

information, described under 10 C.F.R. § 710.8 (l), upon which it relied upon in making the decision to suspend the Individual's security clearance.² Ex. 1.

The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge³ to present evidence to resolve these doubts. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director assigned me as the Administrative Judge in this matter. The DOE introduced nine exhibits (Exs. 1-9) into the record of this proceeding. The Individual introduced two exhibits (Exs. A-B) and presented the testimony of his first-, second-, and third-line supervisors, his team leader, as well as his own testimony, during the hearing.

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 Criterion L of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Ex. 1. The Individual does not dispute the factual accuracy of the Criterion L derogatory information described in the Notification Letter. I set forth my factual findings below.

The Individual's first-line supervisor received an inquiry from a DOE finance office asking if several employees, including the Individual, had been on official travel on certain dates money had been withdrawn from their GCCs.⁴ Transcript of Hearing (Tr.) at 59-60. The first-line supervisor discovered that the Individual had not been on official travel on the dates in February and March 2013, that the DOE finance office had asked about. Tr. at 50. Afterwards, the first-line supervisor asked the Individual about the charges and the Individual informed him that he had accidentally used his GCC for withdrawals because it was similar in appearance to his personal credit card. Tr. at 60. In April 2013, the Individual submitted a written statement (April 2013 Statement) reiterating this account of his misuse of his GCC.⁵ Ex. 7. By July 2013, the Individual's third-line supervisor, after asking for additional account information, discovered that the Individual had made additional GCC withdrawals not previously identified in the Individual's April 2013 Statement. Ex. 6 at 2; Tr. at 19. In separate meetings, the Individual

² Criterion L refers to information indicating that an individual 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 Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1 n.1 (2014).

⁴ A GCC is issued to employees to be used only when on official travel. Ex. 8 at 13-14. The inquiry into the Individual's GCC account was triggered by a computer gaming service purchase that appeared on the account. Tr. at 24-25; Tr. at 60. The Individual's son had made the gaming service purchases without the Individual's prior knowledge.

⁵ In the April 2013 Statement, the Individual specifically identified a computer gaming service purchase and six other withdrawals of funds from his GCC. Ex. 7.

informed his first-line supervisor and his third-line supervisor that he had not been truthful in his earlier discussions and his April 2013 Statement regarding his GCC use. Tr. at 20-21, 23-24, 62-63. The Individual then disclosed that he had been living beyond his means and that he was having financial problems but that he was in the process of resolving those problems.⁶ Tr. at 23-24, 62-63; Ex. 6 at 3.

During the September 2013 PSI, the Individual admitted that he knew that his GCC was to be used only for official government travel. Ex. 8 at 11-13. He also admitted that he had purposefully used his GCC on various occasions from February 28, 2013, through March 11, 2013, for personal use and then paid off the charges on the GCC to avoid detection. Ex. 8 at 12, 18-20, 64-65. During one week of that period, the Individual admitted to having obtained cash advances of approximately \$1,000. Ex. 8 at 65-66; *see also* Ex. 3; Ex. 4; Ex. 6 at 4. The Individual admitted that his improper use of his GCC was prompted by his financial difficulties caused by his inability to receive overtime pay due to an injury. Ex. 8 at 20. In his subsequent request for a hearing, the Individual admitted that he had not been initially truthful with his employer because he was ashamed of what he had done. Ex. 2.

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. *See* 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*), Guideline E. Further, 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. *Adjudicative Guidelines*, Guideline I. Given the Individual's admissions that he deliberately used his GCC to provide cash for his own private use and that his misuse was motivated by his financial difficulties, I find that the LSO had sufficient grounds to invoke Criterion L.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that, in these proceedings, an Administrative Judge 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 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 Administrative Judge 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."

⁶The Individual ultimately received a five-day disciplinary suspension for his misuse of his GCC.

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

As noted above, the Individual does not challenge the underlying facts of this case. However, the Individual presented testimony to try to demonstrate his true remorse for having not been initially truthful with his supervisors. Further, the Individual asserts that he has taken steps to resolve the underlying financial difficulties that led to his misuse of the GCC. Lastly, the Individual asserts that his past workplace and personal record indicate that this incident was an isolated case of bad judgment and that he can now be relied upon to hold a security clearance.

The Individual presented testimony from his first, second, and third-line supervisors as well as his team leader. The supervisors testified as to the events that led to the inquiry regarding the Individual’s use of his GCC. All of the supervisors testified as to the Individual’s excellent work record and their opinion that the Individual usually exercises good judgment and reliability. In their testimony, all expressed surprise that the Individual exhibited poor judgment with regard to the use of his GCC and noted that the Individual had expressed deep contrition regarding making a bad choice.

All of the supervisors and the team leader testified as to the Individual’s attempts to resolve his financial problems after his GCC misuse was discovered. Specifically, they testified to the Individual’s selling of his relatively expensive pick-up truck and his now use of a modest pick-up truck. Tr. at 24, 49, 79, 82. The team leader has visited the Individual’s house and has not observed any evidence that the Individual is leading an extravagant life-style. Tr. at 75, 87. Each of the supervisors and the team leader believe that the Individual made an aberrant poor judgment but that the Individual, based upon their interactions with him, has learned a valuable lesson and is now worthy to hold a security clearance. Tr. at 27-30, 42-44, 68-70, 80-82

The Individual testified that his misuse of his GCC arose when he could no longer receive overtime pay because of an injury that restricted his ability to work overtime assignments. Tr. at 92. The Individual created financial obligations based upon the higher income he would receive with his overtime pay. With his income now reduced, he began to experience financial difficulty. Tr. at 92. The Individual asserted in his testimony that he always paid his monthly GCC balance and thus he never “stole” from the government. Tr. at 93. The Individual believes that his five-day suspension and the ordeal of going through the administrative review process has been a deserved punishment – a punishment he never wants to go through again. Tr. at 94-95. The Individual further testified that he would never put himself in a position where his judgment could be questioned again. Tr. at 95.

To resolve the financial situation which led to his GCC misuse, the Individual testified that he began by selling a number of high cost items that were a financial strain, such as his \$40,000 truck, a \$20,000 motorcycle and two all terrain vehicles. Tr. at 96-97. The Individual has also consulted with the DOE facility’s Employee Assistance Program and employed a financial advisor to assist him with his finances. Tr. at 97. As of the date of the hearing, the Individual is now able to live off his basic salary without overtime. Tr. at 98. The Individual also intends to continue to work to reduce his remaining financial liabilities and now has a spreadsheet budget plan that he developed with his

financial counselor. Tr. at 98, 128-29; Ex. A. The Individual has been using this plan for the six months prior to the hearing. Tr. at 129.

At the hearing, the Individual testified that he took full responsibility for his actions and recognizes that his actions have jeopardized his reputation and credibility. Tr. at 133. The Individual asserts that his past-unblemished military and federal service of 19 years is evidence of his good character. The Individual apologized for his actions that led to the present hearing and requests that he be given a second chance to hold a security clearance. Tr. at 137-39.

The Criterion L concerns in this case center on the Individual's deliberate misuse of his GCC, his initial false statements regarding his misuse, and the Individual's financial instability that led to his misuse of the GCC. As for his misuse of his GCC, the Individual knew that his use to obtain money for non-travel purposes was wrong but yet elected to do so. This represents a significant example of bad judgment. In mitigation, the Individual has presented evidence regarding his efforts, including financial counseling, to resolve the financial situation that led to his misuse of the GCC. *See* Ex. A; Ex. B; *see Adjudicative Guidelines*, Guideline E, ¶ 17 (listing as a mitigating factor: the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur); Guideline F (Financial Considerations), ¶ 20 (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.) Documentary evidence provided by the Individual confirms that he has sold a number of vehicles to reduce his debt burden. Ex. A; Ex. B. The Individual also presented evidence concerning his household budget that he asserts will enable him to live within his means. Ex. A; Ex. B. Nonetheless, the Individual reformed financial habits are of relatively limited duration. 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. TSO-01078 (2011); *Personnel Security Hearing*, Case No. PSH-11-0033 (2011). Although the Individual does not appear to have a lengthy pattern of financial irresponsibility, I cannot find that the Individual's relatively recent efforts regarding reforming his finances totally resolve the concerns raised by the Criterion L derogatory information.

Most concerning to me is the Individual's recent falsification in submitting the April 2013 Statement and the accuracy of his testimony during the hearing. In his testimony, the Individual stated that immediately after submitting the April 2013 Statement, he informed his first-line supervisor that the April 2013 Statement was not correct. Tr. at 126. However, a report authored by the first-line supervisor indicates that the first-line supervisor did not discover that the April 2013 Statement was false until sometime in July 2013.⁷ Ex. 6 at 3 (third-line supervisor's account of a late July 2013 meeting with first-line supervisor stating "prior to [the first-line supervisor] coming in to talk to . . . me [he informed me] that he had spoken to [the Individual]. [The first-line supervisor stated] that [the Individual] had admitted living beyond his means and that he had sold off some of his possessions to ease his self-inflicted financial burdens"); *see* Tr. at 19-22 (third-line supervisor testimony that, in July 2013, he initially believed the extent of the Individual's GCC misuse was limited to the

⁷ The first-line supervisor testified that he did not discover that the Individual had misled him as to the extent of the Individual's misuse of the GCC until the September 2013 PSI. Tr. at 62. However, I find the third-line supervisor's contemporaneous report to be more persuasive. My finding is confirmed by the first-line supervisor's additional testimony that he did not realize that the Individual had been untruthful with him until the third-line supervisor informed him as to the other previously unreported misuses of the Individual's GCC. Tr. at 62.

occasions documented in the Individual's April 2013 Statement but later discovered improper withdrawals of approximately \$6,000 over a year-and-a-half time frame); Ex. 6. Additionally, when asked at the hearing about the first time he made inappropriate GCC cash withdrawals, the Individual responded that his misuse of his GCC began in February 2013. Tr. at 119. Nonetheless, later in the hearing, when shown GCC withdrawal records, the Individual admitted he had made three inappropriate GCC withdrawals in January 2013. Tr. at 120-21; *see also*, Tr. at 25-26 (third-line supervisor's testimony that his audit of Individual's GCC misuse indicated improper withdrawals of approximately \$6,000 over a year-and-a-half time frame); Tr. at 47 (second-line supervisor's testimony that the Individual's GCC misuse lasted seven months); Ex. 6. Given the Individual's initial deliberate deception as to the extent of his GCC misuse as demonstrated in the April 2013 Statement, the Individual's unreliable testimony at the hearing, and the relatively recent nature of his reformed financial situation, I cannot find that the Criterion L concerns raised by the Notification Letter have been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the DOE's security concerns under Criterion L. Therefore, the Individual has not demonstrated that restoring his 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 access authorization. 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.
Administrative Judge
Office of Hearings and Appeals

Date: March 5, 2014