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**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-14-0045

Issued: July 30, 2014

**Administrative Judge Decision**

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 Department of Energy should not restore the individual’s access authorization at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is an employee of a Department of Energy (DOE) contractor and holds a suspended access authorization. On November 26, 2013, a Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI) with a personnel security specialist to address concerns regarding his outstanding debt obligations. After the PSI, the LSO determined that there was derogatory information that cast into doubt the individual’s eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. DOE Exhibit (Ex.) 1. The Notification Letter also

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<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>.

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 14 exhibits (Exs. 1-14) into the record of this proceeding. The individual introduced 37 exhibits (Exs. A-KK) and presented the testimony of five witnesses, including his own. *See* Transcript of Hearing, Case No. PSH-14-0045 (Tr.).

## **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: the individual’s 1) outstanding federal and state tax debt totaling \$70,105.08; 2) delinquent and unpaid debts totaling \$370,280.04; 3) pattern of financial irresponsibility; and 4) failure to report his 2013 wage garnishment with the Internal Revenue Service (IRS) to the DOE personnel security. Ex. 1.

The above information adequately justifies the DOE’s invocation of criterion (l), 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) (*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

##### A. Delinquent Debts

The individual is 49 years old and works for a DOE contractor. In the Summary of Security Concerns, the LSO cited the individual's failure to pay his federal and state income taxes and accrual of \$67,342.46 in federal tax debt for the tax periods in 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012, and \$2,762.62 in state tax debt for the tax periods in 2010, 2011 and 2012. Ex. 1. Furthermore, the LSO cited the individual's student loan debt of \$297,250 for which he has been over 120 days late in making payments, six collection accounts totaling \$4,308, three charged off accounts totaling \$14,671.04, and three outstanding debts after his Chapter 13 bankruptcy was dismissed, totaling \$54,051. Ex. 1. The LSO further stated that on November 1, 2007, the individual filed for Chapter 13 bankruptcy with a total of \$148,137 in debt, and his bankruptcy was dismissed in August 2008 for his failure to make payments as required by the trustee. Ex. 1. In January 2009, the individual again filed for Chapter 13 bankruptcy, but it was dismissed a month later in February 2009, as he did not pay the legal fees associated with his bankruptcy action. Ex. 1. Finally, the LSO stated that in early 2013, the IRS garnished about \$600 to \$700 of his monthly wages because of his outstanding tax debt. Ex. 1.

##### 1. Background on Financial Troubles

At the hearing, the individual explained how he got into his financial problems. The individual and his wife were married in 2002, and they began filing their taxes jointly for the 2002 tax year. Tr. at 59, 132. The issues regarding his tax debt arose in 2005 when their income went up, thereby resulting in increased taxes for the married couple. Tr. at 60. They also purchased a house in June 2005, and within the first year of that purchase, their mortgage was sold approximately six times to different lenders; the individual stated that when their mortgage lender changed, the deadlines for their mortgage payments changed, which had associated fees and penalties. Tr. at 64-65. As they lost track of where to send the mortgage payments as their lenders changed, they incurred late fees by submitting payments after the deadlines. Tr. at 65. Furthermore, their mortgage payment amounts increased when their lenders included the additional fees with their monthly mortgage dues. At the same time, their tax debt was increasing. Tr. at 67, 106. The individual stated that he and his wife could not reduce their tax liability by claiming fewer exemptions, thereby reducing their take-home pay, because they needed the money to pay their debts. Tr. at 95-96. While they did not spend exorbitantly, they had struggled financially ever since purchasing their first home. Tr. at 99. Eventually, they could no longer pay their mortgage and they received a foreclosure notice in mid-2007. Tr. at 65-66.

As they wanted to save their home from foreclosure, the individual and his wife filed for Chapter 13 bankruptcy in mid-2007; nevertheless, they ultimately lost their home.<sup>3</sup> Tr. at 67-68. They were

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<sup>3</sup> The house was sold, and the individual claimed that the additional amount that the lender lost by selling the house - \$32,000 - was forgiven. Tr. at 68.

making payments to the bankruptcy trustee through their attorney. Sometime in 2008, in the late afternoon on a day that a payment was due, their attorney notified the individual's wife that he could no longer make the payments for them. Tr. at 75. Accordingly, his wife left work early and tried to make the payment by 3:00 PM, but she was late and the trustee dismissed the bankruptcy due to their late payment. Tr. at 75. Subsequently, the individual and his wife sought advice from their bankruptcy attorney, and he informed them that they could re-file for bankruptcy 90 days later. As they began compiling the documentation for the bankruptcy filing, they realized that if they re-filed for bankruptcy, their monthly payments would be \$1,000 more than what they paid during their first bankruptcy, making it unaffordable to file for bankruptcy at that time. Tr. at 77. By the time they spoke to their attorney, however, he had already filed the paperwork for the bankruptcy, even though they planned to pay off their debts on their own. Tr. at 78. Thus, they did not set up a payment plan for the bankruptcy, and it was summarily dismissed in February 2009. Tr. at 78.

After the second bankruptcy action was dismissed, the individual and his wife had about \$18,700 in federal tax debt and the IRS was garnishing about 70 to 75 percent of the individual's paycheck. In order to resolve their tax issues with the IRS, they contacted an outside agency. Tr. at 79-80. That agency informed them that it would work with the IRS to get their penalties and fees removed and would make the payments to the IRS for them. Tr. at 90. With the assistance of that agency, the individual and his wife anticipated paying off their federal tax debt in three years. Tr. at 80. The fee for the agency's services was \$500 a month, and the agency apparently arranged the removal of the garnishment from the individual's paycheck. Nevertheless, about two and half years later, the individual and his wife discovered that their tax debt had grown significantly to \$45,000 or \$50,000. Tr. at 83; Ex. A. During the two and half years that they hired the agency, the individual and his wife claimed that the IRS never contacted them about their taxes. Tr. at 83. When they discovered that their tax debt had grown, the individual's wife contacted the IRS and was informed that the IRS does not directly work with agencies, such as the one the individual and his wife hired, to take care of an individual's tax debt, and the IRS did not know anything about the agency that the individual and his wife hired. Tr. at 83-84. The individual and his wife could not locate the agency when they tried contacting them, and accordingly, lost approximately \$19,000 to the agency, while their tax debt increased. Tr. at 104. They later filed a complaint with the Better Business Bureau and they plan to contact the federal secret service to report that agency. Tr. at 173.

## 2. Current Financial Situation

Currently, the individual is on a payment plan with the IRS, and he and his wife have been claiming zero exemptions on their taxes since 2013. Tr. at 85, 96, 110. They have also been working with a tax attorney who interfaces with the IRS on their behalf and helped developed their current payment plan, which covers the tax periods listed in the Summary of Security Concerns. Tr. at 85. The individual has paid off his 2006 tax debt, and his overpayment for that tax period of \$1,317.06 was applied towards his 2005 tax debt. Tr. at 85-86; Ex. K. The individual submitted a document indicating that he and his wife are on an installment agreement with the IRS, paying \$2,059 monthly, and that as of May 14, 2014, their federal tax debt was \$70,851.45. Ex. K. On November 28, 2014, their monthly payment to the IRS will increase to \$2,272. Ex. C. He states that while more taxes are being taken out of their paycheck, they are still able to stay within their budget. Tr. at 97.

With regard to their state income taxes, the individual testified and he and his wife had never been able to afford to pay their taxes in one lump sum payment and so they have always made payment

arrangements with the state to pay off their tax debt. Tr. at 72. The individual submitted documentation indicating that he paid \$437.00 to the state on April 22, 2014. Tr. at 116; Ex. M. That was the first payment he made to the state for his current tax debt and he anticipates that his last payment will be in May 2015. Tr. at 146-147. However, he did not submit any documentation indicating what his current tax debt balance is with the state or what the current payment arrangements are with the state. Tr. at 117.

According to the Summary of Security Concerns, the individual's delinquent student loan debt is \$297,250, which is the total amount from three separate accounts. Ex. 1. However, the individual adequately demonstrated that this amount is incorrect as it is at least \$100,000 higher than the actual amount of his student loan debt. Tr. at 147. The loan listed in paragraph B.1.c. for \$145,683 has been purchased by the servicer listed in paragraphs B.1.a. and B.1.b., and therefore, the balance with the loan servicer in B.1.c. is \$0.<sup>4</sup> Tr. at 149; Ex. H. Indeed, his credit report supports his claim that his balance with the servicer listed in B.1.c. is \$0. Ex. H; N. In order to become current on his student loans, the individual testified that he entered into an arrangement with the loan servicer to make nine payments of \$1,300. Tr. at 150.

At the time of the hearing, the individual stated that he had paid off some of the debts that were in collection or entered into a payment plan. Tr. at 92. For the debts listed in paragraphs B.2.a.-c. and B.2.f., the individual arranged to pay them off. Ex. 12 at 100. Regarding the \$191 debt listed in paragraph B.2.e., the individual stated that he is under an agreement to pay the creditor \$20 a month and as supporting evidence, he provided a copy of a check for \$20 to that creditor that is dated January 9, 2014. Exs. R, S; Tr. at 154, 157. However, the individual did not provide any documentation from that creditor, nor any of the other creditors with whom his accounts are in collection, indicating that he has a payment agreement with them. As for the \$75 debt listed in paragraph B.2.f, the individual submitted two documents from the creditor dated December 15, 2013, and February 15, 2014, stating that his payment will be processed, but it does not list the amount the paid, the total amount due, or the payment arrangement. Exs. O, T. Moreover, according to one of the credit reports that the individual entered into the record, he still owes a significantly high amount on all of those collection accounts as of April 15, 2014.<sup>5</sup> Ex. V. The individual has failed to provide sufficient documentation indicating that he has acted responsibly with regards to these debts by either entering into a reasonable payment plan or having paid off some of the collection accounts entirely. Finally, the individual has not provided any documentation regarding the state tax lien for \$2,973, but indicated at the hearing that it would be paid off based on the above-mentioned payment arrangement.

As for the charged off account listed in paragraph B.3.a. for \$12,539, the individual stated that it has been paid in full. Tr. at 159. He cited his credit report dated June 18, 2014, which states that the account is closed, that it was transferred to another lender and is not more than four payments past due. Ex. N. At the hearing, the individual testified that he paid off the new lender.<sup>6</sup> Tr. at 161.

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<sup>4</sup> The credit report in the DOE's Exhibit Notebook indicates that the balance on the account with the creditor listed in Paragraph B.1.c. was zero, and therefore, there is no existing outstanding debt with them. Ex. 4.

<sup>5</sup> The individual submitted a credit report dated June 18, 2014. It indicates that the individual has seven to ten accounts in collection, but it does not list what those accounts are or provide any details on them. Ex. N.

<sup>6</sup> The credit report that the LSO relied upon in issuing its Summary of Security Concerns indicates that the charged off accounts listed in Paragraphs B.3.b.-c. have balances of \$0. Ex. 4; Ex. V.

Finally, with regard to the debt listed in Paragraph B.4.a. for \$32,900, the individual asserts that it was for a second home mortgage and that it was forgiven. Tr. at 162. He further claims that the auto loan for \$18,703 in Paragraph B.4.b. has been paid off. Tr. at 162. Finally, the debt listed in paragraph B.4.c. for \$2,448 has also been paid off, as indicated in the credit report.<sup>7</sup> Tr. at 162; Ex. N.

The individual states that it took until January or February of this year for him and his wife to become current on their finances, reduce their personal expenses, and take care of their tax debt. Tr. at 99. Now, he and his wife review their budget at least bimonthly to determine how to save money. Tr. at 103. His wife testified that they also save receipts to track their expenses. Tr. at 131. The individual and his wife have been participating in a budget program in order to maintain their budget. Tr. at 178-79. He submitted a budget indicating that their combined monthly income is approximately \$8,153 and their monthly expenses are \$8,622, which includes their monthly payments on their taxes, and that their savings are \$229 a month.<sup>8</sup> Ex. JJ. While I recognized that the individual's income varies considerably from month to month, I am not convinced that the household income is sufficient in the long run to meet their current expenses as well as their long term obligations. I am concerned that they would not be able to pay all their expenses and that they may incur new debt as a result.

While I appreciate the financial difficulties faced by the individual, particularly the additional tax debt he accrued when he and his wife were defrauded, I cannot conclude that the individual sufficiently mitigated the DOE's concerns with regard to his debt and financial irresponsibility. *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"). As a result of the fraud, the individual and his wife lost approximately \$19,000 and his taxes increased during the two and one half years he was paying the agency. However, before the scam, the individual had about \$18,700 in tax debt and about 70 to 75 percent of his wages were garnished by the IRS. He had already lost his home in foreclosure after filing for bankruptcy. Accordingly, his financial problems were significant before he and his wife were defrauded and I cannot therefore conclude that the scam led to their financial problems, though I acknowledge its contribution. The individual filed for bankruptcy twice, and while he and his wife did not intend to file a second time, the circumstances surrounding the event still raise serious concerns about their financial stability, given their increasing tax debt and inability to make mortgage payments and pay other creditors.

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

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<sup>7</sup> The credit report upon which the LSO relied in issuing its Summary of Security concerns listed all debts in Paragraph B.4. as having \$0 balances.

<sup>8</sup> These estimates are based on the individual's budget for June 2014, which he submitted into the record. Ex. JJ.

hearing, it is simply too soon to find that the individual has established a sustained pattern of financial responsibility. While I find that he has mitigated the concerns with respect to the accounts that actually had \$0 balances based on the credit report submitted by the DOE, as stated above, given the recency of his payments to the IRS, the state and his creditors to whom he is still significantly indebted, I conclude that the concerns raised by his outstanding debt and pattern of financial irresponsibility have not been sufficiently resolved. *See* 10 C.F.R. § 710.7(c).

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

In its Summary of Security Concerns, the LSO stated that the individual did not report his 2013 wage garnishment by the IRS to the DOE personnel security and that this information raises concerns about his honesty, reliability and trustworthiness. Ex. 1. During his PSI on November 26, 2013, the individual stated that there was a levy on his income that the IRS had initiated in 2013, and that he had submitted that information in the incident report. Ex. 12 at 11-12.

At the hearing, the individual explained that he did not know that he needed to report that his wages were garnished because it was not from his job at the DOE facility; rather, the garnishment was from his wages with his second job. Tr. at 165. He had assumed that reporting a garnishment of wages only applied to his contractor laboratory income, not income from outside sources. Tr. at 165. In light of his reporting many of other debts that are substantial, I am convinced that it was merely his misunderstanding, rather than an intentional act, that caused him to not report the levy. Moreover, his supervisor testified that he is very careful with sensitive information, is “absolutely honest,” and is very responsible. Tr. at 48, 51, 53. His colleague testified that the individual is “exemplary” and responsible in handling classified information. Tr. at 16-19. Finally, a witness who has known the individual’s wife since she was about 14 years old and who wedded the individual and his wife, testified that the individual is trustworthy and exercises good judgment. Tr. at 42, 44. For these reasons, I conclude that the individual has mitigated the concerns associated with his failure to report the levy on his income by the IRS.

## **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 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.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: July 30, 2014