



individual that raised security concerns. In an attempt to resolve those concerns, the LSO summoned the individual for an interview with a personnel security specialist. After this Personnel Security Interview (PSI) failed to adequately address the concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The individual was informed of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced seven exhibits into the record of this proceeding. The individual introduced 10 exhibits and presented the testimony of three witnesses at the hearing, in addition to testifying on her own behalf.

## **II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (f) refers to information indicating that an individual has deliberately misrepresented, falsified, or omitted significant information from a PSI, a Questionnaire for National Security Positions (QNSP), or from written or oral statements made in response to official inquiry on a matter that is relevant to a clearance eligibility determination. Under this criterion, the Letter alleges that the individual falsely indicated on a July 2015 QNSP that she had not had any bills or debts referred to a collection agency during the preceding seven years, and that she failed to report 11 collection accounts that she had during this period.

Criterion (l) defines as derogatory information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct or circumstances include, but are not limited to, illegal behavior or a pattern of financial irresponsibility. In this case, the Letter alleges that the individual has exhibited a pattern of financial irresponsibility, and a pattern of dishonesty, untrustworthiness, and misconduct relating to her previous employment. As support for its allegation of financial irresponsibility, the Letter cites the individual's seven collection accounts and one past due account, totaling \$41,512 in delinquent debt, including \$34,033 in unpaid student loans. Regarding the individual's alleged dishonesty, untrustworthiness, and employment misconduct, the Letter refers to statements that the individual made during a November 2015 PSI that allegedly indicate that she

- Knowingly misused her employer's Mass Transit Benefit Program by providing fare cards to her friends and family, at a cost of \$1,648, and then lied to her employer during its investigation into the matter;
- Knowingly misused her employer's travel credit card by making \$5,800 in withdrawals from ATMs and banks from January to March, 2009, to pay her rent and her bills;
- Signed and submitted fraudulent time and attendance documents claiming a total of 24.84 regular and overtime hours that she did not work, at a cost to her employer of over \$775; and
- That she was terminated from her previous employment in October 2010 for these actions.

These allegations adequately justify the DOE's invocation of criteria (f) and (l), and they raise significant security concerns. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process. Failure to satisfy debts or 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), Guidelines E and F.*

### **III. 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 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 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). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein.* 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).

## IV. ANALYSIS

### A. Mitigating Evidence

At the hearing, the individual attempted to demonstrate, through her own testimony and that of her mother, her sister, and her friend, that she is an honest and reliable person, that her financial difficulties have been due to periods of unemployment, and that she has acted responsibly under the circumstances.

At the outset, the individual discussed her incorrect and incomplete responses on her July 2015 QNSP. She said that her failure to list her 11 collection accounts was an “oversight” that occurred because she thought that nothing had changed in this regard from the information that she disclosed in a previous QNSP, and that if nothing changed, she did not have to “re-submit” it. Hearing Transcript (Tr.) at 38. She felt that she was under pressure to complete the form quickly, and she said that was advised by her co-workers that “if nothing has changed [since her last QNSP], just keep it the same.” Tr. at 41. She asked if she could submit the old QNSP rather than complete a new one, but she was told that she could not. Tr. at 43.

Next, the individual testified about her financial condition and the current status of her seven collection accounts and one past-due account. She said that her financial difficulties have been caused by recent periods of unemployment. Tr. 51. She has contacted seven of these eight creditors, and has either set up repayment plans or has informed them of her employment status and promised that she would repay the debts when she was financially able to do so. Tr. at 46 -60.<sup>3</sup>

However, she has not been able to afford to make payments on these debts, or has only been able to make minimal payments. Tr. at 49, 51. The individual testified that she is “actively working” on her financial obligations, and “that’s half the battle.” Tr. at 61. She has “had to deal with a lot of unemployment and trying to make sure that my wages meet certain requirements, and so I’m working diligently to scratch off these debts.” *Id.*

Finally, the individual testified about the events that led up to her 2010 termination. Regarding misuse of the government travel credit card, she admitted that she made a withdrawal of \$1,000 to pay her overdue rent, but she said that the remainder of the \$5,800 in improper withdrawals was made by her live-in boyfriend at the time. She explained that he told her that he had paid the rent, when in fact he had not done so. By the time the individual discovered this, she was two months behind, and was afraid that she would be evicted. Consequently, she activated the card and made the improper withdrawal. The individual continued that during the telephone call in which the activation took place, the boyfriend overheard her card’s PIN number. Subsequently, during the first three months of 2009, the boyfriend would remove the card from the individual’s wallet, make unauthorized cash

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<sup>3</sup> The individual testified that she does not recognize the eighth debtor, nor does she know what the debt is for. Tr. at 54. The alleged debt is for \$292, owed to “Medical Payment Data.” However, I am unable to locate this debt in the individual’s credit report or in any of the DOE’s other exhibits. I will therefore not consider this alleged debt in this case.

withdrawals using the PIN number, and then return the card to the individual's wallet, all without her knowledge or consent. Tr. at 64-65.

Regarding the individual's time and attendance, she stated that she had to "swipe" her badge every time she entered or left her workplace, and that her employer discovered a discrepancy of approximately 24 hours over a two-year period between the record generated by these actions, and the duty hours that she claimed on her timekeeping documents. Tr. at 68-69. When her employer asked her about the discrepancy, she was unable to accurately account for it because it was "10 minutes" on one day and "12 minutes" on another, and she "couldn't pinpoint each day that . . . I was either late or left early." Tr. at 69.

Finally, the individual addressed her alleged misuse of the employer's Mass Transit Benefit Program. She said that she signed up for the Program because she expected to be using mass transit on some days during her commute. However, she later decided to drive, instead of using public transportation. When she attempted to return the unused fare media, she was allegedly told to keep them, but not to get any more of them. Tr. at 69-70. Because she knew that her family members and some of her friends used public transportation, she gave the fare media to them. Tr. at 70. She admitted lying to the employer's investigator about what she did with the unused media, and said that she did it because she didn't want her family members and friends to get into trouble.

The individual concluded by saying that the DOE should trust her because she has "learned [her] lesson," understands "how important national security is," and now realizes that "honesty is the best policy." Tr. at 78. The individual's mother, sister, and her friend each testified that the individual is honest, trustworthy, and reliable. Tr. at 10, 19, 29, 92.

## **B. Administrative Judge's Findings**

Despite this testimony, the record in this matter reveals a disturbing pattern of dishonesty and failure to abide by rules, regulations, and legal requirements on the part of the individual. As set forth above, she admitted having lied to investigators about the identity of the individuals to whom she gave her unused fare media. Moreover, in her written reply to her employer concerning her proposed termination, she stated that she didn't know the rules that governed the Mass Transit Benefit Program. Yet, during her meeting with her employer's Deputy Director for Human Capital, she acknowledged having signed a document that set forth those rules, and that certified that she agreed to follow them. DOE Ex. 5 at 1. Regarding the unauthorized use of her government travel credit card, she initially told investigators that she was responsible for only one withdrawal of \$1,000, and that her boyfriend made the other withdrawals. However, during an interview that took place in connection with a polygraph examination to which she consented, she admitted that she made all of the withdrawals, and used the funds to pay her bills. DOE Ex. 5 at 20.

At the hearing, the individual testified that she made this admission to the investigators, but only after five hours of questioning, interrupted by a short break, "wore her down." Tr. at 82-84. Nevertheless, I find the admission to be more credible than the individual's unlikely claims that her boyfriend overheard her PIN number during the card activation telephone call, removed the card from her wallet

on multiple occasions without her knowledge or consent, and stole the credit card statements before the individual received them, so she would not discover his withdrawals. DOE Ex. 7 at 45. She also failed to rebut the allegation in the Notification Letter concerning her time and attendance.

Regarding the individual's failure to include her collection accounts on her latest QNSP, I find her explanation that she did not believe that she needed to do this because she had disclosed the information on a previous QNSP to be of little mitigating value. Although the individual conceivably may not have intended to mislead the DOE, she deliberately omitted relevant information from her 2015 QNSP. Her omissions demonstrated, at best, a reckless disregard for the requirement that she provide complete and truthful information and answers to the questions posed in that QNSP. At worst, they represent a continuation of the dishonest and unreliable behavior that resulted in the loss of her previous employment.

Finally, I conclude that the individual has not adequately addressed the DOE's security concerns regarding her finances. As set forth above, the individual testified that her problems were caused by periods of unemployment and that she has contacted her creditors and either set up payment plans or affirmed her intentions to pay off the debt when she is financially able to do so. I find this to be of mitigating value. *See Adjudicative Guidelines*, ¶ 20(b) (the conditions that caused the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances). However, she has made little progress in paying off the creditors mentioned in the Notification Letter and no progress in reducing her overall debt.

Her student loan debt with the Department of Education, which is by far her largest creditor, is an example of the ineffectiveness of her efforts. In October 2014, the individual contacted that agency to ascertain the amount of her debt. She was informed that she owed them \$33,339.45. Since then, she has made one payment of five dollars. Ind. Ex. A at 2. The individual's student loan indebtedness has actually increased over this period. Ind. Ex. D. Her overall debt, including accounts for which she is currently up to date, is \$45,795.73. *Id.* at 3. I do not question the individual's testimony that she is currently unable to make significant progress in paying off her delinquent debt due to a lack of funds. However, her precarious financial position raises serious security concerns, especially considering her history of violating rules and regulations for pecuniary gain.

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's valid security concerns under criteria (f) and (l). Consequently, she has not convinced me that granting her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I conclude that the DOE should not grant the individual a security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: August 4, 2016