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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 27, 2015) Case No.: PSH-15-0069
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Issued: December 18, 2015

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxx (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 a personnel security interview (PSI) in August 2014 and a credit report review, the Local Security Office (LSO) learned that the individual possessed four tax liens, collection and charge off accounts, a mortgage arrearage, tax liability and delinquent debt totalling \$39,268.

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

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.

LSO explained that the 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 two witnesses and testified on his own behalf. The DOE Counsel presented the testimony of six witnesses. The LSO submitted 110 exhibits into the record; the individual tendered twelve 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 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 her 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 has demonstrated a pattern of financial irresponsibility as exhibited by a number of tax liens, collection accounts, charge off accounts and other delinquent debts. The LSO also alleges that the individual, during the course of four separate PSIs in 1992, 1993, 2010 and 2014, promised to keep all of his accounts current, to straighten out his credit report and to be a financially responsible person. However, according to the LSO, the individual failed to keep his financial obligations in order. In addition, the LSO alleges that the individual was disciplined on four separate occasions, two times in 2009, once in 2013 and once in 2014, regarding his workplace behavior.

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, conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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

Beginning in February 1992, the individual was questioned during a PSI about his finances. At that time, the individual's credit report revealed a number of collection and delinquent accounts. His total delinquent debt was \$6,972. During the course of his February 1992 PSI, the individual committed to pay all of his financial obligations on time as well as to meet all of his financial obligations in the future. However, in February 1993, the individual was again questioned about his financial situation. Although the individual had paid down a portion of his delinquent debt, his credit report

at the time still revealed collection accounts, a charge off account and two judgments. His total delinquent debt in 1993 was \$2,779. The individual was not questioned again about his finances until August 2010. During this PSI, the individual's credit report revealed three tax liens, a real estate mortgage with \$2,850 in arrears, a second real estate mortgage balance with \$519 in arrears, and two past due accounts. At that time, the individual asserted that he would manage his finances and stated that the accounts were paid and that payment arrangements had been made on other accounts. The individual also committed to provide documentation to the LSO; however, documentation was never received. Ex. 1. ⁴

Most recently, in August 2014, the LSO questioned the individual about his finances once again during a PSI. Ex. 7. At that time, the individual's credit report revealed that the individual possessed four tax liens in amounts ranging from \$563.00 to \$980.00, an attorney collection account in the amount of \$1,966, two credit card charge off accounts in the amounts of \$2,100 and \$720, a real estate mortgage balance of \$61,584 with \$839 in arrears, a charge off account in the amount of \$6,790, Internal Revenue Tax Liability of \$23,754.88 and total delinquent debt of \$39,268.88. *Id.* During the individual's August 2014 PSI, the LSO agreed to allow the individual until September 15, 2014 to furnish pertinent documentation regarding his finances. The individual failed to furnish the documentation by the due date agreed upon. After telephone contact was made with the individual by the LSO on September 18, 2014, regarding the promised documentation, the individual again promised the LSO that the documentation would be delivered by September 25, 2014. However, the documentation was never received. Ex. 1.

With respect to the individual's personal conduct, the individual was disciplined on four separate occasions during his employment. In September 2009, the individual was disciplined by his employer for "Failure to Notify/Gain Supervisory Approval for Absence," after the individual failed to appear for required Human Reliability Program (HRP) testing. Again, in September 2009, the individual was disciplined for having four attendance discrepancies in 90 days. In January 2013, the individual was terminated from employment for a rules violation after falling asleep on duty. Subsequently, in March 2013, the individual participated in arbitration regarding the matter. The arbitrator found in favor of the individual because the company had failed to administer discipline consistently. Finally, in October 2014, the DOE received information from the individual's employer stating that the individual had been involved in horseplay that caused an on-duty injury. The individual was disciplined by his employer, and was suspended from work for eight days as a result. *Id.*

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

⁴ The individual disputes this fact and asserts that he provided documentation after the interview.

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.

Workplace Behavior

During the hearing, the individual was questioned about the four disciplinary incidents that occurred at work. He acknowledged that he was disciplined in September 2009 for failing to notify or gain supervisory approval for an absence where he failed to show for HRP testing and for four attendance discrepancies in 90 days. The individual explained that he was going through a divorce in September 2009 and was dealing with issues regarding his children. Tr. at 233. He testified that, outside of this stressful period in his life, he has never had any other instances of tardiness during his employment. *Id.* at 234. Regarding the January 2013 sleeping incident, the individual acknowledged that he "dozed off" while on duty. *Id.* at 235. He explained that he was terminated for seven months before being reinstated and did not believe that the offense warranted his termination. *Id.* at 237. He further explained that this incident was out of character for him, that he learned a lesson from the incident, and that this was not his normal behavior. *Id.* at 238. Finally, with respect to the October 2014 horseplay incident, the individual testified that he touched the hand of a co-worker who had a previous injury. He further testified that he did not intend to hurt his co-worker and was not aware that his co-worker's hand was still injured because she was not wearing a brace at the time. He admits that he made a mistake. The individual testified that other than this incident he has never been accused of any inappropriate behavior, verbal or physical, related to other employees. *Id.* at 244.

During the course of the hearing, a number of witnesses testified about the individual's disciplinary issues. One manager who was familiar with the disciplinary proceedings regarding the individual's 2013 sleeping incident testified that he believed the incident was particularly egregious because the individual was the only employee on duty at the time. *Id.* at 19. Likewise, another witness, who has known and worked with the individual for over 18 years testified that he agreed that the individual's sleeping incident was egregious, but believes that the individual is a reliable and honest person as well as a good employee. *Id.* at 39, 40, 46. He further testified that he was aware that the individual was going through a divorce in 2009 and believed that the individual's attendance discrepancies were out of character for the individual. *Id.* at 46 and 52. With respect to the individual's 2014 horseplay incident, this witness testified that he was aware of it and did not believe the individual intended to harm the employee involved. Four other witnesses testified that they were aware of the individual's sleeping on duty and horseplay incidents, but stated that the individual is honest and trustworthy and they did not believe that these incidents are likely to recur in the future. Finally, the employee involved in the horseplay incident testified that she has known the individual for about 10 years and is one of the individual's co-workers. *Id.* at 70. She explained that on the day of the incident, the individual was seated behind her and had asked about the injury on

her hand. *Id.* At one point, after raising her arm, she felt “a twist in her hand.” *Id.* at 71. She testified that she did not understand why the individual had twisted her hand and decided to record it in the first aid log because it was hurting her. *Id.* The co-worker stated that it was less than five months since she had surgery on her hand and had only been back to work for three weeks since her injury. She testified that that she did not believe the individual intentionally or maliciously sought to hurt her hand. *Id.*

In considering the evidence before me, I looked to the Adjudicative Guidelines. There are two mitigating factors that pertain to this case. First, I find the LSO’s security concerns regarding the individual’s 2009 attendance discrepancies and Failure to Notify/Gain Supervisory Approval for Absence to be substantially mitigated under Guideline E at ¶17(c), which addresses behavior that occurred so long ago or so infrequently or under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness or good judgment. Here, the individual’s 2009 disciplinary incidents occurred over six years ago. The individual testified that he was going through the stress of a divorce at this time. Tr. at 233. He further testified that he has had no other attendance issues since that time period. *Id.* at 234. In addition, his witnesses credibly testified that the individual is a reliable and trustworthy individual. Second, with respect to the individual’s January 2013 sleeping incident and the October 2014 horseplay incident, I find that the individual has acknowledged this behavior and has taken steps to alleviate factors and circumstances that caused the inappropriate behavior. During the hearing, the individual testified that with respect to the sleeping on duty incident, he was terminated for seven months and then reinstated. He as well as a number of his witnesses testified that this incident was out of character for him. The individual further testified that he has learned a lesson from this incident and stated that he will not sleep on the job in the future. Likewise, with respect to the horseplay incident, the individual acknowledged that he made a mistake and testified that he did not intentionally seek to harm his co-worker’s hand. *Id.* at 250. He further testified that he has never been disciplined for this type of behavior in his 25 years of employment history. The co-worker involved in the incident also acknowledged that she did not believe that the individual intentionally or maliciously sought to harm her when he touched her hand. In the end, based on my assessment of the individual’s demeanor and credibility, I find that this behavior is unlikely to recur.

Based on the forgoing, I find that the individual has sufficiently mitigated the security concerns related to his personal conduct under Criterion L.

Financial Matters

During the hearing, the individual explained the circumstances that led to his financial situation. He testified that most of his current financial issues stem from the ramifications of his divorce. According to the individual, who has been divorced for six years, his divorce decree stated that the marital home was determined to be property of the ex-wife after refinancing and paying the individual his equity interest in the property. However, the individual testified that his ex-wife has had financial difficulties since the divorce, including a bankruptcy, and has not yet refinanced the marital home. *Id.* at 255.

Thus, the individual has not yet been released from liability. The individual testified that a number of accounts that were listed on his earlier credit reports belong to his wife, including Sears and JC Penney credit accounts. He testified that credit card charge off accounts have now been paid in full or are current. Exhs. A and G. In addition, he testified and provided documentary evidence that he has entered into an installment agreement with the IRS paying \$260 a month. Exhs. B-E. According to his most recent credit report dated November 15, 2015, the individual's active accounts now only reflect his mortgage, shared with his ex-wife, with a zero past due balance. In addition, his credit accounts now reflect a zero balance. Three of the four tax liens have been released. However, there still remains one state tax lien in the amount of \$980. Ex. 108.

The individual was questioned about his previous PSIs in 1992, 1993 and 2010 when he was asked to furnish pertinent financial documentation and committed to straighten out his credit report and to be a financially responsible person. During the hearing, he disputed the assertion that he did not provide financial documentation in a timely fashion to the LSO. *Id.* at 266. For example, with respect to his 2010 PSI, he testified that he provided tax documentation the day after the interview. The individual acknowledged his financial issues in 1992 and 1993, but asserts that he does not have a pattern of financial irresponsibility as he did not have any financial issues for seventeen years until 2010, around the time period of his divorce. He was also questioned about his 401K loan history, specifically why he did not use approximately \$19,000 of loan money to pay off his IRS debt. He testified that he needed money to pay for daily expenses as well as other issues, i.e., a car motor, after he was reinstated and returned to work with a reduction in his pay.⁵

In evaluating the individual's financial issues against the Adjudicative Guidelines, I find that his financial problems date back over 20 years, and although he had a seventeen-year break, they are currently ongoing. Therefore, Adjudicative Guideline F, ¶20 (a) is inapplicable. To a certain extent, some of the individual's financial problems were beyond his control. In 2009, the individual and his wife divorced, which was undoubtedly a stressful time period in his life as he had two young children at the time. Nevertheless, I cannot find mitigation under Guideline F, ¶ 20 (b) because the individual did not convince me that he acted responsibly under all of the circumstances regarding his finances. On a number of occasions, the individual promised to provide pertinent financial documentation to the LSO following his PSIs. While he did provide some documentation, including his divorce decree and some state tax documentation, there is evidence in the record that he did not provide all of the documentation he promised. There is also evidence in the record, i.e., his 2010 PSI, that the individual promised to pay off his outstanding debts with the proceeds from a 401K loan. However, he testified that he used the proceeds of the loan for daily expenses. Likewise, with more recent loans, the individual did not fully specify the needs for the loans other than using the proceeds for everyday expenses. The individual also chose not to use any of the proceeds

⁵ The DOE offered the testimony of a personnel security specialist who testified about DOE's concerns regarding the individual's financial irresponsibility. When questioned about the individual's most recent credit report, he testified that there still remains a concern that the individual has a one remaining state tax lien that has not been paid. Tr. at 130.

of his loans to pay down his IRS debt. Furthermore, although the individual's credit report reflects that he has paid off a number of accounts, there still remains a state tax lien. The individual has given no indication of when that debt will be resolved. I, therefore, cannot find mitigation of his financial problems under Guideline F, ¶ 20 (c). While the individual has set up an installment plan with the IRS to resolve his tax liability, he had the opportunity to do so much earlier when he incurred the debt. Again, he has not yet resolved the state tax lien still reflected on his most recent 2015 credit report. Hence, Guideline F, ¶ 20 (d) is inapplicable. In summary, the evidence before me is not sufficient to resolve the individual's financial issues, and their associated security concerns under Criterion L 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 resolve 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 18, 2015