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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: August 15, 2013) Case No.: PSH-13-0098
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Issued : December 12, 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 granted at this time.

I. Background

The Individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. Pursuant to a background investigation, the Local Security Office (LSO) discovered potentially derogatory information regarding the Individual’s financial indebtedness. The LSO conducted a Personnel Security Interview (PSI) with the Individual in May 2013 (May 2013 PSI).

In July 2013, the LSO sent a letter (Notification Letter) to the Individual advising her that it possessed reliable information that created a substantial doubt regarding her eligibility

^{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.

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/}

Upon her receipt of the Notification Letter, the Individual exercised her 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 her own testimony and the testimony of one character witness. The LSO submitted six exhibits into the record; the Individual tendered two 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

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).

consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites one criterion as the basis for suspending the Individual's security clearance, Criterion L. To support its allegations, the LSO lists the Individual's 12 outstanding debts, totaling \$62,412. The Individual's failures to live within her means, to satisfy her debts, and to meet her financial obligations raise a security concern under Criterion L, because her actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," all of which can raise questions about the Individual's reliability, trustworthiness and ability to protect classified information. See Guideline F of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. Findings of Fact and Hearing Testimony

The Individual had 12 outstanding debts totaling \$62,412 at the time of the May 2013 PSI. DOE Ex. 1. She has since satisfied six of the smaller debts listed on her credit report which total \$18,058. DOE Ex. 2. At the hearing, she reiterated that she has satisfied those six debts. Tr. at 10. In discussing the remaining six debts, she testified that she is attempting to save money to satisfy those debts, which total over \$48,000, as of February 2013. Tr. at 11, 14, 16, DOE Ex. 1. The Individual testified that she and her husband were current on their debts until he was injured in 2009 and unable to work. Tr. at 17. With her husband's injury, their monthly income decreased by approximately \$2,000. Tr. at 21.

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)^{3/} and the Adjudicative

³ 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.

Guidelines. After due deliberation, I have determined that the Individual's access authorization should not be granted. I cannot find that granting 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.

In considering the evidence before me, I first looked to the Adjudicative Guidelines. Under Guideline F at ¶ 20(a), I must consider whether the behavior occurred so long ago or was so infrequent that it is unlikely to recur. I cannot find mitigation under ¶ 20(a) because the Individual has not satisfied her outstanding obligations totaling over \$48,000. Although she has satisfied six of the debts, the Individual has had no contact with the other creditors. She testified that she intends to "save" money prior to contacting the creditors. Because she has made no effort to contact six creditors to even set up a payment plan, I find that the security concern regarding her substantial outstanding debt remains unmitigated under ¶ 20(a).

Second, though the Individual testified that her financial difficulties arose, at least in part, because her husband was unable to work due to his injury, she testified that she was only paying the minimum amount due on her credit card debt at the time he was injured. Tr. at 22. In addition, she testified that some of the debt was accrued to fulfill necessities, but the remainder were discretionary purchases. Tr. at 22. Based on these findings, there is no mitigation of 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. It does not appear to me that the Individual made any effort to fix her financial difficulties until faced with this hearing, although some of the obligations were paid after her May 2013 interview. Importantly, she has not even contacted six creditors to begin paying debts totaling over \$48,000. Finally, there is no evidence that the Individual has received or is receiving substantial counseling for her financial problems.

Finally, I am not convinced that the Individual understands the need for financial discipline in order to satisfy her obligations. As previously noted, she has made no effort to contact the six creditors. She stated that the one creditor that she attempted to contact had given her an incorrect telephone number. The Individual testified that she was attempting to save some money before contacting the creditors. Yet, her budget shows a monthly surplus of over \$1,300. When questioned at the hearing whether she was saving money to pay off the debts, she stated "Yes, I have, but things come up," Tr. at 14. In view of her budget, I am suspicious about her claim that she refrained from contacting her creditors because she did not have money to pay down the debts. Also, it is my assessment, based on my observation of the Individual's demeanor and her testimony, that she is unconcerned about her financial obligations.

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).^{4/} At this point, the Individual has not demonstrated a sustained pattern of financial responsibility for a significant period of time relative to her lengthy period of financial irresponsibility.

Based on the foregoing, I find that the Individual has not sufficiently 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 granting 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: December 12, 2013

⁴ 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.