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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: January 14, 2016	)	Case No.: PSH-16-0006
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	)	

Issued: April 20, 2016

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX ("the Individual") for access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."[1] For the reasons set forth below, I conclude that the Individual's access authorization should not be restored at this time.

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) received potentially derogatory information regarding the Individual's financial stability. In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in July 2015.

In September 2015, 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. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the

[1] Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8(l) (hereinafter referred to as Criterion L).[2]

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing on March 4, 2016, convened pursuant to § 10 C.F.R. § 710.25 (e) and (g), the DOE introduced 13 exhibits (DOE Exs. 1-13) into the record. The Individual presented her own testimony and introduced three exhibits (Ind. Exs. A-C). *See* Transcript of Hearing, Case No. PSH-16-0006 (Tr.). Following the hearing, the Individual submitted three additional documents.

II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 or unfavorable, that has a bearing on the question of whether granting or restoring a 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 his [or 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard indicates "that security determinations should err, if they must, on the side of denials").

III. Notification Letter and Associated Security Concerns

As previously noted, the Notification Letter cited Criterion L as the basis for suspending the Individual's security clearance. Criterion L concerns information that an individual has engaged in conduct "which tend[s] to show that the individual is not honest, reliable, or trustworthy . . . ."

[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).

10 C.F.R. § 710.8(l). Conduct that falls within Criterion L includes "a pattern of financial irresponsibility." *Id*. Further, federal agencies adjudicating security clearances must consider that "[f]ailure 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* (December 19, 2005), Guideline F.

With respect to Criterion L, the LSO alleges that the Individual has demonstrated financial irresponsibility marked by an "established pattern of an unwillingness or inability to satisfy her debt." Ex. 1 at 2. Specifically, the LSO alleges, based on credit reports, that the Individual has 11 delinquent debts. *Id*. at 1. The delinquent debts identified in the Notification Letter total $20,764. *See id*. According to the LSO, the Individual's wages have been garnished by one of her creditors since April 2015 at a rate of $125 per week. *Id*. at 2. Further, the LSO asserts that the Individual admitted, in a previous November 2013 personnel security interview, that she sometimes makes poor financial decisions and does not prioritize her finances. *Id*. The LSO also alleges that the Individual stated during the November 2013 interview that she planned to resolve a debt of $1,667 to the University of Phoenix, as well as three debts under $100 to various creditors, but that she remains delinquent on those debts. *Id*.

IV. Findings of Fact

At the hearing, the Individual did not dispute that she has multiple delinquent debts. However, she provided additional information regarding the debts listed in the Notification Letter and her attempts to work with collection agencies and creditors to resolve or satisfy them.

The largest three debts specified in the Notification Letter are debts of $7,533, $5,521 and $3,785. Ex. 1 at 1. The Individual identified these debts as student loan debts. Tr. at 17. The Individual has been taking classes intermittently since 2008. Ex. 11 at 12. In her testimony, she confirmed that, in response to missed payments on these loans, her wages have been garnished since April 2015, at a rate of about $125 per week. Tr. at 18, 20-21; *see also Order of Withholding from Earnings* (March 25, 2015). The Individual testified that she previously had believed that a loan forbearance she received on other loans applied to these loans as well. Tr. at 18. She claims she did not realize that her lender expected payments on these loans until she was notified of the garnishment. Tr. at 20. The balances on these loans have been reduced somewhat due to the garnishment. Tr. at 24.

As to the other debts identified in the Notification Letter, the Individual believes that two of those—a $250 amount and a $574 amount—are for the same purchases at Old Navy and are not separate debts. Tr. at 27-28; Ex. 1 at 1. The Individual recalled that this debt was brought to her attention in her November 2013 security interview. Tr. at 14. In that interview, she stated that she would be setting up a payment arrangement to resolve the debt. Ex. 12 at 31. Nevertheless, according to the Individual, she waited until shortly before her March 2016 hearing to try to make an arrangement with the collection agency. Tr. at 14-15. She admitted that, "I didn't make it important." Tr. at 15. The Individual claims she has reached a settlement agreement to make a one-time payment of $459 and that she will pay this amount by the end of April 2016. Tr. at 16. Her credit report suggests that her Old Navy debt may date back to at least 2009. *See* Ex. A at 2.

Two of the delinquent debts in the Notification Letter are for medical expenses in the amounts of $979 and $230. Ex. 1 at 1. She describes the $979 debt as involving medical care for her son. Tr. at 25. The Individual disputes these debts, asserts that she does not remember receiving bills and claims that health insurance held by her and her husband should have covered these expenses. Tr. at 25-26, 30-31. She claims that she contacted her health insurance company in February 2016, prior to the hearing, to inquire about coverage for the $979 debt. Tr. at 25-26. As to the $230 expense, she testified that she has contacted the collection agency and requested a form that would allow her to submit a claim to an insurer. Tr. at 31-32.

The remaining debts are the four that the Notification Letter cites as debts that the Individual acknowledged in a November 2013 interview but did not resolve as she said she would. My review confirms that these debts were discussed with the Individual in that 2013 interview and that she stated then she would address them. Ex. 12 at 59-64, 73-78, 84-87. One of these is a $1,667 debt to the University of Phoenix. *See* Tr. at 9; Ex. 1 at 1. The Individual claims she spoke with someone at the University of Phoenix following her 2013 interview, that she disputed the charge and that the university led her to believe it would eliminate the debt. Tr. at 10; Ex. 11 at 33. Nevertheless, she asserts that she did not review her credit report between her November 2013 interview and her July 2015 interview and so did not realize the debt had not been eliminated. Tr. at 10-11. The Individual has provided evidence showing that in February 2016, she reached a settlement with the University of Phoenix to lower this debt to about $416. Ex. C; Tr. at 11. She claims she will pay this amount by the end of April 2016. Tr. at 17.

Her other three debts are for medical expenses in the amounts of $94 and $73. Tr. at 33-34. The Individual does not recognize the $94 amount and believes that the $73 amount is a copayment from a 2010 surgery that should have been covered by insurance. Tr. at 33-34. She testified that she has attempted, unsuccessfully, to talk with a collection agency about the $94 debt and that she inquired about the $73 charge just prior to the hearing. Tr. at 33-34. The final debt, for $58, is for a gas bill that she disputes dating back to 2012. Tr. at 35. During the hearing, when asked why she did not resolve the $58 debt after it was brought to her attention in 2013, the Individual stated, "I know it seems very irresponsible for me, and it was, and I have been." Tr. at 36.

The Individual testified that growing up, she was "never taught the importance of . . . being financially responsible." Tr. at 42. She explained that following her November 2013 interview, she still did not believe her financial status was "that big a deal" and she thought she could address her debts "when I got around to it." Tr. at 37. She described the latest investigation into her eligibility to hold a security clearance as a "real eye-opener for me on the importance of making sure that things are taken care of." Tr. at 40.

The Individual contends that since the wage garnishment began about a year ago, she has become "more diligent" with her finances. Tr. at 41. She has adjusted to the garnishment of her wages by reducing her retirement contributions. Tr. at 22-23. She and her husband jointly handle their finances. Tr. at 42. In the months before the hearing they put as much as $200 per week into savings. Tr. 45. The Individual has been paying medical bills as they arise and verifying that she is not charged any amounts that should be covered by insurance. Tr. at 46-47, 50. She is monitoring her credit more closely. Tr. at 50-51. In her November 2013 interview, the Individual described herself as occasionally going shopping without considering what she could afford but

testified in the hearing that she now keeps expenses low and avoids entertainment spending. Ex. 12 at 32-33; Tr. at 44. The Individual may return to school, which may place some or all of her student loans in forbearance status. Tr. at 19-20, 23.

As to why she has not paid off more of her delinquent debt, she explained that she has prioritized paying new bills to prevent them from becoming delinquent as well. Tr. at 37-38. She also claims that new expenses that came up, including medical expenses for her husband and son, have made it difficult to pay off older debts. Tr. at 21-22, 48. It appears, as well, that her household income has fluctuated. In her July 2015 interview, she stated that at that time, her husband was unemployed and looking for work. Ex. 11 at 67-68.

V. Administrative Judge's Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses 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) 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 an initial matter, I find that the LSO has properly raised a security concern under Criterion L, regarding the Individual's financial irregularities. The Individual does not dispute that she continues to have delinquent debts and that she did not address many of those debts following her November 2013 security interview despite indicating that she would.

In considering whether the Individual has mitigated the properly raised security concern, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

> (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;

Adjudicative Guidelines, ¶ 20(a)-(e).

Regarding the above factors, I cannot find that, as applied to the instant matter, they sufficiently mitigate the security concerns raised by the LSO. With respect to ¶ 20(a), the Individual's irresponsible financial behavior was not so long ago or infrequent that it does not cast doubt on her current reliability, trustworthiness or good judgment. Indeed, the garnishment of her wages began only in April 2015 in response to missed loan payments, and many of her debts were delinquent as of the hearing. Regarding ¶ 20(b), it is true that some of the Individual's debts involve medical expenses beyond her control. Nevertheless, her testimony suggests that she has not been diligent about making sure that her health insurance provided coverage where possible. In addition, it appears that she has either overlooked or ignored medical bills, or has not verified with health care providers that she does not owe a balance. Accordingly, I cannot find that she has acted responsibly under the circumstances.

The next two factors, ¶ 20(c) and ¶ 20(d), relate to the Individual's efforts to resolve her financial problems and debts. I find it concerning that, as of the date of the hearing, she had not resolved so many of the debts brought to her attention in 2013, particularly the three small debts under $100. To some extent, the Individual has initiated efforts to resolve her debts by making inquiries into them and negotiating settlements on her Old Navy and University of Phoenix debts. I note that she also has taken steps to become more financially responsible such as monitoring her credit, increasing her savings and paying bills on time.[3] Nevertheless, 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, e.g.*, *Personnel Security Hearing*, Case No. PSH-14-0105 (2015); *Personnel Security Hearing*, Case No. PSH-13-0046 (2013); *Personnel Security Hearing*, Case No. PSH-12-0103 (2012); *Personnel Security Hearing*, Case No. PSH-11-0015 (2011). In the instant matter, I find that the actions the Individual has taken are still too recent and preliminary to demonstrate a new, sustained pattern of financial responsibility. In fact, according to her testimony, she did not begin investigating many of her debts until just before the hearing.[4]

Finally, as to ¶ 20(e), the Individual has suggested that some of her debt may be disputable. She has raised questions about whether her student loans should have been in forbearance, whether the Notification Letter lists her Old Navy debt twice, whether health insurers should have covered some medical bills and whether the University of Phoenix assessed her an improper charge. Nevertheless, even if she does have a reasonable basis for disputing some of these debts, it would

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[3] It is unclear if the Individual is receiving or intends to receive counseling. She indicated in her April 2015 interview that she intended to seek counseling but in her March 2016 hearing stated only that she had joined a credit monitoring service. Ex. 11 at 37, Tr. at 50-51.

[4] The evidence also suggests that she may face additional financial challenges in the near future if she is unable to extend a forebearance on one of her student loans. Tr. at 18-19.

not fully mitigate the irresponsibility she displayed by ignoring her debts for so long, and it would not assist her in demonstrating a new pattern of financial responsibility.

VI. Conclusion

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise 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 resolve the security concerns associated with Criterion L. I therefore cannot find that restoring 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 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.

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

Date: April 20, 2016