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

In the Matter of Personnel Security Hearing)

Filing Date: August 29, 2016)

Case No.: PSH-16-0071)

Issued: November 22, 2016

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX XXXX (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, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines), I have determined that the individual’s access authorization should be granted.

I. Background

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. From 2004 through 2015, the individual accumulated debt and failed to pay his federal income taxes for several of those years. During Personnel Security Interviews (PSIs) conducted in January and April 2016, the individual described the nature of his debts and the causes underlying them.

On July 7, 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 attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying

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.

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 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 the testimony of one witness, his wife, and he testified on his own behalf. There were no witnesses for the LSO, but it submitted 14 numbered exhibits into the record. The individual submitted six exhibits, which I labeled as Exhibits A-F. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or letter 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 granting or continuing 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

² Criterion L concerns information that indicates 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, . . . a pattern of financial irresponsibility . . .” 10 C.F.R. § 710.8(l).

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 previously noted, the LSO cited Criterion L as the basis for administrative review of the individual's eligibility for security clearance. 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 may raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Adjudicative Guidelines at Guideline F, ¶ 18.

The LSO's security concerns under Criterion L arose when it obtained information from the individual in 2012 that he had acquired outstanding delinquent debts and had failed to pay his federal taxes for 2004, 2006, 2007, 2008, 2008, 2009, and 2010. After the individual was laid off from his employment at the DOE facility in January 2103 and then re-hired at the facility in February 2015, the LSO continued its inquiry into his financial difficulties, learning that he had not repaid his earlier debts and tax liability, had acquired additional debt, and had not paid his federal taxes for 2014. Although he told the LSO during a January 2016 PSI that he intended to contact creditors to resolve his debts, he did not do so by April 2016, nor had he addressed his tax liability. Despite the individual's acknowledgment in 2012 that he understood the DOE's concerns regarding his financial irresponsibility, he nevertheless had over \$57,000 in outstanding delinquent debts in July 2016. Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion L. The individual has accumulated debt since 2004, if not earlier, and as of the date of the Notification Letter had not repaid his creditors. Moreover, though he had duly filed his federal taxes each year, he had not paid the taxes he owed for several years' income. His pattern of continuing to accumulate debt without resolving his old debts demonstrates that he has been living beyond his means and has been financially irresponsible. This behavior clearly raises questions about his self-control, lack of judgment, and possibly his willingness to follow rules and regulations, which in turn could affect his ability to protect classified information.

IV. Findings of Fact

Citing a January 2016 credit report and an April 2016 PSI, the Notification Letter reflects the following debts incurred by the individual: a motor vehicle loan delinquent by 60 days, two motor vehicle loans charged off with combined past due balances of over \$10,000, and about \$5,315 of debt currently in collection, the aftermath of obtaining payday loans. Exs. 1, 4, 12. During that PSI, the individual admitted that he owes over \$40,000 to the Internal Revenue Service (IRS) for unpaid taxes for 2006, 2007, 2008, 2009, and 2010.³ The individual does not

³ It appears that any federal tax liability for 2004 and 2014 has now been resolved through the application of tax refunds the individual has received on returns for other years. *See* Tr. at 69.

dispute the validity of any of these debts though, as discussed below, he challenges the balance due on one of the motor vehicle loans. At his January 2016 PSI, he stated that he would contact two of his creditors to resolve the amounts due and pay them. Ex. 13 at 32-34, 39. When questioned at his April 2016 PSI, however, he revealed that he had not yet contacted them. Ex. 12 at 49-60.

The individual has attempted to address his outstanding federal tax liability twice. He explained at a 2012 PSI that he had entered into payment plan with the IRS in 2008 to repay outstanding taxes due for 2004, 2006, and 2007 at \$250 a month, but never made any payments. Ex. 14 at 50-57. At the April 2016 PSI, he explained that he had recently attempted to set up a payment plan with the IRS to repay all of his outstanding tax liability, but the IRS rejected the plan because the monthly payment he proposed, \$250, was significantly less than the minimum monthly payment the IRS calculated, \$684, to pay off the total liability within six years. Ex. 5; Ex. 12 at 14.

At the hearing, the individual and his wife provided additional details concerning the causes of his many outstanding debts and his attempts to resolve them. Starting in 2000, the individual worked as an electrician on jobs obtained through his union placement office. He had steady work until about 2004, when construction projects, and work for electricians, began to taper off. There were fewer and fewer jobs available through the union hall, and he was out of work for periods as long as six months. Tr. at 41-42. He was “desperate at the time . . . to do what [he] thought was right” for his family. *Id.* at 44. He learned from other electricians that they would declare 99 dependents on their federal tax withholding declarations, in order to have no federal taxes withheld and therefore maximize their take-home pay; he did the same. *Id.* at 45. He did not believe that there was anything illegal about this behavior; his intention was to provide for his family to the fullest extent while he had work. *Id.* at 67-68. The effect of having no tax withheld from his paychecks, however, was that, at the end of the year, he needed to pay his tax liability and had no resources to do so. *Id.* at 43. The years for which he owed money to the IRS are precisely those years in which he had long periods of unemployment and declared 99 dependents when he did have income from work. He managed to secure reliably consistent work at the DOE facility from 2011 through January 2013, when he was laid off, and then again starting in January 2015. *Id.* at 48. He did not declare 99 dependents while working at the DOE facility, and intends never to do so in the future. *Id.* at 45, 69.

The individual’s other debts, described below, also accrued in those years in which he had long periods of unemployment. His attempt at a payment arrangement with IRS in 2008 failed for similar reasons: he was laid off between the time he signed the agreement and the time of his first payment due. *Id.* at 72. In contrast, as a result of his consistent work at the DOE facility since January 2015, he now has sufficient funds to pay off his debts, and he has taken steps to do so where possible.

One of his largest debts, now charged off, was a car loan he acquired in December 2012, shortly before being laid off from his job at the DOE facility. Ex. 4. He realized that he could not meet the payments, and turned the vehicle in to the creditor. Since the date of the Notification Letter, he has communicated with the bank and has been offered a settlement. He challenges the amount owed because he believes the bank resold the vehicle and recouped virtually all its costs through the resale. He has spoken with bank representatives, including one who committed to

providing him with details regarding the resale of his car. Tr. at 25; Ex. 2; Ex. D. He is awaiting confirmation from the bank, and stated that he is committed to repaying the bank an amount that takes into account the resale of his car, up to the offered settlement amount. Tr. at 20-21; Ex. F. He stated that he would be able to pay off the settlement amount within a year, and the monthly budget statement he submitted supports his assertion. Tr. at 22, 65; Ex. E.

The individual also reached out to a company from which he obtained a payday loan and owed \$315. After failing to reach the creditor on a number of attempts, he succeeded in October 2016 and entered into an agreement with the company through which he is making four automated payments to repay the loan in full. The last of these payments will be made in early December 2016. Tr. at 32-34; Ex. C.

The individual and his wife both testified about their efforts to repay other debts that have failed because the creditors cannot be located. With respect to a second, older vehicle loan, they have tried for several years, most recently in March 2016, to complete payment on the note but have failed to locate the lienholder, which has apparently gone out of business. Tr. at 28-29; Ex. 7 at 3. They have faced similar difficulty regarding one of the payday loans. As recently as March 2016, they have been referred from office to office, ultimately reaching a non-functioning phone number, and they have received no written communication from the creditor, so they feel that they have no way to discuss the loan or negotiate a settlement. Ex. 7 at 4; Ex. 12 at 61-66. I note that neither of these debts appear on the January 2016 credit report for the individual, even as charged-off debts. Ex. 4.

The individual's testimony at the hearing provided a favorable update regarding his repayment of delinquent federal tax liability. In late April 2016, he and his wife entered into a new agreement with the IRS to repay their overdue taxes at the rate of \$694 per month for five years, beginning in June 2016. Tr. at 48; Ex. A. He submitted reliable evidence that he has made the scheduled payments in a timely manner as of the date of the hearing. Ex. B. When completed, the agreement will resolve all outstanding liability to IRS. Ex. A. The monthly budget the individual submitted into the record demonstrates that he has sufficient income to meet this monthly payment. Ex. E. Moreover, he will not incur additional debt with the IRS, because he now declares no dependents, ensuring a tax refund each year, which will go toward further reducing his current debt. Tr. at 46.

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 DOE security clearance should be granted. I find that granting 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 observation, I note that the record contains no evidence of the individual living extravagantly at any time, either during periods of underemployment or now, when his work, and income, is steady. The debts he acquired arose from used car purchases and paycheck loans secured when money was tight. His tax liability similarly arose from a short-sighted practice of over-declaring dependents in order to maximize his take-home income when he had only sporadic employment. He consistently stated that the only reason he ever had financial problems was unemployment. *See, e.g.*, Tr. at 40. The facts in this case support his assertion.

I find that the individual's financial difficulties occurred under circumstances that are unlikely to recur and do not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Adjudicative Guidelines at Guideline F, ¶ 20(a). Their underlying cause was the individual's underemployment, a situation that was beyond his control. *Id.* at ¶ 20(b). That situation has been rectified by his obtaining his current position at the DOE facility, where he is no longer subject to the vagaries of employment opportunities available through the union hall. While underemployed, he may have employed questionable judgment in acquiring payday loans and declaring 99 dependents, but his rationale was to provide for his family within the boundaries of the law. He has clearly learned that neither of these approaches was wise in the long run, and he testified that he will never engage in either practice in the future. Furthermore, there are clear indications that his financial difficulties are being resolved and are under control. *Id.* at ¶ 20(c). The individual has engaged in good-faith efforts to repay overdue creditors. *Id.* at ¶ 20(d). He has attempted to contact each of the creditors that the LSO identified in its Notification Letter, with varying results. In two cases, he was unable to communicate with them, but in two others, including the IRS, he has entered into repayment agreements, and he is working with the final creditor to resolve a disputed amount of past-due debt. *Id.* at ¶ 20(e). I find that he has taken responsibility for his past debts and taken steps to prevent accumulation of debt in the future. I therefore find that the individual's behavior, and the record's reflection of the individual's whole person, adequately resolve this concern under Criterion L.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised 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 presented sufficient information to fully resolve those concerns. Therefore, I conclude that granting the individual's 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 DOE should grant the individual's DOE access authorization.

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

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William M. Schwartz
Administrative Judge

Office of Hearings and Appeals

Date: November 22, 2016