

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 his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the Individual presented his own testimony. The LSO submitted 11 exhibits into the record; the Individual also submitted 11 exhibits.

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 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). 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

^{2/} Criterion L relates 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).

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 cites one criterion as the basis for suspending the Individual's security clearance, Criterion L. To support its allegations, the LSO references the Individual's financial indebtedness. The Individual's financial irregularities raise a security concern under Criterion L, because his condition "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." See Guideline 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). Specifically mentioned in the Guidelines as disqualifying are "a history of not meeting financial obligations" and "failure to file annual Federal, state, or local income tax returns as required." Adjudicative Guidelines, ¶ 19(c), (g).

IV. Findings of Fact and Hearing Testimony

Except where otherwise indicated, the facts are undisputed. As of the date of the Notification Letter, the Individual had outstanding debts in the amount of \$11,757 and charged off accounts in the amount of \$27,219. DOE Ex. 1 at 1. In addition, he had not filed his 2011 and 2012 Federal and state tax returns or his 2010 state tax return. DOE Ex. 1 at 2. Although he filed his 2010 Federal tax return, he did not pay those taxes. Tr. at 36.

The Individual testified that on May 27, 2014, he filed for Chapter 7 bankruptcy. Tr. at 46; Ind. Ex. C. He expects the bankruptcy to be discharged within 60 days of the hearing. Tr. at 16. He is presently on a payment plan with the Federal and state governments. Tr. at 24. His state tax debt will be paid in full in September 2014. Ind. Ex. F at 5. His Federal tax debt will be paid in full in August 2016. Ind. Ex. F at 6.

The Individual testified that his financial difficulties arose when his then wife underwent several surgeries. Tr. at 11. She became addicted to the pain medication and could not hold a job, leading to the loss of her nursing license.^{3/} Tr. at 12. The Individual's ex-wife asserted to him that she was working, but that there were problems with payroll and she wasn't getting paid. Tr. at 13-14. Her lies caused difficulties with filing their Federal and state taxes, because she could not produce her W-2 forms. Tr. at 14. According to the Individual's testimony, his ex-wife's failure to hold a job caused his indebtedness. Tr. at 11-14.

He filed his 2011 and 2012 Federal tax returns in December 2013. Tr. at 35; Ind. Exs. G-J. He consulted with a credit counseling service, which told him he was too far in debt and needed to contact a bankruptcy attorney about filing for bankruptcy before the service could help him. Tr. at 16. Since his bankruptcy filing on May 27, 2014, he has retained the credit counseling service, attended a credit educational class, and started another counseling service to learn how

^{3/} According to the Individual's testimony, his now ex-wife is presently in jail, where he had to go to serve divorce papers. Tr. at 30. Their divorce was finalized in March 2014. Tr. at 29-30.

to manage his finances more successfully without debt. Tr. at 41; Ind. Ex. C; Ind. Ex D at 1; Ind. Ex. E.

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)^{4/} 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.

The LSO has properly raised a security concern under Criterion L, regarding the Individual's financial irregularities. He failed to file his 2011 and 2012 Federal and state tax returns on time and failed to pay his 2010 Federal tax debt. In addition, the Individual has substantial outstanding debt.

In considering the evidence before me, I must look to the Adjudicative Guidelines to determine if the Individual has mitigated the properly raised security concern. The relevant paragraph lists conditions that could mitigate this type of 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to

^{4/} 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.

substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Adjudicative Guidelines, ¶ 20(a)-(e).

The Individual's financial difficulties arose after his wife's surgeries and her loss of employment. Over a three-year period, the Individual did little to alleviate those financial difficulties. He admitted at the hearing that he just "lost all hope." Tr. at 12. Finally, in December 2013, the Individual began to take control of the situation. He filed his 2011 and 2012 tax returns. Ind. Exs. G-J. Shortly after his PSI in February 2014, he went to the credit counseling service to try to repair his financial situation. When told the credit counseling service could not help because he carried too much debt, he consulted with a bankruptcy attorney. He filed for Chapter 7 bankruptcy in May 2014. The Individual has taken responsibility for his debts. He is attempting to rectify his financial situation.^{5/}

While the Individual has made strides in correcting his financial situation, at the time of the hearing, he had satisfied only paragraph 20(c) listed above from the Adjudicative Guidelines that could mitigate the concern raised by his financial indebtedness. He has attended credit counseling with the credit counseling service and also with an additional service which works with him on budgeting, discarding his debt, and planning for his financial future. Ind. Exs. D-E.

The Individual has not satisfied the other conditions which could mitigate the security concern raised by his financial irresponsibility. His indebtedness started in 2010 and continued until May 2014, when he filed for bankruptcy. Therefore, I cannot find that he satisfied paragraph 20(a). Although his financial problem did occur because of his wife's surgery and subsequent unemployment, he did not act responsibly in the situation. He ignored his responsibilities by not opening his mail and ignoring telephone calls. Tr. at 33; DOE Ex. 1 at 2. Thereby, I cannot find that he satisfied paragraph 20(b) of the Adjudicative Guidelines. Finally, the Individual does not dispute any of the outstanding debt, which would satisfy paragraph 20(e) of the Adjudicative Guidelines.

Although the Individual started to make an effort to solve his financial problems by filing his 2011 and 2012 Federal and state tax returns in December 2013, I cannot find that he has made a good-faith effort to pay his creditors as required under paragraph 20(d) to mitigate the concern. As of May 2014, with his bankruptcy filing, the Individual is on the correct path to financial stability. However, 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-13-0098 (2013); *Personnel Security Hearing*, Case No. PSH-12-0134 (2013); *Personnel Security Hearing*, Case No. PSH-12-0058 (2012); *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*

^{5/} The Individual appears to be handling the situation in an open, honest, and ethical manner. One of his debts that is not being discharged in the bankruptcy is a car loan. The Individual took the loan out on a relative's car. Tr. at 51. He realizes that he has an obligation to satisfy that debt to his relative, so she does not lose her car.

Hearing, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009).^{6/} At this point, the Individual has not demonstrated a sustained pattern of financial responsibility for a significant period of time relative to his period of financial irresponsibility.

Given the Individual's remaining financial indebtedness and a short pattern of financial responsibility, I cannot find that the Individual has sufficiently mitigated the security concerns associated with Criterion L.

VI. 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 concerns associated with Criterion L. 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 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.

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

Date: August 27, 2014

^{6/} OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.