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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: July 6, 2016 )  
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Case No.: PSH-16-0060

Issued: October 13, 2016

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Administrative Judge Decision  
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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXX (hereinafter referred to as “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.”<sup>1</sup> For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s security clearance should be restored.<sup>2</sup>

**I. BACKGROUND**

A Local Security Office (LSO) obtained information that raised concerns regarding the Individual’s eligibility to hold a security clearance. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on November 12, 2015. Because the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on July 6, 2016. At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, her spouse (the Spouse), and her attorney (the Attorney).

<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 also be referred to in this Decision as 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.energy.gov/OHA>.

See Transcript of Hearing, Case No. PSH-16-0060 (hereinafter cited as “Tr.”). The LSO submitted exhibits, marked as Exhibits 1 through 14. The Individual submitted 13 exhibits, marked as Individual’s Exhibits A through M.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to paragraph (l)<sup>3</sup> of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

The LSO alleges, under Criterion L, that the Individual has three unpaid charge-off accounts totaling \$10,358; 13 unresolved collection accounts totaling \$11,519; and five outstanding judgments against her totaling \$15,364.

The LSO further noted that the Individual had previously (in a PSI conducted on November 30, 2012) been advised of the LSO’s concerns about her financial responsibility, and that she had provided her assurances that she would work to resolve her financial issues.<sup>4</sup> The Individual’s pattern of financial irresponsibility, as alleged, adequately justifies the LSO’s invocation of Criterion L, and raises significant security concerns. The Adjudicative Guidelines state in pertinent part:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds . . . . Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a

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<sup>3</sup> Criterion L refers to information indicating that the Individual has “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, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

<sup>4</sup> While the Notification Letter asserts that the Individual provided assurances that she would resolve these debts during her October 30, 2012, PSI, the record is actually somewhat ambiguous on this matter. When the Individual was asked about her future intention regarding her finances, she replied by stating:

Hopefully to one day be free of them but I don't know, to me anymore they're just a part of what, what I have to do. And just, I just pay on it and if by chance something happens and I can't, well then I can't and I'll just eventually, you know, and, and as I said if I should, if I would lose this job well then I couldn't pay on 'em, and I would try just to do whatever I could and, you know, get another job and then eventually start paying on 'em again.

realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . and (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Adjudicative Guidelines at ¶¶ 18, 19. The Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of human nature, Administrative Judges apply the guidelines in conjunction with the information available in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

### **III. REGULATORY STANDARDS**

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### **IV. FINDINGS OF FACT**

The Individual has a long-standing history of failing to meet financial obligations, dating back to at least 2003, when the LSO issued a Letter of Interrogatory (LOI) to her inquiring about her financial issues. Ex. 10 at 1. The Individual's responses to these interrogatories indicated that she was experiencing significant difficulties in her personal life at that time: she was undergoing treatment for cancer, had experienced a period of unemployment, and was going through a divorce. Ex. 10 at 1-2. The Individual also claimed that she was unaware of some of her bills, because they had been delivered to the wrong house. Ex. 10 at 2. The LSO conducted three PSIs of the Individual: on February 7, 2012, March 12, 2012, and October 30, 2012, inquiring into her financial circumstances. Ex. 3 at 1. Apparently, these PSI's and the LOI resolved those issues, because the Individual retained her security clearance.

In August 2015, the Individual's wages were garnished by a creditor. Ex. 8 at 1. After receiving notice of this garnishment, the LSO obtained a credit report of the Individual, which showed that the Individual had approximately 16 outstanding collection or charge-off accounts, and a number of outstanding judgments entered against her. Ex. 4.

On November 12, 2015, the LSO conducted a PSI of the Individual. During this PSI, the Individual was asked about the circumstances that led to her wages being garnished. The Individual acknowledged that she had failed to pay her credit card debt. Ex. 11 at 10. The Individual noted however, that she had promptly resolved the debt that led to her garnishment by paying the creditor. Ex. 11 at 10. Although the judgment was entered in favor of the creditor in 2013, the Individual claimed that she was unaware of the debt until her wages were garnished. Ex. 11 at 12, 19, 80, 223. Prior to her being informed of the garnishment, she believed that her finances were in order. Ex. 11 at 83, 218. She claimed that her husband had failed to inform her about the creditor's previous collection efforts; in some cases, she claimed, he threw out important communications from creditors without informing her. Ex. 11 at 12, 20, 233. The Individual said she thought she did not have to pay bills once they had been charged-off which led her to believe her financial problems were behind her. Ex. 11 at 138, 228. The Individual further indicated that she had recently become aware of two other outstanding judgments against her. Ex. 11 at 13, 18-19. The Individual explained that her husband suffers from Post-Traumatic Stress Disorder (PTSD) and is severely disabled. Ex. 11 at 35. He is permanently unable to work as a result. Ex. 11 at 68-69. Her husband has difficulty controlling his spending as a symptom of his PTSD. Tr. at 66, 71, 87, 92. The Individual further reported that she provides support for her brother, who has a disability. Ex. 11 at 38. The Individual admitted that she had not sought professional advice for her financial problems. Ex. 11 at 211. The Individual stated her intention to seek help in order to address her financial issues. Ex. 11 at 223. The Individual indicated that she was considering filing for bankruptcy. Ex. 11 at 128, 208.

On June 16, 2016, the LSO received a response, prepared by the Individual's attorney, to the Statement of Charges (Response). The Response indicates that the Individual filed a Petition for Bankruptcy under Chapter 13 on April 2, 2016. The Response states that the Chapter 13 Plan submitted by the Individual to the Bankruptcy Court will pay 100% of her unsecured creditors' claims plus interest. Ex. 2 at 1. The Response further asserted that her Chapter 13 Plan will completely and comprehensively resolve all of the Individual's outstanding debts, and that all valid creditors of the Individual will be paid in full, plus interest. Ex. 2 at 3. Upon completion of their Chapter 13 Bankruptcy, the Individual will be completely debt free. Ex. 2 at 4. The Response further notes that the Individual's financial difficulties arose when her spouse's traumatic brain injury and PTSD, which were incurred during his military service, led to the loss of his job in 2010. Ex. 2 at 4. The sudden loss of income caused financial issues which eventually stabilized once he began receiving disability payments. Ex. 2 at 4. The Response further claimed that the Individual had not incurred any additional delinquent debt since 2011. Ex. 2 at 1. According to the Response, the only new debt incurred by the Individual during the past five years were secured vehicle loans, and department store credit cards, all of which were current at the time her Petition was filed. Ex. 2 at 1.

## **V. ANALYSIS**

At the hearing, the Individual showed that she has fully addressed her financial issues by filing for Bankruptcy under Chapter 13, which will resolve each of her outstanding debts, and has shown that her current monthly income going forward is sufficient to ensure that her monthly income now exceeds her expected monthly expenses, including those payments required by her Bankruptcy Plan, by a significant margin.

At the hearing, the Individual testified that until 2010, she and her spouse had both been employed at the same pay rate by a DOE contractor. Tr. at 25. When her spouse had a breakdown in 2010, suddenly, they lost half of their income. Tr. at 26, 76-77. It was a very difficult time for her: she did not understand what her spouse was going through, and she was left alone to manage their household, on half of their previous income. Tr. at 26. The Individual testified that her spouse eventually admitted to her that he was discarding letters from creditors without telling her about them. Tr. at 32, 60.

The Individual testified that she has been receiving financial counseling since August 2016. Tr. at 28-29. The Credit Counselor, to whom she was referred by her attorney, is helping the Individual clear her credit history, and manage her credit and financial matters. Tr. at 29, 75; Ex. K. The Individual testified that she has not incurred any additional delinquent debt, since her spouse began receiving his disability payments in late 2011. Tr. at 51. In addition, the Individual was required to attend court mandated credit counseling classes, which she and he spouse have completed. Tr. at 74.

The Individual testified that she used to believe that she was no longer required to pay a bill when it reached “charged-off” status. Tr. at 27-28, 82-83. She now realizes that she is still obligated to pay an account when it is charged-off. Tr. at 28. She testified that the August 2015, judgment and garnishment came as a surprise to her. Tr. at 29-30. She paid that creditor, in full, within two days. Tr. at 30. The Individual testified that she should have been monitoring her credit more closely than before the August 2015, garnishment. Tr. at 52.

The Individual testified that her monthly gross income is \$7,138.89, and that her spouse’s monthly income is “a little over \$3,000.” Tr. at 40. She further testified that their monthly expenses are \$4,744.29. Tr. at 41. After taxes and deductions from her paycheck, and their monthly expenses, they have \$2,419.29 remaining on their monthly income. Tr. at 41. Under her bankruptcy plan,<sup>5</sup> she is making monthly payments of \$1,300.50 for 60 months.<sup>6</sup> Tr. at 42. She has already made four or five of those payments. Tr. at 58. The Individual noted that, even after the bankruptcy payments are made, she will have a surplus of \$1,350 a month to meet any unexpected contingencies that may arise. Tr. at 66. The Individual testified that these figures are from her Bankruptcy Petition which was submitted to the Bankruptcy Court under oath.<sup>7</sup> Tr. at 41. Her creditors will be paid in full (including interest) at the conclusion of these payments. Tr. at 42. The Individual further testified that she is current on all of her obligations outside of the bankruptcy proceeding. Tr. at 44. The Individual testified that she cannot incur any additional debt without court approval until her bankruptcy payments are complete. Tr. at 53.

The Spouse testified on her behalf at the hearing. The Spouse testified that he had suffered a traumatic brain injury during combat while serving in the United States Armed Forces. Tr. at 18. In addition, the Spouse has been diagnosed with severe chronic PTSD. Tr. at 18. The Spouse is

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<sup>5</sup> A copy of the Bankruptcy Plan appears in the Record as Exhibit B.

<sup>6</sup> The Individual’s Bankruptcy Plan was approved by the Bankruptcy Estate’s trustee on July 17, 2016. Ex. C.

<sup>7</sup> A copy of the Bankruptcy Petition appears in the Record as Exhibit A.

currently being treated for PTSD at a local Veterans Administration (VA) facility.<sup>8</sup> Ex. H; Tr. 18. The Spouse testified that he is “still in and out of the hospital frequently, the psychiatric ward.” Tr. at 18. He testified that he “had a breakdown” in 2010, which resulted in his hospitalization for seven months. Tr. at 18. As a result, the Spouse lost his job, and is still unable to work. Tr. at 19. The VA found him to be 100 percent disabled, and he has been receiving disability payments since late 2011. Tr. at 20. The Spouse testified that he is usually the person who gets the mail in their household. Tr. at 21. The Spouse testified that he would throw away correspondence from creditors; because in his mental state at the time, he believed that they were scam attempts, rather than legitimate communications. Tr. at 22. He further testified that he never informed the Individual about these communications. Tr. at 22.

The Individual’s attorney (the Attorney) testified on her behalf at the hearing, as an expert in Bankruptcy law and because he has personal knowledge concerning her bankruptcy proceeding. The Attorney testified that he has been practicing bankruptcy law for the past 25 years. Tr. at 91. He testified that he advised the Individual to file for Bankruptcy under Chapter 13 because she had a lot of income and because she wanted to pay all of her creditors in full. Tr. at 91. He noted that the Individual will be able to make payments on her bankruptcy plan and still live comfortably. Tr. at 93. The Attorney testified that he believes that the Individual will complete her obligations under the plan in approximately one year (instead of 60 months) and will then be able to exit the court’s supervision, because so few claims were filed against her in the bankruptcy proceeding. Tr. at 96. Her credit will also be completely clean at that point. Tr. at 101.

Guideline F sets forth five conditions which can mitigate security concerns arising from financial irresponsibility. Specifically, ¶ 20 provides that security concerns arising from financial irresponsibility can be mitigated if:

- (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, . . . unexpected medical emergency, or a . . . 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; and,
- (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

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<sup>8</sup> The Individual has submitted Ex. H, a letter from the Spouse’s treating psychiatrist, who is employed by the VA, confirming that he is treating the Spouse for PTSD, and that throwing away important paperwork is consistent with the Spouse’s behavior and his chronic PTSD.

substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Guideline F at ¶ 20. In the present case, the Individual has established that four of these five conditions resolve the security concerns arising from her outstanding debts. The Record shows that the Individual has learned from her past financial mistakes, and has taken appropriate and effective action to address her financial issues, by obtaining expert assistance, by avoiding the accumulation of any addition delinquent debts since 2011 (thereby demonstrating the long-term ability to live within her means), and by filing a Petition for Bankruptcy under Chapter 13. These actions, and her testimony at the hearing, show that she is currently reliable, trustworthy, and exercises good judgment. The Record further shows that conditions that resulted in the Individual's financial problems were largely beyond her control (e.g. loss of employment, and an unexpected medical emergency), and the Individual, eventually, acted responsibly under the circumstances. Moreover, it is clear that the Individual has received and is receiving counseling, and expert legal advice, for the problem and there are clear indications that the problem has been fully resolved by her filing of a Bankruptcy petition. Finally, the record shows that the Individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Accordingly, I find that the Individual has resolved the security concerns, raised under Criterion L by her outstanding debts.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored at this time. The Local Security Office may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

Date: October 13, 2016