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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: October 19, 2015) Case No.: PSH-15-0084
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Issued: January 6, 2016

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (“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 restore the Individual’s access authorization.

I. Background

The Individual is an employee of a DOE contractor in a position that requires that he hold a DOE security clearance. A Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO summoned the Individual for an interview with a personnel security specialist in June 2015. Because the Personnel Security Interview (PSI) did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21.

¹ Access authorization, also known as a security clearance, is an administrative determination that an Individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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On October 12, 2015, the Individual exercised his right under the Part 710 regulations to request an administrative hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25 (e) and (g), the DOE introduced five exhibits (DOE Exs. 1-5) into the record. The Individual presented his own testimony, and introduced five exhibits (Ind. Exs. A-E). *See* Transcript of Hearing, Case No. PSH-15-0084 (Tr.).

II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 or unfavorable, that has a bearing on the question of whether granting or restoring a 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 cited derogatory information within the purview of one potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).² DOE Ex. 1. In support of its Notification Letter, the LSO stated that the Individual’s October 15, 2014, credit report showed six delinquent accounts totaling \$28,711. DOE Ex. 1 at 3. These debts include a debt from his divorce attorney in the amount of \$200 and credit cards from Bank of America in the amount of \$5,615; GE Money Bank

² Criterion L refers to information indicating that the Individual has “engaged 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, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, 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).

in the amount of \$3,693; Capital One in the amount of \$933; USAA in the amount of \$16,973; and Citibank in the amount of \$1,298.³

The Individual did not dispute this claim. I find that the allegations in the Notification Letter are valid and supported by the record in this case. See 10 C.F.R. § 710.27(c) (requiring Administrative Judge to “make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter”). I further find that this information regarding the Individual’s delinquent accounts raises a concern because 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 (December 19, 2005)*, Guideline F.

IV. Findings of Fact

The facts of this case are essentially undisputed. The Individual’s October 15, 2014, credit report showed six delinquent accounts. DOE Ex. 4. The Individual admitted that the accounts were his. Tr. at 10-16.

V. Administrative Judge’s Analysis

The Adjudicative Guidelines state that “[f]ailure 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” Adjudicative Guideline M at ¶ 18.

Under the Adjudicative Guidelines, mitigation of the security concern could occur if:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

Adjudicative Guidelines M at ¶ 20. The Individual testified that his financial indebtedness was due to his separation in 2007 and eventual divorce in 2008. Tr. at 12. During that time, he was trying to maintain two households in order to “keep my girls’ roof over their heads.” Tr. at 19.

³ Neither the DOE Counsel nor I could find this listed on the October 15, 2014 credit report.

The Individual provided a copy of a recent credit report that shows the debts are no longer in collection. Ind. Ex. A. The Individual testified that the debts are not collectable because of the state statute of limitations removed them from his credit report after six years. Tr. at 16; Ind. Ex. E; N.M. Stat. § 37-1-3 (2015). In 2010, when interviewed by the LSO, he indicated that he was going to declare bankruptcy to clear the debts from his credit history. Tr. at 27. After researching the issue, he determined that the debts would be cleared by early 2015 by statute, yet they would remain on his credit history for 10 years, if he declared bankruptcy. Tr. at 30.

I was originally going to do a bankruptcy, and then by the time I was going to do it, it was like '0 -- I think 2010, '11 time frame, I did research, because at that point I was seeing what qualifications needed to -- thinking about what -- if I was able to purchase a home again. And that's where I came across some Internet sites and stuff doing research that said the statute of limitations about the debt falling off after six years.

Tr. at 27-28. Therefore, he made the decision not to declare bankruptcy. Tr. at 30.

The Individual's indebtedness occurred under circumstances that were largely beyond his control, *i.e.*, his divorce, thereby satisfying both ¶¶ 20(a) and (b) referenced above. In addition, there are clear indications that the problem has been resolved thus satisfying ¶ 20(c) referenced above. The Individual's credit report shows no negative accounts. Ind. Ex. A. The four accounts which appear as potentially negative on his most recent credit report show a late payment in March 2014, over a year prior to the hearing date. Ind. Ex. A. Finally, the Individual testified that he was recently able to qualify for a mortgage to purchase a house and a loan to purchase a truck. Tr. at 20. He also provided a budget, which shows a positive cash flow of \$600, even after the purchase of his house and truck. Ind. Ex. B. He is current on his payments to the federal and the State tax services. Ind. Ex. A.

In prior cases involving financial irresponsibility, Administrative Judges have held that “[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” *See Personnel Security Hearing*, Case No. PSH-14-0105 (2015); *Personnel Security Hearing*, Case No. PSH-13-0046 (2013); *Personnel Security Hearing*, Case No. PSH-12-0103 (2012); *Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009).

In reviewing all the exhibits in this matter, along with the hearing testimony, it is apparent to me that the Individual has demonstrated a pattern of financial responsibility since his divorce. As he testified, he has a positive monthly cash flow and has purchased a home and truck. He has no current delinquencies on his credit report.

Accordingly, I find that the Individual has resolved the security concerns set forth in the Notification Letter regarding his financial delinquencies.

Conclusion

For the reasons set forth above, I find that the Individual has resolved the 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 brought forth sufficient evidence to resolve all of the security concerns at issue. I therefore find that restoring the Individual access authorization will not endanger the common defense and would be consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: January 6, 2016