

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge. The DOE introduced 32 exhibits (Exs. 1-32) into the record of this proceeding. The individual introduced seven exhibits³ (Exs. A-G) and presented the testimony of five witnesses at the hearing, including his own. *See* Transcript of Hearing, Case No. PSH-15-0079 [hereinafter cited as “Tr.”].

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate 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 and unfavorable, that has a bearing on the question of whether restoring the individual’s 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

The Notification Letter cites information pertaining to subsections (l)⁴ and (f)⁵ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

³ The individual’s Exhibits A through C were submitted before the hearing and Exhibits D through G were provided through a post-hearing submission.

⁴ Derogatory information includes when an individual “[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 responsibility.” 10 C.F.R. § 710.8(l).

⁵ Derogatory information exists when an individual “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions.” 10

Ex. 1. In its Notification Letter, the LSO cites the following: 1) the individual has a charged-off account for \$34,314; 2) he has four collection accounts totaling \$60,436, which includes a student loan account of \$60,083 and three other accounts of \$178, \$30 and \$145; and 3) he is 60-days past due in the amount of \$1,458 on his mortgage that has a balance of \$124,105. Ex. 1. The Notification Letter also cites the individual's failure to list six collection accounts and two charged-off accounts that he had within the previous seven years of completing his QNSP in June 2014. *Id.* He also failed to disclose that in March 1981, he was arrested and charged with being a minor in possession of alcohol in the QNSPs that he submitted the following times: June 2014, December 2011, December 2010, December 2009, June 2009, December 2008, December 2007, January 2007, December 2005, December 2004, December 2003, April 1999, November 1998, March 1993, and March 1988. *Id.*

The above information adequately justifies the DOE's invocation of criteria (l) and (f), and raises significant security concerns. The 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, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*]. Moreover, the deliberate failure to provide truthful and candid answers during a security clearance process also raises questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.*, Guideline E.

IV. FINDINGS OF FACT

The individual presented the testimony of five witnesses, including his own testimony. My findings from the testimony and the exhibits are explained below.

A. Individual's failure to list past debts and alcohol-related offense in QNSPs

1. *Individual's charge with minor in possession of alcohol*

In March 1981, the individual was charged with being a minor in possession of alcohol.⁶ Ex. 1. In 15 QNSPs that he has submitted since 1988, including the June 2014 QNSP, he never disclosed that he was charged with an offense involving alcohol or drugs. Ex. 1; Exs. 15-29. During a PSI in July 1990 and a PSI in April 2015, he admitted that he was charged with the offense of minor in possession of alcohol when confronted about it. Ex. 31 at 4-5; Ex. 30 at 159. In a letter of interrogatory that the individual submitted in March 2012 ("LOI"), he was asked why he failed to

C.F.R. § 710.8(f).

⁶ According to the Case Evaluation Sheet from April 2015, in March 1981, the individual was cited for being a minor in possession of alcohol and fined \$35, and he was also cited for urinating in public after being observed by a police officer urinating in an alley. After he did not pay his fine, two months later, he was arrested on a warrant for failure to pay his fine. Ex. 5.

respond “yes” to the question asking whether he ever had any alcohol-related charges in his QNSP. Ex. 13 at 4. The individual indicated that he did not deliberately omit that information, but that he was “unaware that the citation that was issued to [him] was a Minor in Possession of Alcoholic Beverages,” and instead believed that it was urinating in public. Ex. 13. He then stated that “[f]uture QNSP’s [sic] with this question will be answered with a ‘YES.’” Ex. 13. Despite his statements, he still failed to disclose the charge in his June 2014 QNSP.

At the hearing, the individual recalled that in 1981, he was given a ticket for urinating in public and that he was arrested a few months later when he failed to appear at the courthouse to take care of that ticket. Tr. at 141-42. His family knew about the incident and he testified that he disclosed it with personnel at his job when he was hired to work there. Tr. at 145. His colleagues also know about it as he has not tried to hide it from them. Tr. at 146. The individual testified that while there was no excuse for not disclosing the offense in the June 2014 QNSP, he did not intend for the DOE to not find out about it and he did not intentionally try to mislead the DOE. Tr. at 146-147. He also knows that the DOE has known about this charge for 20 years based on his previous PSIs and LOI. Tr. at 146.

The individual’s wife was dating him when he got the ticket in 1981 and when he was arrested months later. Tr. at 36. She recalled that he received the ticket for urinating in an alley when he was a teenager and that he was arrested because he never paid the ticket. Tr. at 37. She stated that he has never been arrested again and that he never denied that incident. Tr. at 39-40. In fact, to her knowledge, her husband has always reported that incident, his friends know about it, and he has never kept it a secret. Tr. at 54.

2. Individual’s past delinquent accounts

In his June 2014 QNSP, the individual disclosed that he was delinquent on the two student loans because he was overextended on his home loan, his 401(k) loan and the student loans. Ex. 15. He also disclosed that his wages were being garnished for one of the student loan accounts. Ex. 15. In addition, he stated that they will be placing their home up for sale and will take the equity to pay off the student loans. Ex. 15. Later on, during his April 2015 PSI, the individual admitted that he omitted disclosing in his June 2014 QNSP that he had six collection accounts and two charged-off accounts within the seven years before submitting his QNSP. Ex. 2. He explained that he failed to list three of those collection accounts because he believed that he was current on them and did not realize that they were placed in collection. Ex. 3. However, he admitted that he knew about the other three collection accounts and two charged-off accounts when submitting his QNSP. Ex. 3.

The individual previously disclosed some of those same delinquent accounts that he failed to include in his June 2014 QNSP to the DOE a few years earlier. As an attachment to his December 2011 QNSP, the individual provided a list of his delinquent accounts from the past seven years through an email dated October 22, 2009 (“October 2009 Email”). Ex. 16. The October 2009 Email listed at least three collection accounts that the individual should have disclosed in his June 2014 QNSP, but failed to do so. Ex. 16. The October 2009 Email was also attached to his December 2010 and December 2009 QNSPs. Ex. 17; Ex. 18.

At the hearing, the individual explained that he did not try to hide the fact that he had financial difficulties. Tr. at 114. When he was completing his June 2014 QNSP, he asked his wife about their delinquent accounts and he relied on the information that she gave him. Tr. at 149. He believes that he did not list some debts, including a delinquent account from 2009 (which he previously disclosed in his December 2011, December 2010, and December 2009 QNSPs) because he miscalculated whether the accounts were delinquent in the seven years before June 2014. Tr. at 150. When filling out the QNSP in the future, the individual plans to review his credit report to ensure that he responds correctly. Tr. at 129.

The individual's wife testified that when her husband asked her about their previous delinquent accounts for his June 2014 QNSP, she knew at the time that they were already paid off years ago and so she told him that they were already paid off. Tr. at 556. She stated that any debts that he did not list were due to her belief that they were paid off and so she never mentioned them to him for his QNSP. Tr. at 57. She thought that as long as they were current on those accounts, they did not have to be reported. Tr. at 62.

B. Individual's delinquent accounts

The individual's wife was solely responsible for paying the bills on their home until about the fall of 2015 after the individual realized that he needed to take more responsibility over his financial situation. Tr. at 45. He and his wife began experiencing financial troubles a few years after their son decided to go back to school in 2005 and the individual became a co-signer on his student loans, which he understood at the time he could be responsible for paying.⁷ Tr. at 10. His son attended the primary school in his occupational field in the state where they reside. Tr. at 11. In 2008, after he already graduated and was working, the individual's son injured himself and was unable to work for approximately three months. Tr. at 13. He was therefore unable to make payments on his student loans and creditors began charging the individual for his son's loan payments, which the individual and his wife paid. Tr. at 13-15. In paying off his son's loans, the individual became overextended financially and had challenges in meeting his other payments. Tr. at 120. While his son now works, he does not earn sufficient income to make payments on his loans. Tr. at 14.

The individual experienced further financial difficulties in 2009 and 2010 due to his health problems and a triple bypass surgery that he had in 2010, and during that period he could not make payments on the student loans. Ex. 3; Tr. at 15. In order to pay his bills, in the fall of 2009, the individual withdrew a \$50,000 loan from his 401(k) account and used it to pay towards one of the student loan accounts and other bills. Ex. 7 at 3; Ex. 30 at 12-14; Tr. at 157. That loan from his 401(k) account was paid off in 2014. Tr. at 155. Around the time his 401(k) account was paid off, in November 2014, the individual's wages were garnished in the amount of \$400, every two weeks, to pay for the student loan that is currently in collection. Ex. 3; Tr. at 19. Since his wages became garnished, the individual got behind on his other payments, including his mortgage payments. Ex. 3; Tr. at 121.

⁷The \$34,314 charged-off account and \$60,083 collection account in the Summary of Security Concerns are both for the student loans that his son took out to finance his education. Ex. 1.

In the summer of 2015, the individual and his wife took out another loan from his 401(k)⁸ account for approximately \$47,000 to pay off his smaller collection accounts, get caught up on his mortgage payments, and repair his truck engine that cost \$8,700. Tr. at 155, 157. The delinquent accounts that the individual resolved with his second loan from his 401(k) account include the \$145 collection account from a gas bill and the two accounts for \$178 and \$30 from medical bills that are listed in the Summary of Security Concerns. Ex. 1; Tr. at 26. The collection account for \$145 was paid off on July 15, 2015. Ex. C. The collection accounts associated with the medical bills were paid off on November 25, 2015. Ex. A. There are other outstanding accounts with the same creditor (which are not listed in the Summary of Security Concerns) that have been either been paid or are disputed⁹ and are his wife's medical bills. Ex. A; Tr. at 26.

As of the hearing, the individual and his wife were current on their mortgage, which has a balance of \$120,000,¹⁰ because on August 25, 2015, they paid \$8,696 from their 401(k) loan for the months of March through August 2015. Tr. at 23, 140; Ex. B. The individual testified that they made the payments for the remaining months. Tr. at 140. His wife explained that now, when the individual's paycheck is deposited into his account, he withdraws money to make payments on their mortgage and any other payments that are due before they use their debit or credit card. Tr. at 17.

The individual and his wife have approximately \$20,350 remaining from the 401(k) loan to be used for emergency purposes and all of their delinquent accounts have been taken care of except the student loans. Tr. at 158. As the two student loans remain outstanding, with one being paid through the wage garnishment, the individual and his wife are planning to pay off the loans by either using the funds from selling their house or using the emergency fund from their 401(k) loan after negotiating a settlement or payout to resolve the charged-off student loan account. Tr. at 34, 122. They explained that they have contacted the creditor of the charged-off account to ascertain whether they can settle their debt but have not made an agreement with them as of the hearing. Tr. at 34, 138. They would be willing to use the emergency fund to pay that debt if they are able negotiate a settlement amount. Tr. at 138.

As the individual and his wife are trying to save money to pay off their debts, they moved into his mother-in-law's home two years ago in order to fix up their own home and sell it. Ex. 3; Tr. at 19-20, 49. They are not paying any rent to live in his mother-in-law's home, but they are paying for the utilities of both homes. Ex. 3. They described the decision to sell their home as difficult as it was their dream home where they hoped to have lived in for the rest of their lives. Tr. at 66. As early as

⁸ The individual's income statement indicates that he is paying back his 401(k) loan through a \$401.61 after-tax deduction per pay period. Ex. D.

⁹ The individual explained that they are disputing about \$3,726 in medical costs, which arose after their insurance changed while a claim for his wife's medical procedure was being processed. Tr. at 152-153. He stated that his insurance company advised him not to pay the bill until the billing company files the right paperwork. Tr. at 153.

¹⁰ The account in the Summary of Security Concerns with a balance of \$124,105 and past due for \$1,458 was for his mortgage. Ex. 1.

the PSI in April 2015, the individual stated that “the house is presentable to be sold” and that a neighbor was interested in buying the house. Ex. 30 at 92. Indeed, they had the house on the market for about 18 months before the hearing, but did not hire a real estate agent because they wanted to use that money to pay their bills. Tr. at 49, 124. However, they did not immediately sell the house after the individual’s PSI in April 2015, indicating that they still planned to paint and clean it and make some repairs to get it ready for sale. Tr. at 45-46. Months later, after finally hiring a real estate agent, on December 7, 2015, the individual and his wife entered into a real estate listing agreement to sell their home for \$256,000. Tr. at 22; Ex. G. Once they sell their home, they plan to pay off the student loans with their earnings from the sale. Tr. at 24; 35.

The individual is now making more payments on his own and has become aware of the status of their accounts without relying completely on his wife. Tr. at 16. He submitted a monthly budget indicating that after taking into account their expenses, including mortgage payments, he and his wife have a positive balance of \$394. Ex. F. Aside from the student loans, the individual does not have any other delinquent accounts. Tr. at 26. The individual and his wife testified that they do not have any car payments because they just own one car, they have not taken a vacation in a very long time, they do not have any credit card debt, and they do not spend extravagantly. Tr. at 28-32. In fact, they used to own two vehicles, but because one was stolen after they moved into the individual’s mother-in-law’s home, the individual decided not to purchase another car due to their financial situation. Tr. at 28-29. While the individual has two credit cards with an \$800 credit limit, they are only for emergency reasons and have zero balances because he and his wife have not used the cards in a long time. Tr. at 32, 133. The individual’s wife testified that if they sell their home, their intention is to just buy her a small vehicle to get to and from places as necessary and not spend any more of the money that they earn from the sale. Tr. at 35.

C. Individual’s colleagues’ testimonies

The individual’s colleague and friend who has known him for over 30 years, and supervised him at work for 10 years, testified that the individual is cautious in his approach to work, does not take shortcuts, and is reliable. Tr. at 71-84. He has also socialized with the individual and knows his family. Tr. at 75, 82. He stated that he has never known the individual to be an extravagant spender, and that instead, the individual has always been a conservative spender, describing him as someone who “watches his money pretty close.” Tr. at 76. The individual has talked to him about selling his home and explained that he did not want to use a realtor because of the fees associated with hiring one. Tr. at 78. He also told him that he wanted to save his money to pay his bills. Tr. at 78. The individual’s colleague and friend also knew about the incident from 1981 and testified that it was common knowledge at his workplace. The individual did not hide the fact that he received a ticket for urinating in an alley while he was intoxicated when he was 18 years old. Tr. at 79. With regard to his financial problems, he stated that the individual has also made those problems known to them at work, asking for guidance on how to fix them. Tr. at 80.

Another colleague of the individual who has known him for 22 years testified that she would describe him as dependable and hard working. Tr. at 88. She stated that he is very honest and reliable. Tr. at 89, 91. She is also familiar with the incident in 1981 and that she knows of one other

person – her boss – who is aware of that incident. Tr. at 93. Furthermore, the individual's supervisor, who has known the individual for 21 years, testified that he is very dependable and honest. Tr. at 101. Over the years he has learned about the individual's financial struggles, stating that he has been very forthcoming about it. Tr. at 102. He also stated that the individual does not spend extravagantly and that he has no reason to believe that the individual could ever be coerced or blackmailed into providing sensitive information because of his financial duress or the incident from 1981. Tr. at 105.

V. ANALYSIS

As stated above, 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. *See* 10 C.F.R. § 710.7(c). It is in consideration of the regulations and the Adjudicative Guidelines referenced below, that I have concluded that the individual sufficiently resolved the concerns raised by the LSO.

A. Deliberate misrepresentations, falsifications or omissions – Criterion (f)

After due deliberation and consideration of the witness testimony and the exhibits, I conclude that the individual has resolved the concerns regarding his omissions of past delinquent accounts and of a charge of minor in possession of alcohol from his QNSPs. Specifically, I do not find that his omissions were deliberate or that he intended to conceal derogatory information related to his past criminal conduct, which was relatively minor and occurred more than 30 years ago when he was a teenager, or his financial indebtedness, much of which he already disclosed previously to the DOE.

Regarding the criminal charge that the individual failed to list in 15 QNSPs, which I recognize is not an insignificant amount, it does not appear that he deliberately failed to disclose it so as to influence his qualifications for employment or a security clearance. *See Adjudicative Guidelines E* at ¶ 16(a). Notably, based on the testimony of his colleagues and wife, he did not try to hide that over 30 years ago he was ticketed for urinating in public and then arrested for failing to pay the ticket; he was also forthcoming about being charged as a minor in possession of alcohol or cited for urinating in public when confronted about it by the DOE. All three witnesses who have worked with him for years, including one who is his supervisor, stated that they knew about the incident. Moreover, the individual testified that when he was hired to work for his employer, he disclosed that incident to personnel at his job. His wife also stated that his friends are aware of that incident that the individual has never tried to keep it a secret.

The individual also acknowledged that while there was no excuse for failing to disclose the charge, he did not do it intentionally or try to mislead the DOE. Despite how many times he failed to list this in his QNSP, the testimony of his witnesses strongly convince me that this was not an incident that he deliberately tried to conceal. Moreover, his admissions during his PSI in April 2015 and LOI answers in March 2012 also convince that he was not intentionally being unforthcoming with that

information. While his failure to disclose the alcohol-related charge exhibits a lack of care in completing the QNSP, particularly after being confronted about it in the past by the DOE, I do not find that he acted deliberately so as to mislead anyone or the DOE.

With regard to the delinquent accounts from the last seven years that the individual failed to disclose in his June 2014 QNSP, I find that his omissions were not deliberate. The record indicates that he believed that he was current on three of the six collections accounts that he failed to list; he acknowledged that he knew about the other three collection and two charged-off accounts that he did not list. However, he stated, and his wife confirmed, that because she was more familiar with their accounts and payments, he relied on what she told him, which was that they did not need to be reported. Additionally, it does not appear that he tried to conceal his financial problems as he listed his two large delinquent accounts – the two student loans – in the June 2014 QNSP, and noted that he was overextended on his home loan, his 401(k) loan, and the student loans. Further, the individual also disclosed some of the same debts that he failed to include in his 2014 QNSP in the October 2009 Email, which he attached to three of his previous QNSPs in December 2011, December 2010, and December 2009. He explained that his failure to list accounts that he had within seven years of submitting his June 2014 QNSP was due to a miscalculation of how long ago those accounts were delinquent. While again, he may not have exercised the best care in completing the QNSP, and should have reviewed his credit report, I do not find that he deliberately omitted this information from the DOE. Thus, the individual has resolved the concerns under criterion (f).

B. Delinquent debts – Criterion (l)

I also find that the individual has resolved the concerns regarding his delinquent debts. First, his financial problems were largely due to conditions that were beyond his control – primarily that his son was not able to pay his student loans due to his injury, unemployment and insufficient income, and that his own health issues and surgery in 2010 rendered it difficult for him to pay his expenses. *See Adjudicative Guidelines F* at ¶ 20(b). Even though he knew that he could be responsible for his son's student loans when he became a co-signer, his son was initially paying his loans after graduating from school, until he injured himself and was no longer able to make the payments himself. It was when the individual and his wife made the payments to the student loan creditors, that they become financially overextended, and then further extended when the individual had to undergo surgery and had health problems in 2009 and 2010. Under those circumstances, the individual appeared to have acted as responsibly as he could. He borrowed from his 401(k) in the fall of 2009 to make payments on the student loans and other outstanding expenses and has paid back his 401(k) account as of 2014. As to all of the delinquent accounts, except the student loans, the individual has either resolved the accounts completely or become current on his payments, such as his mortgage. *See Adjudicative Guidelines F* at ¶ 20(d).

Moreover, the individual did not spend money extravagantly or make unnecessary purchases. In fact, two years ago, he and his wife moved into his mother-in-law's home in order to prepare their own home for sale. While he waited a considerable time to actually put his house for sale, his further indebtedness was not caused by his own irresponsible behavior. *See Adjudicative Guidelines F* at ¶ 19(b). As the individual recently hired a real estate agent to sell his home, he has made progress

towards resolving both of the student loans, which are his only remaining delinquent debts. He has a realistic and attainable plan to resolve delinquent student loan accounts. Furthermore, the individual and his wife also have a positive balance in their monthly budget and they have approximately \$20,350 from their current 401(k) loan to use for emergency purposes.

In all, the record does not demonstrate that there was any spending beyond their means to have caused the individual and his wife's financial problems. *See Adjudicative Guidelines F* at ¶ 19(e). In fact, it demonstrates the opposite – that they have been very careful in spending their money and are solely focused on resolving their debts and saving money. Hence, for these reasons, I find that the individual has sufficiently resolved the concerns under criterion (l).

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 (l) and (f). 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 brought forth sufficient evidence to mitigate all of the security concerns at issue. I therefore 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 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.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: January 7, 2016