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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: November 19, 2015) Case No.: PSH-15-0096
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Issued: February 26, 2016

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxxx (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 an ensuing personnel security interview (PSI) in August 2015 and a credit report review, the Local Security Office (LSO) learned that the individual filed a Chapter 13 bankruptcy in 2005 and a Chapter 7 bankruptcy in 2015, and has exhibited a long pattern of financial irresponsibility.

In October 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 derogatory information fell within the purview of one potentially disqualifying criterion set forth

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.

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 one witness and testified on his own behalf. The DOE Counsel did not present any witnesses. The LSO submitted 11 exhibits into the record; the individual tendered 12 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 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.

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 (1) has filed for bankruptcy on two occasions, a Chapter 13 bankruptcy in 2005 and a Chapter 7 bankruptcy in 2015, and (2) has demonstrated a long pattern of financial irresponsibility.

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.*

IV. Findings of Fact

During an August 5, 2015 PSI, the individual was questioned about his finances. He revealed that that he filed a Chapter 13 bankruptcy in July 2005 which contained 15 unsecured claims totaling \$26,367 in debt in primarily credit card and consumer credit accounts. The individual admitted that he overused credit cards because he was not smart about finances, did not control his spending, and charged too much simply because it was easy to do. The 2005 bankruptcy was discharged in August 2008 after the individual and his wife paid the bankruptcy trustee for three years and fulfilled their agreement. However, in July 2008, the individual admitted to opening two new credit card accounts. By the time the individual's credit report was reviewed due to a security clearance request in September 2011, although there were no delinquencies, the individual had accumulated a debt of \$2,011 on one card and \$502 on the other card, both of which were over the credit limits. Ex. 1.

In May 2015, the individual filed a Chapter 7 bankruptcy which included 21 unsecured creditors for a total of \$47,598 in unsecured debt.⁴ During his PSI, the individual admitted that he had

⁴ The Statement of Security Concerns also indicated that the individual paid \$235 to refile a Chapter 13 bankruptcy and further that he did not report his attempt to refile the Chapter 13 bankruptcy. During the hearing, the individual

been irresponsible and failed to control his spending. He further admitted that he did not budget, that he did not save money, and that he spent too much money on items such as eating out, travel, entertainment, electronics and other purchases. After the Chapter 7 bankruptcy was discharged, the individual was still unable to afford his household obligations. In addition, his residential expenses increased. The individual admitted to completing financial counseling in March 2015. Although he admitted that he learned a great deal of sound financial advice in counseling, he stated that he did not implement the advice because it would be difficult to do. In June 2015, the individual completed a Personal Financial Statement (PFS) for the LSO which revealed a number of discrepancies regarding the individual's monthly income and expenses. The PFS also revealed that the individual still had high expenses in areas that typically could be reduced such as food, clothing, cell phones and cable. In addition, the PFS indicated that despite financial counseling, the individual still had not successfully lowered his expenses or saved money. *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 two bankruptcies. He readily acknowledged his financial issues and testified that he and his wife were irresponsible in not getting their finances under control prior to their second bankruptcy. Tr. at 135. The individual stated that he depended on his wife to pay their bills or otherwise handle all of their finances. Since filing his second bankruptcy in 2015, the individual testified that he is more responsible regarding his finances. According to the individual, he is now communicating more clearly with his wife about their finances and consults with her prior to spending any money. *Id.* at 128. He testified that he has attempted to save money and to be more financially stable by selling some of his possessions to pay his expenses as well as trading a vehicle to lower his vehicle expenses. *Id.* at 137 and 138. The individual further testified that he has signed up for a financial course, rarely uses checks, no longer possesses credit cards (although he has received numerous offers in the mail) and is now placing money in savings accounts. Ex. B., Tr. at 139-141. When questioned about discrepancies in expenditures listed in a June 2015 PFS he completed for the LSO, the individual testified that he used figures that his wife provided to him and did not know the figures were based on averages that his wife calculated. Tr. at 145. The individual testified that he did not intend to mislead the DOE when completing his PFS. *Id.* at 146. Finally, the individual testified that his future intentions are to remain debt-free. *Id.* at 158.

explained that he did not "refile" his Chapter 13, but reopened the proceeding to clarify paperwork. He further testified that he did not report this action because he did not consider it to be refiling his bankruptcy. Tr. at 131.

The individual's wife, who has been married to the individual for 18 years testified that she primarily manages their finances. *Id.* at 20. According to the wife, they filed a Chapter 13 bankruptcy in 2005 because of their mounting debt, and paid into the payment plan established by the trustee for three years. *Id.* at 20 and 21, DOE Ex. 5. She testified that the couple did not incur any additional debt from 2005 to 2008. However, the wife stated that in 2011, the couple adopted a daughter with special needs and health issues which created additional expenses for the family. *Id.* at 28. In addition, she testified that her income decreased in 2013 by \$6.50 per hour which put pressure on their ability to pay down debt. *Id.* at 29, Ex. A. She explained that she and her husband used credit cards to pay for their household expenses. The individual's wife also indicated that prior to this time period, they were able to pay their expenses. *Id.* at 30. According to the wife, there were other issues that led to the filing of their Chapter 7 bankruptcy in 2015. The individual's wife testified that they lived in an older home that required expensive repairs, including the replacement of piping. She testified that the couple could not afford the repairs needed to keep the home in a livable condition, and thus decided to move to a new home in February 2015. *Id.* at 36 and 37. The wife stated that the couple's expenses are less in their new home, noting that their utilities and internet expenses have decreased. *Id.* at 38 and 41, Ex. E and H. She further testified that she and her husband have completed financial counseling as required by the bankruptcy court, and have registered for a 10-week course on budgeting. Ex. K. The wife corroborated the individual's testimony that they are closely monitoring their finances and expenses to improve their financial situation. Ex. K. She testified that they are current on all of their bills, that their expenses are below the Internal Revenue Standard for a family of four, that they have no credit cards, that they eat out less and are saving money. *Id.* at 48-58. Finally, the individual's wife testified that the individual is more involved now with the family finances.

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that his financial problems date back at least 10 years with the most recent financial event, his second bankruptcy occurring in 2015. Therefore Adjudicative Guideline F, ¶20 (a) is inapplicable. The individual's financial issues were not largely beyond his control. Although there were a couple of stressful situations, including an increase in expenses for his daughter who has special needs as well as a decrease in his wife's income, I cannot find mitigation under Guideline F, ¶ 20 (b) because the individual did not convince me that he acted responsibly under the circumstances. The individual admitted that he did not pay attention to the family's finances as his wife was the family bookkeeper. He also admitted to being irresponsible for not "grasping" his financial issues sooner and prior to the couple's second bankruptcy. Furthermore, although the individual has completed a required financial counseling course and, at the time of the hearing, was enrolled in a 10-week budget course, I am not convinced that the individual's financial problems are under control yet. While the individual testified that he no longer uses credit cards, is beginning to save money, and has made timely payments on the couple's debt through bankruptcy, it has only been eight months since the individual filed for bankruptcy and has begun to pay down his debt. In light of the individual's long-standing financial issues, I am not yet convinced that he has established a pattern of financial responsibility at this time. I, therefore, find that his financial problems are not yet sufficiently mitigated under Guideline F, ¶ 20 (c). Likewise, while the individual has made timely payments with credit companies through bankruptcy, he has not yet established a pattern of repayment as these payments are still recent. Hence, Guideline F, ¶ 20 (d) is inapplicable. Finally, although the individual is using a budget and currently making timely payments on their credit cards, the individual is still in the process

of learning how to make sound financial decisions. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns 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: February 26, 2016