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United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)
		)
Filing Date:	November 26, 2012	)
		) Case No.: PSH-12-0134
		)

Issued : April 2, 2013

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual's access authorization should not 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. For several periods of his adult life, the individual has experienced financial difficulties, which resulted in the Local Security Office (LSO) conducting three personnel security interviews with him.

In September 2012, 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

[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.

LSO explained 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, 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 Hearing Officer in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented his own testimony and that of his wife. The LSO submitted 18 exhibits into the record; the individual tendered 18 exhibits as well.[3]

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 Hearing Officer's Decision

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[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).

[3] OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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 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, the LSO cites one criterion as the basis for suspending the individual's security clearance, Criterion L. To support its allegations, the LSO lists the individual's bankruptcies in 1993 and 2012, the underlying causes for those bankruptcies, which included amassing over $100,000 in credit card debt and not modifying his family's lifestyle when his income was reduced, and approximately $74,000 in current student loan debt for his wife and himself. The individual's failure 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 of which can raise questions about the 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). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. Findings of Fact

The individual and his wife first filed for bankruptcy in 1990, before he was employed at a DOE facility. Transcript of Hearing (Tr.) at 51, 81. They had amassed debt, some of which was due in part to medical care for their firstborn and in part to overspending. *Id.* at 17, 63. They were expecting another child, and the individual was anticipating being laid off from his employment. *Id.* at 48. The bankruptcy was first approved under Chapter 7 of the Bankruptcy Code, which eliminated some of the debts outright. *Id.* at 54. They reaffirmed some of the debts, however, which required that they continue to pay on those balances. *Id.* at 55. The individual's wife, who worked in a bank, issued herself two credit cards, one in her name and one in the name of another person, without following proper procedures. *Id.* The bank discovered what she had done; she was charged with embezzlement and required to make restitution. *Id.* at 56. In late 1991, the bankruptcy was converted to a Chapter 13, and the individual and his wife made periodic payments to the court to satisfy the remaining debts, including restitution for the embezzlement charge. *Id.* at 54. In 1993, the individual was laid off, as expected, and the family received public assistance for a short period, during which they defaulted on their bankruptcy. The bankruptcy was eventually reinstated and the individual and his wife fully complied with the Chapter 13 terms. *Id.* at 51-52. During this period, the individual relied on his wife to make all household financial decisions, and was not aware

of her improper credit card activity until she was called in for questioning by bank security personnel. *Id.* at 49-50.

From 1993 through 2006, the family's finances remained solid. They purchased a home, and have been investing in home improvements for the past 11 years. *Id.* at 14. The individual and his wife returned to school to improve their educational credentials, and incurred about $35,000 in student loans. *Id.* at 44. For about six years, from roughly 2002 through 2008, the individual's work sent him to distant sites for the majority of those years. As a result, he earned considerable amounts of overtime pay, and the family grew accustomed to the additional income. *Id.* at 68, 95. In addition, due to his prolonged absence, the individual's wife was again in charge of the household finances. *Id.* at 95. They invested approximately $50,000 in the stock market. *Id.* at 57.

In 2006, the family's fortunes took a turn for the worse. The stock market suffered a downturn that affected the individual and his wife as it did many other small investors. The individual and his wife ultimately lost their entire investment. *Id.* at 60. In 2008 or 2009, the individual's work changed and he no longer traveled extensively. *Id.* at 69. Without the overtime, his income was significantly lower than it had been for several years. Nevertheless, they retained the lifestyle to which they had become accustomed. *Id.* at 69. They overspent, not only on themselves but on other, less fortunate members of their families. *Id.* at 22-23. Eventually, they had reached the maximum debt limit on ten credit cards, though the individual was aware of the existence of only five until 2008. *Id.* at 25, 94.

In 2010, the individual was contemplating another bankruptcy. At the hearing, he testified that he had consulted a lawyer, but was resisting the procedure out of fear for its effect on his security clearance. *Id.* at 90, 117-18. Following a Personnel Security Interview in July 2010, he and his wife reviewed their finances, and realized they had accumulated about $200,000 in debt, including mortgage, credit card and school loans. *Id.* at 36, 99-100 (individual concedes "out-of-control spending").[4] The house was worth less than the amount of the mortgage, and interest on outstanding balances constituted roughly 75% of their credit card debt. *Id.* at 109-10. They initiated a Chapter 7 bankruptcy, which was discharged in May 2012. Exh. 17.

Eight months transpired between discharge of the bankruptcy and the hearing. Because his current position no longer keeps him on the road, the individual has taken a more active role in handling the household finances. Tr. at 97. They no longer have any credit cards, and make all their purchases by cash or debit card. *Id.* at 45, 98, 108. The individual reviews the family income and expenses on a daily basis. *Id.* at 108. After the hearing, the individual submitted a weekly balance sheet, which indicates that the income generated by the individual and his wife exceeds their household expenses by about

[4] I make no finding regarding the individual's contention that the interviewer "specifically suggested bankruptcy" and "said that we need to take care of this and this is the route and this is the route we took." *Id.* at 99, 111. Had the individual decided not to pursue bankruptcy, his substantial debts would nevertheless have raised significant concerns for the LSO. Moreover, bankruptcy in itself is not a security concern; it is rather the underlying debt that raises the concern.

$100.[5] *Id.* at 75; *see* Post-hearing submission dated February 7, 2013. They maintain the excess in an emergency fund, which currently contains about $600. Tr. at 98.

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)[6] 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. Mitigating Evidence

At the hearing, the individual and his wife testified about the circumstances that led to their two bankruptcies. The first occurred when they were quite young and newly wed. While they conceded that they spent more than they should have, part of their financial strain arose from a newborn who required extraordinary medical care and from the wife's generosity toward less fortunate members of her extended family. The second bankruptcy, on the other hand, occurred when the couple was mature and experienced. Nevertheless, their generosity toward their children may have contributed toward their financial problems beginning in roughly 2009, though they both conceded that a major cause was their failure to scale back their style of living after the individual's overtime income stopped.

The income now earned by the individual and his wife, though not as great as it was in the heyday of 2003 to 2009, is steady and not insignificant. The 2012 bankruptcy has eliminated their old debts, and they currently bring in slightly more than they spend, according to the budget they presented. They each testified that they have changed their lifestyle: they no longer use credit cards, they make purchases only with money they have on hand,[7] and they no longer eat out at restaurants more than once a week. The

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[5] The individual and his wife support a household of six, including a 20-year-old son, who works at a minimum-wage job but does not contribute to the household expenses; a younger, disabled son; the 20-year-old's wife, who does not work outside the home; and the 20-year-old's baby.

[6] 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.

[7] The weekly balance sheet indicates that they have a "rent-to-own" payment of $50 per week. At the hearing, the individual's attorney emphasized that the couple purchased furniture, and the arrangement is interest-free. Tr. at 74.

balance sheet, which represents their current budget, appears detailed, complete, and reasonable, though their cushion for emergencies, or even unexpected expenses, is quite small.

B. Hearing Officer Evaluation of Evidence

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the individual has demonstrated a pattern of living beyond his means for a considerable length of time. This occurred at two discrete periods of the individual's life, preceding each of the bankruptcies. Both the individual and his wife now recognize that they were overspending during those periods. While the testimony indicates that the wife was managing the household finances single-handedly during those periods, I cannot find that the individual's lack of involvement in financial matters absolves him of his responsibility to shepherd family resources and ensure that household spending remained in proportion to household income. At the very least, he shared a responsibility with his wife to cut back expenses when his income was cut back, due to elimination of routine overtime income. I recognize that the individual has now assumed a much more active role in managing the household budget. Nevertheless, I cannot mitigate the security concerns at issue here under Guideline F at ¶ 20(a), which addresses behavior that occurred long ago or very infrequently, because, while the behavior is no longer current, it was ongoing for at least four years in the near past, as well as for some period in the late 1980s, and I cannot find at this point that the financial problems will not occur again. Initiating bankruptcy is in some cases, and possibly here, a wise decision, and not one that necessarily demonstrates poor financial judgment. Under these circumstances, however, it reflects the consequences of the individual's past pattern of financial irresponsibility and, as only eight months had passed between the recent bankruptcy discharge and the date of the hearing, the individual has not yet demonstrated a new pattern of improved financial judgment. In those eight months, the individual has lived within his means and not acquired any new credit cards, but it is too early to tell whether he and his wife will be tempted, as they have in the past, by the offer of multiple credit cards as soon as the banks deem them eligible or whether they will maintain their frugality.

Second, though the individual and his wife testified that their financial difficulties arose, at least in part, from generosity toward her family, and earlier on from medical expenses, they both admitted that they were living beyond their means, particularly after the individual's access to overtime pay stopped in 2009. I find that the bankruptcies were based only in small part on unavoidable circumstances, but rather mainly on a lack of discipline and an unwillingness or inability to react to reductions in income. Based on these findings, I cannot mitigate the individual's financial issues under Guideline F at ¶ 20(b), *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control.

Third, I cannot find for purposes of Guideline F at ¶ 20(c) that there are clear indications that the financial problem is under control. The individual's more recent bankruptcy was discharged less than a year ago. It eliminated a substantial amount of debt, and the evidence shows that the individual and his wife can now meet expenses given the

ameliorative effect of the debt discharge. The individual's budget represents a good-faith effort to live within their means, but demonstrates that they will have a difficult time building a safety cushion, which stood at $600 at the time of the hearing, to protect them from any expenses out of the ordinary. *See, e.g.*, Tr. at 76 (attorney to be paid from emergency fund). Nor can I find that the individual has received or is receiving substantial counseling for his financial problems. No evidence was provided on this matter, except that the individual and his wife participated in online counseling required in order to file their Chapter 7 bankruptcy in 2010. Exh. L. The wife's testimony regarding the counseling convinces me that the counseling was of short duration and little depth, Tr. at 36, 41, 130, 132, 140, and consequently does not significantly mitigate the LSO's concerns for the individual's financial irresponsibility.

Finally, the individual now clearly recognizes the need for financial discipline. He testified that they use only cash for purchases, eat out only once a week, and review their expenses daily. Moreover, I am convinced that the individual has no desire to find himself again in his present circumstances regarding his access authorization. Nevertheless, I remain concerned about the individual's judgment regarding future financial decisions. While he may have every intention not to repeat his mistakes, he has done so in past, as the circumstances that led to his second bankruptcy mirror in some respects those that led to his first. In addition, too little time has passed for him to demonstrate his renewed discipline.

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-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 Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). At this point, 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.[8]

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion L.

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

[8] At the hearing, the individual's attorney alleged a procedural irregularity in the processing of the individual's personnel security adjudication, but did not develop it. His statement reads, in its entirety, "I am aware that there may be some discrepancy between the Code of Federal Regulations versus the dates that letters were actually sent and received." Tr. at 79. As my focus in this Decision is on the factual support for determining the individual's eligibility for a security clearance, I will not address this claim.

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.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: April 2, 2013