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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 14, 2016) Case No.: PSH-16-0066
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Issued: November 30, 2016

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

I. Background

The individual has been employed by DOE contractors for approximately 30 years at a DOE site in a position that requires him to hold access authorization. During this period of time, the Local Security Office (LSO) has conducted several personal security interviews (PSIs) with the individual on a variety of topics, including finances and workplace conduct. Most recently, the LSO conducted a PSI with the individual in May 2015, in an interview that focused on the individual’s mortgage delinquencies and his attempts to negotiate a mortgage loan modification. See Exhibit 9.

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.

Approximately two months later, the individual's employer advised the LSO that the individual had been issued a written warning for a security infraction that occurred in July 2015. *See* Exhibit 3 and Exhibit 7. While evaluating this information, the LSO received a credit report (August 2015) showing that the individual continued to be delinquent on his mortgage and had filed a petition for bankruptcy. *See* Exhibit 5. The individual had failed to report the bankruptcy petition to the LSO as required by DOE order. *See* DOE Order 472.2 at Attachment 4.

Subsequently, the LSO advised the individual in a letter (Notification Letter) dated June 16, 2016,² that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter (the Summary of Security Concerns), the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).³ *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. The LSO introduced 47 numbered exhibits into the record and presented the testimony of two witnesses, both personnel security specialists. The individual, represented by counsel, introduced 17 lettered exhibits (Exhibits A – Q) and presented the testimony of two witnesses, including that of himself. 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.⁴

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

² The individual's access authorization was apparently suspended in October 2015. Transcript at 140. The record provides no explanation as to the eight-month delay in the issuance of the Notification Letter.

³ See Section III below.

⁴ OHA decisions are available on the OHA website at www.energy.gov/oha/office-hearings-and-appeals. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha/security-cases.

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).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her 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 or her 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). Thus, 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 previously noted, the LSO cited one criterion as the basis for suspending the individual’s security clearance: Criterion L. Criterion L concerns information that an individual has engaged in conduct “which tends to show that the individual is not honest, reliable, or trustworthy....” 10 C.F.R. § 710.8(l). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an “individual’s reliability, trustworthiness and ability to protect classified information.” *See* Guidelines E and F of 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). With respect to Criterion L, the LSO alleges,⁵ *inter alia*, that the individual: (1) violated workplace rules on four occasions; (2) has been

⁵ The Summary of Security Concerns attached to the Notification Letter is ten pages in length and alleges security concerns relating to personal conduct, financial considerations, criminal conduct, and failure to safeguard classified or sensitive information. *See* Ex. 1. On the day of the hearing, the LSO modified the Summary of Security Concerns by striking nearly half of the allegations enumerated with respect to personal conduct, the majority of the alleged financial concerns, and all of the allegations with respect to criminal conduct and the failure to safeguard classified or sensitive materials. *See* Ex. 34. At the hearing, DOE counsel confirmed that those items stricken from the Summary of Security Concerns were no longer concerns to be considered during the administrative review hearing. Tr. at 6-7. Accordingly, this decision considers only those allegations in the modified Summary of Security Concerns as set forth in Exhibit 34.

delinquent on his home mortgage since at least 2011 (i.e., approximately five years as of the date of the Notification Letter); and (3) failed to honor commitments he made to the DOE during several PSIs between 2011 and 2015. Ex. 34 at 1-9.

In light of the information available to the LSO, the LSO properly invoked Criterion L.

IV. Findings of Fact and 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)⁶ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

Preliminarily, I note that the individual and the LSO entered into a Stipulations of Fact, dated October 10, 2016 (Stipulation or Stip.), with respect to many of the factual matters alleged in the Summary of Security Concerns, as it was modified by the LSO on the morning of the hearing (the Modified Summary of Security Concerns). *See* Ex. 34. Additionally, the individual did not dispute several factual matters not addressed in the Stipulation; however, in all instances where the individual contested the allegations, I have carefully considered the totality of the individual's testimony, the entirety of the written record, and the arguments presented by both the individual and the LSO in reaching the findings of fact set forth herein.

A. Administrative Judge Evaluation of the Evidence and Finding of Facts: Criterion L Security Concerns with Respect to Individual's Failure to Honor Commitments

The Modified Summary of Security Concerns refers to four different PSIs in which the individual is alleged to have made commitments, which he is then alleged to have not honored. *See* Ex. 34 at 7-9. In the Modified Summary of Security Concerns, the relevant PSIs are cited to substantiate that the individual made commitments to the LSO; however, no citations are provided to support the LSO's allegations that the individual failed to honor such commitments.⁷ During the pre-hearing conference, DOE Counsel stated that the LSO

⁶ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

⁷ The Summary of Security Concerns did cite the conclusions contained in an LSO case evaluation sheet as a separate factual support for this security concern. *See* Ex. 34 at 8 (item II.B.6). However, notwithstanding that this case evaluation sheet was cited in the Notification Letter, the LSO failed to produce it (Ex. 37) until

would provide witness testimony to evidence the individual's alleged failures to honor his commitments. At the hearing, the LSO presented the testimony of two personnel security specialists. *See* Tr. at 16-113. As described below, the testimony of the personnel security specialists was frequently vague, at times contradictory to the allegations set forth in the Modified Summary of Security Concerns, and at times inconsistent with documents the LSO had tendered to the record. Ultimately, there appeared to be a chasm between the LSO's security files (to the extent that they were produced) and the allegations set forth in the Modified Summary of Security Concerns which, when combined with the overly broad language of certain of the allegations, obscured any failures by the individual which may have actually occurred.

At the hearing, the individual testified on his own behalf. Although the individual does not appear to be financially sophisticated and he acknowledged having been confused by aspects of the mortgage modification process, the individual was candid and direct at the hearing and I concluded that his testimony was highly credible.

October 2011 PSI. The Modified Summary of Security Concerns states that during a PSI in October 2011,⁸ the individual promised to address certain financial accounts and/or provide certain financial documentation by November 30, 2011, and that "the individual failed to do so." Ex. 34 at 9 (items II.B.17, 18 and 19). However, on the morning of the hearing, the LSO submitted into the record (and provided to the individual's counsel at the same time) copies of documents received by the LSO from the individual and dated-stamped by the LSO on December 9, 2011. *See* Ex. 45. These documents relate to the financial matters discussed with the individual during the PSI. The personnel security specialist who conducted the PSI appeared at the hearing and testified that the documents provided by the individual had been insufficient as to content and that the individual had not provided proof of a certain cash payment referred to in his submission. Tr. at 19, 25. At the hearing, the personnel security specialist was unable to state whether the individual was advised of such deficiencies. *Id.* at 28-29. However, the LSO's case evaluation sheet,⁹ signed by the testifying personnel security specialist on the date the individual submitted the documents to the LSO in 2011, did not raise such concerns with respect to the

the morning of the hearing and, thereby, precluded both the individual and OHA from conducting a proper, timely examination of the document.

⁸ With respect to these occurrences, the Summary of Security Concerns cites a PSI dated September 15, 2011. *See* Ex. 1 at 9 (items II.B.17 and 19). However, the LSO introduced into the record no PSI dated or occurring on such date. On the morning of the hearing, the LSO modified the Summary of Security Concerns by hand to change the citation to a PSI dated October 31, 2011 (which had been previously submitted). *See* Ex. 34 at 9 (items II.B.17 and 19).

⁹ The case evaluation sheet prepared by the LSO with respect to the 2011 PSI and the individual's subsequent submissions was also first provided to the individual's counsel and submitted into the record on the morning of the hearing. *See* Ex. 43. This case evaluation contains relevant information that is exculpatory and, under the Part 710 regulations, was required to be made available to the individual. *See* 10 C.F.R. § 710.26(d). It is concerning that the LSO delayed delivery of such information until the morning of the hearing and it was part of a package of 14 new exhibits. The commencement of the hearing was delayed as the individual and his counsel attempted to review the late submissions on the morning of the hearing.

individual's submission and, instead, recommended continued access authorization for the individual with a file review in 12 months. Ex. 43. During her testimony, the personnel security specialist testified that she had not drafted the LSO's security concerns but "assumed" the individual's failure cited as a concern was a reference to the documents being submitted later than the date specified during the PSI.¹⁰ Tr. at 32-33. No concerns regarding the timeliness of the individual's submission were noted on the LSO's case evaluation sheet prepared contemporaneously with the individual's submission. *See* Ex. 43. (The individual's testimony suggests that the "late" submission was likely his second submission of those documents. Tr. at 152.) To the extent that the personnel security specialist is correct that the security concern alleging the individual's "failure" to meet his commitment is due to the individual's submission being nine days late, the Modified Summary of Security Concerns with respect to the October 2011 PSI is both confusing and disingenuous, especially in light of the LSO's failure to tender the documents received from the individual in 2011 until the morning of the hearing.

February 2013 PSI. The Modified Summary of Security Concerns states that during a PSI in February 2013, the individual promised to address certain financial accounts and/or provide certain financial documentation by March 11, 2013, and that "the individual failed to do so." Ex. 34 at 8 (items II.B.11 and 15).

One allegation states that the individual "signed a Certification to furnish document/information with a due date of March 11, 2013. The individual failed to do so." Ex. 34 at 8-9. That certification (again, first submitted by the LSO on the morning of the hearing) lists three items on which the individual agreed to provide documentation. Two of those items (a state tax lien and a medical account) were the bases of two separate security concerns listed in the original Summary of Security Concerns alleging, in each case, that the "individual had failed to" provide the promised information. Ex. 1 at 8 (items II.B.13 and 14). Those security concerns were stricken from the Summary of Security Concerns on the morning of the hearing, and were appropriate deletions in light of the LSO's own records reflecting that the individual had submitted the promised information with respect to the satisfaction of the state tax lien two days after the PSI and with respect to the medical account ten days prior to the date specified during the PSI. Ex. 23, Ex. 26. The third item requested was "proof mortgage is being modified (new loan)." Ex. 42. With respect to this item, the individual submitted to the LSO two general letters that he received from his mortgage lender with respect to "loan assistance." Ex. 24, Ex. 25. These letters were dated-stamped as received by the LSO two days after the PSI. At the hearing, the personnel security specialist who conducted the February 2013 PSI was vague when asked whether the individual had provided the information requested during the PSI, responding "I can't recall exactly without going into – further in the record. I can't recall if it was provided by that date [March 11, 2013] or not." Tr. at 46-47.

¹⁰ Although the testifying personnel security specialist testified that she had not "authored" the security concerns, she was the reviewing official who concurred in commencing the administrative review proceedings against the individual. *See* Tr. at 33, Ex. 37 at 2.

A separate matter alleged as a security concern arising from the February 2013 PSI is that “the individual was asked why he failed to address *any* of the accounts from the previous interview . . . and the individual responded that he had no contact information.” Ex. 34 at 8 (item II.B.12) (*emphasis added*). However, the discussion in the PSI cited in the Modified Summary of Security Concerns relates to the individual stating that he had previously spoken with the LSO about not knowing how to contact one specific creditor, the medical account referred to above. *See* Ex. 22 at 4-6. The personnel security specialist responds by making recommendations as to how to identify the creditor. Less than three weeks later (as reflected in the LSO’s own submissions), the individual provided the LSO with documentation that he had paid the account. Ex. 26.

There is nothing in the record that indicates the LSO communicated with the individual after his document submissions, all of which occurred before the deadline, to advise him of any deficiency in his submissions. It also appears that the individual’s access authorization was continued at that point; however, the LSO did not submit any case evaluation summaries prepared with respect to the February 2013 PSI and the individual’s subsequent submissions.

December 2013 PSI. The Modified Summary of Security Concerns states that during a PSI in December 2013, the individual promised to address certain financial accounts and/or provide certain financial documentation by January 30, 2013, and that “the individual failed to do so.” Ex. 34 at 8 (items II.B.7 and 10). Although the language in the Modified Summary of Security Concerns is very broad with respect to the individual’s commitments and failures, it cites a section of PSI in which the LSO specified the date by which the individual needed to provide “paperwork.” *See* Ex. 14 at 36; Ex. 34 at 8 (item II.B.7). Due to the ambiguity of this allegation, I focused my inquiry on the three subsequent allegations in the original Summary of Security Concerns, all of which relate to the December 2013 PSI and each relates to a specific commitment. Two of these allege that the individual “failed” to provide documentation or take certain actions as he had committed to do during the PSI; both were stricken from the Summary of Security Concerns on the morning of the hearing. Ex. 34 at 8 (items II.B.8 and 9). The third specific allegation set forth with respect to the December 2013 PSI (which allegation was not stricken from the Summary of Security Concerns) states that the individual allegedly failed to honor his commitment during the PSI to provide documentation with respect to a loan modification on his mortgage. Ex. 34 at 8 (item II.B.10). The PSI included a specific discussion requesting the individual to provide a letter to the LSO with respect to the loan modification that had been completed. Ex. 14 at 23, 31. At the hearing, the personnel security specialist who had conducted the PSI testified, in response to a question about whether the individual had provided any documentation with respect to his mortgage modification,¹¹ “We received some paperwork, but I don’t know the date and I can’t – you know, testify to that without referring to a document right now.” Tr. at 60. This testimony by the personnel security specialist suggests that the allegation that the individual failed to provide documentation with respect to his mortgage modification is inaccurate. The personnel security specialist

¹¹ The question asked by the DOE Counsel referred to documents on a “re-modification”; however, all of the portions of the PSI that were being referred to in the preceding questions related to the original loan modification that had been completed. Tr. at 60. *See* Ex. 14 at 31-33.

confirmed during his testimony that the individual's access authorization was continued after the PSI. *Id.*

While the personnel security specialist's testimony acknowledged that the individual had submitted "some paperwork" (seemingly undermining the allegation that the individual failed to provide documentation with respect to his mortgage modification), the LSO's submissions into the record of the proceeding include a package of financial documents received from the individual, which includes a copy of the individual's completed mortgage modification and associated correspondence from his lender. Ex. 13. These appear to match the description of the documents requested by the LSO during the PSI. (Other documents in the individual's package appear to relate to the two other items specifically addressed during the PSI, which the original Summary of Security Concerns alleged had not been provided to the LSO. *Id.* As noted in the preceding paragraph, those two allegations were stricken the morning of the hearing.) These documents were all dated-stamped by the LSO as received on January 14, 2014, which was more than two weeks prior to the deadline specified by the LSO during the PSI. *Id.*

May 2015 PSI. The Modified Summary of Security Concerns states that during a PSI in May 2015, the individual promised to address certain financial accounts and/or provide certain financial documentation by July 31, 2015. Ex. 34 at 7-8 (items II.B.1, 3 and 6). The individual submitted documentation on the payment of certain accounts, which the LSO date-stamped as received on July 29, 2015. Ex. 8, Ex. 11. The LSO's case evaluation sheet completed in August 2015 indicates that not all of the information requested was received (although the two items specifically noted in the case evaluation sheet as omitted by the individual were stricken as security concerns on the morning of the hearing and, therefore, are not included in the Modified Summary of Security Concerns). Ex. 37 at 2. *See* Ex. 34 at 7-8 (items II.B.2 and 4).

With respect to the mortgage modification, the Modified Summary of Concerns states that the LSO received documentation from the individual, however, it alleges that the information did not provide the LSO with the "answers" it sought with respect to the status of his mortgage. Ex. 34 at 7 (item 1). The LSO did not describe with any specificity, in either the Modified Summary of Security Concerns or in the testimony of its personnel security specialists, the information omitted from the individual's submissions. The information received by the LSO from the individual, also date-stamped July 29, 2015, included a copy of a letter from the third party working with the individual on the mortgage modification and a copy of the wire transfer of funds from the individual to the third party for its fees. Ex. 11 at 2, 3. While the LSO contends this information did not answer its questions, I note that it is as detailed as information submitted by the individual following prior PSIs, which had been accepted by the LSO and was apparently deemed sufficient on earlier occasions for the LSO to continue the individual's access authorization. *Cf.* Ex. 24, Ex. 25, Ex. 45. Following receipt of the individual's documentation, the LSO did not advise the individual that his submission had been deficient. Tr. at 234. According to the testimony of the personnel security specialist who conducted the PSI and recommended commencement of the administrative review proceedings, the individual's access

authorization would have been continued, as it had been in the past, had the individual's document submission been more complete. *Id.* at 88-89.

Analysis of Security Concerns with Respect to Commitments Made by the Individual. In the Modified Summary of Security Concerns, the LSO alleges that the individual made commitments in four separate PSIs which he failed to honor. As described above, the allegations are frequently described very broadly; however, in almost every instance where I could identify specific commitments made by the individual during a PSI, the LSO had submitted documents into the record that it had received from the individual to honor his commitments. Most of these documents were date-stamped as received by the LSO prior to the deadlines specified during the PSIs. In the one instance where the documents were received nine days after the deadline, the individual credibly testified that that was a resubmission of documents previously submitted on a timely basis. Even to the extent that he may have been mistaken on making a prior timely submission, a nine-day delay would not support a Criterion L security concern brought five years after the submission, particularly where the LSO had contemporaneously accepted the "late" submission and continued the individual's access authorization without comment as to any tardiness of the individual's submission. *See Ex. 43.*

In addition to the LSO's own records undermining the validity of allegations set forth in the Modified Summary of Security Concerns, the testimony of the personnel security specialists did not substantiate the "failures" of the individual which were alleged in the Modified Summary of Security Concerns. Instead, the testimony tended to equivocate, be vague, or contradict the broad language of the Summary of Security Concerns. Based on the foregoing, I conclude that the record as a whole does not support a finding that the individual failed to honor his commitments to the LSO and, therefore, the individual has sufficiently resolved the Criterion L security concerns alleged with respect such allegations.

**B. Administrative Judge Evaluation of the Evidence and Findings of Fact:
Criterion L Security Concerns with Respect to Financial
Considerations**

Although the LSO interviewed the individual over the years with respect to various financial matters, the financial matters raised in the Modified Summary of Security Concerns relate solely to the individual's delinquencies on his home mortgage. *See Ex. 34* at 2-7. A personnel security specialist testifying on behalf of the LSO testified that the individual's most recent credit report contained no other current delinquencies of any significance. *Tr.* at 53-54.

The individual acknowledges that he is delinquent on his mortgage. *Stip.* at 2-3. His mortgage arrearages began during a period when he was unemployed (or under-employed) and arbitrating the termination of his employment. At the time he was terminated, he had outstanding loans from a retirement account which he did not have the ability to repay and those loans were converted to taxable distributions from his retirement account. He also withdrew additional amounts from his retirement account for living expenses during the

period he was arbitrating his termination. By the time his employment was reinstated, he had accrued state and federal tax liabilities in excess of \$50,000, largely attributable to the taxable distributions from his retirement account. The individual fell behind on his mortgage as a result of his period of unemployment and decided, once he was reinstated by his employer, to prioritize payment of his tax liabilities. He has subsequently paid in full his state and federal tax liabilities. Ex. E.

Subsequent to becoming delinquent on his mortgage, the individual attempted to modify his mortgage on several occasions. The individual initially paid a fee to a third party to negotiate a loan modification and, after a significant period of time, discovered the third party was not a legitimate business and had defrauded its clients. After discovering that he had been a victim of a fraud, the individual continued to pursue a mortgage modification and believed that he had obtained a modification; however, after making the first two payments under the “modified” mortgage, the individual received notice that his home was still in foreclosure and that there had been an error in the documentation to modify the mortgage. Tr. at 145. The individual questioned the appropriateness of the increased mortgage payments proposed by his lender as part of “correcting” the previously negotiated modification and, subsequently, retained the services of another third party. *Id.* at 144-145, 180-182. This third party succeeded in negotiating a modification. To become effective, this modification required that the individual make the first three “modified” payments on time. The individual made the first payment and, thereafter, incurred a reduction in income following the suspension of his access authorization and failed to make any other payments under the offered loan modification (or on the existing mortgage itself). Stip. at 2-3; Tr. at 220. During the approximately six-year period preceding the hearing, the individual made a total of three monthly mortgage payments. *Id.* at 229-230.

With respect to his failure to make any additional monthly mortgage payments, the individual testified that the monthly statements he received from his mortgage lender directed him not to make payments since his mortgage was in foreclosure. *Id.* at 147, 213. *See* Ex. F. While I have concerns about the correctness of the individual’s interpretation of his mortgage statement, the LSO’s personnel security specialist, who testified that he handled the majority of the LSO’s financial cases, concurred that he understood the language on the individual’s mortgage statement in the same way as the individual. Tr. at 78, 92-93, 107-108.

The individual credibly evidenced that his mortgage delinquency resulted from his unemployment (both directly as a result of the reduction in his income during the period of employment and indirectly as a result of his prioritizing payment of the tax debt that arose from taxable distributions from a retirement account during his period of unemployment). Further, he evidenced financial responsibility through his continual attempts to modify his mortgage and by payment of over \$50,000 in tax liabilities following the reinstatement of his employment. His delinquency originated due to circumstances outside of his control (i.e., his unemployment) and I cannot fault the individual for prioritizing payment of tax liabilities. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 20(b). His attempts to modify his mortgage were frustrated when he fell victim to fraud by an organization which purported to assist distressed homeowners and, later, by his mortgage lender repudiating a fully

completed loan modification. The individual was on course to complete another mortgage modification when he incurred a reduction in income following the suspension of his access authorization. Tr. at 140. His continual attempts to effectuate a mortgage modification evidence a good faith effort to resolve his mortgage debt. Cf. Adjudicative Guidelines, Guideline F at ¶ 20(d).

Based upon the foregoing, I find that the individual has sufficiently resolved the Criterion L security concerns with respect to financial irresponsibility.

**C. Administrative Judge Evaluation of the Evidence and Finding of Facts:
Criterion L Security Concerns with respect to Violations of Work Rules**

The Modified Summary of Security Concerns enumerates four instances in which the individual is alleged to have violated work rules and, with respect to these instances, the individual does not dispute the facts cited in the Notification Letter. *See* Ex. 34; Stip. at 1, 3. The individual does, however, argue that the facts cited in the Notification Letter do not fairly reflect the events which occurred nor do they sustain an adverse finding with respect to his honesty, reliability or trustworthiness.

Letter of Termination (2006). The individual acknowledges that his employer terminated his employment in 2006, citing the individual's violation of company work rules as the basis for the termination. Stip. at 1. The individual has consistently denied the allegations made against him and he contested his termination in an arbitration proceeding. Prior to the arbitrator issuing a ruling, the employer rehired the individual with the period during which he was contesting his termination being converted to an unpaid suspension. Tr. at 228-229. Upon his return to work (2007), the individual's access authorization was reinstated and, after one year, the incident was purged from his personnel file. Stip. at 1.

The LSO cites the issuance of termination letter to evidence that the individual has a history of violating work rules; however, the individual's alleged workplace violation was set forth in two different sections in the original Summary of Security Concerns and was stricken from both. Ex. 34 at 1 (item I.A.4), 1-2 (item I.A.5), 10 (item IV.A.1). Since the LSO removed the underlying conduct from consideration as security concern, I need not further consider this issue. This is especially true in this case where the individual's employment and access authorization were reinstated nine years ago, without recurrence of similar alleged behavior.

Mistakenly Allowing Unauthorized Access (2013). The individual acknowledges receiving a written warning from his employer for mistakenly allowing a site employee access to a limited area. Stip. at 1. From the time the individual was initially asked about the incident, he has acknowledged his error. Following his employer's evaluation of the incident, his employer reconfigured the area where this incident occurred to reduce the chance of a recurrence; such reconfiguration of the physical space also suggests that the original configuration contributed to the individual's error. Ex. 16 at 2, 4; Ex. 17 at 3. The individual has not repeated the error. Tr. at 227. He has subsequently received an "excellence" nomination from his employer for confiscating two expired badges, which supports his

contention that he is diligent in protecting restricted areas from unauthorized access. Stip. at 3; Ex. C. For these reasons, the behavior which led to the individual receiving a written warning is unlikely to recur.

Possession of Government-Issued Cell Phone Within a Restricted Area (2015). In the performance of his duties, the individual sometimes carries a government-issued cell phone which is prohibited in sections of his work site. The individual acknowledges having mistakenly entered a restricted area with a government cell phone in his pocket. Stip. at 1. He credibly testified that that was the only instance that he had committed such a violation in the prior nine years and he described the actions that he takes to prevent such incidents. Tr. at 225-227.

Failure to Report Bankruptcy Filing to Security (2015). The individual acknowledges that he filed a bankruptcy petition and, although he was aware of the requirement to report to such filings to DOE, he failed to do so. Stip. at 3. Throughout his PSIs, the individual had consistently stated that he wanted to resolve his financial issues without filing for bankruptcy; this was collaborated by the personnel security specialist who testified at the hearing on behalf of the LSO. Tr. at 93. However, when the individual commenced working with a debt relief group in 2015 with respect to the modification of his mortgage, his home was already in foreclosure and he was advised that he needed to file a “skeleton” bankruptcy petition to stop the foreclosure. He filed the initial petition without the intent to file any subsequent documents. This filing apparently stopped the mortgage foreclosure in order that the individual could continue negotiating a mortgage modification. After the filing, the individual continued to pay all of his financial obligations, other than his mortgage which was already in foreclosure. Tr. at 204-209, 222-224. Since the individual filed no subsequent documents, the bankruptcy court dismissed his petition (as was the individual’s expectation) approximately three weeks after he filed the petition. Ex. 5 at 1.

The individual testified that he was aware of the requirements to report bankruptcy filings to DOE; however, he did not understand that his “skeleton” filing, with no intent to file subsequent documents or proceed towards bankruptcy relief, required DOE notification. Tr. at 224.

The individual’s interpretation of the notification requirement is erroneous. *See* DOE Order 472.2 at Attachment 4. However, there is no indication that he was attempting to deceive the LSO, which was regularly interviewing him with respect to his mortgage, or that he was attempting to avoid or discharge any other indebtedness. As previously noted, I found the individual highly credible, although not financially sophisticated. For these reasons, I have concluded that the individual’s failure to notify DOE of his bankruptcy filing occurred as a result of a genuine misunderstanding of the application of the requirement in his atypical circumstances and, having been properly informed, is unlikely to recur.

Analysis of Security Concerns with Respect to Violations of Work Rules. As noted above, I have concluded that the individual violated work rules in three instances – mistakenly permitting unauthorized access (2013), possession a government cell phone in a restricted area (2015), and failure to notify DOE of a bankruptcy filing (2015). Each incident

occurred under unique circumstances, as described above, and it is unlikely that such behavior will recur. *Cf.* Adjudicative Guidelines, Guideline E at ¶ 17(c). Although even a single incident of violation of work rules, if sufficiently severe, could warrant termination of access authorization, the individual has brought forward sufficient evidence and testimony to resolve the concern that these incidents, whether considered individually or in the aggregate, cast doubt on the individual's honesty, reliability or trustworthiness. *Cf.* Adjudicative Guidelines, Guideline F at ¶ 17(c).

Based upon the foregoing, I find that the individual has resolved the Criterion L security concerns with respect to violations of work rules.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with Criterion L. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: November 30, 2016