

to hold a security clearance and that her security clearance was suspended. Specifically, the Notification Letter stated that the LSO possessed information falling within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (Criterion L).²

Upon her receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The LSO submitted seven exhibits (Exs. 1-7) into the record, and the Individual submitted five exhibits (Exs. A-E). At the hearing, the Individual presented her own testimony along with the testimony of her financial advisor (Advisor).

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 (1998) (“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).

An individual must come forward with evidence to convince the DOE that restoring 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

² Criterion L refers to information that suggests that an individual has “[e]ngaged 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.” 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.* In considering these factors, the Administrative Judge also consults Adjudicative Guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).

III. The Notification Letter and the Security Concerns at Issue

The LSO cites an August 2016 credit report showing that the Individual had eleven outstanding delinquent accounts and a number of charged off credit accounts. Ex. 4. Additionally, the Individual admitted in the 2016 PSI that she failed to resolve her delinquent debts as promised in the earlier 2014 PSI and 2015 PSI. *See* Ex. 5. Given the August 2016 credit report and the Individual's admissions in the 2016 PSI, the LSO had sufficient ground to invoke Criterion L. 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. Adjudicative Guidelines, Guideline F, at ¶ 18.

IV. Findings of Fact

During her initial 2014 PSI with the LSO, the Individual acknowledged that she had several delinquent accounts. *See* Ex. 7. Most notably, the Individual had delinquent accounts with three creditors that totaled approximately \$6,600. *See* Ex. 7 at 18, 25, and 34. The LSO interviewer discussed each delinquent account with the Individual, and the Individual gave her assurance that she would take action to resolve her outstanding debts.³ For instance, the Individual stated that she intended to make an arrangement with one creditor (Creditor 1) to pay off the account. *Id.* at 24. Similarly, for a second creditor (Creditor 2), she told the LSO interviewer that she would contact the company to work out a payment arrangement. *See id.* at 28-30. And the Individual stated the same for the third creditor (Creditor 3): she would contact the creditor and make payment arrangements. *Id.* at 36.

After discussing each delinquent account with the Individual, the LSO interviewer discussed consumer credit counseling. *Id.* at 43. Near the end of the 2014 PSI, the Individual listed the following actions she intended to take to avoid future financial difficulties: call the creditors to

³ The LSO interviewer also stated, and the Individual confirmed, that during a 2010 background investigation the Individual and an investigator discussed two delinquent accounts. Ex. 7 at 33. At that time, the Individual stated she would take action to resolve those accounts. *Id.* However, those two accounts remained delinquent at the time of the 2014 PSI, and the Individual admitted that she failed to follow through on her statement that she would take action. *Id.*

make a payment, pay off debts, and “don’t even think about opening anything or borrowing anything else.” *Id.* at 55. Finally, the LSO interviewer informed the Individual that she would be interviewed again within ten months. *Id.* at 57.

A new garnishment against the Individual prompted the 2015 PSI. Ex. 6 at 9. During the interview, an LSO interviewer and the Individual again discussed the Individual’s financial difficulties and delinquent accounts. Ex. 6. And again, the Individual gave assurances that she would make arrangements to bring the accounts current.⁴ For instance, the Individual acknowledged that the Creditor 1 account was still delinquent and that she had not yet contacted the creditor. *See id.* at 27-28. As for the Creditor 2 account, the Individual acknowledged that her failure to take action to resolve the debt resulted in the PSI-precipitating garnishment. *Id.* at 9-10. Moreover, the Individual admitted that she had not made any arrangements to resolve her delinquent account with Creditor 3. *Id.* at 26. After discussing the Individual’s delinquent accounts, the LSO interviewer went through the Individual’s personal finances. *Id.* at 37-48. After tabulating the Individual’s stated income and expenses, including the garnishment, the LSO interviewer determined that the Individual had a surplus of about four hundred dollars. *Id.* at 50. When questioned about her failure to follow through with resolving her delinquent accounts, the Individual did not provide a rationale. *Id.* Instead, the Individual, again, gave her word that she would contact the creditors to make arrangements. *Id.* at 31. Furthermore, the LSO interviewer advised the Individual to contact a debt counseling professional for assistance; in response, the Individual stated that she would contact a professional regarding resolving her debt. *Id.* at 51-52.

During the 2016 PSI, the LSO interviewer confronted the Individual with her previous promises to contact her creditors and make payment arrangements to resolve her delinquent accounts. Prior to the 2016 PSI, the LSO retrieved a credit report for the Individual. Ex. 5 at 11. The Creditor 1, Creditor 2, and Creditor 3 accounts were still listed as delinquent, among other accounts. As the LSO interviewer addressed each delinquent account, the Individual admitted that she failed to take action to resolve several of them.⁵ For instance, the Individual admitted that she contacted Creditor 1, made payment arrangements, and then promptly defaulted. *Id.* at 28. Furthermore, the Individual’s credit report demonstrated that she had recently defaulted on an account she initiated with another creditor. *Id.* at 32-35. When asked why she failed to make payments to this creditor, the Individual could not provide a reason. *Id.* at 42. The Individual also admitted that she failed to follow through with her statement that she would contact a debt counseling professional. *Id.* at 43. Finally, the LSO interviewer again went through the Individuals monthly income and expenses and determined that the Individual should have a small monthly surplus; however, the Individual then admitted that she gave in excess of her surplus, about \$400, to her daughter and grandchildren each month. *Id.* at 50.

⁴ Two accounts that the LSO identified as delinquent (other than Creditors 1, 2, and 3) during the 2014 PSI were apparently resolved prior to the 2015 PSI.

⁵ One account that the LSO identified as delinquent during the 2015 PSI was apparently resolved prior to the 2016 PSI.

At the hearing, the Individual's Advisor testified that the Individual has been a client of the Advisor's debt management and credit counselling firm since January 2017. Tr. at 12. The Advisor explained that the firm negotiates with creditors to reduce its client's debt and then arranges payment to the creditors from a special trust account the firm creates for its client.⁶ *Id.* at 13-17. The Advisor testified that the firm opened a trust account for the Individual. *Id.* at 13. Each month, \$232 is automatically withdrawn from the Individual's bank account and deposited into her trust account. *Id.* at 14-16. The Advisor's firm determined that the Individual has six delinquent accounts where the creditor could still act against the Individual. *Id.* at 17; *see* Ex. B (Settlement Program Overview.) If the Individual maintains the firm's services, the Advisor believes that the Individual can resolve all six delinquent accounts within 30 months. Tr. at 22.

The Individual testified that, as of the date of the hearing, she had deposited \$464 into the trust account. *Id.* at 35. The Individual stated that a number of factors led to her financial problems: she wanted to provide financial help to her 39 year old unemployed daughter and three grandchildren, and she needed to provide financial help to her infirm fiancé by way of mortgage payments. *Id.* at 42. The Individual testified that it "seemed like it all . . . piled up like a big old circle to where it just took control of me." *Id.* at 42. As a result of her security clearance issues, the Individual has informed her daughter and her fiancé that they can no longer expect financial assistance. *Id.* at 45, 53. The Individual now has a budget that insures her expenses are paid and which provides her with a small surplus. *Id.* at 49. Moreover, the Individual is now focusing on the following five principles: making good decisions; recognizing problems and addressing them; accepting responsibility for mistakes; learning from experience; and staying on her budget. *Id.* at 48-49. The Individual testified that she is focused on the importance of retaining her clearance and her job. *See id.* at 55.

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 security clearance should not be restored at this time.

The Criterion L concerns center on the Individual's significant number of delinquent and charged off debts as well as her failure to fulfill the commitments she made in the 2014 PSI, and then again in the 2015 PSI, to resolve these debts. The Individual does not dispute the facts outlined in the Notification Letter's Summary of Security Concerns. While I appreciate the financial difficulties that the Individual faced, I cannot conclude that the Individual acted responsibly under the circumstances so as to sufficiently resolve the DOE's concerns. Although she made a good faith-effort to pay off some of her debts, the majority of the debts have not been paid off. Indeed, based

⁶ In his experience, the Advisor believes that the Individual's creditors will settle for payment of approximately 50 percent of the amount owed. Tr. at 18, 19. As to the six accounts where creditors have active claims, the Individual owes approximately \$8,000.

on her statements in her previous PSIs, the Individual not only knew about her delinquent debts, but failed to take action to resolve them. Her inaction is represented by her consistent failure to address her delinquent accounts with Creditor 1, Creditor 2, and Creditor 3. Instead, the Individual continued to give her daughter and grandchildren money in excess of her monthly surplus income. At each stage, she failed to offer any explanation as to why she did not take action to address many of her financial issues. Regarding trustworthiness specifically, the Individual made several promises that she would contact her creditors, and in many instances she failed to either contact the creditor or follow through with payment arrangements after making contact.

Regarding the Adjudicative Guidelines' mitigating factors, only two are relevant to this case. First, the Individual is receiving counseling for the problem and there are clear indications that the problem is being resolved. *See* Adjudicative Guidelines, Guideline F, at ¶ 20(c). Second, the Individual has initiated a good-faith effort to repay overdue creditors. *See id.* at ¶ 20(d). However, her recent positive strides come after several prior opportunities to do the same. The Individual had since her September 2014 PSI to take the same positive action. During the PSI, the LSO interviewer advised her of the benefit of a credit counselor. She was similarly advised during her 2015 PSI, and she even stated that she would contact a counselor. However, she waited until after her 2016 PSI and the pendency of this administrative proceeding to seek debt counseling. Furthermore, in prior cases involving financial considerations, Administrative Judges have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *See, e.g., Personnel Security Hearing, Case No. TSO-1078 (2011); Personnel Security Hearing, Case No. TSO-0878 (2010); Personnel Security Hearing, Case No. TSO-0746 (2009).*⁷ Based upon my evaluation of the record and the testimony at the hearing, it is too soon to find that the Individual has established a sustained pattern of financial responsibility. Given the recency of her payments to the trust fund and her pattern of failing to follow through with resolving her financial issues, I cannot conclude that the concerns raised by her outstanding debt are resolved. *See* 10 C.F.R. § 710.7(c). In sum, I find that the Individual has not resolved the security concerns arising from the Criterion L derogatory information contained in the Notification Letter.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information

⁷ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at www.energy.gov/oha.

to resolve the security concerns raised by the Criterion L derogatory information recorded in the Notification Letter. Thus, I cannot conclude that restoring the Individual's suspended DOE access authorization will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should not be restored.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: March 17, 2017