

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing	)	
	)	
Filing Date: October 21, 2016	)	Case No.: PSH-16-0081
	)	
_____	)	

Issued: January 9, 2017

---

**Administrative Judge Decision**

---

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXXX (“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, I conclude that the Individual’s access authorization should be restored at this time.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s indebtedness and failure to file and pay federal income taxes. In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in July 2016.

On September 27, 2016, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained

---

<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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(l) (hereinafter referred to as Criterion L).<sup>2</sup>

After receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing convened pursuant to 10 C.F.R. § 710.25 (e) and (g), the DOE introduced thirteen exhibits (DOE Exs. 1-13) into the record. The Individual presented his own testimony and the testimony of his mother and one co-worker. The Individual also submitted three exhibits (Ind. Exs. A-C). *See* Transcript of Hearing, Case No. PSH-16-0072 (Tr.).

## II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that, in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the Individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his [or her] eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the Individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). This standard implies that there is a presumption against granting or restoring a security clearance. The regulations further instruct me to resolve any doubts concerning the Individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

## III. Notification Letter and Associated Security Concerns

As previously noted, the LSO cites Criterion L as the basis for suspending the Individual’s security clearance. The Criterion L derogatory information that the LSO relies upon is (1) the Individual’s

---

<sup>2</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).

outstanding delinquent debts in the amount of \$3,730, (2) the Individual's acknowledgement in a 2010 Letter of Interrogatory and a 2012 PSI of the outstanding delinquent debts, and (3) the Individual's admission in a July 2016 PSI that he had not filed his 2013, 2014, and 2015 federal income tax returns. DOE Ex. 1; *see* DOE Ex. 10; DOE Ex. 11 at 72, 76-79, 81-83, 87, 89; DOE Ex. 12 at 115. The 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. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline F, at ¶ 18 (Adjudicative Guidelines).

#### **IV. Hearing Testimony and Evidence**

The Individual does not dispute the accuracy of the information cited in the Notification Letter. In 2010 and 2012, the Individual acknowledged the existence of outstanding delinquent indebtedness and told the LSO that he would pay that indebtedness. DOE Ex. 12 at 115; DOE Ex. 13. A July 2016 credit report revealed that the Individual continued to have a number of outstanding debts, including collection accounts totaling \$2,677, a charge-off account of \$771, and a past due account of \$282. *Id.* In addition, as of July 2016, the Individual had not filed his 2013, 2014, or 2015 federal tax returns. DOE Ex. 1 at 2.

At the hearing, the Individual attributed the outstanding indebtedness to his ex-wife's medical issues and related addiction to pain medication. The Individual and his mother both testified that during their marriage the Individual and his ex-wife were able to manage their finances until her medical issues surfaced and she developed an addiction to pain medication. Tr. at 11, 23-25. The Individual testified that his ex-wife was responsible for paying their bills, often hiding mail from him, which is why he would not realize that bills had not been paid until the electricity was shut off. Tr. at 25. When he suggested that he begin paying the bills, she would get upset, and he would let it go to keep the peace. Tr. at 25. He testified that before he knew it, they were behind on all their bills. Tr. at 25. She filed for divorce in 2009, but they worked through it and got back together. Tr. at 26. She filed for divorce again in 2013 and they completed the divorce in 2014. Tr. at 26.

The Individual attributed his failure to file his 2013, 2014, and 2015 tax returns to issues related to his divorce. The Individual and his mother testified that he did not file his taxes for 2013, 2014, and 2015, because he was confused as to how to file in light of the divorce and how to claim their children. Tr. at 12, 33. His former wife filed separately, taking the children as exemptions, and received a hefty refund, although he was paying child support and thought that the exemptions for the children should have been divided between them. Tr. at 12, 29-30, 40-41. The Individual testified that the divorce took a toll on him, attributing his failure to file taxes to his not thinking straight for a while. Tr. at 33.

At the hearing, the Individual testified that he paid his delinquent debts and filed his tax returns for the years in question and paid the taxes due. He submitted a credit report dated November 28, 2016, which shows no overdue accounts. Ind. Exs. A, B, C. Further, the credit reports show only two debts, his home mortgage and his vehicle. Ind. Exs. A, B, C. The Individual and his mother both testified that the Individual filed his income tax returns and paid all the taxes due. Tr. at 14, 30-31. The record shows that the Individual filed his 2013, 2014, and 2015 taxes on September 1,

2016, before receiving the Notification Letter. DOE Ex. 2. He is presently waiting to hear from the Internal Revenue Service (IRS) regarding what penalty and interest he may owe. Tr. at 30.

The Individual sought to establish that his delinquent debts and failure to file tax returns were isolated situations related to his prior marriage and divorce. He testified that his prior indebtedness did not result from extravagance or a failure to live within his means. Ex. 11 at 94-95. This statement was corroborated by his co-worker, who testified that he never saw any unexplainable or excessive expenditures. Tr. at 18. The co-worker also corroborated the Individual's description of the difficulties during the divorce, stating that the Individual would tell his supervisors that he could not do a particular job, when he believed that he could not concentrate to the degree needed to complete the job. Tr. at 20. He further testified that the Individual stringently follows all rules and is a responsible individual. Tr. at 19.

## **V. Administrative Judge's Findings 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should be restored. I find that restoring 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 matter, I find that the LSO properly identified security concerns under Criterion L, regarding the Individual's history of delinquent debts and failure to file his federal income tax returns for several years. A 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. Adjudicative Guidelines, ¶ 18. Conditions which may raise a security concern would be (1) the inability or unwillingness to satisfy debts and (2) failure to file annual Federal income tax returns. Adjudicative Guidelines, ¶ 19 (a), (g).

In considering whether the Individual has resolved the properly raised security concerns, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate the Criterion L 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;
- (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, ¶ 20 (a), (c)-(d). Given the above factors, I find that the Individual has resolved the security concerns raised by the LSO.

With respect to the Criterion L concern regarding the Individual's unpaid debts, I find that the indebtedness and delinquencies were isolated instances attributable to his prior marriage. The fact that the Individual has since divorced means that the circumstances from which the indebtedness and delinquencies arose no longer exist. Further, the fact that the Individual has eliminated the delinquencies resolves the concerns about his indebtedness. Likewise, the Individual has established that his failure to file his Federal tax returns was an isolated lapse in judgement. The Individual has now filed those returns, paid the taxes due, and is committed to paying any interest and penalties once he is advised of the amount. The fact that the Individual resolved these issues prior to the issuance of the Notification Letter is consistent with the testimony of his co-worker that he is a responsible individual. Given the circumstances surrounding the issues raised in the Notification Letter, the Individual's successful resolution of those issues, and the other testimony at the hearing concerning his honesty and reliability, I find that he has satisfied paragraphs 20 (a), (c), and (d), above.

Based on the foregoing, I find that he has resolved the concern raised by his outstanding debts and his failure to pay his 2013, 2014, and 2015 Federal taxes.

## **VI. Conclusion**

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise 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 those criteria. I therefore find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. 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.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals

Date: January 9, 2017