

Letter also informed the Individual that her request for access authorization would be suspended. Ex. 1.

Upon her receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative hearing in order to resolve the substantial doubt concerning her eligibility for an access authorization. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge, and I subsequently conducted a hearing in the matter. The DOE introduced seven exhibits (Exs. 1-7) into the record of this proceeding and the Individual introduced six exhibits (Ind. Exs. 1-6). The only testimony presented was that of the Individual. *See* Transcript of Hearing, Case No. PSH-15-0044 (hereinafter cited as “Tr.”). Furthermore, after the hearing, the Individual filed a post-hearing submission which included her budget and pay stubs.

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). 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).

A DOE administrative proceeding under 10 C.F.R. Part 710 is for the purpose of affording the individual an opportunity of supporting 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 (hereinafter referred to as Criterion L) set forth at 10 C.F.R. § 710.8. DOE Ex. 1. 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). The LSO also cited Guideline F (Financial Considerations) of the Adjudicative Guidelines which describes derogatory information relating to security concerns arising from an individual’s failure or inability to live within one’s means. Adjudicative Guidelines, Guideline F, ¶ 18.

In its Notification Letter, the LSO states that the Individual reported approximately \$11,000 of indebtedness and that the PSI revealed that she failed to list almost \$1,400 of indebtedness. *Id.* Along with these debts, the Individual also reported that she filed for Chapter 7 bankruptcy in 2000, that her home was foreclosed in 2011, that she did not file forbearance papers causing her student loans to become delinquent, and that she did not file her 2012 taxes. *Id.* Furthermore, the Notification Letter stated that despite receiving a \$50,000 insurance payment in 2009, the Individual failed to pay off any of her debts.² *Id.* At the time of the Notification Letter, the Individual had not attempted to resolve any of her financial delinquencies. *Id.*

The above information adequately justifies the DOE’s invocation of Criterion L, 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* Adjudicative Guidelines, Guideline F.

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 determining whether the Individual submitted sufficient information to resolve the security concerns raised by her financial irresponsibility, I considered the mitigating conditions listed in the Adjudicative Guidelines. *See* Adjudicative Guideline F, ¶ 20(a)-(f). After due deliberation, I have determined

² The Individual actually received \$100,000 but set aside \$25,000 in a trust fund for each of her fiancée’s two children. Ex. 3 at 28.

that the Individual's access authorization should not be granted. I cannot find that granting the Individual a 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.

The Individual's history of financial irresponsibility as outlined in the Notification Letter is essentially undisputed and covers a span of over 20 years beginning with the Individual having accounts in collection beginning in 1993. Tr. at 33; Ex. 6 at 13 (2000 Bankruptcy Petition). At the hearing, the Individual acknowledged her history of financial problems which predate her employment with the DOE contractor. Tr. at 18. After her 2000 bankruptcy, the Individual was able stay out of debt for about four years and was able to purchase her home in 2004. Ex. 3 at 46. However, after this purchase, she once again fell into a pattern of financial irresponsibility which led to her current financial situation as demonstrated by her past due financial accounts detailed in the Notification Letter. Since 2009, the Individual has had opportunities to pay off most of her debts when she retained \$50,000 of the proceeds from a life insurance payment upon the death of her fiancée. Ex. 3 at 28, 47-50; Ex. 2 at 21 (Individual resigned from her job in 2009 because of receipt of life insurance proceeds). However, instead of paying off her debts, the Individual chose to buy clothes and other items she was not previously able to afford. Tr. at 16. By April 2009, only a few thousand of the \$50,000 life insurance payment remained. Individual's May 2005 Response to Access Authorization Suspension (Response) at 6. The Individual also attributed much of her indebtedness to the passing of her fiancée, who helped her with her bills, and chronic low wages due to unemployment or underemployment. Ex. 3 at 29; Tr. at 40. In a July 2014 Questionnaire for National Security Positions, the Individual reported approximately \$11,000 of indebtedness. Ex. 2 at 47-55.

After her PSI, the Individual began working on getting her finances in order. Response at 2. She has completely paid off at least five of her debts that were in collection, successfully disputed one, and has been making payments on others with a plan to pay them off in a timely manner. Tr. at 21-22; Ind. Ex. 6. The Individual believes that with her plan she should have all of her debts, excepting a \$9,000 collection account for a repossessed Jeep, paid off by February 2016. Tr. at 35. After the hearing, the Individual submitted her budget and pay stubs which she believes provides evidence of her intention to keep herself financially stable. Ind. Ex. 6; Individual's July 2015 Submission (Submission). The Individual also presented evidence that she consulted with a debt reduction service. Ind. Ex. 3.

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)*. Additionally, Adjudicative

Guideline F lists several mitigating factors relating to security concerns raised by an individual's inability to live within one's means. Adjudicative Guidelines, Guideline F, ¶ 20.

The Individual asserts that the circumstances of her financial problems fit within the mitigating factors listed in Guideline F of the Adjudicative Guidelines. Tr. at 38-40.³ Of the listed mitigating factors, I find that only one mitigating factor is applicable – the Individual has made a good faith effort to repay creditors (paragraph 20(d)). As for the other potentially relevant mitigating factors, I cannot find that the Individual's financial irresponsibility occurred so long ago or occurred under such circumstances that it is unlikely to occur (paragraph 20(a)). The Individual financial problems have lasted for a considerable period and the Individual did not attempt to resolve the problems until after the PSI in October 2014. Further, I cannot find that the Individual's financial problems were caused by circumstances beyond her control and that she acted responsibly (paragraph 20(b)). The Individual's misuse of the \$50,000 life insurance proceeds argues strongly against a finding for the Individual in this regard. Further, while the Individual did see a credit counselling service (paragraph 20 (c)) and received advice, it is unclear the extent of the counselling the Individual received. Lastly, while the Individual may have a reasonable basis to dispute some of the past due accounts (paragraph 20(e)), the bulk of her past due accounts are not in question.

The one mitigating factor I find applicable in this case – the Individual's effort to repay her debts – is outweighed by the relatively brief current period of time the Individual has demonstrated financial responsibility. As referenced earlier, the Individual's attempts to resolve her financial situation originated in October 2014. Given the Individual's lengthy period of financial mismanagement and her prior resumption of financial irresponsibility after a four year period of adequate financial management, I cannot find that the Individual, at this time, has demonstrated an adequate period of sustained financial responsibility that allows me to conclude that the security concerns raised by her financial condition have been resolved.⁴

V. Conclusion

³ The Guideline F mitigating factors are; (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; (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; (f) the affluence resulted from a legal source of income. Adjudicative Guidelines, Guideline F, ¶ 20.

⁴ In making this decision, I have also taken in consideration the Individual's praiseworthy efforts to improve her quality of life and to obtain a higher education despite difficult circumstances. *See* Ind. Ex. 4.

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, 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 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 should not be granted an access authorization at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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

Date: August 21, 2015