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

In the Matter of: Personnel Security Hearing)
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Filing Date: December 4, 2014) Case No.: PSH-14-0105
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Issued: February 18, 2015

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization^{1/} 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 granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in September 2014, after receiving potentially derogatory information regarding the Individual’s financial indebtedness.

In November 2014, the LSO sent a letter (Notification Letter) to the Individual advising her that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory

^{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.

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/}

Upon her receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the Individual presented her own testimony. The LSO submitted six exhibits into the record; the Individual submitted one exhibit.

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 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). The Individual is afforded a full opportunity to present evidence supporting 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

^{2/} Criterion L relates to information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend 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).

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 support for its security concerns under Criterion L, the LSO relies on the Individual's financial indebtedness, including the Individual's delinquent credit accounts totaling over \$51,000 and two outstanding balances totaling over \$21,000 that resulted from two vehicle repossessions. DOE Ex. 1 at 3-4; DOE Ex. 4. The LSO also relied upon the Individual's admissions at the PSI that her home had been foreclosed on in October 2009 and that she had not attempted to satisfy any of her financial delinquencies. I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion L. "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, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." *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) at Guideline F. Further, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." *See id.*

IV. Findings of Fact and Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness 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)^{3/} 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.

As indicated above, the LSO has properly raised security concerns under Criterion L. Accordingly, I now consider whether the Individual has submitted sufficient information to resolve these concerns. In considering the evidence before me, I must look to the Adjudicative Guidelines to determine if the Individual has mitigated the cited financial irregularities. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

^{3/} 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.

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

Adjudicative Guidelines, ¶ 20(a)-(d). The general thrust of these guidelines is that a concern related to financial irregularities can be mitigated by circumstances indicating that the Individual has satisfied her financial obligations or that the financial problems were beyond the Individual's control.

The Individual has acknowledged a history of financial problems which predate her employment with the DOE contractor and have continued during her employment. The Individual testified that her financial indebtedness resulted from her multiple illnesses and her children's diabetes. Tr. at 8, 14. At the time she became ill, she had to close her business because she could not work. Tr. at 15. The LSO alleges that 15 collection accounts were outstanding at the time the Notification Letter was issued. Ex. 1 at 3-4. As of the date of the hearing, the Individual testified that she has not paid nor attempted to pay any of those accounts.^{4/} Tr. at 8-10; DOE Ex. 1 at 3-4; DOE Ex. 6 at 27-28, 36-37. Further, although the Individual claims that her financial problems resulted from her unemployment due to her illness in addition to her children's diabetes, there is no evidence that the Individual acted responsibly under the circumstances. At the PSI, the Individual indicated that when her bills became overdue, she put them aside because she was embarrassed. DOE Ex. 6 at 31, 44, 111. According to the Individual, she attempted to contact her mortgage lender to lower her mortgage payment, but the mortgage company refused. DOE Ex. 6 at 16-17. The Individual acknowledges that she continues to have charge-off debt amounting to over \$51,000 outstanding as of the date of the hearing. In light of such substantial debts, I cannot conclude that the Individual's pattern of financial irresponsibility with respect to her financial accounts has abated.

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);

^{4/} At the hearing, she stated that she visited one bank that held one of her delinquent financial accounts, but was told that the bank branch could not help her. Tr. at 8.

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 is continuing.

Given the Individual's continued financial irresponsibility, I cannot find that she has sufficiently 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, both 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 resolve the security concerns associated with Criterion L. I therefore cannot find that granting 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 granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: February 18, 2015