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

In the Matter of Personnel Security Hearing )

Filing Date: October 15, 2012 )

Case No.: PSH-12-0123 )

Issued: February 15, 2013

**Hearing Officer Decision**

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as “the individual”) for 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 DOE should not restore the individual’s access authorization at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is a DOE contractor employee and holds a suspended access authorization. Through letters of interrogatory, a Local Security Office (LSO) sought additional information from the individual regarding financial delinquencies listed on the individual’s credit report. Subsequently, the LSO summoned the individual for an interview (PSI) with a personnel security specialist on October 24, 2011. Exhibit 9 (PSI Transcript). During the PSI, the LSO requested that the individual provide additional information concerning his finances. Exhibit 10. The LSO ultimately determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. Exhibit 4. The Notification Letter also

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<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 access authorization or a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his 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 Hearing Officer in this case. The DOE introduced 23 exhibits into the record of this proceeding. The individual introduced seven exhibits, and presented his own testimony and that of his wife.

## **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, a Hearing Officer 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 his 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. FINDINGS OF FACT AND ASSOCIATED SECURITY CONCERNS**

The individual’s finances had previously been of concern to the DOE, due in part to his filing a Chapter 7 bankruptcy petition in 2002, through which his prior debts were discharged. After conducting a PSI in October 2008 and receiving additional information from him in March 2009 regarding the bankruptcy filing, the DOE granted a clearance to the individual. The LSO has since periodically requested credit reports on the individual. Exhibits 11, 14, 18. The most recent credit report, dated October 11, 2011, revealed the following:

- a mortgage balance of \$132,489, 150 days past due;
- a past due credit card balance of \$493 dollars;
- two past due telephone account balances totaling \$1,592, one in collection status;
- collection accounts for five medical bills totaling \$539; and

- a past due student loan balance of \$293.

Exhibit 11.

The Notification Letter presented a detailed history of the credit reports requested by the LSO, and the information provided by the individual in two PSIs and in response to seven letters of interrogatory from the LSO. Exhibit 4 at 3-6 (enclosure to Notification Letter). The individual does not dispute any of the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. *See* 10 C.F.R. § 710.27(c) (requiring Hearing Officer to “make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter”).

In the Notification Letter, the LSO cited derogatory information within the purview of a potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L). Exhibit 4.<sup>3</sup> I find that the allegations in this case raise legitimate security concerns under Criterion L. The failure or inability of an individual 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. Moreover, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at Guideline F.

#### IV. ANALYSIS

As the allegations and the security concerns they raise are not in dispute in this case, the question before me is the extent to which these concerns have been mitigated. In this regard, the individual has presented evidence that he has taken actions toward resolving some of his outstanding financial obligations. Specifically, the individual provided documentation that he

- paid in full his \$293 delinquent student loan balance;
- was making regular payments toward his past due credit card debt, reducing the balance owed from \$493 to \$290.50;
- had paid part of the balance due on one of his delinquent telephone accounts; and
- had paid past due balances on some of his medical bills that were in collection status.

Exhibit A; Exhibit B; Exhibit C; Exhibit G at 15-16, 26-29.

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<sup>3</sup> Criterion L defines as derogatory information indicating that the 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).

These actions by the individual mitigate, in part, the concerns in this case. *See Adjudicative Guidelines* at ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”). In addition, to the extent that the individual’s debts are due to medical bills, the concerns raised by those debts are partly mitigated by the fact that such expenses are normally not discretionary. *See id.* at ¶ 20 (b) (“the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances”).

On the other hand, a December 17, 2012, credit report submitted by the individual after the hearing also revealed new delinquencies not listed in prior credit reports, past due balances of \$422 on a telephone bill and \$117 on a cable television bill, both of which were in collection status. Exhibit G at 27, 28-29. This indicates that the individual’s financial difficulties are ongoing and not yet being brought under control, and thus demonstrates the absence of a condition that could mitigate the concerns in this case. *See Adjudicative Guidelines* at ¶ 20 (c) (“clear indications that the problem is being resolved or is under control”).

Most concerning, however, is the largest debt owed by the individual, his mortgage balance, last reported as \$132,489, with \$17,554 in payments past due. Exhibit G at 2-3. The individual has moved out of the house on which he took out this mortgage, Hearing Transcript (Tr.) at 40, 55-56, and has provided documentation that he is in the process of trying to sell the house. Exhibit D. Unfortunately, the appraised value of the house, \$65,000, Tr. at 45, is significantly less than the balance owed on the mortgage. The individual has submitted documentation of a request to the Federal Housing Administration, the insurer of his mortgage loan, to sell the property through a “short sale” transaction, after which the mortgage holder and insurer would agree to waive the right to pursue collection of the deficiency between the proceeds from the sale and the mortgage balance. Exhibits D, F. As of the December 2012 hearing in this matter, the house was unsold and had been on the market since June 2012. Tr. at 33.

When and if the individual completes the contemplated short sale transaction, his financial situation would improve quite dramatically, in that the amount owed on his mortgage beyond the value of the house would be forgiven. However, until this happens, the individual’s problems remain serious. Moreover, I am concerned by the fact that, even without making payments on his mortgage after moving from his house, Tr. at 40-41, the individual has incurred new debts while paying off others, as noted above, a sign that he is not yet exercising the sound judgment necessary to bring his finances under control. In addition, certain of the individual’s newer debts, while not necessarily indications of poor judgment, are nonetheless liabilities for which the individual will ultimately be responsible. *See* Exhibit G at 6-11 (December 17, 2012, credit report listing six student loans taken out between March and September 2012 and totaling \$12,750, payments on which are deferred until June 2014).

As Hearing Officers in prior cases have held, once 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. TSO-1048 (2011), *and cases cited therein*. Here, given the lack of evidence of a new pattern of financial responsibility, I find there to be a substantial risk that the individual will remain in a financially precarious position, and in addition find that the individual has not yet resolved the issues raised regarding the lack of

judgment that contributed to his current situation. Thus, because of both the continued risk of the individual's future financial instability, and the issues of judgment and reliability raised by his behavior related to finances, I cannot find that the individual has resolved the concerns in this case.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns under Criterion L. Therefore, the individual has not 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 should not restore the individual's security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: February 15, 2013