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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing)

Filing Date: March 4, 2014)

Case No.: PSH-14-0019)

Issued: May 21, 2014

Administrative Judge Decision

Shiwali G. Patel, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 Department of Energy (DOE) should restore the individual’s access authorization.²

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. A Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI) with a personnel security specialist on August 26, 2013, to address his outstanding debt. After the PSI, the LSO determined that there was derogatory information that cast into doubt the individual’s eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. DOE Exhibit (Ex.) 1. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for an access authorization.

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 access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge.³ The DOE introduced 21 exhibits into the record of this proceeding (Exs. 1-21). The individual introduced seven exhibits (Exs. A-G) and presented the testimony of two witnesses. *See* Transcript of Hearing, Case No. PSH-14-0019 [hereinafter cited as “Tr.”]. In addition, the individual provided two post-hearing submissions.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate 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 restoring the individual’s 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). 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).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to subsection (l)⁴ 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 LSO cited the following regarding the individual’s financial irresponsibility: 1) an unpaid civil judgment of \$226,950 that resulted from his failure to make mortgage payments; 2) four collection accounts

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 (Aug. 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.

⁴ Criterion (l) defines as derogatory information when 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. § 708.8(l).

totaling \$1,756; 3) four charged-off accounts totaling \$35,428; 4) foreclosure of his home in January 2010 for failure to make mortgage payments, with a current balance of \$225,950⁵; 5) on February 14, 2008, the individual filed Chapter 13 Bankruptcy, which was dismissed in May 2011, for his failure to make timely payments; 5) on December 22, 2003, he filed for Chapter 7 Bankruptcy; and 6) during his PSI's in March 2010 and October 2003, the individual assured that he would make efforts to resolve his delinquent debts, yet, he still failed to do so. *Id.*

The above information adequately justifies the DOE's invocation of criterion (1), and raises security concerns. The 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*, The White House, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*].

IV. FINDINGS OF FACT AND ANALYSIS

A. Testimony Regarding Financial Problems

The individual is 42 years old and began working for a DOE contractor in 2002. Tr. at 21. As described below, both he and husband testified at the hearing that his financial problems were largely due to his husband's actions. The individual's husband testified that in 2008, he was diagnosed as bipolar. Before his disorder was under control and well managed, which was sometime in 2010 or 2011, he would use the individual's social security information, without his knowledge, and open up charge accounts. Tr. at 10. When he could not pay off the credit card balance, he would apply for payday loans. Tr. at 40. The individual did not know about the credit cards because his husband would take the account statements out of the mailbox without informing him. Tr. at 41. Moreover, his husband testified that he spent money excessively. For example, he was fixated on cleaning the carpet and if he noticed a stain on the carpet, he would pay to have the carpet cleaned in the entire house, rather than cleaning just that one stain. Tr. at 16. Further, in 2007, his husband initiated the process for purchasing a Cadillac without first consulting the individual, assuring the individual that he would be able to make payments on the car.⁶ His husband testified that his inordinate spending, which precipitated from his bipolar disorder, caused the individual to go into debt and file for Chapter 13 bankruptcy. Tr. at 10. The individual eventually gave his husband an ultimatum, stating that he needed to attend counseling for their relationship to continue. Consequently, his husband began counseling for his bipolar condition and has been on medication since 2008. The individual submitted a note from his husband's doctor stating that he has been on medication since he began seeing the doctor in July 2008, is invested in his stability and is at a very low risk of relapse. Tr. at 13.

⁵ While the Summary of Security Concerns lists the balance as \$225,950 here, the record reflects that it was actually \$226,950. Ex. 10.

⁶ The individual stated that his husband completed the paperwork to get the car preapproved for purchasing, and then the individual signed the paperwork due to his husband's assurance that since he had a job, he would be able to make payments on the car. Ex. 18 at 25.

The individual's testimony is consistent with his husband's regarding how he got into financial trouble. Since he started working at the lab in 2002, the individual never applied for a credit card and did not create any new debt except for his car and home. Tr. at 27. However, his husband applied for credit cards without the individual's knowledge, using the individual's social security information. He stated that when his husband was unstable due to his bipolar condition, he would also spend money recklessly. Tr. at 22. For example, his husband would excessively spend money on groceries, by purchasing unnecessary items at expensive prices. Tr. at 22-23. Sometime in 2004 or 2005, his husband stopped working regularly and would get into depressive states where he would sometimes lock himself in a closet and not attend work. He had difficulty maintaining employment and therefore, he could not financially contribute to pay off their expenses. Tr. at 24, 26. It was not until six months to a year into the Chapter 13 bankruptcy in February 2008, when the individual received a list of his outstanding debts, that he discovered his husband put them into debt by taking out multiple charge accounts. Tr. at 42. In order to minimize the harm caused by his husband's actions, the individual temporarily used a post office box to receive mail, switched bank accounts, and placed passwords on some of their accounts. Tr. at 49.

B. Security Concerns

i. *Paragraph A*

In Paragraph A, the LSO cited the individual's delinquent debts. Regarding the unpaid civil judgment in the amount of \$226,950 listed in Paragraph A.1, the individual explained that his house went into foreclosure in 2010 and that he does not owe any money to the bank. Tr. at 52-53; Exhibit 10. After the foreclosure, a separate enforcement action was initiated against the bank regarding its deficient foreclosure processes, whereby the bank entered to an agreement in July 2013, with the Federal Reserve Board. The individual provided documentation indicating that his credit reports have been amended to remove the civil judgment and he provided a copy of a \$500 check, dated January 27, 2014, from the bank's servicer that was given as a result of the enforcement action against the bank.⁷ Ex. B. Moreover, the individual demonstrated that he paid off the debts in collection listed in Paragraph A.2.a-d of the Summary of Security Concerns.⁸ He and his husband explained that he did not pay off those debts when they were due because when the bills arrived in the mail, his husband stored them away without informing the individual, and accordingly, the individual never knew about those until much later. Tr. at 63-64. However, he provided documentation indicating that those debts have been paid off. Exs. A-1, 3, 4, 5.

The individual also addressed the LSO's concerns associated with the charged-off accounts listed in Paragraph A.3. First, he provided documentation indicating that he paid off the debt listed in

⁷ The individual explained that after the home was foreclosed on, the shortfall was approximately \$45,000, which was forgiven pursuant to the settlement agreement from the enforcement action against the bank, stating "The Agreement includes . . . forgiveness of deficiency judgments." Ex. F.

⁸ The individual explained that the debts listed in Paragraph A.2.b and c were balances from a bank account that he closed when he went into bankruptcy. He stated that the account should have been listed as reaffirmed debt, but it was not, and accordingly, it went into collection. Tr. at 62.

Paragraph A.3.b on February 13, 2014.⁹ Ex. A-2. As for the \$20,753 that he owed to the bank that is listed in Paragraph A.3.c, the credit reports have been amended to remove that debt as he no longer owed money to that bank once his house was foreclosed.¹⁰ Tr. at 77. At the hearing, the individual explained that the account listed in Paragraph A.3.a for \$14,034 concerned his husband's purchase of the Cadillac. Tr. at 70-71. The individual stated that they voluntarily surrendered the Cadillac during the Chapter 13 bankruptcy proceeding and therefore, the account with the \$14,034 debt is now closed.¹¹ Tr. at 72-73. By surrendering the Cadillac, the individual has saved approximately \$600 dollars a month. Tr. at 15. Finally, as to the debt listed in paragraph A.3.d, the individual provided documentation from a credit bureau stating that it investigated his dispute of that debt, and that it deleted the debt from his credit report. Ex. C3, G. The individual explained that the account was "misleading" as he did not know where it came from, and "it was constantly being reported as 90 days late," which was inaccurate. Tr. at 81.

Hence, upon consideration of the factors listed in the Adjudicative Guidelines, I find that the individual has mitigated the concerns listed in Paragraph A of the Summary of Security Concerns. *See Adjudicative Guidelines* ¶¶ 20(b) ("the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances"), (d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") & (e) ("the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.").

ii. *Paragraph B*

In Paragraph B, the LSO provided information regarding its concern that the individual has established a pattern or an unwillingness or inability to satisfy his debts. Paragraph B.1 lists the foreclosure of the individual's home in 2010. The individual explained that he could not make payments on his mortgage because his husband was not regularly working and as his husband applied for more charge accounts, their expenses grew. Tr. at 84. Thus, their home was foreclosed on in early 2010; however, as stated above, due to the separate enforcement action against the bank, the individual does not presently owe anything to the bank. Tr. at 85. With regard to their current home, which the individual owns, there are no financial issues. Tr. at 85.

As to his failure to make payments to the trustee for his Chapter 13 bankruptcy, which was eventually dismissed, the individual explained that he could not regularly make the monthly payments required by the trustee. The individual entered into Chapter 13 bankruptcy because he

⁹The individual explained that he opened the account listed in Paragraph A.3.b. to commence the Chapter 13 bankruptcy and that when it was brought to his attention that there was still \$641 due on that account, he immediately paid it off. Tr. at 75.

¹⁰At the hearing, the individual explained that the default judgment against him that arose from his mortgage was against him and the second bank (listed in Paragraph A.3.c.) and that accordingly, the second bank no longer could collect on their debt. Tr. at 77.

¹¹The individual provided a copy of his credit report wherein it indicated that the status of the debt listed in Paragraph A.3.a is "Potentially Negative Closed." Ex. D-2.

believed that it would save their home and Cadillac; however, they nonetheless lost their home through foreclosure and they voluntarily surrendered their Cadillac in order to save money and pay off their debts. Consequently, the individual realized that he was not benefiting from the Chapter 13 bankruptcy. Tr. at 93. He explained that the trustee set the payment plan based on individual's income when he worked overtime; however, as he was not able to regularly work overtime, he could not afford to make all the payments. Tr. at 86. While he informed the trustee that he could not afford those payments as he was not earning enough, the trustee refused to lower the monthly payments. Tr. at 87. He also stated that he had many expenses during this period because his vehicle broke down and his husband's mother became terminally ill and in caring for her, they incurred additional expenses by purchasing food for her, paying her rent and expending gas to drive her around. Tr. at 88-89. Subsequently, based on the advice of an attorney, they decided to get out of the Chapter 13 bankruptcy when they realized that instead of paying the trustee directly, they could pay off their remaining debts on their own, particularly as their home was already foreclosed and they no longer owed money to the bank. Tr. at 88-91. They also realized that they would be able to save money without paying the trustee through the Chapter 13 bankruptcy. Tr. at 91-92.

The individual stated that in December 2003, he filed for Chapter 7 bankruptcy after incurring debts from starting his own businesses. Tr. at 94-95. As he did not earn enough to pay his creditors, he incurred debt. Tr. at 95. Consequently, the individual decided to return to college and eventually he started working for a DOE contractor. Tr. at 95. While he was going through a security investigation for his job with the DOE contractor, he was asked by his investigator how was he going to resolve his debts; from his investigation, he felt compelled to enter into Chapter 7 bankruptcy in order to resolve his debts and be eligible for a security clearance to work for the DOE contractor. Tr. at 97.

The individual explained that since 2008, he has not incurred any new debts. Tr. at 99. His indebtedness is now only for his car, house and student loans, and he has been making payments on those debts. Tr. at 100-101. He also lowered his expenses by using fans for the house instead of using the air conditioner, reducing the cable bill, and encouraging his husband to shampoo their carpet instead of having it professionally cleaned. Further, his husband is able to contribute financially through his disability payments. Tr. at 105. The individual submitted a copy of his budget indicating that his total income, with his husband's disability payments of \$665 a month, they earn a total of \$4765 a month, with \$3373 in expenses and \$878 payments towards their debts, including student loans and their car. In total, they are able to save \$514 a month.

Accordingly, I find that the foreclosure of the individual's home, the bankruptcies and the Chapter 13 dismissal were not due to the individual's frivolous spending or irresponsible behavior. Furthermore, the individual has sufficiently mitigated the concerns with regards to his past debt and bankruptcies. He has demonstrated that as soon as he discovered the debts, he paid them off or requested that the credit bureaus investigate them and indeed, some of the debts relied upon by the LSO in its Summary of Security Concerns were eventually removed from the credit reports. He and his husband both testified that his accumulation of so much debt and financial troubles were largely attributed to his husband's excessive spending elicited by his bipolar condition. As his husband's doctor provided a note stating that his condition is stable and that he is a low risk of relapse, I do not find that the individual's financial problems are likely to recur due to his husband's actions. More importantly, the individual acted responsibly in addressing the concerns when they

were brought to his attention and he is now more cognizant of what steps to take to protect his credit. Thus, I find that the security concerns raised by the LSO have sufficiently been mitigated, and that the individual's access authorization should be restored.

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 (1). However, 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 brought forth sufficient evidence to mitigate the security concerns at issue. I therefore 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 security clearance should 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.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: May 21, 2014