



to grant the Individual a security clearance (Notification Letter). Ex. 1. The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The Individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced 30 exhibits (consisting of 678 pages) into the record of this proceeding (Exs. 1-30) and the testimony of the DOE Psychiatrist. *See* Transcript of Hearing, Case No. PSH-12-0139 (hereinafter cited as “Tr”). The Individual testified on his own behalf and submitted six exhibits (Exs. A-F).

## **II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS**

The Part 710 regulations require that I “make specific findings based upon the record as to the validity of each of the allegations” in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites paragraphs (f), (h), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criteria F, H, J, and L, respectively). Ex 1. I address below the validity of the allegations set forth in the Notification Letter in support of the cited criteria. The Individual does not essentially dispute the factual accuracy of the derogatory information described in the Notification Letter. My factual findings regarding the derogatory information described in the Notification Letter are presented below.

### **A. Criterion F**

In 1974, local police arrested the Individual for Careless and Imprudent Driving. Ex. 26. Local police arrested the Individual in 1975 for speeding. Ex. 17 at 4. Pursuant to an investigation, the Individual completed a Personnel Security Questionnaire (PSQ) in December 1980 (12/1980 QSP) indicating that he had only been arrested once in 1974 for Careless and Imprudent Driving. Ex. 26.

In 1985, the Individual was arrested for Driving Under the Influence. Ex. 27 at 79-80, 167-75. In 2005, the Individual completed a QNSP (2005 QNSP) affirming that he had never been charged with any offenses related to alcohol or drugs. Ex. 22 at 7.

Beginning in 2002 through 2010, the Individual failed to file federal and state income tax returns. Ex. 27 at 7-20, 111-14; Ex. 28 at 16-31. Local police arrested the Individual in January 2006 on a bench warrant concerning citation for city code violations. Ex. 27 at 86-103. In 2009, the Internal Revenue Service (IRS) obtained a judgment against the Individual for unpaid income taxes. In 2010, the IRS placed a lien against the Individual for \$8,349 in unpaid income taxes. Ex. 13. In 2010, the Individual’s overdue account for medical services went into collection.<sup>2</sup> Ex. 6 at 4.

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<sup>2</sup> A credit report indicates that the amount owed on this account was \$548. At the 2012 PSI, the Individual stated that he owed approximately \$1200. The Notification Letter reference another medical account placed in collection for \$5. Because of the *de minimus* nature of the amount owed in this \$5 collection account, I will not consider it in making my decision regarding the Individual’s security clearance.

In March 2011, the Individual completed another QNSP (3/2011 QNSP) where he denied: (1) ever being charged or convicted of an offense related to alcohol or drugs; (2) being arrested by a law enforcement officer in the past seven years; (3) ever having a lien entered against him; and (4) ever failing to file or pay federal or state taxes. The Individual completed another QNSP in December 2011 (12/2011 QNSP). Ex. 20. In the 12/2011 QNSP, the Individual denied: (1) that he had any financial accounts go into collection; (2) that he had been arrested by a law enforcement officer in the prior seven years; (3) that he had a judgment entered against him; and (4) that he had a lien placed against him for failure to pay taxes. Ex. 20.

The security concern associated with Criterion F is that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process . . . .” *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines),* Guideline E at ¶ 15. Given the misleading and inaccurate answers given in the 12/1980 PSQ, 2005 QNSP, 03/2011 QNSP, and the 12/2011 QNSP, the LSO had sufficient grounds to invoke Criterion F.

## **B. Criteria H and J**

In August 1985, the Individual was arrested for Driving Under the Influence. Ex. 27 at 79-80; Ex. 4 at 4-5. During the DOE Psychiatrist’s examination in March 2012, the Individual admitted to being a “borderline alcoholic thirty years ago” and consuming alcohol to the point of intoxication on a weekly basis while serving in the military. Ex. 4 at 5. The Individual stated that his excessive alcohol consumption lasted until his 1985 DUI arrest. Ex. 4 at 5. The Individual also admitted during the interview that, in 1987, his personal physician advised him to stop consuming alcohol yet the Individual declined to do so.<sup>3</sup> Ex. 4 at 9. After examining the Individual, the DOE Psychological diagnosed the Individual as suffering from Alcohol Abuse in Early Partial Remission, a condition that could cause a significant defect in judgment and reliability. Ex. 4 at 10. In his evaluative report, the DOE Psychiatrist cited the Individual’s past alcohol consumption patterns and his recent history of consuming alcohol to excess once or twice in 2011 as facts supporting his diagnosis. Ex. 4 at 9. Additionally, the DOE Psychiatrist cited the fact that the Individual admitted going to work with a hangover, consuming more alcohol than intended, and the Individual’s implication during the interview that he experienced increased problems with his wife when he consumed alcohol as additional factors supporting his diagnosis. Ex. 4 at 9. The DOE Psychiatrist recommended that in order for the Individual to demonstrate adequate evidence of rehabilitation the Individual should be abstinent for two years and participate in either an Alcoholics Anonymous (AA) program or a professionally-led substance abuse treatment program. Ex. 4 at 10.

Criterion H refers to “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J references information indicating that

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<sup>3</sup>The Notification Letter reports that this incident occurred in 2007. Ex. 1 at 3.

an individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See Adjudicative Guidelines*, Guideline G; *Personnel Security Hearing*, Case No. TSO-0927 (2010). Given the DOE Psychiatrist’s opinion indicating that the Individual suffers from Alcohol Abuse in Early Partial Remission, a disorder that could cause a significant defect in judgment or reliability, the LSO had sufficient grounds to invoke Criteria H and J.

### **C. Criterion L**

The Individual has been cited or arrested on a number of occasions, listed below:

<b><u>Date</u></b>	<b><u>Charge</u></b>
April 1973	Speeding
March 1974	Careless and Imprudent/Headless Driving
February 1975	Speeding (two separate offenses)
October 1979	Speeding
December 1981	Speeding
January 1982	Speeding
June 1985	Signal Light Violation
August 1985	Driving Under the Influence (DUI) and Speeding, City Sticker Violation
March 1998	City Code Violation
September 2001	Parking a Vehicle on an Unapproved Surface (PVU)
February 2002	Zoning Violation
January 2003	Inoperative Registration of a Vehicle
November 2003	Inoperative Registration of a Vehicle; Zoning Violation; PVU
September 2005	PVU
January 2006	Outstanding Bench Warrant for City Code Violations
March 2007	Improper Display of Plates; Child Restraint Violation
November 2009	PVU

Tr. at 106; Ex. 4 at 4; Ex. 21; Ex. 23; Ex. 24; Ex. 25; Ex. 26 at 86-104; Ex. 27 at 75-80, 81,-86, 167-78; Ex. 28 at 88-93; Ex. 30 at 7, 23.

As noted above, the Individual did not file federal or state income tax returns for the years 2002 through 2010. Ex. 27 at 7-20; Ex. 26 at 16-31; Ex. 4 at 5. The Individual has also experienced a number of financial difficulties and these are listed below:

<b><u>Date</u></b>	<b><u>Financial Problem/Concern</u></b>
1989	Home foreclosed upon
January 1989	Default judgment for a delinquent debt of \$2,948
January 1989	Default judgment for a delinquent debt of \$2,030
March 1989	Filed for and granted Chapter 7 bankruptcy
December 2001	Filed for and granted Chapter 13 bankruptcy protection

October 2009	Filed for Chapter 13 bankruptcy protection <sup>4</sup>
March 2010	Home foreclosed upon
March 2010	Internal Revenue Service file a tax lien of \$8,349 against the Individual

Ex. 3 at 4; Exs. 6-9; Ex. 13; Exs. 18-19; Ex. 26 at 8, 16, 19-21, 27, 30-31, 39-40, 41-43, 44-58, 66, 69, 79-82, 106-07, 109-10; Ex. 27 at 39, 45-50; Ex. 28 at 12-14; Ex. 29 at 21.

The Individual, in a PSI conducted in August 2006 (8/2006 PSI), stated that he was current with his federal and state income tax filings. Ex. 29 at 19. Nonetheless, the Individual has not filed federal or state income tax returns from 2002 through 2010. Despite his signing a Certification To Provide Information (CTPI) form in June 2011 certifying that he would furnish his estimated tax filing dates and information as to his efforts to work with a tax professional, the Individual failed to provide the requested information. Ex. 27 at 20-24, 39-40; Ex. 26 at 26, 28-30, 117-19. The Individual also failed to report either the 1989 or the 2009 bankruptcy to the LSO as required of clearance holders. Ex. 26 at 72-74, 84; Ex. 29 at 7-17. Further, during the 2011 PSI, the Individual stated “when it comes to here, I don’t bring a lot of my personal life in here ‘cause there’s people in here that’s, they live for that . . .” (Comment Incident) Ex. 28 at 76. During this PSI, the Individual admitted to procrastinating on financial issues and “putting his head in the sand” regarding his federal and state tax situation. Ex. 28 at 20. The Individual also admitted to periods of spending compulsively and unnecessarily. Ex. 28 at 63, 66.

In the 2012 PSI, the Individual stated that he felt no obligation to repay the \$12,417 debt remaining from a 2010 home foreclosure because the bank foreclosed on his house. Ex. 27 at 47. He also stated that he did not intend to pay the medical account debt in collection. Ex. 27 at 51-58. The Individual also acknowledged that he has a current debt of \$598 with another financial account. Ex. 27 at 68-69.

Criterion L concerns conduct tending to show that the Individual was “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). Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process. *See Adjudicative Guidelines*, Guideline E, ¶¶ 15, 16(a); *see also, e.g., Personnel Security Hearing*, Case No. PSH-12-0053 (August 3, 2012). In light of the Individual’s history of numerous citations and arrests, financial problems, failure to file tax returns, and his apparent failure to answer accurately a question regarding his tax status in the 8/2006 PSI, I find that the LSO properly invoked Criterion L.

### III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a hearing officer must undertake a careful review of all of the

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<sup>4</sup> The Individual’s bankruptcy petition was rejected by the court after 90 days for failure to supply needed information. As described below, this filing was part of a plan to allow the Individual’s agent to renegotiate his debts and save his house. The Individual did not intend to go forward with the bankruptcy. Tr. at 117.

relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the Individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the Individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the Individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the Individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### IV. ANALYSIS

For the reasons below, I find that while the Individual has resolved security concerns under Criteria H and J, the Individual has failed to resolve the security concerns raised by the Criteria F and L derogatory information.

##### A. Criterion F

In his testimony, the Individual stated that the apparent inconsistencies cited as Criterion F were not an attempt to hide unfavorable information from the LSO. Tr. at 50, 67. The Individual testified that with regard to his failure to report the tax lien against his house in the 3/2011 QNSP, he did not discover the lien, or the IRS judgment against him until he lost his house in foreclosure. Tr. at 49-51, 61-64. As for his failure to report his arrests in the 3/2011 QNSP, the Individual testified that he believed that he was required to report arrests and citations only if there was a fine associated with the arrest. Tr. at 54; *see* Tr. at 64. He also testified that he did not list the medical account in collection because the debt arose from a medical expense and there was a dispute between two insurance companies as to which was responsible for payment. Because he believed that the insurance companies resolved the issue, he did not believe that he owed anything on the account. Tr. at 54-55. With regard to his answers in the 3/2011 QNSP stating that he had filed federal and state tax returns, the Individual testified that he was still “in denial” regarding the need for him to address his tax situation and that he had a “head-in-the-sand” attitude about such issues. Tr. at 58.

The Individual testified that he did report the information described above in the 12/2011 QNSP but that the information “disappeared” when he electronically filed the form. Tr. at 63-64. The

Individual admitted that he should have paid more attention to the 12/2011 QNSP but that he was “so frustrated with [the] system and trying to get [the information] in there,” he electronically signed the 12/2011 QNSP “just to get [it] over with.” Tr. at 64. The Individual did not report his arrests in the 12/2011 QNSP for the same reason he did not report the arrests in the 3/2011 QNSP – he thought there had to be an associated fine with the arrest in order to make it a reportable arrest for QNSP purposes. Tr. at 64-65.

The Individual testified that he did not report his 1985 DUI arrest in the May 2005 QNSP because he misread the question regarding reporting alcohol- and drug-related arrests as asking only for such arrests during the prior seven years. Tr. at 65. Because the arrest was over 10 years old, he did not report the arrest. Tr. at 65. In subsequent QNSPs he reported the DUI arrest. Tr. at 66. As for his failure to report a citation for speeding in a 12/1980 QSP, the Individual did not report the citation because he only received a small fine. Tr. at 66.

My review of the evidence and testimony leads me to conclude that a number, but not all, of the Criterion F concerns raised by the derogatory information have been resolved. The 12/1980 QSP and 2005 QNSP apparent falsifications occurred a number of years ago and because of their age I find that the concerns raised by these incidents have been resolved. Further, I find that the Individual’s explanation as to why he did not believe that the medical account was in collection to be convincing in light of his documentary evidence indicating that there was a dispute regarding this billing of the account.<sup>5</sup> Exs. B-F.

However, the Individual has failed to produce sufficient evidence to convince me that his failure to report his tax filing status in the 3/2011 QNSP was not a deliberate misrepresentation. The Individual’s explanation that he was in denial about his failure to file taxes is unconvincing given the fact that by the date of the 3/2011 QNSP he had failed to file tax returns for approximately eight years. Further, in the absence of additional evidence, I also find unconvincing the Individual’s explanation that he had no knowledge of the IRS judgment or lien against his residence until he lost his house.

I also find that the Individual has failed to present sufficient evidence to support his claim that he, in fact, reported the information in question in the 12/2011 QNSP but that the information was lost due to an error in the electronic QNSP software.<sup>6</sup> The Individual did not testify that he sought help in completing the electronic QNSP or tried to contact the LSO regarding his difficulties. Most significantly, an examination of the completed 12/2011 QNSP indicates that the Individual checked “No” with regard to the questions relating to accounts in collection, being arrested in the past seven years, judgments entered against him, and liens filed against him for delinquent taxes. Ex. 20 at 13, 16.

Considering the entirety of the record, I must conclude that the very serious concerns raised under the Criterion F derogatory information have not been resolved.

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<sup>5</sup>The Individual has now paid off this account. Ex. F.

<sup>6</sup>The Notification Letter does not allege that the Individual failed to reveal his tax filing status in the December 2011 QNSP. *See* Tr. at 62.

## **B. Criteria H and J**

The Individual testified that, in the past 15 years, he has not had an alcohol problem. Tr. at 33-34. The Individual dealt with his alcohol problem a long time ago and has not undertaken any type of treatment program. Tr. at 13-14. To relieve stress which might cause him to engage in excessive consumption of alcohol, the Individual will take a 30- or 45-minute ride on his motorcycle. Tr. at 15. The Individual realizes that if he were to get into difficulty regarding his alcohol consumption, he would most likely lose his security clearance. Tr. at 15.

Upon questioning by the DOE Psychiatrist, the Individual testified that he has not consumed alcohol for the five months prior to the hearing and does not plan to resume drinking alcohol again. Tr. at 17, 23. The last time the Individual was intoxicated was in October 2011 when he consumed five beers with his brother. Tr. at 31-32. Since October 2011, the Individual has consumed alcohol on three different occasions where he consumed no more than two beers. Tr. at 35-36. During his current abstinence, the Individual has attended a number of social events but did not consume alcohol on these occasions. Tr. at 23. The Individual has not been inside a bar for the past several years. Tr. at 25. The Individual did not go to AA meetings, as recommended in the Psychiatrist report's because of the advice he received from friends who had been diagnosed as alcohol dependent and had participated in AA. His friends advised the Individual that he did not have a problem requiring participation in AA. Tr. at 19-20. However, one friend advised him that if the Individual thought he was having difficulty with alcohol, he could contact him. Tr. at 20-21.

The Individual testified that he currently takes care of his mother-in-law. Tr. at 26. His mother-in-law suffered from alcoholism and the Individual and his family removed all of the alcohol from the house to help her get over her alcoholism by going "cold-turkey." Tr. at 26-27.

The DOE Psychiatrist testified that most of the Individual's problems with alcohol occurred in the past and that the last time the Individual qualified for a diagnosis of Alcohol Abuse was in the early 2000s. Tr. at 39. Nonetheless, the DOE Psychiatrist testified that, in his opinion, a diagnosis of "Alcohol Abuse" lasts forever. Tr. at 39.

The DOE Psychiatrist found that the Individual's testimony regarding his alcohol consumption since October 2011 was convincing and that he had a "substantial level of confidence" that the Individual was telling the truth with regard to his alcohol consumption. Tr. at 41. The DOE Psychiatrist found it significant that the Individual has been to social settings with alcohol and did not consume alcohol on those occasions. Tr. at 41. Additionally, the DOE Psychiatrist was impressed by the Individual's efforts regarding his mother-in-law's alcoholism. Tr. at 41. Given these facts, the DOE Psychiatrist concluded that the Individual has a "very good chance of avoiding future episodes of intoxication" and that the chance that the Individual would become intoxicated in the future was low. Tr. at 41-43.

In evaluating the evidence before me, I take note that OHA Hearing Officers generally accord deference to the opinion of mental health professionals regarding the issue of rehabilitation and reformation, *see, e.g., Personnel Security Hearing*, Case No. PSH-11-0003 (2012). The evidence

before me indicates that the Individual has not had any alcohol-related arrests since 1985. Further, there is no evidence before me that the Individual has been intoxicated since 2011 despite being in social events where alcohol was available. Most importantly, the DOE Psychiatrist has testified as to his findings that the Individual is now not likely to become intoxicated in the future. Given the evidence before me, I find that the Individual has resolved the security concerns raised by the Criterion H and J derogatory information.

### **C. Criterion L**

The Criterion L information listed in the Notification Letter falls into several categories: the Individual's failure to file taxes; the Individual's financial difficulties; the Individual's apparent disregard for the law as evidenced by his many citations and arrests; and other alleged information reflecting poorly on the Individual's honesty, trustworthiness and willingness to comply with rules and regulations.

I find that the Individual has resolved one of the Criterion L concerns. With regard to the Comment Incident described above, the Individual testified that his remark was misinterpreted. Tr. at 112. The idea he meant to communicate was that he was not going to tell co-workers details concerning his personal life. Tr. at 113. In reviewing the 3/2011 PSI, the Individual stated that "when it comes to in here, I don't bring a lot of my personal life in here 'cause there's people in here that's, they live for that. They love to spread rumors." Ex. 28 at 76. There is no indication that the Individual, in using the word "here," meant the LSO as opposed to his co-workers or that the Individual meant to state that he would not be forthcoming with LSO officials' questions. Thus, I find that this allegation has been resolved. However, I find that the Individual has failed to resolve the concerns raised by the remaining Criterion L information.

#### **1. Failure to File Taxes**

The Individual testified that he has now employed a firm to represent him before the IRS and his representative was to meet with IRS officials several weeks after the hearing to resolve the Individual's tax problems. Tr. at 68; *see* Ex. A (E-mail and Individual's contract for tax representation services). The Individual admitted that he has made some bad choices concerning his taxes but now asserts that he has changed his attitude and is actively trying to resolve his tax situation. Tr. at 70-71. To enable him and his family to begin paying the tax liabilities he may have incurred, the Individual and his wife made a budget eight months ago and have been paying off their credit cards and other outstanding debts. Tr. at 73, 87. The Individual is building a cushion regarding his income and expenses in order to make monthly tax payments. Once he has resolved his federal tax situation, the Individual will address his state tax issues including a \$4,800 state tax lien. Tr. at 88-89.

I find that the Individual's failure to file tax returns represents a serious incident of poor judgment and reliability and a significant failure to comply with law. The extent of the Individual's failure to file stretches back for eight years and the Individual has only recently begun to remedy his tax issues. The exact amount of the Individual's tax liability has not yet been established and he has not yet begun a plan to pay off his back taxes. Absent a longer period where the Individual demonstrates compliance with his legal and financial

responsibilities, I cannot find, as of the date of the hearing, that the Criterion L concerns arising from his failure to file tax returns have been resolved. *See Personnel Security Hearing, Case No. PSH-12-0044* (2012) (individual's recent repeated failure to comply with the law by filing tax returns requires non-restoration of clearance).

## **2. Financial Difficulties**

The Individual testified that the 1989 bankruptcy resulted from the cumulative effect of having a number of family members living in his family home. Tr. at 101. The 2001 bankruptcy was caused by the downgrading of his employment with an associated loss of income. Tr. at 101. In 2002 or 2003, the Individual had 12 family members living in his home. Tr. at 74. His financial condition was made worse by his decision to refinance his house just before the housing market collapsed. Tr. at 76. This situation was compounded by the Individual's participation in a "loan recovery scam." Tr. at 76, 117-18; *see n.6.*

The Individual has an extensive history of financial instability as indicated by two bankruptcy discharges and the foreclosure of two homes. Even accepting that the Individual experienced extra financial strain by having family members living with him, the Individual has shown an extended period of failure to live within his means such that he has been unable or unwilling to file tax returns. *See Ex. 28* at 31-32 (Individual's admission that he needs in the future to restrict the number of family members living with him in order to control his expenses). In the 2011 PSI, the Individual admitted that he has a habit of procrastination with regard to his tax obligations and has spent money compulsively and made bad financial decisions. *Ex. 28* at 63 (Individual's admission that he has a problem with compulsive spending), 66 (occasional periods of spending unnecessarily). As of the date of the 2011 PSI, the Individual admitted that his then financial situation was "barely livin' within my means." *Ex. 28* at 66. I do find that the Individual has made the first steps in becoming financially responsible and is trying to resolve his tax situation and to budget his spending. While the Individual's two bankruptcies occurred a number of years ago, the Individual still faces financial challenges ahead since his tax liability, as of the date of the hearing, has not been determined. The Individual's history of financial problems is of long duration and his actions to reform his financial habits began relatively recently, eight months ago. Consequently, I find that the Individual has not resolved the Criterion L security concerns raised by his history of financial problems.

## **3. History of Arrests and Citations**

The Individual testified during the hearing that many of the citations cited in the Notification Letter were a result of his failure to comply with zoning regulations with regard to his remodeling of the house. Tr. at 105. Many of these citations were a result of what the Individual described as an "overzealous" code enforcement officer. Tr. at 109. Other arrests such as improper display of plates and a child restraint violation were the result of the Individual's bad judgment in not knowing that the plates in his daughter's car had expired or his failure to notice that his grandchildren had gotten out of their car seats. Tr. at 109.

The majority of the Individual's arrests and citations do not reflect serious violations of the law. The most serious of these violations, speeding, occurred some twenty years ago. However, the

sheer number of citations and arrests and specifically the Individual's history of citation for code violations (for home repair and renovation projects) raise serious questions as to the Individual's judgment. I found it significant that the Individual, in regard to the code violations, testified "we ended up basically going to war, me and the city. I feel I was being persecuted at the time." Tr. at 109. This attitude raises questions as to the Individual's willingness to follow regulations. When asked if he could have resolved the issues with the code enforcement officer, the Individual responded "I really don't know if I could have made a resolution with that officer at that time, because [the locality] had went through a period of time there that the code enforcement was a money-generating thing that they were pounding everybody on." Tr. at 110. Further, the number of code citations (and other citations) reflects a sustained period of non-compliance with the law. Given the evidence before me, I cannot conclude that the Individual has produced sufficient evidence to resolve the concerns raised by his extensive history of arrests and citations.

#### **4. Other Criterion L Information**

With regard his to failure to report the 2001 bankruptcy, the Individual testified that he did not believe that he needed to report the bankruptcy filing because he had disclosed it in a previous personnel security questionnaire. Tr. at 119-20. The Individual testified that his false answer in the 2006 PSI regarding his current tax filings were a result of his "head in the sand" mindset. Tr. at 118-19. As for his failure to report his 2009 bankruptcy filing, the Individual testified his bankruptcy filing was not meant to be a real bankruptcy process but rather a method to stop his creditors from pressing for repayment while an agent negotiated the debts. Tr. at 117; *see* n.6. The Individual also testified that he did not return the CTPI form because he had difficulty getting the required information and that he did not have any contact information for the interviewer who gave him the form. Tr. at 123-24.

With regard to these incidents, I find that the Individual's explanations do not resolve the security concerns. The Individual's explanation regarding his failure to report the 2001 bankruptcy, that he had previously reported the bankruptcy in a prior QSP, is not supported by any evidence before me. The Individual's assertion in the 2006 PSI that he was current with his federal and state tax filings was plainly false. Ex. 29 at 18. The excuse that the Individual did not want to address his tax problems and may have been in denial does not mitigate his duty to answer accurately questions posed to him during the reinvestigation process regarding his security clearance. The Individual's failure to report the 2009 bankruptcy filing is not resolved by his explanation that he did not intend to complete the bankruptcy process. The Individual has failed to cite any evidence supporting his belief that he did not have to report the filing if he did not intend to formally accept bankruptcy relief. Even he had had this subjective belief, the Individual exercised poor judgment in not confirming his understanding of the reporting requirements. The Individual's explanation as to why he did not return the CTPI form is also unconvincing. While the Individual may have had difficulty in obtaining information concerning his financial situation and may not have been given direct contact information with his PSI interviewer, he did have the address to mail the form and thus could have easily sent a note to that address informing officials as to his problems or could have contacted the LSO directly. This incident reflects a significant lack effort to try to comply with rules and regulations and thus represents a serious failure of reliability and judgment.

Overall, the Individual has not resolved the concerns raised by the Criterion L derogatory information recorded in the Notification Letter.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has not resolved the DOE's security concerns under Criteria F and L. Therefore, the Individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the Individual an access authorization at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: March 29, 2013