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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
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Filing Date:	January 7, 2013)	Case No.: PSH-13-0001
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Issued : May 1, 2013

Hearing Officer Decision

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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. The LSO submitted 20 exhibits into the record; the Individual tendered 12 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 Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common

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).

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 2004 bankruptcy and numerous outstanding debts, dating back to 2004. The Individual's failure to live within his means, to satisfy his debts, and to meet his financial obligations raise 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.^{3/} 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 filed for bankruptcy in 2004, after his divorce from his first wife. Tr. at 33. He amassed debt during his marriage as a result of overspending. Tr. at 34. In addition, his wife defaulted on her obligations after their divorce. According to the Individual, the state in which he resides is a community property state, and as a result, his wife's debts became his as well. Tr. at 34. The LSO interviewed him in 2004 about his bankruptcy. DOE Ex. 19. At that time, the Individual assured the LSO that he understood DOE's concerns about financial irresponsibility. *Id.* at 193-94, 226-27.

In 2009, the LSO again interviewed the Individual because of his unpaid debt obligations. DOE Ex. 18. At that time, he assured the LSO that he would pay off his debts. *Id.* According to his credit report dated August 2012, he had not taken care of a number of the obligations that were outstanding in 2009. DOE Ex. 11. When questioned about these outstanding obligations in 2012, he admitted to the LSO that he had not paid them all. DOE Ex. 17. At the hearing, the Individual asserted that he had paid the outstanding obligations, but did not provide documentation to support his contention. Tr. at 15-17. He did provide documentation after the hearing showing that he had set up a monthly payment plan for a number of his overdue bills. See Post-hearing submissions dated March 7, 2013. The Individual borrowed money from a friend of 24 years who also holds a security clearance to pay off other obligations in full. Tr. at 8-9, 52.

^{3/} A security concern does not arise from the bankruptcy filing, *per se*, but rather, as here, from the circumstances surrounding the bankruptcy and the attendant financial problems. See *Personnel Security Hearing*, Case No. PSH-11-0015 (2012); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-1018 (2011); *Personnel Security Hearing*, Case No. TSO-0692 (2009); *Personnel Security Hearing*, Case No. TSO-0288 (2006); *Personnel Security Hearing*, Case No. TSO-0217 (2005); *Personnel Security Hearing* Case No. VSO-0509 (2002).

Of the charges listed in the Notification Letter, the Individual has paid off five of the obligations in full, including \$600 owed to the Internal Revenue Service (IRS). He used his 2012 tax refund to pay his tax liability approximately one month prior to the hearing. Tr. at 20-21; *see* Post-hearing submission dated March 7, 2013. He paid off one of the other obligations in January 2013. Tr. at 8. He paid the other three obligations after his interview with the LSO in 2009. Tr. at 15-17, 19-20. The “obligations paid status” are reflected on the credit report he submitted dated February 6, 2013. Ind. Ex. A. At the hearing, the Individual testified that one final obligation has been paid in full, but the documentation provided by the Individual indicates that it was not paid until March 14, 2013, after the date of the hearing. Post-hearing submission dated March 14, 2013. Finally, the Individual has set up payment plans for four other obligations. Tr. at 9-14; *see* Post-hearing submission dated March 7, 2013.

At the hearing, the Individual stated, “I’ve said over and over that we were both horrible at managing money and lived, you know, paycheck to paycheck.” Tr. at 13. The Individual alleged that he was overspending to satisfy his wife prior to their divorce in 2012. Tr. at 36. He concluded that since the divorce, “I don’t have any outside influences anymore that are causing me to try to decide, you know, between, you know, trying to make somebody happy and, you know, being financially responsible.” Tr. at 49.

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.

A. Mitigating Evidence

At the hearing, the Individual testified that he has satisfied a number of the obligations and has a payment plan for the remainder. He testified that his bankruptcy was caused by his ex-wife defaulting on her obligations after their divorce. He also testified that he does

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.

not intend to incur new debt, and has established automatic withdrawals from his bank account to pay his bills.

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 during a period of over nine years in the Individual's life, from at least 2004 to 2012. In the later part of that period, the Individual recognized that he was overspending but could not control his wife's habits. While the Individual has blamed both of his ex-wives for his financial difficulties, I cannot find that they were solely responsible. The Individual admitted that he and his first wife jointly acquired the debt prior to the divorce, as did he and his second ex-wife. Further, he admitted that he did not manage money well. Nevertheless, I cannot find mitigation of the security concerns at issue here under Guideline F at ¶ 20(a), which addresses behavior that occurred long ago or very infrequently. While the behavior is no longer current, the Individual did not pay some of the obligations in 2013, approximately one to two months prior to the hearing, and I cannot find at this point that the financial problems will not occur again.

Second, though the Individual testified that his financial difficulties arose, at least in part, from his ex-wives' overspending, he admitted he knew that they were living beyond their means. 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 borrowed money from a friend to pay off some of his obligations in 2013. Further, he used his 2012 IRS tax refund to pay his IRS obligation. It does not appear to me that he made an effort to fix his financial difficulties until faced with this hearing. Although some of the obligations were paid after his interview with the LSO in 2009, more debt was accrued and not satisfied until the hearing was looming this year. Nor can I find that the Individual has received or is receiving substantial counseling for his financial problems. The only testimony on this matter indicated that the Individual contacted a credit counseling agency and found it to be too expensive. Tr. at 41.

Finally, the Individual now recognizes the need for financial discipline. He testified that he uses only cash for purchases and has set up automatic withdrawals for all his payments. 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 the past. In addition, too little time has passed for him to demonstrate his renewed discipline to financial responsibility. Further, at the hearing, the Individual appeared almost unconcerned about his financial obligations. He testified that he was sure he paid some of his debts but could not provide specifics. The Individual said he had bank statements

showing the payments, but he did not bring the documentation with him and had to submit it after the hearing.

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-12-0134 (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 Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009).^{5/} 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.

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 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
Hearing Officer
Office of Hearings and Appeals

Date: May 1, 2013

⁵ 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.