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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: March 18, 2013)

Case No.: PSH-13-0034

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Issued: June 13, 2013

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. During a routine re-investigation in 2012, the local security office (LSO) obtained information about the individual’s finances that raised security concerns. The LSO summoned the individual for an interview with a personnel security specialist. After this Personnel Security Interview (PSI) failed to adequately address these concerns, the LSO determined that derogatory

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov> . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced six exhibits into the record of this proceeding. The individual introduced eight exhibits and testified at the hearing, as did her daughter.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (l) defines as derogatory information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct or circumstances include, but are not limited to, a pattern of financial irresponsibility. As support for its invocation of this criterion, the Letter alleges that the individual has \$25,101 in delinquent debt, including:

- 14 collection accounts totaling \$6,656;
- Four charged-off accounts totaling \$9,070;
- \$9,000 for three years of unpaid lot rental fees; and
- \$375 owed to her credit union.

The Letter also cites statements made by the individual during her January 2013 PSI indicating that:

- She has not contacted any of her creditors despite previous statements during her reinvestigation that she intended to do so;
- She has ignored \$3,544 in medical-related debts for seven years, hoping that they would "go away;"
- She opened four of the collection or charged-off accounts on her 30 year-old daughter's behalf, and is responsible for the corresponding debt. However, she has made no effort to resolve the debt, and continues to open accounts for her daughter because the individual "doesn't learn;" and
- She received a \$42,000 settlement in 2005 following a 2004 car accident; however, she spent the money on things other than paying off delinquent debt because of "greed."

Finally, the Letter refers to the individual's acknowledgement during a 2008 PSI of the DOE's concerns regarding financial irresponsibility. Despite this acknowledgement, the individual proceeded to accrue over \$25,000 in new delinquent debt.

The individual generally does not dispute these allegations, and they adequately justify the DOE's invocation of criterion (1). They also raise significant security concerns. 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, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Also, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline F.*

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 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 or unfavorable, that has a bearing on the question of whether granting or restoring 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).

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). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein.* 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. FINDINGS OF FACT AND ANALYSIS

A. Findings of Fact

The record in this matter indicates that circumstances over which the individual had little or no control, and the individual's irresponsibility, both contributed to her current financial dilemma. The individual testified that her financial problems began in 1999, when she divorced her husband. Hearing transcript (Tr.) at 45. She was working at a convenience store at the time, and although her husband had custody of their children and the individual was not required to pay child support, she was not making enough money to support herself. DOE Exhibit (DOE Ex.) 5 at 14-15. Consequently, she lived with her parents for several months, Tr. at 45, before they helped her purchase a trailer. With a car note and a mortgage, she began to fall behind in paying her bills. Some of these were medical bills that the individual incurred because she did not have health insurance. DOE Ex. 5 at 16. In 2004, the individual was in an automobile accident, and later that year, she received a \$42,000 settlement as a result. DOE Ex. 5 at 22. Although the individual did pay off some of her debts with this money (including \$7,000 owed to her parents and \$4,000 owed in lot rental payments for her trailer), she also spent \$17,000 on a car, bought furniture for her trailer, and gave her daughters money to pay their bills, but did not use it to pay some of her overdue bills. DOE Ex. 5 at 24, 30, 42; Tr. at 36.

In 2008, the individual was summoned by the LSO for a PSI, during which her finances were the primary topic of discussion. At that time, she had at least seven collection accounts and her credit report showed overdue debt in the amount of \$8,000. DOE Ex. 5 at 52. Her wages had been garnished. *Id.* at 32. She was also delinquent in paying her state and local taxes. The individual explained that she would falsely claim 10 deductions on her taxes, which would result in less money being withheld from her paycheck. However, the amount withheld would be insufficient to pay her taxes, and she would have to set up a repayment plan with the state and federal tax authorities to satisfy her debts. *Id.* at 45-47. The LSO explained the DOE's security concerns regarding personal finances to the individual, and she promised to stop claiming an incorrect number of deductions, and to make a more concerted effort to satisfy her debts. *Id.* at 58-65.

In 2012, the individual's trailer burned down. Although the dwelling itself was covered by insurance, the individual testified, its contents were not, and the expenses associated with this event appear to have adversely affected the individual's ability to meet her financial obligations. Tr. at 46.

As previously indicated, in 2013, the LSO again summoned the individual for a PSI about her finances. At that time, the individual had 18 collection or charged-off accounts, totaling in excess of \$15,000 in delinquent debt, and \$9,000 in unpaid lot rental fees. She had made repayment agreements with some of her medical creditors, but stopped paying because "something always [came] up." DOE Ex. 6 at 17. Despite this inability to satisfy her own financial obligations, she opened at least four accounts in her own name for the benefit of one of her adult daughters, including accounts for the purchase of cars in 2007

and 2011. *Id.* at 32, 50. The understanding between the two of them was that the daughter was to pay these bills, but when she got laid off, that duty fell to the individual. Tr. at 48. Despite her assurances during the 2008 PSI, some of the debts covered during that Interview remained unpaid as of January 2013. DOE Ex. 6 at 41.

At the hearing, the individual testified that she has made a concerted effort to pay her delinquent debt. She has paid off 12 of the collection and charged-off accounts, she has arranged for payment plans for five other such accounts and for her overdue lot rental payments, and her ex-husband is paying off one of the accounts. Tr. at 18-30. She further stated that she has told her adult daughter that she can no longer help the daughter out financially, that she now has a budget, and that she is now behaving in a financially responsible manner and has been doing so since she contacted her creditors to formulate repayment plans “a few months” before the hearing. Tr. at 48-49, 51-52.

B. Analysis

Notwithstanding the individual’s recent efforts to address her outstanding financial obligations, I continue to harbor substantial doubts about the individual’s finances. As an initial matter, although I recognize that factors that were largely outside of the individual’s control, such as her 1999 divorce and the 2012 fire, contributed to the individual’s financial difficulties, I conclude that they were primarily caused by the individual’s poor financial decisions. In 2004, the individual chose to give money to her daughters, buy furniture, and spend \$17,000 for an automobile, rather than devote more of her \$42,000 windfall to meeting her own financial obligations. She also opened accounts for cable and cell phone service, and for two cars, in her own name, but for her adult daughter’s benefit, at a time when she had accrued a number of collection or charged-off accounts, and had \$9,000 in unpaid lot rental fees. As of the date of the Notification Letter, the overdue debt for these four accounts totaled over \$11,000, almost half of the individual’s total debt of \$25,101. As of the date of the hearing, the overdue debt for these accounts totaled \$7,805, approximately 43 percent of the individual’s total remaining overdue debt of \$18,100. The individual opened a second account for the purchase of an automobile for her daughter in 2011, even though the first car that she bought for her had been repossessed in 2007 after her daughter had failed to remain current on the car payments.

Furthermore, the individual has not established a pattern of financially responsible behavior that is of sufficient duration and effect to offset the years of financial irresponsibility that have led to the individual’s current situation. Assuming that the individual contacted her creditors to establish payment plans right after her January 2013 PSI, it appears that she has been behaving in a financially responsible manner for approximately four months. During that time, she has reduced her indebtedness to these creditors by approximately \$7,000. Although she has made progress in extricating herself from her difficulties, a substantial amount of overdue debt remains, and four months of good decision-making regarding money is insufficient to convince me that a return to her previous pattern of poor judgment is unlikely.

Finally, the record in this matter indicates that the individual's recent financial progress has been made with substantial financial support from her ex-husband, and there is nothing in the record that guarantees that that support will continue. The individual borrowed \$6,000 from her ex-husband to pay off some of her creditors; in effect, exchanging one debt for another. Furthermore, after the individual's trailer was damaged by fire in 2012, she moved in with her ex-husband with the agreement that she would pay for the groceries, but that he would not charge her rent and would pay all of the other domestic expenses. Tr. at 55. The individual's current budget (which does not include a monthly figure for groceries for herself, her ex-husband, and the two daughters who live with them) shows a monthly surplus of \$631. However, the individual's trailer is being renovated, and she plans to move back into it once work is complete. Tr. at 54. Presumably, at that time, the individual will have to assume the domestic expenses that are now paid by her ex-husband. The extent to which this will affect the individual's budget is unclear, and, accordingly, I cannot be certain that the individual will be able to continue to service her debts while incurring these new expenses. Significant security concerns remain regarding the individual's finances.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criterion (I). Consequently, she has failed to convince me that restoring her 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 restore the individual's security clearance 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.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: June 13, 2013