

**\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.**

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

In the Matter of Personnel Security Hearing )  
 )  
Filing Date: May 6, 2014 ) Case No.: PSH-14-0048  
\_\_\_\_\_ )

Issued: July 17, 2014

---

**Administrative Judge Decision**

---

Shiwali G. Patel, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the DOE should not grant the individual’s access authorization at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is an employee of the Department of Energy and is an applicant for access authorization. A Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI), with a personnel security specialist on January 30, 2014, in order to address issues concerning his outstanding debt obligations and alleged misrepresentation on his SF-86 (Questionnaire for National Security Position or QNSP) that he submitted on April 2, 2012, and November 7, 2013. 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

---

<sup>1</sup> 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.

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

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.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge. The DOE introduced 13 exhibits (Exs. 1-13) into the record of this proceeding. The individual introduced 12 exhibits (Exs. A-L) and presented only his testimony at the hearing. *See* Transcript of Hearing, Case No. PSH-14-0048 [hereinafter cited as “Tr.”]. Furthermore, after the hearing, the individual filed several post-hearing submissions, including his budget and documentation of payments towards his debts.

## **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 cites information pertaining to subsection (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. In its Notification Letter, the LSO cites the following: 1) the individual’s federal delinquent tax debt for the years 2000, 2001, 2002, 2004, 2005, 2006 and 2012, totaling \$40,950.45; 2) the individual’s seven collection accounts totaling \$52,949.63; 3) the individual’s account that is 60 days past due for \$305; 4) the individual’s statements during his PSIs in August 2012 and September 2008, and a previous administrative hearing in February 2013, that he intended to resolve his outstanding debts, but during his PSI on January 30, 2014, he admitted that he did not resolve his debts; and 5) the individual’s failure to disclose on his QNSPs a federal tax lien for 2006. Ex. 1.

The above information adequately justifies the DOE's invocation of criterion (1), and raises significant 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*]. Moreover, the failure to provide truthful and candid answers during a security clearance process also raises questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.*, Guideline E.

#### **IV. FINDINGS OF FACT AND ANALYSIS**

The individual is 54 years old and is an applicant for a security clearance. Ex. 8. He previously had a security clearance but, after concerns were identified regarding his financial delinquencies during his re-investigation, his clearance was suspended in October 2012. In February 2013, the individual's security clearance was terminated due to his extended leave of absence. Ex. 3. He has several outstanding tax debts and collection accounts, some of which were previously addressed in the prior administrative review proceeding before OHA regarding his previous clearance suspension and during his PSIs on January 30, 2014, August 27, 2012, and September 10, 2008. In November 2013, a request for reinstatement of the individual's access authorization was submitted.

##### **A. Delinquent Debts**

At the hearing, the individual explained how he fell behind on paying his bills and got into debt. In 1999, he started a business with two other individuals and lost money from that business. Tr. at 19. In order to avoid paying taxes so that they could pay their business expenses, he and his business partners filed a 1099 tax form. Tr. at 19. They expected their business to become successful so that they could eventually pay off their taxes; however, they lost money from that business while accruing tax debt at the same time. Tr. at 19. Thus, in April 2002, they sold their business to a company that the individual later sued for not paying him the full amount from the buyout plan, which was approximately \$71,500. Ex. 11 at 13-22. Furthermore, the individual stated that he lost \$20,000 from his wife's income when she left him in 2000, and that he has struggled financially ever since she left. Tr. at 19; Ex. 11 at 28. In order to pay off his debts and to be current on his mortgage, the individual began withdrawing money from his 401(k) account in 2002. Tr. at 20. However, since he did not pay taxes for his withdrawals from his 401(k) account, he ended up owing taxes to the Internal Revenue Service (IRS). Ex. 9 at 81. The individual also stated that in 2005, foreclosure proceedings were initiated against him, but he withdrew money from his 401(k) to pay his mortgage and prevent the foreclosure. Tr. at 21. He also used that money to take care of his children, and pay for food, utilities and insurance. Tr. at 20; 45. During that time, his taxes accrued and he fell behind in paying his expenses and debt.

The individual was diagnosed with a serious illness in November 2012, for which he had to take time off from work and undergo treatment for ten months, or until September 2013. Tr. at 9-10. During this time, his financial situation worsened as he paid a premium of \$250 a month for his health insurance, which, after six months, increased to \$1,080 a month. Tr. at 9. Moreover, the individual's pending lawsuit against the company that bought out his business in 2002, through which he anticipated receiving a large enough award to pay off his remaining debt, was dismissed on

February 21, 2013.<sup>3</sup> Ex. 2; Tr. at 29. Finally, the individual testified that he also fell behind on paying his debts because he did not receive timely disability payments, which he started receiving on December 24, 2012, more than a month after he submitted his paperwork on November 14, 2012. Tr. at 43; Ex. 2. He received a total of \$37,244.56 from December 2012 through September 18, 2013, from his disability payments. Ex. 3. The individual also testified that he applied for loans for financial assistance, but was denied because of his low credit score. Tr. at 24. Furthermore, foreclosure proceedings were again initiated against him, but he withdrew money from his 401(k) account in January 2014 to pay his mortgage. Tr. at 20-21, 23. Now, the individual is working and is current on his mortgage payments. Tr. at 17, 20.

In regard to his tax debt, the individual provided a letter, dated June 6, 2014, from a tax professional stating that he owes the IRS \$13,745.09 plus interest and penalties for 2004, 2005, 2006 and 2011, instead of \$40,950.45, as cited by the LSO in its Notification Letter. Ex. A; Tr. at 15. The tax professional stated that the individual is on a voluntary payment plan with the IRS, and that his status is “currently non collectible.” Ex A. After the hearing, the individual submitted a copy of a check to the United States Treasury for \$11,000, dated June 25, 2014, and a copy of a proof of delivery from the IRS, dated July 14, 2014. He also submitted a print out of a Payoff Calculator from the IRS’s online Account Management Service indicating that his total debt as of July 14, 2014, was \$13,281.57 for the tax periods ending in 2005, 2006 and 2011, which, presumably, was before the IRS applied his \$11,000 payment towards the balance.<sup>4</sup> At the hearing, the individual stated that as long as he does not withdraw money from his 401(k) and he pays his taxes, he does not anticipate having to owe taxes in the future. Tr. at 24-25. However, it appears that in order to pay the IRS, the individual again borrowed \$11,000 from his 401(k) account. In a post-hearing submission, the individual provided a copy of a Distribution Statement indicating that on July 7, 2014, he took a 60-month loan out for \$11,000 from his 401(k) account. The individual now claims that his balance with the IRS is \$2,254.35 and he asserts that he will pay off his tax debt within the next month from working overtime.

At the hearing, the individual stated that he had not paid into any of the outstanding collection accounts as he focused on first paying off his car in May 2014. Tr. at 26-27. However, after the hearing, the individual paid off the debt listed in paragraph B.1.d. of the Summary of Security Concerns for \$132 and he paid \$177.30 towards the debt for \$496 listed in paragraph B.1.a. He also provided a bank statement showing that withdrawals were made from his account towards the creditors listed in paragraphs B.1.b (\$692.36) and B.1.c. (\$300). Moreover, he is also now current on the account that was past due for \$305 for his second mortgage, listed in paragraph B.2., as indicated by the credit report he submitted into the record. Ex. L; Tr. at 28; 42. The individual disputes the \$15,892 credit card debt in paragraph B.1.f. Tr. at 28, 40. However, he has not presented any proof that he filed a dispute regarding that debt. Moreover, he has not paid towards the \$28,916.63 debt

---

<sup>3</sup> It appears that the matter was dismissed by a court order granting a motion for summary judgment or adjudication against the individual. Ex. 2. However, at the hearing, the individual explained that there was a court hearing scheduled in December 2012, which he missed because he was receiving treatment for his illness, and that consequently, his case was dismissed. Tr. at 29. Regardless of the reason, the record demonstrates that the individual’s case against the company was dismissed, and therefore, he can no longer rely on the receiving any award from his lawsuit to pay off his debt.

<sup>4</sup>The individual also provided documents from the IRS indicating that he overpaid his taxes for 2013 and that resultantly, \$2,156 was applied towards his 2004 taxes and that \$387.01 of his overpayment for his 2004 taxes was applied towards his 2005 taxes. Exs. E and F.

listed in paragraph B.1.g., claiming that he will dispute that debt by filing a lawsuit against the individual to whom he is indebted that amount. Finally, the individual has also not paid towards the debt listed in paragraph B.1.e. for \$6,459, stating that the creditor offered him a settlement of that debt for approximately \$1,900. Yet, he has not presented any proof of that settlement amount.

As for any of his debts that are more than ten years old, the individual claims that they should not be listed in his credit report as they would not be actionable under a court of law because of the statute of limitations. Tr. at 33. While he has not yet done so, he intends to meet with a credit counseling company to have those debts removed because of the statute of limitations. Tr. at 33. The individual stated that his main concerns are keeping his home and ensuring his children are taken care of, and then paying off the IRS. Tr. at 39. The individual testified that he lives within his means, and submitted a copy of his budget, indicating that his monthly expenses are \$4,698.11 and his monthly income is \$5,636.12. Tr. at 48.

As stated in the LSO's Notification Letter, the individual claimed during his PSIs in 2008 and 2012 that he would pay off his debts, yet failed to do so. At his PSI on August 27, 2012, the individual stated that he would first take care of his tax debt before paying off his other debt. Ex. 11 at 62, 81, 129. While his PSI in August 2012 was just a few months before he began his ten-month treatment for his illness that contributed to his failure to pay off his debts, he had previously made similar representations to the DOE that he would pay his debts, but did not follow through. Specifically, at his PSI on September 10, 2008, the individual stated that he would settle his tax debt within the next year, and that if necessary, he would take money out of his 401(k) to make the payments. Ex. 13 at 15. He also then stated that he intended to resolve his debts. Ex. 13 at 37. However, as indicated in the administrative record, the individual waited until recently to take care of these debts.

While I appreciate the financial difficulties that the individual faced since 2000 with his wife leaving him, the loss of income from his business, and more recently, his illness, I cannot conclude that the individual acted responsibly under the circumstances so as to sufficiently mitigate the DOE's concerns. *See* Adjudicative Guideline F, Paragraph 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"). Although he made a good-faith effort to pay off some of his debts, the majority of the debts have not been paid off, and the individual had years to resolve those debts or to dispute them, if necessary. Further, though he made payments towards his tax debt and some of his other debts, he only began to do so recently. He has had several years to begin paying off these debts. Indeed, based on his statements in his previous PSIs, the individual has known about some of these debts and certainly his tax debt as early as 2008, or six years ago, but only recently began to pay them off.

Moreover, even though he disputes some of the debts listed in the Notification Letter, the individual has not provided any documentation to substantiate the basis for his dispute or of his efforts to resolve them with the creditors. *See* Adjudicative Guideline F, Paragraph 20(e). As stated above, the burden is on the individual to provide sufficient evidence to mitigate the concerns of the LSO. Furthermore, the individual has not sufficiently convinced me that the problems associated with his debts will be resolved. The individual has had financial challenges over the last ten years, and has continued to increase his tax debts by withdrawing from his 401(k) in order to pay off his expenses. In fact, he recently withdrew \$11,000 from his 401(k) to pay his tax debt. As the individual has the

burden to demonstrate that he has mitigated the concerns with regard to his outstanding debt, I cannot find that he has presented sufficient evidence to have successfully done so.

In prior cases involving financial considerations, 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, e.g., Personnel Security Hearing, Case No. TSO-1078 (2011); Personnel Security Hearing, Case No. TSO-0878 (2010); Personnel Security Hearing, Case No. TSO-0746 (2009)*. Based upon my evaluation of the record and the testimony at the hearing, it is simply too soon to find that the individual has established a sustained pattern of financial responsibility. Given the recency of his payments to the IRS and of some of his debts, and that he is still has not paid the majority of his outstanding debts and continues to borrow from his 401(k), I cannot conclude that the concerns raised by his outstanding debt have not been resolved. *See* 10 C.F.R. § 710.7(c).

### **B. Honesty, Reliability and Trustworthiness**

In its Notification Letter, the LSO stated the individual failed to disclose in his QNSPs, which he submitted in April 2012 (2012 QNSP) and November 2013 (2013 QNSP), that he had a tax lien for his 2006 taxes. Ex. 1. According to the Notification Letter, the individual previously admitted that he had a tax lien of \$3,166.91 for his delinquent 2006 federal taxes. Ex. 1.

In his 2013 QNSP, the individual listed three accounts involving tax debt, and ten accounts involving routine accounts. Ex. 7. The federal tax liens that he listed in his 2013 QNSP were for \$27,466, \$4,616 and \$5,246 of tax debt. *Id.* In his 2012 QNSP, he listed the tax liens for \$27,466 and \$4,616. Ex. 8. At the hearing, the individual explained that he listed the federal tax lien debts that were listed in his credit report, and stated that the \$3,166.91 amount listed by the LSO in the Notification Letter for 2006 was not in his credit report. Tr. at 30. Indeed, the individual provided a copy of his credit report, dated May 2, 2014, where only three tax liens are listed, two of which appear to be duplicative. Ex. L. One of the liens is for a tax debt from 2013, which is listed twice, and the other is from 2007; neither is for 2006. *Id.* Furthermore, in the credit reports contained in the DOE’s exhibits, there is no listing of a tax lien for a 2006 tax debt.<sup>5</sup> Ex. 5. Accordingly, while the LSO states that the individual failed to list a 2006 tax lien, the record does not support that such a lien ever existed.<sup>6</sup> Also significant is that the individual listed numerous other tax debts that were far higher than what he purportedly owed for his 2006 taxes. Hence, I conclude that the individual did not deliberately omit information regarding his purported 2006 tax lien in his QNSPs and that he was not trying to mislead the DOE, particularly has he provided information on his other debts and liens that were much greater in amount.

---

<sup>5</sup> In his April 2012 credit report, three liens for \$27,466 from 2003 are listed, and one for \$4,616 from 2007 is listed. Similarly, in the February 2007 credit report, only three tax liens are listed, all of which appear to refer to the same lien for the 2003 federal tax debt for \$27,467.

<sup>6</sup> The transcripts of the PSIs do not indicate that the individual actually stated he had a lien that arose from his 2006 debt. During his PSI in January 2014, he did not clearly express that he had a tax lien for 2006, but rather, that he obtained information on his outstanding debt from his credit report. Ex. 10 at 32-33. At his PSI in August 2012, he stated that the IRS garnished his wages for his 2006 tax debt, which he appears to have confused with a lien; however, he later stated that his account was levied for the 2006 tax debt. Ex. 11 at 34, 46. Finally, at the previous administrative review hearing, the individual was asked about the 2006 tax lien, but did not definitely state that such a lien existed. Ex. 9 at 97.

In further support of the individual's character as trustworthy and reliable, several individuals testified that he is an honest person who exercises good judgment.<sup>7</sup> His close friend for over 36 years stated that the individual has integrity and is reliable. 2013 Tr. at 14, 19. His former foreman, employer, and colleagues also testified that the individual exercises good judgment, has good work ethic, "would not take short cuts," and has set a good example for other employees. 2013 Tr. at 25-55. Two of his ex-wives also testified that the individual is very honest and that he "plays by the rules." 2013 Tr. at 111-118. Hence, for all these reasons, I find that the individual has not intended to misrepresent any information regarding his debts during the personnel security clearance process, and therefore, he has sufficiently mitigated the concerns associated with his representations on the purported 2006 tax lien debt.

## 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). 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 all of the security concerns at issue. I therefore cannot find that granting 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 should not be granted access authorization. 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: July 17, 2014

---

<sup>7</sup> The DOE Counsel stipulated that the witnesses who testified as to the individual's character in an earlier OHA Administrative Hearing, OHA Case No. PSH-12-0141, would be providing the same testimony in the instant hearing and therefore, need not re-testify. Tr. At 4. Accordingly, their testimony will be briefly summarized in this portion of my decision regarding the individual's honesty, reliability and trustworthiness, and the transcript from that hearing will be cited as "2013 Tr."