United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)	
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Filing Date:	June 19, 2015	)	Case No.: PSH-15-0052
		)	

Issued: September 24, 2015

Administrative Judge Decision

Ann S. Augustyn, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization[1] 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 fully discussed below, after carefully considering the documentary and testimonial evidence in the case in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual has worked for a DOE contractor for more than 30 years in positions that have required him to hold a DOE security clearance. During his most recent routine background investigation, the Local Security Office (LSO) uncovered some derogatory information relating to his finances, which prompted a Personnel Security Interview (PSI) on November 18, 2014.

In May 2015, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his continued 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 two potentially disqualifying criteria set forth

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

in the DOE 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 a hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, four witnesses testified. The individual presented his own testimony and that of three additional witnesses. The DOE did not present any witnesses. In addition to the testimonial evidence, the LSO submitted 28 exhibits into the record[3]; the individual tendered 12 exhibits which I marked at the hearing as Exhibits A through L. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

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 at the hearing 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. §

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[2] Criterion F relates to information that indicates a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, 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, or proceedings conducted pursuant to §710.20 through § 710.31." 10 C.F. R. § 710.8(f).

Criterion L refers to information indicating that an individual 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. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

[3] The DOE Counsel confirmed at the hearing that there was no Exhibit 22, even though there was a tab for it in the binder it submitted into the record. The DOE Exhibits are Exhibits 1 through 21, and 23-29.

710.26(h). Hence, 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 derogatory information at issue in this proceeding involves Criteria F and L. To support its reliance on Criterion F, the LSO states that the individual failed to list six collection accounts and a three-day suspension on a Questionnaire for National Security Positions (QNSP) that he executed in November 2014 (2014 QNSP). It also asserts that in a QNSP that he executed in January 2009 (2009 QNSP), he failed to list 17 collection accounts.

The LSO raises multiple concerns under Criterion L. First, the LSO states that the individual has seven unpaid collection accounts totaling $6,743.94, has failed to file his Federal taxes for the tax years 2006, 2008, 2009, 2010, 2011 and 2013, and has failed to file his State taxes for the tax years 2006, 2010, 2011, 2012, and 2013. Moreover, the LSO states that the State has issued a tax warrant in 2011 for the individual's failure to pay State taxes in 2005, 2006, 2008 and 2009. It also claims that the individual has demonstrated a pattern of financial irresponsibility and points to the following information as evidence. During five PSIs between 1991 and 2009, the individual acknowledged that he was aware of DOE's concerns about his finances, yet he currently has seven unpaid financial delinquencies. Moreover, after a PSI in 2003, the individual accumulated 10 collection accounts totaling $45,951.00, and sustained a repossession, a foreclosure and a judgment. The LSO also alleges that the individual has filed two Chapter 13 Bankruptcy Petitions, one on September 9, 1991, and a second on June 24, 1994. According to the record, the Bankruptcy Court dismissed both petitions because the individual failed to make scheduled payments. The LSO alleges next that, between 1979 and 2014, the individual engaged in a pattern of criminal conduct, and cites 26 instances of the individual's interactions with the criminal justice system to support this charge. Finally, the LSO enumerates six instances over a 23-year period when the individual provided inconsistent information to the LSO regarding his payment of taxes, arrests, and criminal charges.

I find that the DOE properly invoked Criteria F and L in this case. Conduct involving questionable judgment, lack of candor or dishonesty can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Moreover, 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 also raise questions about an individual's reliability, trustworthiness and ability to protect classified

information. Failure to file Federal and state income tax returns could raise a security concern and may be disqualifying. Finally, criminal activity creates doubt about an individual's judgment, reliability and trustworthiness. By its very nature, it calls into question an individual's ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 29, 2005), Guidelines E, F and J.*

IV. Findings of Fact

The individual, who has been married and divorced twice and has three children, has a lengthy history of financial difficulties and encounters with law enforcement. Regarding his finances, the individual has filed for bankruptcy on at least two occasions. In 1991, the individual and his ex-wife filed for bankruptcy under Chapter 13 of the Federal bankruptcy laws. The bankruptcy petition listed 48 creditors and liabilities totaling almost $32,000.00. DOE Ex. 6. This proceeding was dismissed for failure to make the required payments to the bankruptcy trustee. There is conflicting evidence in the record as to the date of the second bankruptcy filing. On his April 1995 QNSP, the individual listed two Chapter 13 bankruptcies, one in 1991 and the second in 1994. DOE Ex. 19 at 8. *See also* April 4, 2004, PSI (DOE Ex. 25) at 8-10. However, during his August 2003 PSI, the individual claimed that he did not file for bankruptcy in 1994, but that his second Chapter 13 filing occurred in July 2000. DOE Ex. 26 at 37-41. In the mid-1990s he also had several judgments entered against him as a result of lawsuits filed by creditors, and had his wages garnished as a result. DOE Ex. 27 at 27-28. The individual has also had a number of delinquent, charged-off or collection accounts. During a June 2009 PSI, he admitted to having failed to list 17 such accounts on a January 2009 QNSP. DOE Ex. 24 at 14-43. A June 2014 credit report lists seven collection accounts totaling $7,032. The individual has reached an agreement with a creditor to resolve at least one of his debts, a mortgage for approximately $33,000.00. Individual's (Ind.) Ex. C.

As alleged by the LSO in the Notification Letter, the individual failed to file Federal income tax returns for the years 2006, 2008, 2009, 2010, 2011 and 2013, and did not file tax returns required by two States for the years 2006, 2007, 2010, 2011, 2012 and 2013. Although a tax warrant was issued by one of the two States against the individual in 2011, this warrant was dismissed in 2014 when the individual made the required payment to this State. Ind. Ex. B. He also entered into an agreement with a tax indebtedness resolution company in 2014. Under the terms of that agreement, the company was to "file all necessary tax returns" to bring the individual "into compliance with all Tax Agencies attempting to collect an existing tax debt," and to "attempt to negotiate a monthly payment with the respective Tax Authority." Ind. Ex. A. In return for these services, the individual authorized a credit card payment of $3,720.00, consisting of $725 in tax preparation fees and $2,995 as a resolution of his tax indebtedness. *Id.*

On September 22, 2014, the individual requested and received a "Record of Account" from the Internal Revenue Service (IRS). This document was addressed to the individual and another person whom I will refer to as "D.S.," and set forth information from the individual's 2012 tax return. Ind. Ex. A, pgs. 12-19. At some time subsequent to that date, the individual filled out IRS form 14039, "Identity Theft Affidavit." On that form, the individual claimed that he was the victim of identity theft that was affecting his tax records. He went on to state that that the Record of Account

that he received from the IRS showed the individual as "married filing joint return with . . . [D.S.]" and that he does not know who Darrell Sutton is. *Id.* at 10. This Affidavit is unsigned and undated.

Records obtained by the LSO show that the individual, or someone with the same name as the individual, has been arrested, cited, or charged 26 times between 1979 and 2014 for illegal behavior. Eleven of these encounters with law enforcement involved driving-related offenses: three charges of Driving on a Suspended License; three citations for Speeding; and charges of Obedience to No-Turn Sign, Moving Violation/Driving Wrong Way, Moving Violation/Open Container, Unattended Motor Vehicle, and No Insurance. The remaining 15 incidents consist of seven charges of passing worthless or fraudulent checks; three charges of Failure to Appear; two of Battery; and single incidents of Uniform Criminal Extradition Act Arrest Prior to Requisition, Assault on Police Officer, and SUSP Obstructing an Officer. The individual did report the loss of some personal checks to the local police department in 1997. DOE Ex. 11. Exhibits submitted by the individual also establish that he has paid all applicable fines and fees associated with his traffic offenses, that his driving privileges have been restored, and that one of the worthless check charges filed against him was dismissed. Ind. Exs. E, F, G, I, J, K and L.

V. Analysis

The allegations set forth in the Notification letter essentially fall into three categories: financial irresponsibility, illegal activity, and falsification. I will address these areas of concern *seriatim.*

A. Financial Irresponsibility

At the hearing, the individual blamed his ex-wives for a substantial portion of his financial difficulties. He claimed that his first wife was a drug addict, which caused a lot of economic difficulties. Tr. at 133. He further asserted that the reason that the 1991 Chapter 13 bankruptcy proceeding was dismissed was because his first wife failed to pay her share of the amount that they were supposed to remit to the bankruptcy trustee. Tr. at 143. According to the individual, his second wife, who handled the couple's finances, used their money to support her family rather than to pay their bills in a timely fashion. Tr. at 133-134.

These explanations do not provide significant mitigation for the LSO's concerns about the individual's finances. As an initial matter, they are completely unsupported by any independent evidence. Second, even if true, they do not adequately explain the sheer magnitude of the individual's difficulties. The individual divorced his second wife in 2003. DOE Ex. 17 at 20. Yet six years later, during his 2009 PSI, the individual acknowledged that he had 17 collection accounts, and during his 2014 PSI, the individual admitted to having the seven collection accounts referred to in the Notification Letter. DOE Ex. 24 at 14-43, DOE Ex. 23 at 33-76. The individual incurred these delinquent debts despite being repeatedly reminded of the DOE's security concerns regarding financial irresponsibility.

The individual's inability or unwillingness to satisfy his debts continued as of the date of the hearing. During his November 2014 PSI, the individual discussed the seven collection accounts cited by the LSO in the Notification letter, and said that two of them had been paid off. Although he claimed to know nothing about four of the five remaining accounts, he accepted responsibility

for all five debts and agreed to contact the creditors to establish payment plans. *Id.* However, as of the date of the hearing, he had not contacted these creditors, had not established payment plans, and still claimed to have no information about these debts. Tr. at 102-106. Moreover, there is no documentation in the record to support the individual's claim that the two other debts had been satisfied.

As alleged in the Notification Letter, the individual's financial difficulties have included a failure to file and pay his Federal and state taxes in a timely fashion. At the hearing, the individual testified that he did not file his Federal or state tax returns in 2006 because he inadvertently left all of his records in the trunk of a vehicle that was eventually sold for salvage value. Tr. at 112. The later returns were not filed due to "one situation after another." Tr. at 113. In 2014, the individual retained the services of a tax indebtedness resolution company. Tr. at 114. That company was tasked with filing the individual's tax returns, determining how much money he owed in back taxes, fees and penalties, and negotiating a settlement with the relevant tax authorities. Tr. at 115. However, as of the date of the hearing, the tax indebtedness resolution company was still in the process of determining how much the individual would have to pay, and there is no evidence in the record documenting that any of the delinquent Federal returns have actually been filed. Although the dismissal of the tax warrant suggests that the individual's indebtedness to one of the two states in which he was required to file returns has been satisfied, there is no indication in the record that the individual has filed tax returns for the second state.

Based on the foregoing, I find that the DOE's security concerns regarding the individual's failure to file state and Federal tax returns in a timely manner remain unresolved. The loss of records did not excuse the individual from the requirement of filing 2006 state and federal tax returns. There is no indication in the record that he attempted to re-construct his records or that he sought extensions of time for filing from either the IRS or the state tax authorities. That loss of records certainly did not excuse the individual from filing tax returns for subsequent years. The individual's retention of the tax indebtedness resolution company and the dismissal of the tax warrant are mitigating factors that indicate that the individual has begun to address this issue. However, he has not demonstrated that the delinquent returns have actually been filed, or that any payments have actually been made to the IRS or to the second state. The individual's failure to file state and/or Federal tax returns for the years 2006 through 2013 demonstrates a level of financial irresponsibility and a willingness to disregard legal requirements that ill-befits a security clearance holder.

B. Illegal Activity

At the hearing, the individual testified that he had a son with the same name, and he expressed uncertainty as to whether all of the 26 instances of illegal activity cited in the Notification Letter could accurately be attributed to him. Tr. at 150. Although he did not specifically claim that any of the 26 offenses were committed by his son, and not by him, he denied having any knowledge of 15 of the instances cited in the Notification Letter. Tr. at 151-183.

Based on the record in this matter, I find that the offenses in question were committed by the individual. As an initial matter, I did not find the individual's testimony that he knew nothing about any of the 15 incidents to be credible. At the hearing, he indicated that he knew nothing about the

1988 Worthless Check charge, any of the Assault or Battery charges or Failure to Appear charges alleged in the Notification Letter, or the 1988 SUSP Obstructing an Officer charge. Tr. at 181-182. Yet two of his exhibits were documents obtained from local law enforcement authorities that indicated that the Worthless Check charge had been dismissed, and that a bench warrant had been issued due to the individual's failure to appear in court. Ind. Exs. E and L. Moreover, he testified at the hearing that the 1993 Assault charge stemmed from an incident during which the police were allegedly using excessive force against his brother. Tr. at 176. In addition the individual provided details about the 1991 Battery charge and the 1988 SUSP Obstructing an Officer charge during his 1991 PSI. DOE Ex. 28 at 19-27. Furthermore, there is no evidence in the record to support a finding that the individual's son committed any of these offenses. This son was born in 1983, Tr. at 182, and therefore would have been too young to have been involved in much of the illegal activity in question.

The individual also testified that he lost a checkbook, and he offered this as an explanation for the Fraudulent and Worthless Check charges against him in 2002 and 2003. Tr. at 173. However, even if all five of the Fraudulent or Worthless Check charges that were filed against the individual after he reported the loss of his checkbook in 1997 were discounted, the remaining 21 citations, charges, or arrests would form an extensive pattern of involvement with law enforcement over a period 35 years that raises serious and unanswered questions about his judgment and reliability. The individual has not successfully addressed the DOE's security concerns regarding his illegal activity.

C. Falsification

This category of concerns consists of allegations that the individual intentionally provided false, incomplete or misleading answers to questions posed on six QNSPs from 1990 to 2014. More specifically, the LSO alleges in the Notification Letter that the individual failed to disclose information about his collection accounts on his 2014 and 2009 QNSPs, and information about his arrests on his 2009, 2001, 1995, 1991 and 1990 QNSPs. [4] While an occasional omission of relevant information from a QNSP may be due to a faulty memory or misinterpretation of a question, the sheer volume of information omitted from a total of six QNSPs strongly suggests that the failure to disclose the information was deliberate. I have already concluded that the individual's contention that he had no knowledge of 15 of the arrests, citations, and charges alleged in the Notification Letter, including the arrests at issue here, was not credible. Similarly, the individual's claim that he did not list a total of 23 collection accounts on his 2009 and 2014 QNSPs because he

[4] The LSO also alleges that the individual failed to disclose on his 2014 QNSP that he had not filed his state tax returns for 2007 or his Federal tax return for 2008, and failed to disclose that he had been suspended from his job for a "violation of policy." DOE Ex. 1 at 7. Regarding the filing of his tax returns, the fact that the individual disclosed on that QNSP all of the other years for which he had failed to file a return suggests that the omission of his 2007 and 2008 returns was inadvertent.

Regarding his failure to disclose his suspension, the individual testified that he did not do so because he contested this job action, and because he thought that the suspension had been dismissed. Tr. at 88-89. However, the relevant question was whether he had "been officially reprimanded, suspended, or disciplined for misconduct in the workplace," DOE Ex. 16 at 12, with no exception made for disciplinary actions that the individual contested or that were later dismissed. I agree with the individual's admission during his 2014 QNSP that he should have disclosed this suspension.

knew nothing about them strains credulity to the breaking point. Significant security concerns remain under Criteria F and L concerning the individual's honesty and trustworthiness.

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 Criteria F and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including assessing the credibility of the witnesses and weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with either criterion. 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.

Ann S. Augustyn
Administrative Judge
Office of Hearings and Appeals

Date: September 24, 2015