***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:	January 28, 2014	)
		) Case No.: PSH-14-0004
		)

Issued : April 7, 2014

Administrative Judge Decision

Ann S. Augustyn, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization[1] 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 Adjudicative Guidelines, I have determined that the DOE should not restore the individual's access authorization.

I. Background

The individual works for a DOE contractor in a position that requires him to hold a DOE security clearance. During a routine background re-investigation, some derogatory information surfaced relating to a number of matters, including the individual's outstanding tax liabilities and other debts. When the Local Security Office (LSO) was unable to resolve the derogatory information during a personnel security interview (PSI), it requested and received permission to initiate an administrative review proceeding.

[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.

In December 2013, 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. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the DOE security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).[2]

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting a hearing, and I was appointed the Administrative Judge[3] in the case. At the hearing that I conducted, two witnesses testified. The individual presented his own testimony and that of one additional witness. The DOE did not present any witnesses. In addition to the testimonial evidence, the LSO submitted 14 exhibits into the record; the individual tendered eight exhibits. 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.

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 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

[2] Criterion L refers to information indicating 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. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . 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).

[3] Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. *See* 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

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 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, there is only one criterion at issue in this proceeding, Criterion L. To support its charges, the LSO alleges that the individual: (1) provided inconsistent information during the security clearance process about a variety of matters, (2) has eight outstanding collection accounts totaling $10,346, (3) owes approximately $14,000 in delinquent Federal taxes for the tax years 2003, 2004, 2005, 2006, 2009, and 2010, (4) has an outstanding Federal tax lien in the amount of $9,417, which was filed against him in October 2007, (5) withdrew money from his retirement account and cannot account for where he spent some of the money, and (6) admitted that he has not lived within his means.

As an initial matter, I find that that the individual's inconsistent responses regarding his tax delinquencies, his failure to file or pay Federal income taxes, the Federal tax lien levied against him, his delinquent child support payments, his overdue bills, his felony child abuse charge, his workplace discipline record and his termination from a former employer raise security concerns under Criterion L. Failure to provide truthful and candid answers during the security clearance process can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See* 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 at Guideline E (Adjudicative Guidelines), ¶ 15.

In addition, I find that the individual's outstanding debts, delinquent Federal taxes, outstanding Federal tax lien, and inability to live within his means raise security concerns under Criterion L. 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, raise questions about a person's ability to comply with rules and regulations which, in turn, cast doubt on a person's reliability, trustworthiness and ability to protect classified information. *See* Guideline F, ¶ 18 of the Adjudicative Guidelines.

IV. Findings of Fact

During his employment with various DOE contractors over the last 23 years, the individual has completed several security forms. While the 2013 security form is at issue in this proceeding, relevant information is contained in security forms that the individual executed in 1990, 1995, 2000, 2002 and 2007 that has a bearing on some of the arguments that he raises in this case.

In September 1990, the individual completed a Questionnaire for Sensitive Positions (QSP) in which he revealed that he had been arrested and charged in June 1974 with child abuse. Ex. 13 at 294-308. In 1995, he executed another QSP and again revealed that he had been arrested for child abuse in 1974. *Id.* at 258. In July 2000, he executed a Questionnaire for National Security Positions (QNSP), on which he failed to list the 1974 child abuse charge on the security form. *Id.* at 220, 222. He did, however, reveal that he had several delinquent accounts on that form. *Id.* at 220.

In February 2002, the individual filed a Chapter 7 Petition for Bankruptcy. Ex. 11 at 10. His total liabilities at the time were $25,267, and his total assets were $1583. *Id.* He received a bankruptcy discharge in May 2002. *Id.* The LSO decided to continue the individual's security clearance after the individual filed for bankruptcy. Ex. 8.

In March 2002, he completed another QNSP in which he revealed again that he had been arrested in 1974 for child abuse. *Id.* at 165. He also admitted on the 2002 QNSP that he had been fired from a former place of employment. *Id.*, Ex. 11 at 5.

In May 2007, the individual executed his first electronic QNSP in which he again disclosed the 1974 arrest for child abuse, and some outstanding medical co-payments. Ex. 13 at 102-134. At the time, he claimed that he did not have any delinquent accounts older than 90 days, and that in the previous seven years did not have any delinquent debts older than 180 days. *Id.*

On March 12, 2013, the individual executed the electronic QNSP which is at the heart of this proceeding. Ex. 9. On that form, he responded negatively to the question whether he was currently delinquent on any Federal debt. At the time, however, he owed the Internal Revenue Service (IRS) approximately $14,000 in back taxes, penalties and interest. He also denied on the 2013 security form that he had failed to file or pay Federal, state or other taxes, yet at the time he completed the form, he had not filed his 2010, 2011 and 2012 Federal income taxes. Similarly, when asked if he had ever had a lien filed against his property for failing to pay taxes or other debts, he answered, "no," when, in fact, a Federal tax lien had been placed against his assets in October 2007.

The individual further responded "no," to questions asking if he had: (1) any child support delinquencies, (2) any debts turned over to a collection agency, (3) ever been charged with a felony offense, and (4) had received, in the last seven years, a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace or been terminated from employment. The record reflects, however, that at the time he completed his 2013 security form, he was in arrears in his child support payments; had eight outstanding collection accounts; had

been charged with felony child abuse in 1974; had received two written reprimands in 2009; and was terminated from the employment from which he had received the two written reprimands.[4]

The individual does not dispute that he has outstanding collection accounts, although he claims not to be familiar with the identities of all the debtors listed on his credit report. He also does not dispute that as of 2013, he owed approximately $14,000 in delinquent Federal taxes for tax years 2003, 2004, 2005, 2006, 2009 and 2010, and had a Federal tax lien filed against his assets in October 2007 in the amount of $9,417. He admits, also, that he withdrew $27,000 from his retirement account in December 2012, and then gave a total of $10,500 to his sons, paid $2,000 for back rent, and paid $1,650 towards his back taxes. He stated that he has $7,000 left over but cannot account for the remaining $5,850. Finally, the individual admitted that he has not always lived within his means, often purchasing items for his children that he should not have purchased in light of his financial situation.

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 access authorization should not be restored. I cannot 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.

A. The Individual's Inconsistent Statements At Issue in this Proceeding

1. The Individual's Mitigating Explanations

The individual offered several explanations for most of the inconsistent statements that he provided during the security clearance process. He explained at the 2013 PSI that he spent an inordinate amount of time locating addresses for some of his close relatives, which then reduced the amount of time he had to complete the other portions of his 2013 QNSP within the required time frame. Ex. 10 at 181. At the hearing, he testified that he had difficulty completing the electronic QNSP from his home computer. Tr. at 57-59; 81-84; 94-95; 99. He claims that he called the Personnel Security Specialist (PSS) assigned to his case several times and explained to her that he was having trouble completing the form and that the deadline for its electronic submission was looming. *Id.* He claimed that she told him to erase all the pre-filled information on the form, and to begin anew. *Id.* at 101. He also claimed that the PSS advised him that he would be given the opportunity to explain anything he needed to when he met with the Office of

[4] The record does not support a finding that the individual admitted during a 2013 PSI that he had received a written reprimand for time card errors that he allegedly made at his place of employment in 2012. While there might be other documentary evidence to support the existence of time card improprieties relating to the individual and others in his work group, I note that the allegation set forth in paragraph A.7. of the Summary of Security Concerns is predicated solely on the individual's admission that he had received a reprimand for having made time card errors in 2012. He did not admit in the PSI that he received a reprimand for the time card error. For this reason, I find that there are no factual underpinnings for the charge set forth in the Summary of Security Concerns in paragraph A.7.

Personnel Management (OPM) representative. *Id.* He interpreted the PSS's statement as meaning that he could check "no" on boxes, and then explained to the OPM representative that the responses should have been "yes." *Id.* at 82-83. He concluded by stating that he did not intentionally mislead DOE with his responses, adding that DOE security has all of his records and already knows what most of his answers should be. *Id.* at 59, *see also* Ex. 10 at 167-168, 171, 181, 182. The individual offered the above arguments as the sole reasons why he responded negatively to the questions that form the basis of the allegations contained in paragraphs A.1., A.2., A.5. and A.9. of the Notification Letter.

As for the allegations contained in paragraph A.3 of the Notification Letter, he testified that he never owned any real property so he did not believe any "lien [was] placed against his property.[5]" One of the individual's exhibits shows that the IRS placed a lien on his assets on October 5, 2007, due to a balance owed on his Federal income taxes. Ex. B.

With regard to the allegations contained in paragraph A.4. relating to his child support payment delinquencies, the individual testified that he responded negatively to this question because there was a question about whether he owed the money for past child support. Tr. at 92. He explained that for the last two years that his son was a minor, his son lived with him and not his ex-wife. *Id.* He thought that the court would reverse the outstanding delinquency once it learned that the son had not lived with his ex-wife for two years. *Id.* at 93.

Paragraph A.6. of the Notification Letter relates to felony offenses. The individual testified that the DOE already knew that he had been charged in 1974 with child abuse and that those charges had been dismissed. *Id.* at 99. He argued again that he could not complete the form in a timely manner so he answered the question in the negative. His testimony about this matter is consistent with his explanation during the 2013 PSI, where he told the PSS that he was in a hurry when he completed the form and read it wrong. Ex. 10 at 166. At the time, he asserted that "It was a mistake on his part," explaining that he had received two or three extensions to complete the form but was unable to do so in the allocated time period. *Id.*

The allegations contained in Paragraph A.8. of the Notification Letter relate to the individual's past disciplinary record at a former employer and the circumstances of his departure from a past employer in 2009. The individual maintained that he answered the question about whether he had been terminated from employment in the negative because he was told that he had been laid off, not terminated. *Id.* at 37-38. A former supervisor testified that she believed the individual was terminated, but that the managers who informed him that his services were no longer needed with the company did not communicate clearly to the individual the reasons for their decision, or that he was being terminated instead of "laid off." *Id.* at 70-71. The individual also testified that he never had any conduct issues with the subject employer, although he admitted that he might have had some performance issues. *Id.* at 42. He added that he thought "termination" meant terminated for misconduct not performance issues. *Id.* at 46. He admitted, however, that he

[5] The DOE Counsel pointed out that the individual responded to the PSS's question during the 2013 PSI inquiring about the status of the federal tax lien filed in 2007 with the statement "I'm on a payment plan." The individual convinced me that his response was intended to go to the outstanding debt, not to the existence of a federal tax lien against his property.

should have answered the question "yes" because he had been fired from other positions. Id. at 45. In fact, he had previously disclosed firings from other jobs in earlier security forms.

2. Administrative Judge Evaluation of Evidence

As an initial matter, the individual correctly pointed out that he has generally reported most of the information which he is alleged to have omitted on the 2013 security form in previous iterations of that form. For example, he reported the child abuse charge on his 1990, 1995, 2002 and 2007 security forms, but not on his 2000 form. With regard to the child abuse charge, I am persuaded that he was not trying to mislead the DOE.

He and his former supervisor also provided convincing testimony that the individual's 2009 termination might have been incorrectly portrayed to the individual as a "layoff," not a "termination." It is noteworthy, in my view, that the individual fully disclosed on his 2002 QNSP and in a 2002 PSI that he had been terminated from another employer.

With regard to the individual's principal argument related to the inaccurate responses he provided on the 2013 QNSP, I recognize that completing the electronic version of the security form within a relatively short period of time can be a daunting experience for some persons because of the technological challenges that the computerized form can present. This is especially true in the case of the individual, whose life circumstances over a period of six decades required voluminous reporting, who worked at a "blue collar" job that did not regularly require him to carefully read materials, and who was not adept at navigating a form which allows for no deviation from inputting information except in a certain format. In addition, in the individual's case, he worked in a different state and in a different time zone from the servicing security representatives, a fact that made his receiving guidance time-consuming and frustrating. All these factors, in my view, impacted, to some extent, the individual's ability to respond accurately to the questions on the 2013 security form.[6] Based on my observation of the individual's demeanor at the hearing and the unique situation in which he found himself, I find that the individual was overwhelmed with completing the QNSP in a timely manner. He also convinced me that, for most of his inaccurate responses, he intended to correct the record when he spoke to the OPM investigator.

These excuses, however, do not mitigate all the inconsistent statements that the individual made on his 2013 security form. Specifically, with regard to the issue of his outstanding debts, he told the OPM investigator that he wanted to hide his debts hoping to clear them up before the start of his background investigation. Ex. 13 at 73. While the individual testified that he made this statement in jest, I was not convinced. Also, with regard to the individual's explanation for not listing his outstanding child support payments on his 2013 QNSP, *i.e.* that he hoped a court would recognize the error of making him pay his ex-wife for child support during the time he had custody, I find that however well-grounded the individual thought his arguments to the court had been, at the time he completed his 2013 QNSP, his delinquent child support payments were still his obligation.

[6] It is unclear from the record how the individual completed the 2007 electronic QNSP, although he implied that he had on-site assistance.

For all the reasons set forth above, I find that the individual has not mitigated all the Criterion L security concerns predicated on the erroneous information that he supplied on his 2013 QNSP.

B. The Individual's Outstanding Debts and Tax Liabilities

With regard to the individual's eight outstanding collection accounts, he testified that he is in settlement negotiations with two of the creditors, will try to negotiate with another creditor, and is unfamiliar with the debtors associated with five other outstanding accounts. Tr. at 106-112, 117. After carefully reviewing the record, I am not able to find that the individual has mitigated the security concerns associated with all of his outstanding debts under any of the factors set forth in ¶ 20 of Adjudicative Guideline F. Even though he has made some good faith efforts to compromise and settle with two of his eight creditors, he still has six outstanding debts which need attention.

As for his outstanding tax liabilities, the individual testified that he entered into an agreement in August 2013 with the IRS to pay $250 each month towards his federal tax debt. Tr. at 115-116. During the 2013 PSI, he stated that he paid $1400 when he first set up the plan with the IRS. Ex. 10 at 131. He submitted documents prior to the hearing from the IRS showing five payments of $250, and his running balance owing for tax years 2004, 2005, 2006, 2009, 2010. Exhibits B, C, D, E, and F. He testified that after 10 to 12 months of faithfully paying the IRS, he hopes the IRS will offer to settle and compromise with him for a lower amount than he owes so he can extinguish the debt. *Id.* at 115-116. This testimony contrasts with his statement during the October 2013 PSI when he related that he should be able to pay his taxes in full in a few months. Ex. 10 at 98. The individual's long term failure to satisfy his tax obligations is not mitigated by his payment of a faction of what he owes the IRS. While it is laudable that he entered into a payment plan with the IRS and has apparently extinguished his 2003 Federal tax liability, it is simply too soon to tell if he will satisfy all his obligations to the Federal government, including his outstanding debts for tax years 2004, 2005, 2006, 2009 and 2010. I therefore find that the individual has not mitigated the security concerns associated with his failure to satisfy his delinquent Federal taxes for five of the six years set forth in the Notification Letter. [7]

In making the findings above, I considered other allegations set forth in the Notification Letter, *i.e.* the individual's admission that he had not lived within his means when he purchased items for his children that he should not have, and that he was not able to account for how he spent all the money that he withdrew from his retirement account. The individual admitted to the truth of these allegations during the hearing. Tr. at 133-135.

C. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the 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 have found that the individual has not brought forth sufficient evidence to mitigate the security

[7] The record supports a finding that the Federal tax lien in the amount of $9,417 (Paragraph B. 3 of the Notification Letter) is subsumed in the outstanding Federal tax debt, and is not an additional liability.

concerns associated with that criterion. I therefore cannot 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 DOE should not restore the individual's access authorization. The parties may seek review of this Decision by an Appeal

Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Administrative Judge
Office of Hearings and Appeals

Date: April 7, 2014