

informed the Individual that she was entitled to a hearing before an Administrative Judge in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual testified on her own behalf and offered the additional testimony of a former co-worker. In addition, the Individual submitted nineteen exhibits into the record (Indiv. Exs. A-S). The DOE counsel presented no witnesses, and tendered thirteen exhibits (DOE Exs. 1-13). *See* Transcript of Hearing, Case No. PSH-14-0028 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including “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 of the individual at the time of the conduct; the voluntariness of 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,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *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).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a); *see generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter informing the Individual that the DOE possessed certain derogatory information which raised doubts regarding her eligibility to hold DOE access authorization. According to the Notification Letter, this information raises security concerns under Criterion L of the Part 710 regulations. DOE Ex. 1. To support its Criterion L concerns, the LSO alleged that the Individual had charged off debts totaling approximately \$38,500, collection accounts totaling approximately \$5,200, and past due traffic fines totaling approximately \$3,000. *Id.* In addition, the LSO cited the Individual's \$7,500 in charged off student loan debt and other student loans, totaling approximately \$173,400, which are currently in unemployment deferment, and alleged that the Individual used her student loans to finance trips for which she did not receive course credit. *Id.* Finally, the LSO cited the Individual's statement during the November 2013 PSI that she is not in a financial position to resolve her delinquent debts. *Id.*

It is well-established that 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," which, in turn, may call into question an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F, ¶¶ 18, 19. In this case, there was ample information in the record regarding the Individual's finances that raised valid security concerns. Therefore, I find that the LSO properly invoked Criterion L.

IV. FINDINGS OF FACT

The pertinent facts of this case are essentially undisputed. The Individual is currently 34 years old. She began having financial difficulties when she was an undergraduate student, and her finances worsened over the years. DOE Ex. 13 at 12; Tr. at 28-35. While she was in college, the Individual received minimal financial aid and supported herself with credit cards and wages from various low-paying jobs. *Id.* at 12-13. In September 2009, while still in graduate school, the Individual left her job in order to focus on her studies. *Id.* at 13-14. However, she unexpectedly did not receive the financial aid that she anticipated that semester. *Id.* at 13. She applied for various positions, but was unable to secure steady employment beyond some occasional short-term or temporary jobs. The Individual was generally unemployed from September 2009 to April or May 2011. *Id.* at 13-14.

In June 2012, the Individual began a paid internship with a DOE contractor. *Id.* at 16. In December 2012, the DOE contractor determined that the Individual did not meet the educational requirements of the graduate student internship program and terminated the Individual's paid internship. *See* DOE Ex. 12 at 14-19; DOE Ex. 13 at 16-17. However, the DOE contractor offered the Individual the opportunity to remain in her position in an unpaid "guest" status. She chose to do so and, as of January 2013, she continued her work for the DOE contractor without collecting a salary. *Id.* In the summer of 2013, the Individual left the DOE contractor to return to her former university to resolve her outstanding educational issues. Tr. at 34-36; Individ. Ex. E. As of the date of the hearing, the matter was not yet resolved. Tr. at 35-36. However, she expects to have completed her required coursework by the summer of 2014 at the latest. *Id.*

As a result of her financial difficulties, the Individual incurred a number of debts over the years. According to the Notification Letter, the Individual had charged off accounts in the following approximate totals: Account 1 for \$16,200; Account 2 for \$2,200; Account 3 for \$4,300; Account 4 for \$3,200; Account 5 for \$12,400; and Account 6 for \$220. DOE Ex. 1. In addition, the Individual also had collection accounts in the following approximate amounts: Account 7 for \$150; Account 8

for \$590; Account 9 for \$320; Account 10 for \$3,600; and Account 11 for \$570. *Id.* The Individual owed approximately \$3,000 in past due traffic fines.³ *Id.* Finally, she had approximately \$170,000 in deferred student loans.⁴ *Id.*

IV. ANALYSIS

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to conclude at this time that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

A. The Individual's Mitigating Evidence

With respect to the various delinquent debts cited in the Notification Letter, the Individual disputed the validity of three of the accounts, acknowledged her responsibility for the remaining debts, and discussed the steps she has taken to resolve them.

According to the Individual, she was not responsible for three of the debts cited in the Notification Letter. First, the Individual disputed the validity of Account 5, which was an auto loan debt that was listed on her credit report. According to the Individual, she obtained an auto loan in 2007 for approximately \$13,000, but the original lender went out of business in 2009 without naming a successor lender on the loan, and a "predatory lender" attempted to claim ownership of the account and sent her a contract alleging that she owed \$30,000. Tr. at 54. The Individual disputed the new lender's claim, and when the new lender was unable to provide documentation to support its claim, the applicable state regulatory authority ultimately granted the Individual the title to her vehicle outright.⁵ Tr. at 51-55; *see also* DOE Ex. 2; DOE Ex. 13 at 62-68; Individ. Exs. C, J. In addition, the Individual challenged two of the cited collection accounts – Accounts 9 and 11. The Individual stated that she was unaware of the origins of those two accounts and the two creditors were unable to provide her with any documentation substantiating the debts. Therefore, upon investigations prompted by the Individual's disputes of the accounts, all three major credit monitoring agencies removed the two accounts from her credit report. Tr. at 58-59; Individ. Exs. P, Q; *see also* DOE Ex. 2.

The Individual acknowledged her responsibility for the remaining accounts, but noted that some of the accounts have been resolved. For example, the Individual represented that the creditor for Account 2 has forgiven the outstanding debt. Tr. at 48-49.⁶ In addition, with respect to Account 6,

³ The Accounts 3 and 4 appear to be two separate student loan accounts held by the same lender. Similarly, the Accounts 7 and 8 appear to be two distinct medical accounts held by the same creditor. DOE Ex. 1; Tr. at 49, 58.

⁴ According to the Individual's May 2014 credit report, she has approximately \$180,000 in student loans currently in deferment. Individ. Ex. Q.

⁵ While the record does not definitively establish how much of the original loan the Individual repaid, she estimates that she made payments totaling at least \$8,400 in the two years before this incident transpired. Tr. at 57. In any event, it is clear that the Individual gained ownership of the vehicle without having to repay the entire balance of her original loan.

⁶ The Individual submitted a Form 1099-C, *Cancellation of Debt*, which indicates that Creditor 2 discharged approximately \$1,030 of the Individual's debt. *See* DOE Ex. 2. However, she testified that she contacted Creditor 2,

the Individual stated that she successfully negotiated a settlement with the creditor. Tr. at 55-56; Indiv. Exs. F, I. Moreover, she contended that one of the cited charged off student loan debts, Account 3, no longer appears on her credit report, although she does not know why. Tr. at 49.

Although some of the cited accounts have been resolved, the Individual acknowledged that she remains responsible for several others. Specifically, the entire balance of Account 1, totaling nearly \$16,200, remains. Tr. at 45. In addition, she noted that she continues to owe the balance of the other charged off student loan debt, listed as Account 4, totaling approximately \$3,200. Tr. at 50. She noted that the account has been transferred to a different lender that she is “trying to track down.” *Id.* She continues to owe the full balances of the medical accounts, Accounts 7 and 8, for approximately \$150 and \$590, respectively. Tr. at 58. With respect to Account 10, the Individual stated that she contacted the creditor to request full or partial forgiveness of the debt, but the creditor was not willing to negotiate with her at that time. Therefore, she continues to owe the entire balance on that account, approximately \$3,600. Tr. at 59. Finally, the Individual still owes “between \$2,500 and \$3,000” in unpaid fines for traffic tickets. Tr. at 62. She stated that she inquired whether she could perform community service or resolve the tickets through alternate means due to her limited funds, but her request was denied. Tr. at 61-62.

The Individual attributed her financial difficulties primarily to the fact that she “was met with a recession” when she finished graduate school, which made it difficult for her to find employment. Tr. at 28. The Individual asserted that, prior to the economic recession, she had debts, but “was managing them.” Tr. at 88. According to the Individual, she lives modestly and does not spend money “flippantly.” *Id.* Rather, she contends that her debts “have been borne out of a lack of income.” *Id.* With respect to the study-abroad trip that was cited in the Notification Letter, the Individual vehemently denied improperly or frivolously spending her financial aid. She insisted that she traveled inexpensively and lived frugally while on that trip, and asserted that she would have spent the same amount of money, or more, over the same period of time had she remained home rather than taking the trip. Tr. at 63-69.

The Individual readily accepted responsibility for her delinquent accounts. However, she maintained that, because she has not been collecting a salary on a regular basis, she has not had the financial means to repay her debts, and is currently not in a position to address the outstanding accounts. Tr. at 34; DOE Ex. 13 at 35-61. She noted that while there may have been other alternatives available to her, such as seeking welfare or some similar form of assistance, her “political ideologies have prevented [her] from accepting” that type of help. Tr. at 29. Similarly, she has been unwilling to “walk away” from her debts by filing for bankruptcy. Tr. at 33. The Individual believes that her debts are “not something that [she] cannot overcome given a salary,” and she intends to resolve her outstanding accounts once she has a steady income. Tr. at 33, 35. She stated, “I truly believe that if I had a salary that fully compensated me for the work that I’ve done, I would be able to fully address, in a forthright manner, payments to my creditors.” Tr. at 88.

The Individual stated that she has an offer of employment from the DOE contractor contingent upon her resolving the education issues which prompted termination of her paid internship as well as her obtaining a security clearance. Tr. at 72; *see also* Indiv. Ex. H. However, she admitted that it was

who confirmed that the balance of her account is \$0. Tr. at 48-49. Two of the three credit reporting agencies currently report the balance of this account as \$0. Indiv. Exs. M, P. However, the third credit reporting agency lists the account status as “charged off” with balance of approximately \$2,200 past due as of May 2014. Indiv. Ex. Q.

not “official offer of employment from the contractor.” Rather, her former supervisor told her that she should reapply for a position once those two conditions are met. According to the Individual, “it was basically a verbal understanding.” Tr. at 83. Nonetheless, the Individual submitted a projected budget, which she based on the salary that she expects to receive once she is rehired by the DOE contractor. *Indiv. Ex. S.* She added that, if she is not rehired by the contractor, she intends to actively apply for other positions. Tr. at 72.

Regarding the Individual’s current financial status, as of the date of the hearing, she was unemployed. The Individual had been working in a restaurant for a period time prior to the hearing, but alleges that she was “constructively terminated” after she reported sexual harassment by a co-worker. Tr. at 70-71. She currently collects unemployment benefits in the amount of \$500 per month. Tr. at 71, 80. At the hearing, the Individual described her current monthly expenses as follows: \$800 for rent, \$200 for food and general living expenses, and \$50 for her cell phone. Tr. at 79. When asked how she supports herself since her expenses are more than double her unemployment payment, the Individual explained that until very recently her boyfriend assisted her by subsidizing some of her expenses. However, they have since separated. Tr. at 80-81. For income in the immediate future, she plans to pay her bills by obtaining temporary work. Tr. at 81. The Individual also testified that she has filed formal sexual harassment complaints based on the incident at her previous place of employment and she “expect[s] to be getting some income from that” Tr. at 80. In addition, she was involved in a motor vehicle accident in March 2014 and anticipates an “insurance pay-out.” *Id.* At this time, she does not have any savings or funds set aside for emergencies or unexpected expenses. Tr. at 81-82.

The Individual’s former co-worker, who saw the Individual several times per week during her employment with the DOE contractor, testified that he did not know the specifics of the Individual’s financial situation, but she appeared to live very modestly. Tr. at 23-24. He added that, based on his interactions with the Individual, he judged her to be “trustworthy” and “extremely conscientious and dedicated.” Tr. at 19-20.

B. Administrative Judge’s Evaluation of Evidence

As noted above, inherent in security concerns raised by financial difficulties are issues pertaining to reliability, trustworthiness, and the ability to protect classified information. These include questions regarding what an individual’s behavior with respect to his finances generally indicates regarding his self-control, exercise of good judgment, and willingness to abide by laws, rules, and regulations. Adjudicative Guidelines, Guideline F, ¶ 18. In addition, of specific concern is that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” *Id.* Among the factors that may serve to mitigate security concerns raised by an individual’s financial problems are that “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” “the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances,” “the [individual] 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,” and “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]” Adjudicative Guidelines, Guideline F, ¶ 20.

In this case, upon consideration of the entire record, I am unable to conclude that the Individual has mitigated the Criterion L concerns associated with her finances. On a positive note, some of the delinquent debts listed in the Notification Letter have been resolved, either because the Individual successfully disputed certain accounts, as was the case with Accounts 9 and 11, or because she negotiated a settlement, as in Account 6, or because she was forgiven certain debts – either voluntarily, like Account 2, or unwittingly, as was the case with Account 5. Nonetheless, given the totality of the circumstances in this case, I cannot find that the resolution of those delinquent accounts alone is sufficient to mitigate the security concerns raised by the Individual’s finances as a whole.

As an initial matter, the Individual has demonstrated an apparent unwillingness to accept personal responsibility for the financial predicament in which she finds herself. Throughout this proceeding, the Individual has generally attributed her financial struggles to a number of external factors – the national recession, the termination of her internship with the DOE contractor, and working without collecting a salary, to name a few. While all of those factors may have played a role to some extent, underlying the Individual’s financial difficulties are decisions that she made at various points in her life. For example, the Individual made certain choices with respect to her educational degrees that ultimately resulted in the termination of her internship with the DOE contractor. She also elected to remain with the DOE contractor in an unpaid status rather than pursuing other paid opportunities elsewhere. Then, after working for no salary for a period of time, the Individual chose to return to her former university to resolve her educational issues with limited income with which to support herself. The Individual also elected to maintain her debts without seeking any assistance, despite having legal avenues of assistance available to her. The record contains other examples of similarly debatable decisions. Suffice it to say that, finding herself in difficult circumstances, the Individual was certainly entitled to make whatever decisions that she believed were right for her. However, it is troubling that she now is unable or unwilling to recognize that her own choices and actions likely exacerbated her financial misfortunes. Given the Individual’s consistent readiness to attribute responsibility for her situation to everything but her own actions, doubts remain regarding her judgment and reliability, particularly with respect to her finances.

Apart from the underlying reasons for the Individual’s financial troubles, that the Individual continues to have a number of delinquent accounts which she is unable to address remains of serious concern and weighs against mitigation. While the total amount of the Individual’s debt is not particularly exorbitant, based on the evidence in the record, the Individual does not currently generate income on a stable basis that is sufficient to cover her regular living expenses – which are minimal – let alone to allow her to even begin to address her outstanding debts. Moreover, the Individual’s grasp of her path forward is nebulous at best. The Individual finds herself relying on anticipated settlements from legal proceedings, income from temporary employment, or a future position with the DOE contractor, all of which are imprecise, uncertain, and ill-defined. As a result, I must conclude that the Individual remains in a very precarious financial position.

In prior cases involving financial irresponsibility, we 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-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0732 (2009); *see also* Adjudicative Guidelines, Guideline F, ¶ 20. In this case, while some of the delinquent debts which contributed to the security concerns related to the Individual’s

finances have been resolved, her financial position remains highly volatile and unstable, and she has provided little specific evidence which demonstrates that her situation will abate in the future. This raises serious concerns regarding her vulnerability to pressure, coercion, exploitation, or duress on account of her finances. Given these facts, I cannot conclude that her financial difficulties are in the past and unlikely to recur and, therefore, do not cast doubt on her current reliability, trustworthiness, or good judgment. Consequently, I find that the Individual has not mitigated the security concerns cited under Criterion L regarding her pattern of financial irresponsibility.

V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to resolve the security concerns cited under Criterion L. Therefore, I cannot conclude that granting the Individual DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

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

Diane DeMoura
Administrative Judge
Office of Hearings and Appeals

Date: June 20, 2014