

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). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented the testimony of four witnesses: two supervisors, a co-worker and his girlfriend. He also testified on his own behalf. The DOE counsel did not present any witnesses. The DOE and the individual submitted a number of written exhibits prior to the hearing.

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 denial"); *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 restoring 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 Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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

2/ Criterion L relates, in relevant part, to information that a person 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).

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 in favor of the national security. *Id.*

III. Finding of Fact

The individual's April 2012 PSI and April Letter of Interrogatory revealed that the individual has a number of delinquent debts including a collection account in the amount of \$176, a charged-off account in the amount of \$2,182 and another delinquent account in the amount of \$855. *See* DOE Exh. 1. The individual's PSI also revealed that in February 2010, a civil judgment was entered against the individual regarding one of these accounts. *Id.* In addition, the individual owes \$3,100 in delinquent State tax debt for 2008, 2010 and 2011. *Id.* He also owes \$9,000 in delinquent Federal tax debt for the same years. *Id.*

During his April 2012 PSI, the individual admitted that he is currently not living within his means as his monthly net income is \$2,800 and his monthly expenses are \$3,023 excluding his mortgage which was 30 days past due at the time. *Id.* Also, during a PSI conducted on October 25, 2005, the individual was made aware of and acknowledged his understanding of DOE's concerns regarding financial responsibility. *Id.* Despite his acknowledgment and understanding, he continued to be financially irresponsible. *Id.* In addition, both the individual's 2005 and 2012 PSIs revealed that the individual had filed for bankruptcy in October 1992. *Id.*

IV. Analysis

I have thoroughly considered the record in 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). 3/ After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be 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.

A. Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites one potentially disqualifying criterion as the basis for suspending the individual's security clearance, Criterion L.

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding her conduct, to include knowledgeable participation, the frequency and recency of her conduct, the age and maturity at the time of the conduct, the voluntariness of her participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for her conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

To support its reliance on Criterion L, the LSO states that the individual has established a pattern of financial irresponsibility and has demonstrated an unwillingness or inability to satisfy his debts. The LSO cites a number of delinquent outstanding debts. The individual's failure or inability to live within his means, to satisfy his debts and to meet his financial obligations, raises a security concern under Criterion L, because his actions may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all which also call into question the individual's reliability, trustworthiness and ability to protect classified information. *See* Guideline F of the *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).

B. Mitigating Evidence

During the hearing, the individual acknowledged his pattern of financial irresponsibility and failure to meet his financial obligations. The individual's tax problems began in 2008 when he withdrew money from a retirement account to pay down debt and did not claim it on this taxes. Transcript of Hearing (Tr) at 62. He subsequently began owing money to the IRS. According to the individual, the IRS garnished his check in 2011 when he did not respond to a notification from them. *Id.* at 63. The individual asserted that he did not receive the letter from the IRS because his girlfriend's daughter unintentionally and without the individual's knowledge placed the letter in a drawer. *Id.* at 64. Once his check was garnished, the individual asserts that he fell behind on his bills. *Id.* at 65. The individual testified that in the past he was "not good with his money," but he is now back on track and living within his means. *Id.* at 53, 54 and 57. He testified that after refinancing his car and withdrawing money from the refinance, he has been able to pay off his delinquent debt and pay down about \$4,000 in back taxes. *Id.* at 50. The individual provided documentary evidence indicating that his delinquent accounts have been paid, his State taxes have been paid, and that he is now on a payment plan with the IRS to pay off the remaining balance of his tax liability. *See* *Indiv. Exh. A-D*. The individual's documentary evidence also indicates that the individual paid off his delinquencies three to four months prior to the hearing. In addition, the individual testified that, while he has the ability to pay his own bills, he will be transferring his check to his girlfriend's account to manage so that he can be assured that his bills are paid in a timely fashion. *Id.* at 54.

C. Hearing Officer Evaluation of Evidence

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that he is reliable and trustworthy, and that he is no longer subject to pressure, coercion, exploitation or duress. For the reasons set forth below, I find that the individual has not provided sufficient information to resolve the Criterion L concerns at issue.

During the hearing, the individual acknowledged his pattern of financial irresponsibility, but stated that he is now back on track, has paid off his delinquent accounts and currently has a payment plan with the IRS to resolve his tax liability. I commend the individual for taking the initiative to try to pay off all of his outstanding debts and to maintain a payment plan with the IRS. In prior cases involving financial irresponsibility, Hearing Officers 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 *Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). Here, it is simply too early for me to find that the individual has demonstrated a sustained pattern of financial responsibility for a significant period of time relative to his lengthy past period of financial irresponsibility. While the individual maintains that he is now living within his means, he only recently, three to four months prior to the hearing, began to rectify his financial issues. Therefore, his period of reformation has only recently begun. Given the individual’s pattern of financially irresponsible behavior, I am not yet convinced that the chances of a return to his previous behavior are acceptably low. Based on the foregoing, I find that the individual has not yet mitigated the security concerns associated with Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in possession of the DOE that raises 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 find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criterion L. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual’s access authorization should not 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.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: November 1, 2012