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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: September 25, 2015 ) Case No.: PSH-15-0074  
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Issued: January 15, 2015

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 July 2015 and a credit report review, the Local Security Office (LSO) learned that the individual had a number of delinquent debts, charge-off accounts, collection accounts as well as outstanding state and Federal taxes.

In August 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

<sup>1</sup> 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).<sup>2</sup>

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 four witnesses and testified on his own behalf. The DOE Counsel did not present any witnesses. The LSO submitted seven exhibits into the record; the individual tendered two 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.<sup>3</sup>

## **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 (9<sup>th</sup> 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.

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<sup>2</sup> 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).

<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov](http://www.energy.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://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 a number of delinquent debts including \$10,000 in back child support, a number of charge-off accounts totaling \$6,946, and a number of collection accounts totaling \$30,827, and (2) has unfiled state and Federal tax returns.

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 personal conduct related to his failure to file his state and Federal taxes 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 the past. In a February 2003 Letter of Interrogatory (LOI), the LSO questioned the individual about a wage garnishment for child support. Ex. 1. In May 2003, the individual's security clearance was administratively terminated for not responding to the LOI. In July 2003, the individual filed a Chapter 7 bankruptcy because his wages were being garnished for child support and he was not able to keep up with his bills. *Id.* However, in December 2003, the individual's clearance was reinstated after resolving the issues with his finances. In 2012, the individual was delinquent on his mortgage, student loan, three credit accounts as well as his child support. At that time, he stated his intent to contact creditors. *Id.* Later, in January 2015, the LSO received information which revealed a December 2014 Writ of Garnishment for the individual. This information prompted the LSO to obtain the individual's credit report which revealed a number of collection and charge-off accounts. As a result, the LSO conducted a PSI on July 14, 2015. During the course of the PSI, the LSO learned that the individual was divorced in March 2009 which left him responsible for most of the finances. Regarding the individual's delinquent debts, the PSI revealed that the individual owes approximately \$10,000 in back child support, possesses charge-off accounts totaling \$6,946 and collection accounts totaling \$30,827. In addition, during the

PSI, the individual admitted that he had not filed his state and Federal taxes for 2012, 2013 and 2014. *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 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 delinquent debts and outstanding state and Federal taxes. He testified that his debt and tax issues both stem from his partial divorce in 2009 which has not yet been finalized due to a child support dispute. Ex. B. The individual explained that when he filed his taxes after his divorce, his refunds were garnished for back child support. Tr. at 43. The individual testified that he did not file his 2012 through 2014 taxes because his divorce decree was not finalized and he believed he was "kind of throwing [his refund money] away." He testified that he had planned to use his refund money toward paying down his debt, but rather got himself more in debt when his refunds were garnished. *Id.* at 45. The individual stated that he intends to file his state and Federal taxes once his divorce decree is finalized and the child support dispute between him and his ex-wife is resolved. *Id.* at 51. The individual also explained that a jurisdictional issue must also be resolved before his divorce is finalized. Ex. A, Tr. at 60. He testified that he did not understand that he had a duty to file taxes every year, but stated that he understands his obligation now. *Id.* at 58. The individual further testified that he plans to contact the Internal Revenue Service for guidance on how to file his past taxes in light of the garnishment issue.

With regard to the individual's delinquent debts, he testified that according to his partial divorce decree he is responsible for half of the debt. *Id.* at 65. He acknowledged that back child support is still listed as delinquent debt, but reiterated that the approximate amount of \$10,000 is in dispute and will not be resolved until his divorce decree is finalized. *Id.* at 67. He testified that he is currently paying \$1000 in child support and does not believe he should owe any back child support because he was taking care of his children and paying the home mortgage for his wife at the time of their divorce. *Id.* at 67. Likewise, the individual testified that he does not dispute the charge-off accounts totaling \$6,946 and collection accounts totaling \$30,827, both listed in the statement of security concerns. Again, according to the individual, until his divorce is finalized, he is unsure of what portion of the debt he owes. *Id.* at 70. The individual testified that once he knows the portion of the debt he owes, he plans to consolidate his debt into one loan. *Id.* at 70 and 78. He reiterated that all of his debts including charge-off accounts and collections accounts are still pending in his divorce. He stated that he is currently working hard to support his children and get out of debt. *Id.* at 73. <sup>4</sup>

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<sup>4</sup> The individual offered the testimony of four friends who have known him for a long period of time. All of these witnesses testified that the individual is an honest, reliable and trustworthy person. *Id.* at 10, 20, 26 and 31.

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that his financial problems date back for a number of years and are ongoing. Therefore Adjudicative Guideline F, ¶20 (a) is inapplicable. Although the individual testified that his financial issues were largely beyond his control as his delinquent debt is the direct result of his 2009 divorce which is still pending, I cannot find mitigation under Guideline F, ¶ 20 (b) because the individual did not convince me that he acted responsibly under the circumstances. Even though he does not know the exact amount he would owe after his divorce is finalized, the individual has not contacted credit companies or attempted to make any partial payments. Furthermore, despite his current financial plight, the individual has not yet sought any financial counseling or otherwise put mechanisms in place to prevent future financial issues. In addition, the record reflects that the some of the individual's financial issues predated his 2009 divorce. 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). As stated above, the individual has not yet initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Rather, he has placed his debts on hold until his divorce is finalized. Thus, he has not yet established a pattern of repayment. Hence, Guideline F, ¶ 20 (d) is inapplicable. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns, at this time.

With respect to the individual's outstanding state and Federal taxes, I find that the individual has not provided sufficient evidence to resolve the Criterion L security concerns related to his reliability and trustworthiness. The individual testified that he did not file his state and Federal taxes for 2012, 2013 and 2014 because his refund checks were being garnished for back child support which was money he would have used to pay down his debt. He also testified that he intends to file his taxes as soon as his divorce is finalized and stated that he was unclear that he had a duty to file his taxes every year. I find the individual's testimony that he did not understand his duty to file his taxes as required by law not to be credible. Rather, I am convinced that the individual chose to not file his taxes or even for extensions simply because he wanted to avoid having his refunds garnished for back child support. This represents a disregard for the law. Again, in light of these circumstances, I find that the individual has not resolved the Criterion L security concerns related to his outstanding state and Federal taxes.

## **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: January 15, 2015