

November 1, 2011, October 13, 2005, April 16, 2004 and June 27, 2003. *See* Exhibits 14, 15, 16 and 17.

On April 25, 2013, the LSO advised the individual in a letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the 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 *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented testimony of five witnesses, including that of himself and his wife. The LSO introduced 17 numbered exhibits into the record; the individual tendered 13 lettered exhibits (Exhibits A-M). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.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 granting 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

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.

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 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 cited one criterion as the basis for suspending the individual's security clearance, Criterion L. To support its allegations, the LSO notes (1) the individual's failure to pay his taxes and his acknowledgement during the 2013 PSI that he owed federal and state tax authorities an aggregate of \$21,104 for prior tax years; (2) the individual's collection debt of \$3,080 and charged-off debt of \$5,096; (3) the individual's financial delinquencies at the time of the 2013 PSI on his student loans (120 days), a credit card (60 days), an auto loan (30 days) and a cable bill (30 days); and (4) statements made by the individual during the 2011 and 2013 PSIs which reflect a lack of diligence or good judgment on his part. *See* Ex. 1. The individual's failure or inability to live within his means, 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.*

In light of the information available to the LSO, the LSO properly invoked Criterion L.

IV. Findings of Fact

The individual and his wife have been married for over 20 years and, prior to the suspension of the individual's access authorization, the wife alone managed the family's finances and made their financial decisions. The individual did not involve himself in their finances and relied upon the wife with respect to all financial matters. Tr. at 63 – 66, 86 – 90, 100.

The individual does not contest the accuracy of the allegations set forth in the Notification Letter at the time of its issuance. *Id.* at 156. During the hearing, the individual focused on the progress that he and his wife have made in resolving their financial difficulties since his receipt of the Notification Letter and the solidity of their financial plan moving forward.

Federal Taxes. The individual and his wife had routinely received refunds after filing their annual federal tax returns and, in 2008, the individual decided that, rather than paying surplus money to the Internal Revenue Service (IRS) each year that got refunded, it would be more efficient to reduce his tax withholding allowances and, thereby, increase their monthly cash flow. *Id.* at 80, 128 – 129. When he recalculated his withholding allowances, he made an error while using an internet tax calculator and, as a result, owed taxes for 2008. *Id.* at 59. His wife, who handled all of their finances (including their taxes), told him they had owed taxes and he needed to reduce his withholding allowances. *Id.* at 59, 61. He failed to do so until 2011. *Id.* at 60 – 61, 80. The individual and his wife credibly testified that the individual thought they had been paying their tax deficiencies each year when they filed their tax returns and only became aware they had unpaid tax liabilities when he specifically asked his wife about their tax status when he was completing his Questionnaire for National Security Positions as part of his routine security reinvestigation in 2011. *Id.* at 60 – 62, 140 – 141. Subsequently, the individual and his wife have paid their tax federal tax liability for 2011 and 2012 on a timely basis. *Id.* at 106 – 107; Ex. A at 15 – 23.

The individual and his wife negotiated a tax payment agreement with the IRS in November 2011 and, subsequently, made only one payment under the agreement. Tr. at 84 – 85. In January 2013, the IRS levied his unpaid taxes, interest and penalties. Ex. 10. The individual did not learn that payments were not being made under the tax payment agreement until his wages were levied. Tr. at 84. As of the 2013 PSI, the individual owed \$14,158.67 to the IRS. Ex. 1; Tr. at 156.

Following notice of the federal tax levy, the individual promptly negotiated a new payment agreement with the IRS pursuant to which (1) \$106.00 is deducted from the individual's bi-weekly paychecks by his employer, (2) the individual's withholding allowances were reduced so that they individual will likely have overpaid his taxes each year, (3) all tax overpayments are applied to reduce his federal tax debt rather than refunded and (4) the IRS released the levy of his wages. *Id.* at 75, 61, 104 – 105; Ex. A at 1. Between application of tax refunds and payroll deductions under the tax payment agreement, the individual has reduced his federal tax liability by \$4847.00 and anticipates his tax liability will be paid in full within two years. *Id.*; Tr. at 83.

State Taxes. The individual and his wife failed to fully pay their state income taxes when due from 2006 through 2010; they paid their state tax liability for 2011 and 2012 on a timely basis. Ex. B at 2, 8, 9; Tr. at 75, 92 – 93. In January 2013, the state tax authorities garnished the individual's wages for \$6,945.29 in unpaid taxes, interest and penalties. Ex. 11 at 3, 4. This amount was paid in full through the garnishment; the individual and his wife are now current on their state taxes. Ex. B at 6, 7.

Student Loans. The individual has student loans totaling over \$170,000. Ex. K at 3. During the 2011 PSI, the individual stated that these loans were in forbearance until February 2012 and that he anticipated being able to pay them upon the termination of the forbearance period. Ex. 14 at 35, 47. When the forbearance period ended, it is unclear whether payments were made; however, as of the 2013 PSI, the individual was 120 days delinquent on his student loans. Ex. 6 at 2; Ex. 13 at 23 – 25, 27; Tr. at 118 – 119.

Subsequent to the Notification Letter, the individual has applied for an income-based payment on his student loans and, as a result, he was granted a 60-day forbearance period until September 2013. Ex. K at 1, 4; Tr. at 119 – 120. During the forbearance period, the individual has made a voluntary payment of \$609.59 on the loans. Ex. K at 4; Tr. at 122. When the forbearance period terminates, the loans will be deemed “current.” Ex. K at 1; Tr. at 120.

Other Delinquent Debt. At the time of the 2013 PSI, the individual had three accounts in collection (\$3,080), one charged-off account (\$5,096), one over-limit credit card with a 60-day delinquency, one car loan (\$900 past due) with a 30-day delinquency and a cable bill (\$100) with a 30-day delinquency. Ex. 1; Ex. 6 at 1 – 3; Tr. at 156. As of the date of the hearing, the individual had fully paid or settled⁴ the collections accounts, the charged-off account⁵ and the over-limit credit card; he had brought current his auto loan and cable bill (as well as all other bills); and researched an additional item (\$1,755)⁶ that he discovered on his credit report while preparing for the hearing and paid that account in full, as well. Ex. E; Ex. F; Ex. F; Ex. G; Ex. H; Ex. I; Ex M; Tr. 109 – 118, 123 – 124.

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

⁴ Payment by the individual for these items was accomplished through the liquidation of a small retirement account that the individual had through a prior employer. Ex. D; Tr. at 131 – 133, 165 – 166, 169 – 170. In liquidating the account, the individual prudently allowed for taxes and early withdrawal penalties. Ex. D at 1; Tr. at 155. In light of the employee’s age and the limited size of the liquidated account, such liquidation should have no long term adverse impact on the individual’s financial viability. *See Id.* at 133, 155.

⁵ The account that was listed as charged-off was for an automobile that the individual still owned and had in his possession. Notwithstanding that the account was listed on his credit report as “charged-off,” at the time of the 2013 PSI, the individual was current on the account. Nonetheless, the individual settled the debt in full prior to the hearing. Ex. H; Tr. at 115 – 117.

⁶ This item was *not* noted by the LSO or in the Notification Letter and relates to cancellation fees on a cell phone contract. The individual testified that, although the carrier had changed its policies with respect to contract cancellations, it was his responsibility to have been aware of the policy change and, therefore, he paid the amount in full after first learning of the charge while reviewing his credit report in preparation for the hearing. Ex. J; Tr. at 142 – 144.

guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁷ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. 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

The individual does not contest the accuracy of the facts alleged in the Notification Letter.⁸ Tr. at 156. Rather, the individual focuses on the circumstances surrounding his debt, the progress he and his wife have made in resolving their financial situation and the financial strategy that they have for the future.

The individual and his wife married and began their family of four children while undergraduates. *Id.* at 88 – 89. While putting themselves through school, both the individual and his wife incurred substantial debt in the form of student loans. Upon completion of the individual's graduate studies, he accepted employment with a DOE contractor (1) in a year in which financial constraints precluded signing bonuses traditionally paid to new hires in the individual's field, and (2) in a location where the rental market was temporarily inflated due to a catastrophe having destroyed a large portion of the housing market. *Id.* at 53, 135 – 136. Additionally, a miscommunication resulted in the individual incurring \$3000 in moving expenses not reimbursable by his employer. *Id.* at 54, 135. The individual and his wife believe that these circumstances, amongst others, caused an adverse impact on their finances that has disadvantaged them since the beginning of the individual's working career.

During their 20-year marriage, the wife managed exclusively the family's finances and made their financial decisions. *Id.* at 88. The individual did not involve himself in their finances and trusted that his wife would manage their financial affairs. When questioned during the PSIs on financial matters, the individual had limited knowledge of the matters raised and relayed the concerns to his wife, expecting she would take care of them. *Id.* at 63 – 66, 86 – 90, 100.

The individual involved himself in the family's finances for the first time following the 2013 PSI and the subsequent suspension of his access authorization. *Id.* at 90 – 91. The individual now takes primary responsibility for the family's finances. *Id.* at 99. By liquidating a small retirement fund that the individual had with a prior employer, the

⁷ 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.

⁸ However, the individual correctly disputes the LSO's conclusion that a budget submitted by the individual subsequent to the 2013 PSI omitted liabilities for taxes and a charged-off account.

individual has fully paid or otherwise satisfied all of their collection or charged-off debt. Ex. D; Ex. E; Ex. F; Ex. G; Ex. H; Tr. at 131 – 133, 165 – 166, 169 – 170. Their one charge card has been paid in full; their automobile loans and all utilities are current; they are in compliance with their tax payment agreement with the IRS; and the individual's student loans will be deemed current when his present forbearance period expires and the first payment made in mid-October. Ex. A; Ex. K; Ex M. To show their financial responsibility, prior to the hearing the individual (1) paid certain medical collection accounts prior to the administrative review hearing notwithstanding his belief those amounts were previously paid, (2) made a voluntary payment on the student loans during the forbearance period and (3) paid a previously unknown debt that first appeared on a credit report he obtained to prepare for the hearing. Ex. E; Ex. J; Ex. K; Tr. at 109 – 114, 142 – 144.

The individual and his wife believe that they now have a financial plan that will allow them to remain current on their financial obligations going forward. Ex. L; Tr. at 125 – 133. The individual has arranged for his pay to be divided into separate accounts, one from which he will pay their recurring monthly bills (e.g., automobile and student loans, utilities, telephones, insurance and commuting expenses) and one from which he and his wife can pay other household and family expenses (e.g., food, gasoline and children's expenses). *Id.* at 127 – 128. Their budget projects \$2,150.00 being available each month for household and family expenses, an amount they believe is sufficient. Ex. L at 2; Tr. at 131 – 132. As part of their budget, the individual presented a 12-month calendar showing specific dates on which each of their recurring bills would be paid. Ex. L at 3 – 14. The individual has also calendared a quarterly reminder to check his credit report to assure that he has accurate information on his financial accounts. Tr. at 144.

The individual's supervisor testified that, at work, the individual is responsible for a multi-million dollar budget that needs to be frequently updated because of their changing work environment. According to his supervisor, the individual shows tremendous responsibility, judgment and diligence with respect to the budget he manages at work and, amongst his peers, is the manager most diligent in updating his budget forecasts. *Id.* at 38, 41, 45.

B. Hearing Officer Evaluation of Evidence

The individual does not contest the accuracy of the delinquent, collection and charged-off debt recited in the Notification Letter at the date thereof. *Id.* at 156. The existence of such debt reflects the individual's history of being unable or unwilling to pay his debts in a timely manner and constitutes financial irresponsibility, which is a disqualifying security concern under Criterion L. *See* Adjudicative Guidelines, Guideline F ¶ 19(a), ¶ 19(c).

The individual's documented progress on his finances is laudable: as of the date of the hearing he has paid or resolved all of his outstanding debt, with the exception of federal tax debt (which is subject to a tax payment agreement on which he is current), automobile loans (which are current) and student loans (which are currently in forbearance). Ex. A; Ex. B; Ex. E; Ex. F; Ex. G; Ex. H; Ex. I; Ex. J; Ex. K; Ex. M. He has presented a budget illustrating his family's ability to meet their financial needs and obligations and a detailed

calendar demonstrating the actions he will take to remain current on his obligations in the future. Ex. L; Tr. 38, 41, 45. This significant progress and detailed planning, for which the individual and his wife are to be commended, must be analyzed within the context of the individual's total financial situation.

Both the individual and his wife credibly testified that the individual relied upon his wife to manage their finances. *Id.* at 63 – 66, 86 – 90, 100. They suggest that their family's history of financial disarray occurred without the active involvement or knowledge of the individual and that he had insufficient information about their finances to meaningfully address concerns raised during the PSIs. *Id.* at 162 – 163. While I accept as credible that the individual was unaware of the details of their financial situation, such unawareness does not excuse him from responsibility. A holder of access authorization is responsible for his or her financial well-being and that necessarily requires a reasonable exercise of diligence to, as a minimum, *be informed* of the details of his or her financial situation. The individual abdicated all responsibility on financial matters to his wife as is reflected in his testimony that "I didn't really have a clear understanding of our finances because I chose not to participate... ." *Id.* at 63 (emphasis added). While such abdication would rarely exonerate a holder of access authorization for accountability for his or her finances, it is patently inexcusable and shows a lack of judgment in this situation where the LSO had conducted five PSIs with the individual, all focused on financial matters. *Cf.* Adjudicative Guidelines, Guideline F ¶ 19. *See* Ex. 13; Ex. 14; Ex. 15; Ex. 16; Ex. 17.

The individual appears to have become involved in the management of his family's finances only after his access authorization was suspended. Tr. 90 – 91. While the resolution he effected once he became involved is formidable, the concern is whether such resolution can be maintained once the pressure of an administrative review procedure is removed. The individual's financial history is replete with positive steps followed by reversals. For example, the individual and his wife negotiated a tax payment agreement with the IRS in November 2011 only to default on the agreement after the first payment. *Id.* at 84 – 85. They entered into a new tax payment agreement in January 2013, which has been paid on a current and consistent basis through payroll deductions. Ex. A. Unfortunately, payments accomplished through payroll deduction provide little insight into whether a person has the discipline to satisfy financial obligations as they become due and to avoid expenditures and financial commitments which cannot be satisfied on a timely basis.

In the present case, in the weeks prior to the administrative hearing the individual satisfied his prior financial delinquencies in order to have a "fresh start." *Id.* at 129. He presented a thoughtful, realistic and well-organized plan; however, it was a plan to be implemented the following month. *Id.* at 147 – 150. The plan addresses his very sizable student loans which are in a period of forbearance. While he has shown good faith by making a voluntary payment on the student loans during the forbearance period, I would be remiss to ignore that his prior forbearance period ended in February 2012 and his payments were 120 days delinquent by March 2013. Ex. 6 at 2; Ex. 13 at 23 – 25, 27; Ex. 14 at 35, 47; Ex. K.

The concern is whether this pattern of financial irresponsibility will recur. The individual's financial plan (which provides for his bi-weekly pay to be disbursed to different accounts, one dedicated to the payment of recurring bills in accordance with the schedule detailed on his 12 month calendar, and limiting all other expenses to the available cash set forth in his proposed budget) would address this concern if successfully implemented for a sustained period of time. In prior cases involving financial irresponsibility, Hearing Officers have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." See *Personnel Security Hearing*, Case No. PSH-13-0046 (2013); *Personnel Security Hearing*, Case No. PSH-12-0103 (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). As of the date of the hearing, the individual was planning to commence implementation of his financial plan in the following month; any period of reformation would commence only upon such implementation.

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

V. 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 at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Hearing Officer
Office of Hearings and Appeals

Date: October 10, 2013