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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-15-0087  
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Issued: January 7, 2016

**Administrative Judge Decision**

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 suspended access authorization at this time.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to maintain a DOE security clearance. In his January 30, 2014, Electronic Questionnaires for Investigations Processing Form (January 2014 QIP), the Individual revealed that he had not filed nor paid federal income tax for the years 2009 through 2012. Ex. 8 at 34-35 (Section 26). The local security office (LSO) conducted an in-depth investigation and determined that the Individual had not filed federal or state of residence (State) income tax returns for a number of years and had a number of

<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.

delinquent accounts which had not been revealed in his January 2014 QIP. Additionally, the Individual, when asked, in the January 2014 QIP, failed to reveal that he had a number of delinquent credit accounts and wage garnishments. Ex. 8 at 37 (Section 26). During the LSO investigation, the Individual also submitted an inaccurate written statement asserting that he had entered into a payment agreement with the State regarding past due income taxes. The LSO conducted a personnel security interview with the Individual in May 2014 (May 2014 PSI). On September 24, 2015, the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance (Notification Letter). The Notification Letter explained that that the derogatory information fell within the purview of two potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections f and l (Criteria F and L respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The DOE submitted 12 Exhibits (Exs. 1-12) into the record for the hearing. At the hearing, the Individual presented the testimony of a psychologist (Psychologist) and his accountant (Accountant), along with 34 Exhibits (Ex. A-X and AA-JJ). *See* Transcript of Hearing, Case No. PSH-15-0049 (“Tr.”).

## 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 (1998) (“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).

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<sup>2</sup> Criterion F references information indicating that an individual “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . .” 10 C.F.R. § 710.8(f). Criterion L relates to information that a person suffers from “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). The Notification Letter also cited concerns under Guidelines E and F as described in 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).

The individual must come forward 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 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **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.* In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See Adjudicative Guidelines.

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites two criteria as the basis for suspending the Individual’s security clearance, Criteria F and L. It is well established that conduct involving lack of candor or dishonesty can raise questions about an individual’s trustworthiness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Adjudicative Guidelines, Guideline E, at ¶ 15.

With respect to Criterion F, the LSO cited the Individual’s failure in the January 2014 QIP to disclose his history of wage garnishments and delinquent accounts. Given the discrepancy between the Individual’s answers in the January 2014 QIP and his actual credit history, I find that the LSO had adequate information to support its involving Criterion F in the Notification Letter.

As for the Criterion L derogatory information, conduct involving questionable judgment, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15. Further, 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Adjudicative

Guidelines, Guideline F, at ¶ 18. The record before me demonstrates that the individual has problems in meeting his financial obligations and has provided inaccurate information to the LSO, thus justifying the LSO's invocation of Criterion L in the Notification Letter.

#### **IV. Findings of Fact**

The Individual testified that his financial problems began in 2007 after his divorce. Tr. at 32. After paying child support, the Individual had difficulty in paying all of his expenses. *Id.* The Individual believed that if he increased his income tax exemptions he would have extra money in his paycheck to pay his bills.<sup>3</sup> Tr. at 33, 41. However, when his 2009 federal and State taxes became due, the Individual believed that he would not be able to pay his tax liability for 2009 and decided not to file his 2009 returns. Tr. at 42. The Individual continued with his plan to receive extra money in his paycheck by claiming increased deductions through 2013. Tr. at 33, 40-41. The Individual stated that he did not file tax returns for the years 2009-2013 until the spring of 2014.<sup>4</sup> Tr. at 40. The Individual persisted in his plan despite the fact he was aware that any unpaid taxes would accrue interest and penalties. Tr. at 42-43. In 2014, the Individual testified that he filed for and was granted a Chapter 7 bankruptcy. Tr. at 35-36. Despite the Individual's financial problems, he continued to and is currently making payments for a Recreational Vehicle (RV) and an All-Terrain Vehicle (ATV) at an approximate interest rate of 25 percent. Tr. at 45-46.

The Individual estimated that he owes approximately \$35,000 to the Internal Revenue Service (IRS) and \$12,000 to the State for past due income taxes. Tr. at 36. Currently, the Individual has two small credit accounts, obtained after his 2014 bankruptcy, which he is paying off. Tr. at 48-49. However, until he can obtain an exact total for his tax delinquencies, he is unable to craft a financial plan to satisfy these debts. Tr. at 58.

The Individual acknowledged that in April 2015, he supplied the LSO with a written statement indicating that that he had entered into a payment plan with the State to repay his back taxes. In the statement he wrote "I have made a payment agreement," and "this is in reference to . . . State delinquent tax debt," and "[I] will pay them \$10,200 on April 30th, 2015, and will make six monthly payments of \$200 for the last \$1200." Tr. at 54; Ex. 3 at 1. The Individual admitted that he had made no payments to the State according to the agreement he described and that the agreement was "nothing official." Tr. at 54. The Individual stated that he did not make the \$10,200 payment because he wanted to refinance his truck, and he did not inform LSO of that fact. Tr. at 54. Nonetheless, the Individual testified that he has made some voluntary tax payments to the State. Tr. at 55; *see* Ex. GG.

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<sup>3</sup> The Individual planned to catch up his debts by paying a larger income tax assessment at the end of the year.

<sup>4</sup> The Individual's Accountant has filed amended tax returns for 2012, 2013, and 2014 based upon the initial tax preparer's error in determining whether the Individual could claim one of his children for tax purposes. *See infra*; Tr. at 13-14, 16, 51.

As for the errant answers provided in the January 2015 QIP, the Individual testified that he had problems with the QIP software. Tr. at 60. Specifically, the QIP program would encounter technical problems and the Individual would then have to reenter his information. Tr. at 60. Additionally, the Individual did not have all of his credit information available regarding his past due and delinquent accounts. Tr. at 60-61. Despite these problems, the Individual acknowledged certifying the accuracy of his January 2014 QIP. Tr. at 62. The Individual also testified that he did not notify the LSO when he discovered that he had not correctly reported his past due and delinquent accounts. Tr. at 62. The Individual also acknowledged that he did not notify the LSO of his 2014 bankruptcy until April 2015. Tr. at 63.

The Individual testified that he believes he will be able to better manage and keep track of his financial affairs. The Individual has a monthly budget that he mentally uses. Tr. at 67. He has visited with his bank so that various expenses can be taken from his bank account directly and thus reduce to temptation for discretionary spending. Tr. at 68. The Individual testified that he has been examined by his Psychologist and has been found to suffer from Attention Deficit Hyperactivity Disorder (ADHD). Tr. at 56. He believes that with treatment from his Psychologist for this disorder he will be able to create a financial plan and stick to it. Tr. at 69.

The Individual's Accountant testified that he examined the tax returns for 2009 through 2014 that were prepared by the Individual's initial tax preparer. Tr. at 13. Because the Accountant found errors in the initially filed tax returns, he has filed amended tax returns for 2012, 2013 and 2014. Tr. at 14, 16. The errors stem from the initial tax preparer failing to add the Individual's children as dependents for tax purposes. Tr. at 16. The Accountant believes that if the Individual increased the sum withheld from his taxes and entered into installment agreements with the IRS and the State, his tax liabilities could be repaid. Tr. at 17-18. Additionally, some of the Individual's tax liability might be subject to reduction as a part of negotiating a plan to resolve these debts. Tr. at 26-27.

After the hearing, the Individual submitted statements from his Accountant estimating his current tax liability for the period 2009 to 2014 as totaling \$19,308 to the IRS and \$7,292 to the State. Ex. II and JJ. These totals do not include extra sums reflecting interest and penalties. Ex. II and JJ.

The Individual's Psychologist testified that he examined the Individual and determined that the Individual suffered from a mild form of ADHD. Tr. at 83-84. While the Individual declined to consider medication for the treatment of his ADHD, the Psychologist stated that the Individual was willing to undergo brief psychotherapy (8-10 sessions) to manage his ADHD. Tr. at 84-85. In the case of the Individual, who has a mild form of ADHD, the Psychologist stated that brief psychotherapy would be an appropriate therapy. Tr. at 84. As of the date of the hearing, the Psychologist had not been able to schedule any psychotherapy sessions due to the Individual's travel schedule. Tr. at 84. With treatment, the Individual's ADHD could be reduced where his symptoms would not be significant. Tr. at 85.

The Psychologist testified that the Individual's ADHD could be a factor in the Individual not meeting his legal and financial obligations for the prior six years. Tr. at 86-87. Sufferers of ADHD, the Psychologist opined, might demonstrate behaviors such as being chronically late on bills or going slightly over the speed limit. Tr. at 87. In his experience, people with mild ADHD often have financial problems similar to the Individual. Tr. at 87. However, the Psychologist opined that ADHD sufferers do not typically have major problems with the legal system. Tr. at 87. The Psychologist declined to offer an opinion as to the effect of ADHD on the Individual's judgment but stated that ADHD may, in general, affect judgment. Tr. at 89.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented 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 DOE security clearance 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.

### **A. Criterion F**

The Criterion F concerns center on the Individual answering "No" to questions on the January 2014 QIP concerning whether, in the prior seven years, he had defaulted on a loan, had debts turned over to a collection agency, had an credit account or card suspended, had his wages garnished or had or was currently more than 120 days delinquent on any credit account. Ex. 8 at 37 (Section 26). The Individual does not dispute that his answers to these questions were incorrect. Tr. at 80; *see* Tr. at 59-60 (admission that the Individual failed to disclose a number of delinquent and collection accounts); Ex. 3 at 29 (2014 Bankruptcy petition indicating 8 credit accounts in collection status).

In mitigation, the Individual has claimed that computer program errors or his ADHD were responsible for these misrepresentations. I have examined the medical records that the Individual submitted along with the testimony of the Psychologist. *See* Ex. CC. I find that it is likely the Individual suffers from a mild case of ADHD. While this might explain the Individual's error in answering "No" regarding his financial history of delinquent accounts, I must conclude that this factor alone does not constitute sufficient evidence to mitigate the Criterion F information contained in the Notification Letter. My conclusion is supported by the Individual's April 2015 statement to the LSO stating that he had entered into a payment plan with the State to resolve his tax debt. This statement was patently untrue and cannot be explained as a lack of attention to detail an ADHD sufferer might experience. The April 2015 statement represents a deliberate misrepresentation or at least a very careless approach to the need to provide accurate information.

Even if I were to conclude that the Individual's ADHD was responsible for his misrepresentations, at the time of the hearing, the Individual had not begun treatment. In sum, the Individual has not presented sufficient evidence to resolve the Criterion F concerns raised by the derogatory information in the Notification Letter.

## **B. Criterion L**

The Criterion L concerns arise from the Individual's history of financial irresponsibility and his judgment, lack of candor, and unwillingness to comply with rules and regulations.

### **1. Financial Irresponsibility**

The Individual's history of financial problems are highlighted by his history of delinquent accounts and accounts placed into collection. The record indicates that at the time of his 2014 bankruptcy petition, the Individual had eight credit accounts that were in collection. Ex. 3 at 29. Further, the Individual failed to file federal and State income tax returns because he did not have sufficient funds to pay the expected tax debts. The Individual's failure demonstrates an inability to manage his finances and a lack of judgment. The record indicates also that the Individual purchased an RV in 2010 for \$10,000 despite having significant debt problems at the time. Ex. 7 at 15. The Individual's history of financial irresponsibility is of long duration. In addition to his April 2014 Bankruptcy, the Individual filed for bankruptcy in 1996. Ex. 7 at 19.

The Individual has presented evidence that after his April 2014 bankruptcy he has tried to conduct his financial affairs with increased responsibility. A review of the Individual's most recent credit reports indicates that he has only two credit accounts open and both are current. Ex. CC at 5. Further, the Individual has made two voluntary tax payments to the State in 2015. Ex. GG. While treatment for his ADHD may help him be more diligent in promptly attending to his financial affairs, as of the date of the hearing, he has not begun treatment. Further, the Individual has significant tax liabilities before him totaling \$26,000 (not including interest and penalties) for which there is no current repayment plan.<sup>5</sup>

Given the relatively short time the Individual has tried to resolve his financial problems and the length of time the Individual has struggled with his finances, I cannot find that the Criterion L concerns arising from his history of financial problems have been resolved. *See e.g., Personnel Security Hearing, Case No. PSH-15-0044 (2015)* (an individual who has been financially irresponsible 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). Further, my review of the Adjudicative Guidelines finds that none of the mitigating factors are applicable in this case. Adjudicative Guidelines, Guideline F, ¶ 20.

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<sup>5</sup> The Individual testified that the IRS cannot determine the exact amount until it determines whether he properly included his children as deductions. Tr. at 73-74.

## **2. Judgment, Lack of Candor, and Unwillingness to Comply with Rules and Regulations**

The Individual's failure to timely file income taxes during the period 2009 to 2014 is a significant failure to meet his basic legal responsibilities as a citizen. This deliberate decision cannot be mitigated by his relatively recent filing of these tax returns. The Individual has demonstrated a sustained significant lack of judgment regarding his decisions which have resulted in his significant history of delinquent credit accounts as discussed above. The Individual's decision to purchase the RV in 2010 for \$10,000 while experiencing credit problems is an example of this lack of judgment. The Individual's April 2015 communication to the LSO stating that he had already entered into a repayment plan with the State was patently untrue and demonstrates a lack of candor with the LSO as well as poor judgment.

The fact that the Individual suffers from a mild cases of ADHD provided no mitigation for the significant evidence in the record regarding the Individual's lack of judgment, candor and unwillingness to comply with rules. The Psychologist testified that ADHD would not affect an individual's ability to make choices with regard to "right vs. wrong." Tr. at 92. He went on to opine that individuals with ADHD are most likely to make "little lapses" that may produce legal concerns. Tr. at 93. While the Individual has presented evidence regarding his attempts to be more financially responsible and to be in compliance with income tax legal requirements, these relatively recent efforts do not, at this time, outweigh the significant Criterion L derogatory information available in the record.

I have also considered the mitigating factors listed in the Adjudicatory Guidelines regarding such conduct. Arguably, mitigating factor (d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur," might apply to the Individual. Adjudicative Guidelines, Guideline E, at ¶ 17(d). However, the Individual had not yet begun counselling as of the time of the hearing. Further, it is uncertain whether counselling for ADHD would affect the Individual's willingness to be truthful or improve his reliability or trustworthiness. In any event, even if I credited the Individual with this mitigating factor, it would not outweigh the Individual's extensive history of lack of judgment, failure to comply with laws or failure to be candid. Consequently, I find that the Individual has not resolved the Criterion L derogatory information contained in the Notification Letter.

## **VI. Conclusion**

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria F and L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a



comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to resolve the cited security concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization at this time.

Richard A. Cronin, Jr.  
Administrative Judge  
Official of Hearings and Appeals

Date: January 7, 2016