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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: February 27, 2014) Case No.: PSH-14-0016
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Issued: May 23, 2014

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 Department of Energy (DOE) should not restore the Individual’s access authorization.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility and possessed a security clearance. Exhibit (Ex.) 3 at 1. Pursuant to a regularly scheduled reinvestigation, the Individual completed a Questionnaire for National Security Positions (QNSP) form. Ex. 11. In her QNSP, the Individual reported that she had not filed or paid her state income tax for the year 2006. Ex. 11 at 28; *see* Ex. 14 at 13-20, 22-23, 27-30. Consequently, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the Individual in November 2013 (November 2013, PSI). Ex. 14. Because the November 2013, PSI failed to resolve the security concerns raised by the Individual’s admission that she failed to pay her 2006 state income tax or file a 2006 state income tax return and failed to resolve other negative financial information disclosed during the investigation, the LSO suspended the Individual’s security clearance. Ex. 1. In January 2014, the Individual received a detailed notification letter (Notification Letter) from the LSO outlining the

¹ An 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 be referred to in this Decision as an access authorization or a security clearance.

specific derogatory 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 she 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 16 exhibits (Exs. 1-16) into the record of this proceeding. The Individual introduced six exhibits (Exs. A-F) and testified on her own behalf at 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. With one exception, 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.

In 1994, the Individual filed for Chapter 13 bankruptcy. Exs. 8-10; Ex. 13.

In 2013, the Individual revealed in her QNSP that she had failed to pay state income tax in 2006. Ex. 11. During the November 2013, PSI, the Individual stated that she had been contacted several times by a collection agency for back state income tax for the year 2006. Ex. 14 at 13-14. The Individual went on to state that, in light of this, she believed that she must have failed to file her state income tax for the year 2006. Ex. 14 at 14. At the time of the November 2013, PSI, the Individual had not taken any steps to resolve the delinquent 2006 back income taxes. Ex. 14 at 20-23.

During the November 2013, PSI, the Individual admitted that, in February 2011, her home in another city was foreclosed by a financial institution after she stopped making payments on the mortgage in April or May 2010. Ex. 14 at 45-48, 53-54. The Individual also admitted that she had two charged off credit card accounts totaling approximately \$8,000. Ex. 14 at 35-37, 43; Ex. 7; Ex. 11 at 31. Additionally, the Individual admitted that she was delinquent on four credit cards

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).

totaling approximately \$13,000 and that she had failed to contact the credit card companies regarding the debts. Ex. 14 at 38-42; Ex. 7; Ex. 6.

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. *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 F. Given the Individual's admission in her QNSP that she had failed to pay her state income tax for 2006 and her admission in the November 2013, PSI regarding her foreclosed home and her charged off and delinquent credit accounts, 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." 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

At the hearing, the Individual asserted that, contrary to her statements in the QNSP and in the November 2013, PSI, she had, in fact, filed a return and paid her 2006 state income tax. The Individual testified that, in April 2011, when she moved to her current residence from another state, she received a letter from a collection agency informing her that she owed approximately \$3000 in past due income taxes for 2006. Tr. at 52-53. The Individual, by her own admission, procrastinated in

following up on this debt until April 2012. Tr. at 54. However, after contacting a state office and being given a telephone number in order to make an inquiry, she again failed follow up on this debt. Tr. at 54-55. After the November 2013, PSI, while searching for another document, the Individual discovered her 2006 state tax return and other documents indicating that she had filed the return and paid the assessed tax in a timely manner. Tr. at 55. The Individual has submitted into the record a copy of her 2006 state tax return as well as other documents indicating that she had timely filed and paid her 2006 state income tax. See Exs. A- D; Ex. F. Given the documentary evidence submitted by the Individual, I find that she has resolved the Criterion L security concern raised by her alleged failure to file and pay her 2006 state income tax.

The remaining Criterion L derogatory information relates to the Individual's history of delinquent and charged off debts and the Individual's foreclosed residence. The Individual testified that she had purchased a house in August 2008 when she was working for a DOE facility in another state. Tr. at 19-20. In January 2010, the Individual was informed that the DOE facility was winding down and that she needed to find a position at another DOE facility. During this time, the housing market experienced a severe downturn in her residential area. As a result, the Individual began to experience financial difficulties because the credit limits on her credit cards were lowered and her minimum payments suddenly increased. The Individual contacted her mortgage holder to see if she could restructure her mortgage. Tr. at 20-21. The mortgage holder informed her that she was not eligible for any type of assistance unless she was behind in her mortgage payments. Tr. at 21. Consequently, in April or May 2010, the Individual stopped making mortgage payments on the residence. Tr. at 23-24. In October 2010, the Individual moved to her current state of residence and to her current position at the DOE facility. Tr. at 24. When the Individual moved to her current position, she received relocation services from her employer to sell the residence. Tr. at 23. The relocation service arranged a short sale of the residence for approximately \$150,000.⁴ Tr. at 75. However, the mortgage holder refused to affirm the transaction unless the Individual signed a personal promissory note for \$25,000. Tr. at 76. Because the Individual refused to sign the promissory note, the mortgage holder foreclosed upon the residence. Tr. at 76-77. The Individual testified that she does not have any financial liability resulting from the foreclosure. Tr. at 77.

The Individual testified that she has settled the two charged off credit card accounts referenced in the Notification Letter. Tr. at 32. *See* Ex. E. However, when shown a recent credit report obtained a few days before the hearing, the Individual did not recognize another delinquent credit card account for \$358 which did not appear in an earlier credit report submitted as an exhibit (Ex. 7) in this case.⁵ Tr. at 34; Ex. 16. The Individual has not been contacted by the credit card company with regard to that account. Tr. at 34-35. The Individual testified that with regard to most of her delinquent credit accounts she usually waits for the debt holder to contact her before she takes action to resolve the debt. Tr. at 35-36. However, with regard to one of the delinquent credit card accounts, she contacted the account holder in 2010 but was unable to settle the account. Tr. at 44-45. At the hearing, the Individual affirmed most of the delinquent credit card accounts shown on the recent credit report. Tr. at 44-47. Based upon the most recent credit report, the Individual believes that she now owes approximately \$22,000 in delinquent accounts. Tr. at 87.

⁴ The Individual purchased the house for \$250,000. Tr. at 77.

⁵ The DOE Counsel submitted this recent credit report during the hearing and, for the purposes of this Decision, I have marked it as Exhibit 16.

The Individual testified that she receives periodic payments for being a member of a Native American tribe and uses these payments to resolve outstanding accounts. Tr. at 44-45, 47-48. The Individual also testified that she has visited a community financial assistance program to seek advice regarding her financial options and has taken several on-line classes regarding personal finance offered by a university. Tr. at 71-72.

The Individual, like many others homebuyers, was caught in the housing price bubble in which a number of homeowners' mortgage debts became greater than the deflated price of their houses. As such, the fact that she had such a mortgage does not necessarily raise a question about the Individual's judgment. *See Adjudicative Guidelines*, ¶ 20(b) ("the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances). However, it is of concern that, in an attempt to get relief from her mortgage problem, she deliberately chose not to make payments on her residence despite the fact that she had been successfully making her mortgage payments. This demonstrates an unwillingness to honor a debt and reflects poor judgment.

As for the Individual's delinquent credit cards, the Individual has made a promising start by resolving the two charged off credit card accounts. However, the Individual has not made any recent attempts to resolve any of the remaining delinquent accounts. Further, the Individual admits that her current method of dealing with creditors is similar to the method she described in a June 1995 Letter of Interrogatory she submitted to the LSO.⁶ Tr. at 62-63. In examining the *Adjudicative Guidelines* criteria for mitigation of financial instability, I find that none of these factors apply in the regarding the Individual's current delinquent debts. *See Adjudicative Guidelines*, Guideline F, ¶ 20 (mitigating factors). Further, in prior cases involving financial irresponsibility, Administrative Judges 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). The Individual has been attempting to learn more about personal finance and settle some of the charged off and delinquent accounts, in part, by using her tribal payments. Nonetheless, the Individual also admitted that this plan might not be practical since she is currently on leave from her position and not being paid. Tr. at 47. Given the facts before me, I cannot find, as of the date of the hearing, that the Individual has yet adopted a proactive, responsible approach to resolve all of her delinquent accounts or has demonstrated an extended period of financial responsibility. Consequently, I cannot find that all of the Criterion L derogatory information listed in the Notification Letter has been mitigated.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not mitigated all of the DOE's security concerns under Criterion L. Therefore, the Individual has not demonstrated that

⁶ When asked in the 1995 Letter of Interrogatory as to what efforts she made to work with her creditors or a consumer credit counselling agency prior to filing for her 1994 bankruptcy, the Individual responded "I tried contacting creditors directly to work out the situations. I would pay one creditor all I could and as much of what they asked of me one month while holding out on the others. This was a continuous, rotating cycle that wasn't getting me very far ahead in the game. And of course they were not pleased. When the creditors started to all demand more money and more often, I contacted a credit counselling agency. For reasons I do not recall now, this did not appear to be a course I could take. . . ." Ex. 10 at 1.

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 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: May 23, 2014