

Administrative Judge in order to resolve the substantial doubt concerning her eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge. The DOE introduced 16 exhibits (Exs. 1-16) into the record of this proceeding. The individual introduced 13 exhibits (Exs. A-M) and presented the testimony of three witnesses, including her own testimony. *See* Transcript of Hearing, Case No. PSH-15-0019 [hereinafter cited as “Tr.”]. Furthermore, after the hearing, the individual filed ten pages of post-hearing submissions, including her budget and documentation pertaining to her bankruptcy.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting her eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cites information pertaining to subsection (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Ex. 1. In its Notification Letter, based mostly on the statements made by the individual during the PSI, the LSO states that the individual did the following: 1) after receiving a \$28,000 settlement in August 2013, she spent approximately \$24,200 of it on new bedroom furniture, televisions, video game systems, a laptop, vehicle and to fix her mother’s vehicle, among other things, even though she had approximately \$11,071 in outstanding collection and charged-off accounts at the time of receiving

the settlement money; 2) admitted to taking out a \$10,000 loan in October 2011³ using her vehicle as collateral to consolidate about \$8,000⁴ worth of credit card debt with two different creditors and did not use the remaining money to pay off any of her outstanding collection and charged-off accounts, which amounted to approximately \$5,812 at the time; 3) in October 2008⁵, the individual withdrew \$40,000 in equity from her residence after refinancing it with an adjustable rate mortgage and she used about \$16,000 of it to lend her sister money, purchase her sister's children's school clothes, pay her sister's delinquent utility bills, lend her mother and grandmother money, make home improvements and buy furniture; 4) admitted during the PSIs in 2014 and 2010, that she made bad decisions by helping others financially and spending unnecessarily despite her financial distress; 5) despite stating in two previous PSIs in 2010 and 2006, that she intended to reduce her spending and pay her bills on time, she continued to be financially irresponsible and filed for Chapter 13 bankruptcy on October 8, 2014; 6) she has one outstanding collection account for \$62 that has not been included in the Chapter 13 bankruptcy. Ex. 1.

The above information adequately justifies the DOE's invocation of criterion (I), and raises significant security concerns. 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, 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*, The White House, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*].

IV. FINDINGS OF FACT

The individual had a security clearance since 2006, which has been suspended because of the DOE's concerns about her financial responsibility. Ex. 1. At the PSI and the hearing, the individual explained how she got into her financial troubles and, as explained further below, she disputes some of the statements in the Summary of Security Concerns. While the information she disputes was derived from her own statements during her PSI, in her request for an administrative review hearing, the individual explained that she was not prepared for the PSI because she did not bring any paperwork with her to the interview except for the bankruptcy paperwork. Based on her demeanor during the hearing and her consistent testimony regarding the dates of taking out loans and when she got into debt, I fully credit her testimony that she gave under oath, including her testimony disputing some of the information in the Summary of Security Concerns. Thus, based on testimony at the hearing and the documents submitted before the hearing as exhibits and the individual's post-hearing submissions, I make the findings below.

³ While the Summary of Security Concerns states that the individual took out the \$10,000 loan in October 2011, at the hearing, the individual stated that she actually took out that loan in October 2008. Tr. at 43-44, 55.

⁴ At the hearing, the individual stated that while the Summary of Security Concerns indicates that she used her vehicle to consolidate about \$8,000 worth of credit card debt, she actually used it to consolidate approximately \$3,000 worth of debt. Tr. at 56-57.

⁵ At the hearing, the individual stated that instead of refinancing her home in October 2008, she actually refinanced in October 2006. Tr. at 44, 55.

The individual financially supports three daughters, who are 14, 23 and 24 years old and live with her, and she has supported them throughout the years that she faced financial troubles. Ex. 12; Ex. 13 at 357. In 2006, the individual refinanced her home and withdrew \$40,000 in equity. Tr. at 43. She used \$24,000 from that amount to pay off her vehicle. Tr. at 43-44. With the remaining \$16,000, the individual loaned her sister \$5,000, paid for her sister's children's school clothes and utility bills, gave her mother \$2,600 and her grandmother \$100, paid for home improvements, purchased bedroom furniture for her children and she took her children and nephew on a vacation. Tr. at 45-47. These payments were made in 2006 and 2007. Moreover, the individual consolidated her outstanding bills into the refinancing. Tr. at 46. Hence, contrary to what is stated in the Summary of Security Concerns, the remaining \$16,000 was not intended to pay off any of her bills as they were consolidated with the home refinancing. Tr. at 47. After making these payments, she saved some money and then began paying her bills with a credit card so that she could build credit. Tr. at 47-48. By 2008, she did not have any money in savings. Tr. at 48.

Additionally, in 2007, the individual took out approximately \$4,037 in credit to pay for her friend's dental work. Tr. at 40. While her friend made some payments towards the loan, he stopped and the individual was left with making the remaining payments, which she did until sometime in 2011. Tr. at 40. In March 2008, the individual had surgery and was unable to work for three months, and she said it was then when she became behind on her bills. Tr. at 94. In October 2008, she took out a loan for \$10,000 by using her vehicle as collateral. Tr. at 41, 48. She used that money to pay her bills and to loan her sister \$5,000 to pay for her vehicle, who only paid her back \$400. Tr. at 48, 50. She consolidated about \$3,000 in loans and paid them off. Tr. at 49; 57. With the remaining \$2,000, the individual paid her utility bills, made a mortgage payment, bought food and purchased clothing and other things that her children needed. Tr. at 49, 59. After she received the \$10,000 loan, the individual was caught up on her bills. Tr. at 62. Thus, contrary to what is stated in the Summary of Security Concerns, the individual did not have outstanding debts at the time that she took out the \$10,000 loan because the collection and charged-off accounts listed in paragraphs B.1 and B.2 were from accounts that opened later in 2009 through 2011. Ex. 1.

In 2009 and 2010, the individual began using her credit cards to help her mother, her sisters and their families. Tr. at 49. She stated that she helped her mother pay for her medical expenses with her credit cards. Tr. at 62. Moreover, one of her sisters, who had six children and was unemployed, asked the individual for financial assistance to pay for her children's shoes, clothing and food. Tr. at 49-50. At the time, the individual believed that her sister – the same sister to whom she loaned \$5,000 for her car – would pay her back when she started working again. Tr. at 50. When asked at the hearing why she loaned her sister money again despite only getting \$400 of the \$5,000 back from her earlier, the individual stated, “[b]efore I got hired here [in 2000], I didn't have – I got fired, and I didn't have any income coming in, and before I got hired here, my sister – both of my sisters helped me.” Tr. at 96. In addition, she helped another sister pay for towing and fixing her car on her credit card. Tr. at 51. That sister only made two payments towards the bill, leaving the rest for the individual to pay off. Tr. at 52.

In 2010, the individual became overwhelmed by her unpaid bills. Tr. at 52. Also, that year, her mortgage payments increased from \$1,300 to \$1,600 a month because she had an adjustable rate mortgage. Tr. at 62-63. She then had a personnel security interview in September 2010, where she

represented then that she would make better financial decisions and would stop helping others financially. Tr. at 52-53; Ex. 14 at 141-42. However, after that interview, when she asked her sisters to repay her for the money she loaned them, they refused, argued with her, and threw pennies at her in response. Tr. at 53.

In early 2011, the individual called her mortgage company to try to lower her monthly payments as she was still paying off her credit card debt and could not afford her mortgage. Tr. at 63. Around that time, her oldest daughter became sick and was in and out of the hospital, and then six months later, her youngest daughter also became sick. Tr. at 63. The individual explained that this continued in 2012 before she became behind on her mortgage. Tr. at 63. At that time, she was also trying to save money, but could not pay her bills. Tr. at 64.

In August 2013, she received a settlement for \$28,000, at a time when she also had ten collection accounts and four charged off accounts totaling \$11,071. Tr. at 64-65. Instead of using the settlement money to pay off those accounts, the individual purchased bedroom furniture for her children and other items, including furniture for the home, food, clothing for her children and a used vehicle that cost \$750. Tr. at 65-66. She purchased video games for her children because someone who once stayed at their home stole their things, which she wanted to replace, and also she bought a laptop for herself because she was going back to school. Tr. at 68. The individual also testified that she paid for home repairs because her former boyfriend broke the windows and doors in her home. Tr. at 66. She also used that money to pay bills around the house and spent approximately \$50 on gambling. Tr. at 65, 68. The individual gave her mother \$3,000 because she was ill and needed financial support for her bills and she also paid for repairs on her mother's car. Tr. at 66. In addition, she paid approximately \$5,000 to her homeowner's association for her dues and fines for alleged property violations. Tr. at 71.

At the hearing, the individual explained that she did not use the settlement money to pay off her outstanding debt because she had consulted with an attorney who informed her that she could either consolidate her debt, which she could not afford to do, or file for bankruptcy, which she was concerned about because of the implications on her job, specifically, losing her badge. Tr. at 67, 101. Also, she testified, "[w]hen I received the money, my first thing was taking care of my home." Tr. at 68. She did, however, try to reach her creditors to pay off her debts and many times she was informed that another company purchased the debt, but could not reach the right person to take care of those debts; eventually she became frustrated from trying and stopped contacting them. Tr. at 69, 102. While she paid the bills on three to four of her accounts, she did not take care of all of her bills, resulting in the outstanding debt. Tr. at 69. The individual did not provide any documentation of the outstanding bills that she paid off at the time. When asked at the hearing about her decision to use the settlement money to purchase furniture instead of paying off her debt, she acknowledged that in hindsight, it was not an appropriate decision. Tr. at 72.

In October 2014, the individual filed a Chapter 13 Bankruptcy Petition and arranged a payment plan for her outstanding debts totaling \$21,359⁶, except one with a balance of \$62 that she included in her

⁶ These were the unsecured nonpriority claims.

bankruptcy after the hearing as evidenced by her post-hearing submission.⁷ Tr. at 73; Exs. 10 & 12. At the hearing, the individual stated that her monthly payment for her bankruptcy is \$1,118, which includes her monthly mortgage payments. Tr. at 76. Her plan is to make payments for three years and afterwards, she will continue to make her mortgage payments at about \$804 a month. Tr. at 77. At the time of the hearing, the individual stated that she was one month behind on her bankruptcy payments because she had sustained an injury in January 2015 and was not working for two and a half months. Tr. at 78. Her plan was to resume paying in May 2015. Tr. at 79. However, the individual did not provide any documentation to demonstrate that she has resumed making those payments.

In reflecting on her financial history and decisions, the individual stated, “[t]he choices that I’ve made were bad decisions, me trying to help everybody and – make everybody happy and do everything for everybody and not for myself is – is the reason why I’m in this situation. What I’m going to do different is I can’t help everybody, I can’t save everybody, and my decisions – I have to think of me and my situation first before I think of anybody else.” Tr. at 84. Currently, she does not have a relationship with her sisters, saying that she would not loan them any money if they asked. Tr. at 100. She still sometimes helps her mother with her medical expenses, but at a minimal expense of about \$80 a month, if any. Tr. at 100. Additionally, while she stated in her 2010 PSI that she spends money on her children because she wants to give them everything she did not have, in her 2014 PSI she said that she cut her expenses by no longer taking them out to eat, buying them expensive gifts, paying to get their hair done, and buying them expensive clothing. Ex. 13 at 364, 386; Ex. 14 at 11. Finally, both her mother and daughter testified at the hearing that she is responsible, has changed her spending habits and no longer loans out money to her sisters. Tr. at 30, 126.

In a post-hearing submission, the individual provided a copy of her budget, indicating that her monthly income is \$3,023.08 and that her monthly expenses, which includes her payments to the Bankruptcy Trustee, is \$2,555.50. Some months, she may pay an additional \$75.00 for a home warranty service call or \$80.00 for her mother’s medical expenses. Thus, per month, she is able to save approximately \$312.58 to \$467.58. She testified that while she does not have any savings, she has a 401(k) account from which she never withdrew money. Tr. at 88. However, she never submitted any documentation indicating how much money she has in her 401(k) account. Finally, while she has had several credit cards in the past, about six to seven, she currently has no credit cards. Tr. at 98.

V. ANALYSIS

As an initial matter, I find that the individual has sufficiently disputed the concerns listed in paragraphs B.1 and B.2 by credibly testifying that she took out the loan for \$10,000 using her vehicle as collateral in 2008, not 2011, and therefore, she did not have the outstanding collection and charged-off accounts listed in those paragraphs at the time she received the loan. Ex. 1; Tr. at 43-44, 55. Second, she sufficiently mitigated the concerns in paragraph F as she provided a copy of her

⁷ By the time of the hearing, the individual had not yet included that account in her bankruptcy because her attorney informed her that she should first find out if there were other outstanding debts that needed to be included in the bankruptcy to only file one amendment with all of those debts. Tr. at 80.

Schedule F for her bankruptcy action in a post-hearing submission, indicating that the particular outstanding collection account has now been included with her bankruptcy. *See* Adjudicative Guideline F, ¶ 20(e).

However, in considering the Adjudicative Guidelines as to the remaining security concerns, I cannot find that the individual's conduct has been mitigated under Guideline F, ¶ 20(a), as her financial problems are recent and I am not convinced that they will not recur. She continues to provide financial support to her mother, despite her representations to the LSO in 2010 that she would stop providing money to others in an effort to improve her own financial situation. She also has no savings, and recently missed a payment to the Bankruptcy Trustee because she became ill.⁸ Moreover, her failure to meet her financial obligations, ironically, was caused in part by her willingness to help her sisters, a friend, and her mother with their financial needs. Her decision to help them while she had existing financial obligations makes me question her judgment, particularly as it contributed to more financial problems for her. Second, she has not convinced me that the conditions that resulted in her financial problems were largely beyond her control. *Id.* at ¶ 20(b). She had an opportunity to settle her debts when she was awarded the \$28,000 settlement in 2013; yet, instead she opted to purchase unnecessary items, *e.g.*, bedroom furniture and video games. For this reason, I cannot find that she acted responsibly under the circumstances. Third, she has not received financial counseling and did not convince me that despite filing a Chapter 13 Bankruptcy Petition, her problems are under control. *Id.* at ¶ 20(c). She also already missed at least one payment under her reorganization plan and because she filed for Bankruptcy in October 2014, it is simply too soon to determine whether she will successfully meet the terms of that Plan. Hence, even if she has made some changes in her spending habits and no longer loans money to her sisters, as she testified, I am not convinced that her financial problems are yet resolved. *Id.*

Finally, in prior cases involving financial considerations, 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, e.g., Personnel Security Hearing*, Case No. PSH-14-0048 (2014); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010). For the reasons stated above, it is simply too soon to find that she has established a sustained pattern of financial responsibility. I, therefore, conclude that the concerns raised by the LSO have not been sufficiently resolved. *See* 10 C.F.R. § 710.7(c).

VI. 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 (1). 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 all of the security concerns at issue. I therefore find that restoring the individual's access authorization will endanger the common defense

⁸ While the individual stated at the hearing that she has not withdrawn money from her 401(k) account, she did not provide any documentation indicating how much she has in that account.

and is inconsistent 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.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: June 9, 2015