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

In the Matter of Personnel Security Hearing)

Filing Date: March 31, 2015)

Case No.: PSH-15-0026)

Issued: July 2, 2015

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (“the Individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should not grant the Individual’s access authorization at this time.

I. Background

The Individual is an employee of a DOE contractor in a position that requires that he hold a DOE security clearance. To address security concerns raised during the investigation, the Local Security Office (LSO) summoned the Individual for two interviews with a personnel security specialist in June and July 2014. After these Personnel Security Interviews (PSIs), 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 (Notification Letter). The Notification Letter also informed the Individual that he was entitled to a hearing before an

¹ Access authorization, also known as a security clearance, is an administrative determination that an Individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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Administrative Judge in order to resolve the substantial doubt concerning his eligibility for an access authorization.

On March 20, 2015, the Individual exercised his right under the Part 710 regulations to request an administrative hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me the Administrative Judge. At the hearing, the DOE introduced 13 exhibits (Exs. 1-13) into the record. The Individual presented the testimony of three witnesses, including his own testimony, and no exhibits.² See Transcript of Hearing, Case No. PSH-15-0026 (Tr.).

II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 or unfavorable, that has a bearing on the question of whether granting or restoring a 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

As indicated above, the LSO concluded in the Notification Letter that derogatory information exists that creates a substantial doubt as to the Individual’s eligibility to hold a security clearance. That information pertains to the Bond Amendment (Section 1072 of the National Defense Authorization Act for Fiscal Year 2008³) and paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

² During the hearing, the Individual stated that he would present documentation after the hearing relating to his debt obligations and payments. Tr. at 41. However, these documents were never submitted.

³ See DOE Order 472.2, Appendix E at E-1.

The Bond Amendment provides that a Federal agency may not grant or renew a security clearance for a covered person who has been convicted of a crime, was sentenced to imprisonment for a term exceeding one year for that crime, and was incarcerated as a result of that sentence for not less than one year. 50 U.S.C. § 3343(c)(1)(A). The security concerns cited in the Notification Letter include the Individual's 2005 mandatory one-year sentence for a Habitual Offender conviction⁴ and the Individual's 1994 conviction and four-year sentence, of which he served 13 months, for Possession of Crack Cocaine with Intent to Distribute.

Although the LSO correctly invoked the Bond Amendment in this case, we note that the Individual's 2005 sentence and incarceration do not meet the Bond Amendment requirements, because the Bond Amendment requires a sentence *exceeding* one year and incarceration for no less than one year. The 2005 sentence was for exactly one year, and the Individual was incarcerated for only eight months. Tr. 56-57. On the other hand, the Individual's 1994 four-year sentence and 13-month incarceration meet the requirements and, therefore, properly form the basis of the LSO's invocation of the Bond Amendment.

Criterion L refers to information indicating that the Individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress, which may cause him to act contrary to the best interests of national security. The Criterion L security concerns cited in the Notification Letter include both instances of criminal conduct and financial irresponsibility. Specifically, the Notification Letter cites the Individual's extensive criminal record, which dates back to 1990 and includes 19 arrests and charges, with the last offense cited, a traffic offense, being in 2007.⁵ The Notification Letter also lists the Individual's various delinquent debts, some of which have already been sent to collection and some which have current past due amounts, all of which total a little more than \$10,000.

The foregoing conduct adequately justifies the DOE's invocation of Criterion L. Criminal conduct and 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 (December 19, 2005), Guidelines F and J.* Accordingly, the criminal conduct and financial problems raise serious security concerns.

IV. Findings of Fact and Analysis

The facts of this case are essentially undisputed. The Individual affirmatively acknowledged both his criminal record and his debts listed in the Notification Letter. Tr. at 38- 51. At the

⁴ In Virginia, there is a mandatory one-year sentence for a conviction of a driving offense after being declared a "habitual offender." In the Individual's case, he was stopped three times for driving without a license and on the third occasion was sentenced to one year incarceration, of which he served eight months. Tr. 35-36.

⁵ Although the Individual's last incarceration was in 2005, his last offense was in 2007 for a habitual traffic offense.

hearing, the Individual describes the loss of his five-year-old daughter in a house fire in 2001 as the event that served as “the beginning of the end of [him] running the streets.” Tr. at 33. After that event, he decided to change his life and returned to working as an electrician, a trade he enjoyed before he began his criminal lifestyle. Tr. 33-34. In speaking about his current financial situation, the Individual stated that his financial troubles stemmed from being challenged in court for child support for both of his living daughters at the same time. Ex. 11 at 64; Tr. at 43-44. The Individual stated that paying for a lawyer to handle these cases led to him getting behind on other financial obligations. Tr. at 65. Since working for his current employer, the Individual has never failed a drug test, has never allowed his personal problems to affect his work, and is held in high esteem by his supervisors. Tr. at 12, 14, 30.

As previously stated, under the Bond Amendment, a person is disqualified from holding an access authorization if they have been convicted of a crime, sentenced to imprisonment for a term exceeding one year for that crime, and incarcerated as a result of that sentence for not less than one year. 50 U.S.C. § 3343(c)(1)(A). It is clear that a significant amount of time has elapsed since the criminal activity relevant to the Bond Amendment, as well as the other cited criminal conduct. The sentencing and incarceration relevant to the Bond Amendment occurred in 1994 – over 20 years ago. Moreover, almost ten years have elapsed since the Individual’s most recent criminal conduct – the 2007 conviction for habitual traffic offense. Outside of 2007 traffic offense, the Individual’s last criminal offense was in 1998, almost 17 years prior to the hearing. Tr. 38-39. Aside from the passage of time, the Individual testified persuasively that, as the result of the death of a daughter, he determined to turn his life around and has done so. Further, his supervisors both testified to his present honesty and reliability. Tr. at 12, 22, 25, 30. He has the use of a business credit card and truck. He has never abused either privilege, even going so far as to report an out-of-state accident with the truck that the supervisor testified he would have no knowledge of. Tr. at 12. His direct supervisor testified, “he was able to prove himself . . . to me. As time has passed he has been able to do that more and more to the point to where I trusted him with actually supervising an entire crew out of state where he has to be eyes and ears for the company.” Tr. at 11. Because his criminal behavior is not recent and because there is clear evidence of rehabilitation, I find that the Individual has mitigated the security concerns arising from past criminal conduct. Guideline J, ¶ 32 (a), (f).

Nonetheless, I cannot find that the Individual has mitigated the Criterion L security concerns relating to his ongoing financial struggles. The Individual is still having difficulties meeting his different financial obligations. He is currently delinquent by at least 60 days on seven accounts. Guideline F, ¶ 20 (a); Notification Letter; Ex. 6. These financial difficulties are not isolated and involve a range of accounts and debts for amounts both small and large. Guideline F, ¶ 20 (b); Notification Letter; Ex. 6. This seems to indicate that even when able to clear certain debts, the Individual has not done so. Furthermore, the Individual presented no evidence during the hearing to show that he had received or was receiving financial counseling for his problems in order to work towards getting his debt under control or resolved. Guideline F, ¶ 20 (d). Instead, the Individual has in the past used loans from his employer to lighten his debt obligations, opting to pay back his employer instead of a creditor. Tr. 24-25; Ex. 11 at 31-32. This, however, is not a viable long term solution for the Individual’s financial problems. Thus, the Individual has not mitigated these security concerns by resolving his debts. Guideline F, ¶ 20 (f). During the hearing, the Individual made reference to numerous payment plans he set up in order to pay

down his various debts. Tr. 39-51. These claims, however, remain uncorroborated. Despite statements during the hearing that he would provide documentation as to the payments currently being made on his delinquent accounts, he never did so before the record was closed. Tr. at 41.

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. PSH-14-0048 (2014); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security hearing*, Case No. TSO-0878 (2010).⁶ For the reasons stated above, the Individual has clearly not demonstrated sustained financial responsibility. Though it seems that the Individual has made some effort in repairing his finances, I cannot find that the concerns raised by the LSO have been sufficiently resolved. *See* 10 C.F.R. § 710.7(c).

V. Conclusion

For the reasons set forth above, I find that the Individual has sufficiently mitigated the security concerns under the Bond Amendment and Criterion L, regarding his past criminal activity and incarceration. However, I also find sufficient derogatory information in the possession of the DOE that raises serious security concerns relating to the Individual’s financial irresponsibility 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 not brought forth sufficient evidence to mitigate all of the security concerns at issue. I therefore find that granting the Individual’s access authorization will endanger the common defense and is inconsistent with the national interest. Accordingly, I have determined that the Individual’s access authorization should not be granted. 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: July 2, 2015

⁶ Decisions issued by the Office of Hearings and Appeals are available on the OHA website at <http://www.energy.gov/oha>.