



eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon her receipt of the Notification Letter, the individual exercised her 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 in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented her own testimony and that of the attorney who assisted her in filing a petition for bankruptcy. The LSO submitted 15 numbered exhibits into the record; the individual tendered six exhibits, which have been labelled A through F.

## **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 (9<sup>th</sup> 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 or her 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> 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).

## **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 one criterion as the basis for suspending the individual's security clearance, Criterion L. To support its allegations, the LSO lists the individual's current delinquent debt, which totals \$13,155, and over \$100,000 in charged-off debt. The LSO also notes the individual's failure to resolve a number of debts, despite her stated intentions to do so during her 2008 and 2011 PSIs, as evidence of a pattern of unwillingness or inability to satisfy debts. The individual's failure to live within her means, to satisfy her debts and to meet her financial obligations raises a security concern under Criterion L, because her 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. See Guideline F 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). In addition, the LSO cites three occasions on which the individual failed to fully disclose to the LSO the extent of her financial difficulties: disclosure of her home, during a 2008 PSI, and a number of collection and charged-off accounts on Questionnaire for National Security Positions (QNSPs) she completed in 2011 and 2013. Deliberate omission, concealment, or falsification of relevant facts from forms or in communications used to determine eligibility for access authorization can raise questions about the individual's honesty, reliability, and trustworthiness, qualities upon which the LSO must rely when determining eligibility for access authorization. Adjudicative Guidelines at Guideline E at ¶ 16.

## **IV. Findings of Fact**

The individual bought a house in 2004. Exhibit (Ex.) 13 (Transcript of January 28, 2014, Personnel Security Interview) at 38. At the time of the purchase, she and her husband were both working at full-time jobs. Transcript of Hearing (Tr.) at 9, 10. A first-time home buyer, she quickly learned that her mortgage was based on an interest-only loan, and the monthly payment increased by about \$500 every six months. *Id.* at 10; Ex. 13 at 37. Nevertheless, they were able to meet the increasing monthly payments with their combined income. Tr. at 13. About a year after the house purchase, her estate agent, who was her stepsister, convinced her to obtain a second mortgage on the home for

\$93,000. *Id.* at 14-15.<sup>3</sup> Her husband lost his job in 2006, and since that time he has worked as a musician, contributing to the household income sporadically and unpredictably. *Id.* at 9, 17; Ex. 13 at 64. With only one income, the monthly payments on the two mortgages became unmanageable. By the third year of the mortgage, the individual was making only partial payments on the mortgage and was having difficulty paying other creditors as well. Ex. 13 at 18-19, 37-38. By December 2007, she had lost the home to foreclosure and moved her family to the rental property where they continue to reside. *Id.* at 39.

Following the 2007 foreclosure, the individual stopped using credit cards and managed the household expenses on a cash-only basis, relying only on her income for budgeting purposes. Tr. at 31. At the hearing she stated that she always intended to pay back the debts she incurred while she was trying to meet the mortgage payments, as she had stated during her 2008 and 2011 PSIs. *Id.* at 12. Nevertheless, she testified that she did not enter into payment plans with her creditors, because she did not want to commit to plans she might not be able to adhere to, and money was too tight to pay back debts. *Id.* at 48. The individual also testified that she did not file for bankruptcy until recently, though debt counselors she consulted in 2008 recommended it for her. *See* Ex. 14 (Transcript of April 13, 2011, Personnel Security Interview) at 40. When questioned why she had resisted filing for bankruptcy, the individual gave three reasons: she was embarrassed; she had always intended to pay the bills she had incurred, though she never had enough income to do so; and she could not afford the cost of hiring an attorney or the filing fees associated with a bankruptcy proceeding. Tr. at 12; Ex. 13 at 48. After her January 2014 PSI, however, the individual realized that her current income would never be sufficient to pay her back debts in addition to her household expenses. Tr. at 25. She also learned that her legal services insurance plan, deducted from her paycheck, would cover the attorney's fees associated with a bankruptcy proceeding. *Id.* at 26. Armed with that knowledge, the individual filed for bankruptcy within two weeks of the PSI. Exs. C, D, F. The bankruptcy was discharged on May 27, 2014. Ex. E.

## 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)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access

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<sup>3</sup> When questioned during the hearing as to what purpose the second mortgage served, the individual testified that she had no idea: neither she nor her husband had ever seen any of the proceeds of that mortgage. As a first-time homeowner, she simply followed the stepsister's advice, obtained the mortgage, and made monthly payments. *Id.* at 15-16.

<sup>4</sup> 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.

authorization should be restored. I 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. Financial Matters**

At the hearing, the individual testified about the circumstances that led to her incurring debt. Because she appears to have been debt-free until she purchased a home in 2004 and her husband lost his job in 2006, I agree with the individual that the house purchase and the job loss are the chief causative factors in her indebtedness. Credit reports that the LSO obtained on the individual in 2007 through 2014 demonstrate that her outstanding debt accounts, both overdue and in collection, date back to a period ending in 2007. *See* Exs. 4-8. There is no evidence that the individual has incurred new debt, or even opened a new credit card account, since that time. *Id.*

During the LSO's most recent review of the individual's eligibility for a security clearance, the individual completed a monthly budget statement. Ex. 10. She testified that she included only her income on that statement, though her husband does contribute to the household as well. Tr. at 17. The individual stated that her husband earns \$700 to \$800 a month when he has work, but estimated that he brings in \$3000 to \$4000 annually. *Id.* at 27, 52. She is committed to running the household on her income alone, as his is unpredictable. This approach is commendable, if somewhat conservative. At the hearing, we reviewed the budget and adjusted a few expense items to somewhat higher levels. *Id.* at 21-24. Nevertheless, the individual's budget, even as modified, demonstrates that she is living within her means and can successfully, though frugally, maintain her household on her salary alone. As the DOE Counsel pointed out, however, the husband's income serves as a valuable cushion when unexpected expenses arise.

Given the tightness of her budget, I find that the individual was reasonable to file for bankruptcy once she realized she could afford to do so. Initiating bankruptcy is in some cases a wise decision, and not one that necessarily demonstrates poor financial judgment. It often reflects the consequences of the individual's past pattern of poor financial decisions. Although the individual's bankruptcy was made final just recently, the debts discharged all date from a period before her December 2007 foreclosure. Therefore, in this particular situation, the bankruptcy has relieved the individual from the crushing burden of debts so old that they do not cast a shadow on her current financial conduct.

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the individual demonstrated a pattern of living beyond her means for a relatively short period of time, from 2006, when her husband lost his job, to the December 2007 foreclosure. During this period, the family's income was effectively cut in half, yet the monthly mortgage payments continued to increase. The period ended when they moved to a rental property and no longer carried a mortgage, and the individual has managed her household expenses responsibly since then. In light of the circumstances surrounding the individual's financial problems, I find the LSO's security concerns about the individual's finances to be mitigated under Guideline F at ¶ 20(a),

which addresses behavior that occurred so long ago or so infrequently or under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness or good judgment.

Second, the conditions that resulted in the individual's financial problems were, to some degree, beyond her control. Her husband's loss of employment in 2006 contributed significantly to the family's inability to meet the monthly house payments and other routine household expenses. With two small children, the couple was not unreasonable in deciding that the husband should stay home with the children to avoid the cost of daycare. See Ex. 13 at 72. Having reached that decision, the individual made sure that she could manage all the household expenses, but not the outstanding indebtedness, on her income alone. Based on these findings, I mitigate the individual's financial issues under Guideline F at ¶ 20(b), *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control, and the individual acted responsibly under the circumstances.

Third, I find, for purposes of Guideline F at ¶ 20(c), that there are clear indications that the individual's financial problems are resolved or under control. The individual has exercised financial discipline since at least 2007. The only aspect of her finances that was not under control was the outstanding indebtedness, which was incurred in 2006 through 2007. The individual's recent bankruptcy has now discharged those debts. It clearly took the individual more time than it should have to overcome her reluctance to file for bankruptcy, but she has done so. The positive effect of the bankruptcy is that she no longer is responsible for those old debts. Her new debt-free status, when combined with her ability to meet her household expenses and her long-time commitment to not create new debt, including the use of credit cards, demonstrates that her financial problems have been resolved.

In prior cases involving financial irresponsibility, Administrative Judges (formerly called 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), and cases cited therein.<sup>5</sup> In that case, the Hearing Officer found that eight months of responsible financial behavior was too short a period to demonstrate a sustained pattern of financial responsibility for a significant period of time relative to the individual's lengthy past period of financial irresponsibility. In contrast, the record in this case reflects financial decisions made between seven and ten years ago by an unsophisticated first-time home buyer who was misguided by her stepsister; her indebtedness, while substantial, did not arise from willful irresponsibility. In any event, the individual in this case, though saddled with debt from an earlier period, has lived within her means, frugally and conservatively, since she lost her home in 2007. The intervening period of about seven years represents a sustained pattern of financial responsibility that, when coupled with her testimony explaining how her financial difficulties arose, sufficiently demonstrates that her past pattern of financially risky behavior is unlikely to recur.

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<sup>5</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha).

## **B. Omission of Information**

The individual addressed the LSO's concerns regarding her omission of adverse financial information on two QNSPs and during a PSI. In her response to the Notification Letter, the individual wrote that at the time of her 2008 PSI, she had received no documentation concerning her December 2007 foreclosure and was unsure of its status; as a result, she did not raise it in response to general questions about her financial position. Ex. 2. At the hearing, the individual testified that she had not obtained a copy of her credit report before completing her PSIs; working from memory, she listed most of her debts, but failed to recall all of them. Tr. at 29. In her testimony, she emphasized that she did not deliberately misstate her finances at any time. She accepted full responsibility for not securing credit reports before completing those forms, and committed to being as accurate as possible on all future QNSPs. *Id.* at 30. I note that the individual did report her foreclosure during later PSIs and further note that she was not consistent in her omissions of the various debts on the two QNSPs. I find that the individual's past inattention to detail in reporting her financial condition, while not commendable, does not demonstrate a deliberate intent to omit or conceal critical information from the LSO. In addition, her commitment to accuracy in the future mitigates any lingering doubts I may have in this regard.

Based on the foregoing, I find that the individual has mitigated the security concerns associated with Criterion L.

## **VI. 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 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 brought forth sufficient evidence to mitigate the security concerns associated with Criterion L. 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 access authorization 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.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: July 11, 2014