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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: June 17, 2016)

Case No.: PSH-16-0056

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Issued: September 13, 2016

Administrative Judge Decision

Neil Schuldenfrei, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me, in light of the relevant regulations and the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines), I have determined that the individual’s access authorization should not be restored.

I. Background

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. On June 2, 2016, the Local Security Office (LSO) sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns attached to the Notification Letter, the LSO explained that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8(l) (hereinafter referred to as Criterion L). Criterion L concerns information that a person has:

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

...engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior....

10 C.F.R. § 710.8(l).

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented his own testimony only, with no other witnesses, and the LSO presented no witnesses. In addition to the testimonial evidence, the LSO submitted nine numbered exhibits into the record (exhibits 1-9). At the hearing, the individual submitted two exhibits (exhibits A and B). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his 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 individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and

security, and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As support for its security concerns under Criterion L, the LSO cited delinquent debts totaling \$23,868. Ex. 1, attachment at 1. The notice provided a list of nine specific delinquent debts, including:

- TD Auto Finance (\$13,080)
- Springleaf Finance (\$5,560)
- Colonial Finance (\$1,471)
- Conn Credit (\$1,241)
- Capital One (\$498)
- CRA/Credit Recovery (\$338)
- Knight Adj. (RC Willey) (\$1,196)
- Portfolio (Synchrony Bank) (\$261)
- Credit Management (Comcast West) (\$233)

Id. The LSO also cited evidence of “financial irresponsibility including an established pattern of unwillingness and an inability to satisfy debt.” *Id.* As evidence thereof, the Notification Letter listed eight specific examples, including:

- A November 2015 Writ of Garnishment for \$307.99;
- An admission by the individual, during a personnel security interview (PSI) on February 19, 2016, that he did not want to pay his financial accounts, and that he had made no efforts to contact any of the creditors regarding his delinquent accounts;
- An admission by the individual, during his PSI on February 19, 2016, that he had a vehicle repossessed in December 2014 for failure to make payments on the account;
- A Chapter 7 bankruptcy in 2007;
- An admission by the individual, during a PSI on February 23, 2007, that he had vehicles repossessed in May 2006 and June 2006 for failure to make payments on the account;
- An admission by the individual, during a PSI on February 23, 2007, that he had two garnishments of his wages in 2006 for failing to repay loans;
- An admission by the individual, during a PSI on February 3, 2006, that he had a vehicle repossessed in 1996 for failure to make payments on the account;
- An admission by the individual, during a PSI conducted on February 3, 2006, that he cosigned a vehicle loan that eventually went to collections; and
- An admission by the individual, during a PSI conducted on February 19, 2016, that he cosigned a loan on another vehicle that was reported on his credit report as a charge-off account.

Id. at 2.

IV. Findings of Fact

Based on a writ of garnishment served December 24, 2015, the LSO requested the individual's credit report. That report, dated January 27, 2016, evidenced numerous delinquent debts, including charged-off accounts and accounts in collection, totaling \$23,868. These delinquent debts were cited in Section A of the LSO's Summary of Security Concerns. In addition, the LSO cited a variety of evidence of other financial irresponsibility in Section B.

At the hearing, the individual presented evidence that the delinquent debts listed in Section A of the Summary of Security Concerns (Ex. 1, attachment at 1) had been discharged through Chapter 7 bankruptcy, dated June 27, 2016. Ex. A.²

With respect to the evidence of financial irresponsibility listed in Section B of the Summary of Security Concerns (Ex. 1, attachment at 2), at the hearing, the individual acknowledged the veracity of virtually all of the information contained therein.

At the hearing, the individual stated that, prior to the PSI of February 19, 2016, he was unaware that financial issues could impact his security clearance. Tr. at 56-57. However, he was then shown a transcript of his previous PSI of February 23, 2007, wherein the Interviewer clearly put the individual on notice of the potential impact of financial issues on his security clearance.³ *Id.* at 57. The individual then acknowledged that he had, in fact, been aware of the potential issue. *Id.* at 58.

The record reflects that, following the PSI of February 23, 2007, the individual avoided financial issues until December 2014, when a vehicle was repossessed for failure to make payments on the account. Ex. 1, attachment at 2. At the hearing, the individual stated that he began to default on

² At the hearing, the individual submitted a credit report dated August 5, 2016, reflecting that the debts in question had been discharged in bankruptcy. Ex. B. However, for reasons that are not clear, the debt to Credit Management (Comcast West) is not reflected in this credit report as either pending or discharged. Tr. at 11-13. However, the amount in question (\$233) was the smallest of the debts cited in the Summary of Security Concerns. Ex. 1, attachment at 1. Accordingly, for purposes of this decision, I will presume that the debt to Credit Management (Comcast West) has been resolved.

³ The Interviewer stated,

DOE feels an individual encountering financial difficulties is vulnerable to blackmail or pressure to sell classified information for money. If a person is not responsible with finances their reliability is questioned since the person has not been responsible in meeting their financial obligations. If an individual is not reliability [sic] or trustworthy, DOE cannot expect that person to comply with security regulations or controls which serve to protect national security. DOE is also concerned that if someone knows that you are not meeting your financial obligations, an individual may see you as a target and come to you with a bribe. An individual who is financially overextended is a risk ... of having to engage in illegal acts to generate funds. Do you understand the concerns?

Ex. 9 at 80-81. The individual responded, "yes." *Id.*

loans at that time because he owed “all of them all at the same time, and it just hit me at the same time right there, paying left to right, trying to keep up with them.” Ex. 8 at 21. With respect to the Capital One loan, he stated, “I didn’t wanna pay for it no more, that’s why I just stopped paying for it.” *Id.* at 43. With respect to the Kmart/Sears loan, he stated “I just don’t wanna pay for it no more....” *Id.* at 49. With respect to his delinquent loans in general, he stated, “Don’t wanna pay for ‘em. Just like you said, thought it was just gonna go away, but it was continued [sic] coming back to you.” *Id.* at 98. At the hearing, when given an opportunity to clarify, the individual indicated that he was simply overwhelmed with financial issues. Tr. at 51.

In his PSI of February 19, 2016, the Interviewer asked the individual about each of his delinquent accounts. In a number of cases, the individual indicated that he had received monthly statements on his loans, but, for reasons he could not explain, he had not received notices of delinquency or court dates. *See, e.g.*, Ex. 8 at 11, 25, 31, 40, 43. He also stated that, for at least two of the loans, he failed to make payments because he was unable to determine where to send those payments. Ex. 8 at 25, 31.

There is little record of any effort to resolve the debts. In the PSI, the individual was asked “what efforts can you share with me that you have done towards [paying] your debt?” Ex. 8 at 61. The individual responded, “I did nothing right now.” *Id.* *See also* Ex. 8 at 17, 28, 49, 98, 107.

During the hearing, the DOE attorney sought to discuss a budget with the individual. The transcript indicates that the individual was not clear on the concept of a budget.⁴ Tr. at 28-29. The DOE attorney then offered to contact the DOE Employee Assistance Program, to set up an appointment for the individual, in order to obtain assistance in developing a budget. *Id.* at 30-35. The individual was non-committal. *Id.*

V. 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.

Section A of the Summary of Security Concerns cites numerous financial accounts which were charged off and in collection. The individual has provided evidence that those debts have been discharged in bankruptcy. Accordingly, those debts have been resolved, and do not constitute a basis for concern, pursuant to 10 C.F.R. § 710.8(l). However, the individual has done nothing to resolve the concerns raised in Section B of the Summary of Security Concerns, which include several writs of garnishment, several vehicle repossessions, a previous bankruptcy, and several other financial issues. Therefore, I find that there is ample information in the Notification Letter to support the LSO’s reliance on Criterion L. Failure to satisfy debts or meet financial obligations

⁴ The record contains a “Personal Financial Statement” for the individual, which appears to be a simplified budget. However, it appears that the document had been prepared for him by the PSI Interviewer, and at the hearing, he was unable to answer a basic question regarding some of the entries. Tr. at 39.

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. Potentially disqualifying conditions under Guideline F include "the inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." *Id.* at 19(a), (c).

The Adjudicative Guidelines provide a list of 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.

Adjudicative Guidelines, Guideline F, § 20(a)-(d).

Here, the individual has failed to meet any of the mitigating criteria. The pattern of behavior in question has continued until the recent past: the conditions that resulted in the financial problems were well within the individual's control (indeed, the individual acknowledged that he continued to take loans, because the terms seemed favorable); the individual has not received counseling for the problem (and in fact, seemed reluctant to accept assistance in formulating a budget); and the individual made no substantive effort to resolve the financial issues evidenced in Section B of the Summary of Security Concerns.

As noted, the individual did resolve the outstanding debts evidenced in Section A of the Summary of Security Concerns by filing for bankruptcy. However, 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 Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009).

Here, while the individual has taken steps to rectify some of his financial issues, there has not been a sustained pattern of financial responsibility sufficient to demonstrate that a recurrence of the past

pattern is unlikely. *See Personnel Security Hearing*, Case No. PSH-12-0075 (2012). Furthermore, statements and actions of the individual cast doubt on his willingness or ability to sustain a pattern of financial responsibility. In the PSI, and at the hearing, the individual: repeatedly stated that he simply didn't want to pay his bills; acknowledged that he made little effort to pay them; repeatedly proffered the excuse that he didn't pay them because he was unsure where to pay them; and repeatedly alleged that he had not received notices of delinquencies or court dates, despite having received monthly statements at the same address.

Furthermore, the individual stated that he was previously unaware of the potential impact of financial issues on his security clearance; however, the record shows that he had been explicitly notified of the potential consequences during his 2007 PSI.

Where doubt exists as to a person's access authorization eligibility, I am instructed by the regulations to resolve that doubt in favor of the national security. 10 C.F.R. § 710.7(a)

For these reasons, I find that the individual has not resolved the concerns of the LSO, pursuant to Guideline F.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the individual's suspended DOE access authorization "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the individual's suspended DOE access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Neil Schuldenfrei
Administrative Judge
Office of Hearings and Appeals

Date: September 13, 2016