

security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criterion F and Criterion L).^{2/}

Upon his receipt of the Notification Letter, the Individual exercised his 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 Administrative Judge^{3/} in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the Individual presented three witnesses in addition to his own testimony. The LSO submitted six exhibits into the record; the Individual tendered nine 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).

^{2/} Criterion F concerns information where an individual has “deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . .” 10 C.F.R. § 710.8(f). 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).

^{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 staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

Thus, an Individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after 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 two criterion as the basis for suspending the Individual's security clearance, Criteria F and L. To support the Criterion F allegations, the LSO references the Individual's alleged falsifications on his 2013 Questionnaire for National Security Positions (QNSP). Conditions that can raise a security concern include the deliberate omission, concealment, or falsification of relevant facts from any questionnaire completed during the personnel security process. *See* Guideline E 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). To support the Criterion L allegations, the LSO references the Individual's delinquent debts, including his home mortgage; his two bankruptcy filings, one in 2011 and one in 2012; and his failure to report to the DOE his two bankruptcy filings and a wage garnishment in 2013. The Individual's failures to meet his financial obligations raise a security concern under Criterion L, because his 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. Guideline F. His failure to report his bankruptcy filings and the wage garnishment raise questions regarding his reliability and trustworthiness. Guideline E.

IV. Findings of Fact and Hearing Testimony

The Individual testified that, on the advice of his brother, he stopped paying his home mortgage in 2010. Tr. at 90. His wife had recently lost her job and the monthly mortgage payment had adjusted to an amount that they could not afford to pay. Tr. at 90. The Individual was negotiating with the mortgage company for a loan modification when his brother suggested he stop paying. Tr. at 90. His brother held himself out to be a financial planner, although to the best of the Individual's knowledge, his brother was neither an accountant nor an attorney. Tr. at 91-92. Also on the advice of his brother, the Individual stopped paying his other debts, including a student loan taken to help his son finish college, and gave his brother \$15,000 to invest. Tr. at 93, 96, 102. On two occasions, in October 2011 and June 2012, the Individual's brother filed bankruptcy on the Individual's behalf to stall the foreclosure on the Individual's primary residence. Tr. at 99. The Individual testified that he told his brother that, because of his job at the DOE contractor, he could not file bankruptcy. Tr. at 99. The Individual did not learn about the bankruptcy filings until after he completed his QNSP. Tr. at 100. The Individual's

bankruptcy attorney testified that it was possible for the Individual's brother to file without the Individual's knowledge. Tr. at 64.

In regard to the Individual's wage garnishment, he testified that he did not receive notification until May 2013, after he completed the QNSP. Tr. at 137. He also testified that, at the PSI, he estimated that he learned of the garnishment in February 2013. Tr. at 108. Notification came from his employer, and therefore, he believed that DOE had notification of the garnishment. Tr. at 106-07.

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)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should not be restored. I cannot find that restoring 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.

A. Criterion F

The Individual falsified information on his 2013 QNSP. He signed the QNSP stating that within the last seven years he had (1) not defaulted on a loan, (2) not had any bills turned over to a collection agency, (3) not had any accounts charged off, and (4) not had his wages garnished. At the PSI and during the hearing, the Individual admitted that he knew he had defaulted on a loan, had bills turned over to a collection agency, and had accounts charged off. His only defense to answering these questions improperly on the QNSP was that he was overwhelmed and stressed. Tr. at 112. In addition, he claimed that he knew there would be an investigation and he believed he could explain his situation more clearly in person to the investigator. Tr. at 112. Unfortunately, this is not a defense to falsifying information on a QNSP. Criterion F concerns where an individual has "*deliberately* misrepresented, falsified, or omitted significant information" during the administrative review process. 10 C.F.R. § 710.8(f). The Individual admitted that he deliberately falsified his QNSP, even though he may have had good intentions. Therefore, I cannot find that he has mitigated the concerns raised by his falsification of these three questions.

As to the question regarding his wage garnishment, the Individual claimed at the hearing that he did not receive notice of the wage garnishment until after he completed his QNSP in April 2013. Tr. at 106-07, 137. The Individual submitted a copy of the letter sent to his employer on May 1,

⁴ 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.

2013, regarding the wage garnishment. Ind. Ex. D. The letter indicates that the wage garnishment order of withholding was issued on April 25, 2013. Ind. Ex. D. The Individual's QNSP was dated April 22, 2013. DOE Ex. 5. It is possible that the Individual had no knowledge of the wage garnishment at the time of the QNSP despite his answer to the contrary at the PSI. DOE Ex. 6 at 39, 41, 44, 46-50, 115-119, 121. I found the Individual's testimony to be credible, especially when supported by his exhibit. I find that the Individual did not falsify the information regarding his wage garnishment.

B. Criterion L

To support the Criterion L security concern, the LSO relies on the Individual's numerous outstanding debts, including a student loan and his mortgage. DOE Ex. A at 2. In addition, the LSO relies on statements regarding the Individual's financial irregularities that the Individual made during his November 2013 PSI. These statements include the fact that the Individual admitted that he stopped paying his outstanding debts in 2010 on the advice of his brother and gave his brother \$15,000 to invest; filed Chapter 13 bankruptcy in 2011 and 2012; has made no attempt to satisfy his outstanding debts, including his mortgage; and knew he was to report his wage garnishment and bankruptcies to the DOE. DOE Ex. A at 2-3.

1. The Individual's Outstanding Financial Responsibilities

In considering the evidence before me, I must look to the Adjudicative Guidelines to determine if the Individual has mitigated the Criterion L security concern regarding his outstanding financial responsibilities. The relevant paragraph lists four conditions that could mitigate security concerns, including:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;
- (c) 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;
- (d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

Adjudicative Guidelines, ¶ 20(a)-(d).

The Individual's financial difficulties began in 2010 when his wife lost her employment at the same time his mortgage was adjusting to a higher monthly payment. Tr. at 90. His financial difficulties continued as of the date of the hearing. The Individual's bankruptcy attorney testified that she has filed Chapter 7 bankruptcy for the Individual and expects that it will be discharged within the next couple of months. Tr. at 36-37. She testified that the Individual's debts were not for "high ticket items," but rather for everyday purchases. Tr. at 40-41. The bankruptcy attorney also testified that the Individual will be in a good financial situation once the

bankruptcy is discharged. Tr. at 57. He does not carry high car payments and all his expenses are in line with the Internal Revenue Standards, as they must be for the bankruptcy to be discharged. Tr. at 56-57. The student loan taken out for his son's education, which cannot be discharged in a bankruptcy, will be modified. Tr. at 58. The attorney testified that she expects that the bank holding the Individual's mortgage will either agree to modify the loan or will agree to a short sale of the house. Tr. at 59. I do not believe that the Individual will find himself in a financial disorder again, but there is simply no pattern of financial responsibility as of the date of the hearing. 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).^{5/} Unfortunately, until the bankruptcy has not been discharged and he has shown a pattern of financial responsibility, I cannot find that the Individual has mitigated the concern under paragraph 20(a) of the Adjudicative Guidelines at this time.

The Individual and his bankruptcy attorney testified that his wife lost her employment at the same time that their mortgage payment adjusted upwardly. Tr. at 90. In addition, the Individual was ill-advised by his brother which led to his current financial predicament. Tr. at 32, 90-92. These factors could indicate mitigation under paragraph 20(b) of the Adjudicative Guidelines. However, the second part of paragraph 20(b) is that the Individual acted responsibly under the circumstances. I understand that the Individual believed that his brother was advising him in his best interest, but it is incomprehensible that the Individual would believe that paying none of his outstanding bills would be a path to financial solvency. Therefore, under paragraph 20(b), I cannot find that the Individual acted responsibly in light of his wife's job loss and the mortgage payment adjustment. The Individual has not mitigated the concern under paragraph 20(b).

Under paragraph 20(c), the Individual and his bankruptcy attorney both testified that he has received counseling as required by the bankruptcy code. Tr. at 34; Ind. Ex. E. The bankruptcy attorney testified that the Individual was very prompt in completing both required courses. Tr. at 56. I find that the Individual has satisfied this condition and mitigated the security concern under paragraph 20(c) of the Adjudicative Guidelines.

The Individual's bankruptcy, when discharged, could mitigate the concern under paragraph 20(d). However, as stated above, the discharge has not yet occurred. Therefore, the Individual's debts are still outstanding. I cannot find that the Individual has mitigated the security concern under paragraph 20(d) of the Adjudicative Guidelines.

Based on the foregoing, I find that the Individual has not sufficiently mitigated the security concerns associated with Criterion L.

⁵ 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.

2. The Individual's Knowing Failure to Satisfy His Outstanding Financial Responsibilities or to Report Matters to the DOE.

In considering the evidence before me, I must look to the Adjudicative Guidelines to determine if the Individual has mitigated the Criterion L security concern regarding his failure to satisfy outstanding financial responsibilities or to report his wage garnishment and bankruptcies to the DOE. The relevant paragraph lists four conditions that could mitigate these security concerns, including:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

* * *

- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress

Adjudicative Guidelines, ¶ 17(a)-(c), (e).

As to the Individual's failure to satisfy his outstanding debts, the Individual testified that he was relying on the advice of his brother, who was holding himself out to be a financial counselor. While reliance on authorized personnel or legal counsel advising an individual specifically concerning the security clearance process can mitigate a concern raised about an individual's trustworthiness and reliability, such reliance is not present here. The Individual relied on his brother's poor advice regarding his financial matters. He has presented no evidence of mitigation regarding his failure to pay his financial obligations, including his mortgage. I find that he has not mitigated the Criterion L concern raised regarding his outstanding financial obligations.

As to the Individual's failure to report his bankruptcy filings, he testified that he did not know that his brother had filed bankruptcy on his behalf. Tr. at 99. At the PSI, he was not as adamant that he did not know his brother had filed two bankruptcies without his knowledge as he was at the hearing. DOE Ex. 6 at 104. Rather, he stated that his brother told him it was not a "real filing." DOE Ex. 6 at 105. For that reason, he did not report the bankruptcy filings to DOE. DOE Ex. 6 at 105. I found the Individual to be credible at the hearing. I can believe that he did not know that his brother filed the bankruptcy filings on his behalf. This claim is bolstered by his bankruptcy attorney's statement that it is possible to file a bankruptcy filing on another

person's behalf without his knowledge. I find that the Individual has mitigated the Criterion L concern raised by his failure to report his bankruptcy filings.

As to the Individual's failure to report his wage garnishment, as I noted in the discussion under Criterion F, the Individual stated at the hearing that he did not receive notice of the wage garnishment until May 2013. Tr. at 137. In reading the transcript of the PSI, the Individual stated that he received notice of the garnishment approximately six months prior to the November PSI. DOE Ex. 6 at 39. When the Personnel Security Specialist suggested May or June, he said, "No, no, it was before June. So why don't we say about February." *Id.* Later in the PSI, when questioned again, he says, "Um, I don't know . . . what did I say, maybe like in February or something. . . . and that's a guesstimate too." *Id.* at 47. At the hearing, the Individual presented evidence that he received a letter dated May 1, 2013, regarding his wage garnishment. Ind. Ex. D. Further, the letter indicates that the wage garnishment was not ordered until April 25, 2013, three days after he completed his QNSP. Ind. Ex. D. However, as of the date of the PSI, he had still not reported the garnishment to the DOE. The Individual explained, at the hearing, that since he received the letter informing him of the wage garnishment from his employer, he thought the DOE had been informed. Tr. at 104. The Individual has presented little evidence to mitigate the concern raised by his failure to report the wage garnishment to the DOE. I find that he has not mitigated the Criterion L concern.

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 Criteria F and 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 Criteria F and L. I therefore cannot 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 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
Administrative Judge
Office of Hearings and Appeals

Date: June 2, 2014