

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of Personnel Security Hearing )  
 )  
Filing Date: February 24, 2015 )  
 )  
\_\_\_\_\_ )

Case No.: PSH-15-0010

Issued: August 1, 2015

**Administrative Judge Decision**

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Department of Energy (DOE) should not, at this time, restore the Individual’s access authorization.

**I. BACKGROUND**

The Individual is a DOE employee and is an applicant for security clearance. Exhibit (Ex.) 5 at 9. The Local Security Office (LSO) received information in October 2013, that the Individual had misused his government-issued travel credit card (credit card) and had provided false information to his supervisor (Supervisor) about his use of the card. The LSO subsequently conducted a personnel security interview with the Individual in January 2014 (January 2014 PSI). Ex. 5.

Because the January 2014 PSI did not resolve the security concerns raised by the Individual’s misuse of his credit card or the allegedly misleading information he provided officials regarding his credit card usage, the LSO issued the Individual a notification letter (Notification Letter) suspending his security clearance. Ex. 1. Additionally, the Notification Letter outlined the

<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

specific derogatory information, described in 10 C.F.R. § 710.8 (l) (Criterion L), which created doubt regarding the Individual's eligibility to hold a security clearance.<sup>2</sup> The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to present evidence to resolve these doubts. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director assigned me as the Administrative Judge in this matter. The DOE introduced five exhibits (Exs. 1-5) into the record of this proceeding. The Individual introduced 14 exhibits (Ex. A-M) into the record and offered his testimony as well as the testimony of his former father-in-law.

## 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, an 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 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").

---

<sup>2</sup> Criterion L refers to information indicating that an individual 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).

### III. DERROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

The Individual has been a DOE employee for approximately three years and possessed a security clearance. Ex. 5 at 9-10; Ex. 3 at 3. In August 2013, the Individual began to make non-government related purchases using his credit card. Ex. 5 at 39. The Individual began to make these purchases because he and his family were undergoing financial problems caused in part by the need to make repairs to the rental property his spouse owned. Ex. 5 at 41-42. These problems were aggravated by his wife's unemployment due to health problems. Ex. 5 at 42.

In September 2013, the Individual took two personal trips and obtained cash advances for these trips using his credit card. Ex. 5 at 56-57. Later that month, the Individual received an E-mail from an accounting official (Official's September 26 Message) alleging that a number of purchases made with the Individual's credit card in August 2013, may be expenses unrelated to official travel. Ex. C. In response, the Individual E-mailed the accounting official a message (Individual's October 1 Message) stating in its entirety "There was associated travel with . . . [Voucher number]." Ex. C. The accounting official E-mail reply (Official's October 3 Message) stated that the Individual took a \$1,600 advance which was more than the entire amount of the authorized trip voucher. The official also noted that there was a charge for gasoline in August 2013 before the date of the trip related to the voucher. Ex. C. The Individual responded to this E-mail (Individual's October 3 Message) by replying "Thanks for the detailed response. I realize the concern. Obviously, I will refund the travel card account. Is there a remediation path in addition to repayment? Thanks for your assistance and education in this matter." Ex. C.

In October 2013, the Individual met with the Supervisor to report his misuse of his credit card. After that meeting, the Supervisor sent an E-mail to the LSO regarding the Individual's misuse of his credit card and about the Individual's lack of candor in his response to the accounting official. Ex. 4. The Supervisor noted in the E-mail that the Individual had failed to apply a voucher payment of approximately \$1,600 to his credit card balance and that the Individual had written three checks of \$300, \$2000, and \$1,017 to pay his credit card but that all three checks had been returned. Ex. 3 at 1. The Supervisor also alleged that the Individual had informed him that his credit card balance was approximately \$2,600 when, in reality, the balance was \$6,412.45. Ex. 3 at 1.

In November 2013, the Individual was issued a "Notice of 30 Day Suspension Without Pay (Notice)." Ex. B. In the Notice, the Supervisor cited three grounds, as described in the October 2013 E-mail to the LSO, to support his recommendation of a 30-day suspension: (1) inappropriate use of the Individual's credit card; (2) failure to timely pay his outstanding credit card balance; and (3) lack of candor. Ex. B. In February 2014, the Deputy Director of the Individual's organization issued a "Notice of Decision" (Decision) to the Individual informing the Individual that he would be suspended for 14 days. Ex. B. In the Decision, the Deputy Director found sufficient evidence to sustain the Notice's charge that the Individual had misused his credit card. Ex. B at 1-2. The Deputy Director, however, found that the allegation that the Individual had failed to timely pay his outstanding credit card charges was not adequately substantiated because the Individual had shown that the expenses for the most part had been paid during the normal billing cycles of the credit card. With regard to the lack of candor charge, the Deputy Director found that the Individual's response to the Official's September 26 Message had

been misleading. Ex. B. As to the allegation that the Individual had misled the Supervisor regarding the amount of his credit card debt, the Deputy Director did not sustain this specification since, at the time of the Individual's meeting, the Individual's credit card debt was actually \$2,761, which approximates the Individual's report of the account balance, \$2,600. Nonetheless, because of the Individual's misleading statements to the accounting official, the Deputy Director sustained the charge of "lack of candor." Ex. B.

In January 2014, the LSO conducted a personnel security interview (PSI) with the Individual. Ex. 5. During the interview, the Individual admitted to have knowingly misused his credit card on a number of occasions in August 2013. Ex. 5 at 25-26. The Individual also admitted to having used his credit card during two personal trips in September 2013. Ex. 5 at 55-56. With regard to the three payments made by checks with insufficient funds, the Individual admitted that he had been "kind of rattled" and "did not think out the checks when I wrote them." Ex. 5 at 58, 69.

The DOE cites, under Criterion L, two security concerns described under Adjudicative Guidelines E (Personal Conduct) and F (Financial Considerations). Ex. 1 at 4-5. These guidelines highlight security concerns arising from an individual exhibiting questionable judgment, lack of candor, dishonesty, and a failure to comply with rules (Guideline E) and an individual's failure to live within his financial means (Guideline F). Given the information available to the LSO regarding the Individual's misuse of his credit card and his apparent lack of candor regarding inquiries into his misuse, I find that had ample grounds to invoke Criterion L as specifically described by Adjudicative Guidelines E and F.

#### **IV. FINDINGS OF FACT AND ANALYSIS**

The Individual does not dispute the facts outlined in the Notification Letter. However, the Individual challenges the Notification Letter's allegation that he attempted to mislead DOE officials regarding his credit card misuse. 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. Mitigation Evidence***

At the hearing, the Individual admitted that he had improperly used his credit card to make non-authorized purchases. Transcript of Hearing (Tr.) at 48-49. His family's financial problems were triggered by his wife's unemployment and for her need of specialized medical treatment, which required air travel and lodging, expenses which were not fully covered by the Individual's medical insurance. Tr. at 41-42. The Individual testified that in August 2013 he was renovating his wife's rental property and he needed to purchase gasoline for his car and building materials. Tr. at 41. The Individual decided to use his credit card because he was "maxed out" on his family's personal credit cards. Tr. at 41. The Individual knew that he would be on official travel combined with personal travel later that month and that he signed an agreement stating that he would be responsible for any charges outside of official travel, so he believed his use of the

credit card for non-official travel purposes would be excused. Tr. at 43-44. However, later in September 2013, he took two personal trips and received cash advances using his credit card. Tr. at 44, 56. After his first non-official use of the credit card, the Individual found it to be “easy to use” especially since his debit card would not authorize, at that time, cash withdrawals. Tr. at 75. In total, the Individual believes that he had made non-authorized purchases totaling \$2,500 to 3,000 on his credit card. Tr. at 45. He considers this action to be a “lapse in judgment.” Tr. at 44.

The Individual denies that he tried to mislead officials regarding his misuse of his credit card. Tr. at 14-15. With regard to his initial response (October 1 Message) to the Official’s September 26 Message, the Individual asserts that, because he was on leave, he did not receive the message until the day of the deadline to respond to the Official’s September 26 Message. Tr. at 46. The Individual’s October 1 Message was prompted by his attempt to “elicit more dialogue” and that he meant to say that some, but not all, of the charges were associated with official travel. Tr. at 50, 67. He believed his response would prompt the accounting official to give him a specific list of which charges were in question. Tr. at 50.

As for his responses to the Supervisor’s questions regarding the total amount of his credit card misuse, the Individual asserted that his answers were based on his best estimates and that he did not know that his checks in payment had been returned. Tr. at 54. The Individual also believed that he would be able to provide more precise answers when an official investigation was performed concerning this issue. However, no other investigation was performed. Tr. at 55-56.

The Individual points out that he wrote the returned checks around the middle of September 2013. When asked about the checks at the hearing, the Individual noted that he had some funds in a different bank’s account and added “ I was kind of writing kind of fast and I said, well, just let me -- let me try to take care of this, and -- and I -- I don’t know if they were checks. They could -- I also used the online system at that same time.” Tr. at 57-58. In the January 2014 PSI, the Individual explained the returned checks by responding “I did bounce a few checks. That’s true. But that was because I was getting harried, and I wasn’t -- I was just trying to write some checks and put the money in later or whatever.” Ex. 4 at 57-58.

The Father-in-Law, who has known the Individual for approximately 25 years, believes that the Individual’s misuse of the credit card was a “poor judgment call” on the Individual’s part and that the Individual is now financially sound. Tr. at 19, 22. The Father-in-Law believes that his poor judgment was triggered by his current wife’s then health issues. Tr. at 23. Had the Father-in-Law known of the Individual’s financial problems, he would have been willing to help. Tr. at 23. Overall, this is the only instance of bad judgment that the Individual has exhibited since he has known the Individual. Tr. at 26.

## ***B. Analysis***

### ***1. Lack of candor and failure to comply with rules – Guideline E***

Despite the evidence presented by the Individual, I must find that the concerns relating to the Individual’s lack of candor and failure to comply with rules have not been resolved. As an initial matter, I find that the Individual’s statement to the Supervisor regarding the total owed on his

credit card was not meant to be misleading. Significantly, in his Decision, the Deputy Director found that, at the time of the Individual's conversation with the Supervisor, the Individual's credit card debt was approximately \$2,760. Ex. A at 3. This sum is generally consistent with the Individual's report to the Supervisor that the amount owed on the Individual's credit card was \$2,600. I do not find this to be a material difference such as to raise a security concern.

As to the Supervisor's charge that the Individual failed to pay his credit card after receiving the \$1,600 voucher payment, the Individual provided a statement from his credit card holder indicating that in November 2013, the Individual had a credit of \$27 on his credit card account and that all charges had been paid. Ex. G. In the Decision, the Deputy Director found that the Individual had paid all of the charges, including those for non-authorized purchases, within the proper billing cycle, and that no late fees were assessed against the Individual. Ex. A. at 2. Given the evidence before me, I cannot find that the Individual failed to timely pay his outstanding credit card balance.

Nonetheless, I find that the Individual's October 1 Message was intended to obfuscate the accounting official's request regarding certain purchases with his credit card during August 2013. Even assuming that the Individual felt time pressure to respond, it is inconceivable that the Individual, who holds a responsible position and who rose from the enlisted ranks of the armed forces to become an officer, would not have thought to ask for additional time to respond to the E-mail or ask for specific clarification as to what information the accounting official was seeking. The Individual's testimony that his October 1 Message sought to "elicit more dialogue" is not credible. Further, I find disturbing the Individual's poor judgment in writing of checks backed by insufficient funds to resolve his credit card issues. In the January 2014 PSI, the Individual admitted that he wrote the checks knowing that at the time he did not have sufficient funds to cover the checks. This would suggest that the Individual wrote the checks in an attempt to obtain additional time to resolve this problem.

Most importantly, the Individual's deliberate decision to disregard DOE's rules by making non-travel related charges on his credit card demonstrates extremely poor judgment. Even if I were to accept his rationale for making the purchases in August 2013 (the fact he was going on official and non-official travel on the same trip and that he had signed an agreement to be responsible for the charges), he intentionally chose to disregard the rules by using his credit card to obtain cash advances for two personal trips in September 2013. This is a recent and serious failure in judgment which outweighs the evidence presented by the Individual. Given the evidence before me, the Individual has not resolved the security concerns raised by his lack of candor and failure to comply with rules.

## ***2. Financial Irresponsibility – Guideline F***

I find that the Individual has mitigated the concerns relating to his financial irresponsibility as described under Adjudicative Guideline F. The Individual's misuse of the credit card is a relatively isolated event. There is no evidence in the record that the Individual has ever experienced any other incidents of financial irresponsibility. Since his credit card problems, he has made significant changes in his family's finances to resolve his prior financial problems. The Individual has withdrawn his daughter from a private school, cut back on overall spending and

has sold the rental property. Tr. at 74-75, 86; Ex. K-1 (affidavit from spouse regarding medical condition and sale of rental property in January 2014). The Individual's spouse has recovered and is now gainfully employed. Tr. at 86. The Individual has only one credit card and does not have any other debt except a car payment and his share of the mortgage payment. Tr. at 87. The Individual's family now has a budget and saves a portion of their income. Tr. at 90.

The circumstances which triggered the Individual's financial problems have been remedied and are unlikely to recur. There is no evidence before me which indicates that the Individual has experienced other financial problems in the past. Consequently, the security concerns relating to the Individual's prior financial problems have been resolved. See Adjudicative Guidelines, ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur); Adjudicative Guidelines, ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

## V. CONCLUSION

The incidents of lack of candor and failure to comply with rules are recent, serious, and outweigh the evidence presented by the Individual regarding his exceptional work and military record, as well as the testimony of the Father-in-Law regarding the Individual's character. *See* Ex L. Thus, I find that the Individual has not presented sufficient evidence to resolve the security concerns raised by his lack of candor and failure to comply with rules.<sup>3</sup> I also conclude that the Individual has not mitigated the DOE's Criterion L security concerns raised by the Notification Letter nor demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE, at this time, should not restore the Individual's access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals

Date: August 1, 2015

---

<sup>3</sup> I also find that none of the mitigating factors related to Adjudicative Guideline E, ¶ 17, are applicable in this case.