [the Individual’s] reliability, trustworthiness, or good judgment.” *See* Adjudicative Guidelines, Guideline E, ¶ 17.

B. Criterion L – The Individual’s Purported Financial Irresponsibility

The Individual did not dispute any of the information cited in the Notification Letter regarding his finances. According to the Individual, many of his delinquent debts and the issues with his taxes were attributable to actions taken by his wife, from whom he is currently separated. Tr. at 178, 180-81, 186. The Individual stated that, throughout their marriage, his wife was responsible for completing and filing their taxes. Tr. at 201. While she had generally filed their taxes appropriately, she stopped doing so in 2006 or 2007 for reasons that remain unclear, and “that made things pile up.” Tr. at 180, 202. The Individual stated that, in retrospect, he should not have relied on his wife to ensure that their taxes were completed. Tr. at 186. In addition, his wife “[ran] up a lot of bills” and the Individual “was trying to keep her happy and keep her bills up for

her” Tr. at 178. To that end, the Individual sometimes obtained payday loans in order to help his estranged wife pay bills. *Id.*, Tr. at 201.

The Individual has since learned the extent of his debts, as well as the status of his taxes, and he has been actively engaged in trying to resolve those matters. With respect to the delinquent accounts, the Individual established at the hearing that the accounts have either been paid in full or are on a repayment plan. *Indiv. Exs. D-H, J, K; Tr. at 173-74, 184-86, 197.* In addition, he has been working with a tax preparer to help him sort out his tax returns from prior years and to repay his delinquent taxes. The Individual’s outstanding balance on his Federal taxes is approximately \$60,000. *Indiv. Ex. B.* He is currently on a repayment plan that he expects will allow him to have paid in full his delinquent Federal taxes in “a couple [of] years.” Tr. at 199; *see also Indiv. Exs. B, C.* He is also on a repayment plan to satisfy his state tax debt and his delinquent property taxes. Tr. at 185, 195-96; *Indiv. Exs. D, H.* The Individual understands the importance of resolving his financial difficulties. In addition to his employment with the DOE contractor, he has a regular part-time job and also occasionally works as a handyman. He uses any extra income from his primary job, and all of his income from his other work, to pay down his debt. Tr. at 176. In addition, he regularly withdraws the allowable amount from his retirement account to put toward his debts. Tr. at 183. The Individual stated that he lives a very frugal lifestyle and that he has not incurred any new debt. Tr. at 179, 192; *see also Tr. at 19, 106, 114, 143-44, 159-60.* He also no longer takes out payday loans or gives his wife money to pay her bills, although he does help maintain her residence. Tr. at 178, 198, 201. The Individual stated that his wife has also “learned a hard and valuable lesson” and that she no longer spends money lavishly. Tr. at 181, 198. The Individual acknowledged that he does not currently know the exact total of his outstanding debts and does not currently have a budget. Tr. at 178, 191-92. However, he states that he is now “in control” of his finances and is in the process of paying down his debts. Tr. at 181, 185. The Individual believes that his financial situation is slowly improving and that he is “on the right track now.” Tr. at 202.

Among the factors that may serve to mitigate security concerns raised by an individual’s financial problems are 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,” or that “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment . . . [or an] unexpected medical emergency . . .) and the individual acted responsibly under the circumstances[.]” Adjudicative Guidelines, Guideline F, ¶ 20.

Upon consideration of the record in this case, I cannot conclude that the Individual has resolved the Criterion L concerns regarding his pattern of financial irresponsibility. The evidence in the record supports the Individual’s assertions that the underlying cause of his financial difficulties can be attributed to actions taken by his wife. *See, e.g., Tr. at 76-77, 106, 160.* Nonetheless, despite having been made aware of the DOE’s concerns regarding his finances during the reinvestigations of his security clearance which took place in 1996, 2003, and 2009, the Individual continued to enable his wife’s behavior with respect to their finances, taking little action to address his financial situation. Recently, the Individual has become much more proactive with respect to his finances. He has adopted a very frugal lifestyle, has repaid many of his outstanding debts, and has entered into repayment agreements to resolve his tax debts. He also no longer takes out

payday loans to pay his wife's bills. These are all positive factors. However, the Individual is in the very early stages of addressing his financial issues. He does not currently know the total of his outstanding debts. He continues to have a sizeable tax debt which is in the early stages of repayment. In addition, the status of his relationship with his estranged wife – including the extent to which he financially supports her – remains uncertain. Finally, while it appears that the Individual is able to satisfy his current monthly financial obligations, he has little margin for error. With the exception of a retirement account, he appears to have no money in savings at this time. Consequently, should he be faced with an unexpected or emergency expense, the progress he has begun to make in righting his finances could easily be reversed.

In prior cases involving financial irresponsibility, we have held that “[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” See *Personnel Security Hearing*, Case No. PSH-14-0001 (2014); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); see also *Adjudicative Guidelines*, Guideline F, ¶ 20. In this case, it is simply too soon since the Individual began addressing his financial issues to conclude that his financial situation is currently stable such that his financial difficulties are in the past and unlikely to recur and, therefore, do not cast doubt on his current reliability, trustworthiness, or good judgment. Consequently, I cannot conclude at this time that the security concerns cited under Criterion L regarding the Individual's pattern of financial irresponsibility have been fully resolved.

V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria F 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 Individual has presented adequate evidence to fully resolve the Criteria F and L concerns regarding his candor. However, I further find that the Individual has not presented sufficient information to fully resolve the Criterion L security concerns pertaining to his financial irresponsibility. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization “will not endanger the common defense and security is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization at this time.

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

Diane DeMoura
Administrative Judge
Office of Hearings and Appeals

Date: February 12, 2015