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

In the Matter of Personnel Security Hearing)
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Filing Date: August 17, 2015) Case No.: PSH-15-0067
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Issued: December 22, 2015

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter referred to as “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 restore the individual’s access authorization.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. During an ensuing personnel security interview (PSI) in April 2014 and a credit report review, the Local Security Office (LSO) learned that the individual had a number of charge-off accounts totaling \$14,941 as well as an outstanding collection account and a past due account. The LSO also learned that the individual had an established pattern of an unwillingness or inability to satisfy debts.

In July 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 eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the

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.

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).²

Upon his receipt of the Notification Letter, the individual exercised his 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 individual presented the testimony of six witnesses and testified on his own behalf. The DOE Counsel did not present any witnesses. The LSO submitted 16 exhibits into the record; the individual tendered five exhibits. 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.³

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 granting 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. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² 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).

³ OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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, there is only one criterion at issue in this proceeding, Criterion L. To support its charges, the LSO alleges that the individual (1) has ten delinquent debts with a total outstanding balance of \$14,941, (2) has an outstanding collection account for \$3,789, and (3) has an account with a past due amount of \$158. In addition, regarding the individual's honesty, reliability and trustworthiness, the LSO alleges that the individual has an established pattern of an unwillingness or inability to satisfy his debts.

The individual's failure to live within his means, to satisfy his debts and meet his financial obligations raises a security concern under Criterion L because his 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). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* In addition, the individual's vulnerability to blackmail, exploitation, and duress calls into question the individual's judgment, reliability, trustworthiness and his ability to protect classified information. *See id.* at Guideline E.

IV. Findings of Fact

The individual has been questioned about his finances on a number of occasions. In a December 2009 Letter of Interrogatory, the LSO questioned the individual about his delinquent debt and outlined its concerns regarding his financial irresponsibility. During a PSI conducted in February 2012, the individual admitted to being financially irresponsible. Specifically, he admitted that he incurred credit card debt due to his unnecessary and compulsive spending. In response to questions about his finances, the individual indicated that he would only purchase items if he could pay with cash. However, despite his stated intentions, between December 2012 and February 2014, he charged purchases to 15 new credit cards. In April 2015, the LSO conducted another PSI. During this PSI, the individual admitted that he received collection notices for charge-off accounts from a number of credit companies, but ignored the notices. He admitted that the charge-off accounts remain unpaid. Ex. 1.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot 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.

During the hearing, the individual explained the circumstances that led to his spending habits and subsequent delinquent debt. He readily acknowledged that he is a compulsive spender. Tr. at 66. The individual testified that he has done a lot of "soul-searching" to figure out why he has been plagued with spending and financial issues. *Id.* According to the individual, he believes his financial issues are the consequences of how he has dealt with major life stressors. He testified that these stressors included his daughter being involved in a near-fatal accident in 2009 as well as the subsequent deaths of his mother and stepfather in a close time frame. *Id.* at 66, 67. The individual acknowledged that after each stressful episode, he made poor financial choices. He also testified that after refinancing his home, he made a number of financial mistakes, including accumulating a great deal of credit card debt. *Id.* at 66. The individual stated that his last spending episode occurred after learning that his daughter was a victim of domestic violence soon after having a baby. He stated that, shortly thereafter, his daughter moved in with him and his wife. He acknowledged that the items he purchased after his daughter's move were simply things that he and his children could have lived without, and reiterated that he made poor decisions. The individual testified that he has no one else to blame for the financial decisions he has made in his life. *Id.* at 67.

Although the individual currently has outstanding debt, he stated that he has been working toward reducing it for the past five or six months. During the hearing, the individual testified and provided documentary evidence concerning the 10 charge-off accounts, all of which were opened in 2012, outlined in the summary of security concerns. The individual testified that he has made payment arrangements with these companies and has reduced the balances on these accounts. He also testified that he has completely resolved one of these accounts. *Id.* at 72-76. With respect to an outstanding collection account in the amount of \$3,789, the individual acknowledged that he overlooked this account because there was no contact from the company. *Id.* at 77. He testified that he has recently established a payment arrangement with this company and will be making \$102.39 monthly payments for the next 36 months. *Id.* at 79. Finally, with respect to an account with a past due amount of \$158, the individual stated that he is now current on this account and is making regular monthly payments. *Id.* at 80.

During the hearing, the individual was questioned about his lack of attention to his finances. He admitted that he received collection notices for charged-off accounts, but ignored them. *Id.* at 90. He also testified that he stated his intention to resolve debt and to not open new credit cards, but opened 15 new credit cards after his 2012 PSI. *Id.* at 91. However, he stated that he has learned from his mistakes and has changed his current spending habits. He testified that he is no

longer using or opening new credit cards or any other revolving accounts and has frozen his credit to prevent future spending. The individual testified that although he has not attended a Debtors Anonymous meeting, he has considered attending one in the future for support. He has also considered financial counseling. *Id.* at 104.

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that his financial problems date back at least six years ago and are ongoing. Therefore Adjudicative Guideline F, ¶20 (a) is inapplicable. The individual's financial issues were not largely beyond his control. Although the individual stated that his spending cycles occurred after stressful periods in his life, I cannot find mitigation under Guideline F, ¶ 20 (b) because the individual did not convince me that he acted responsibly under the circumstances. The individual testified that he ignored collection notices and did not attempt to contact credit companies. In addition, he testified that he spent money on unnecessary items. Furthermore, despite his current financial plight and acknowledgement that he is a compulsive spender, the individual has not yet sought any financial counseling or otherwise put mechanisms in place to prevent future financial issues. In the end, I am not convinced that the individual's financial problems are under control yet. I, therefore, find that his financial problems are not mitigated under Guideline F, ¶ 20 (c). While the individual has made efforts to set up payment arrangements with credit companies and to repay his creditors, he has not yet established a pattern of repayment as these payment arrangements are recent. Hence, Guideline F, ¶ 20 (d) is inapplicable. Finally, as noted above, the individual is still in the process of addressing the root cause for his compulsive spending. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns at this time.

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 not brought forth sufficient evidence to mitigate the security concerns associated with that 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 DOE should not restore the individual's access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals

Date: December 22, 2015