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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: December 16, 2015 )  
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Case No.: PSH-15-0102

Issued: April 7, 2016

**Administrative Judge Decision**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf in connection with that employment. During the ensuing investigation, the local security office (LSO) obtained information about the individual's finances that raised security concerns. As a part of that investigation, the LSO summoned the individual for an interview with a personnel security specialist. After this Personnel Security Interview (PSI) failed to adequately address these concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The

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<sup>1</sup>An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

individual was informed of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 11 exhibits into the record of this proceeding. The individual introduced seven exhibits and presented the testimony of two witnesses at the hearing, in addition to testifying on his own behalf.

## **II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (1) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (1) defines as derogatory information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct or circumstances include, but are not limited to, a pattern of financial irresponsibility. As support for its invocation of this criterion, the Letter alleges that the individual has \$36,704 in delinquent debt, including:

- 7 collection accounts totaling \$11,157;
- Two charged-off accounts totaling \$8,747; and
- \$16,800 in unpaid federal taxes.

The Letter also alleges that he had two foreclosures in 2008, one on his residence and one on a timeshare property.

For the most part, the individual does not dispute these allegations, and they adequately justify the DOE's invocation of criterion (1). They also raise significant security concerns. Failure 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. Also, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline F.*

### III. 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 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. 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).

### IV. ANALYSIS

#### A. Mitigating Evidence

At the hearing, the individual attempted to demonstrate, through his testimony and that of his wife and his supervisor, that his financial difficulties are now under control, and that he is a reliable person who exercises good judgment and can be trusted to adequately safeguard classified information.

The individual testified that his financial difficulties were due primarily to periods of unemployment or under-employment, and to bad tax advice that he received while working in a foreign country. From 2004 to 2007, the individual worked for a U.S. Government contractor in a foreign country. In 2007, the individual quit and returned to the United States because he had “been gone for too long.” Hearing Transcript (Tr.) at 40. After being unable to find a job, the individual resumed his employment in the foreign country three months later. In 2008, the individual left his job in the foreign country again and returned to the United States because his mother-in-law was terminally ill and he needed to provide support for his wife. His mother-in-law died shortly after his return and he again tried to find employment in this country, for approximately six months. After being able to find only temporary employment, he eventually returned to his job in the foreign country. In this position, he was earning approximately \$10,000

per month. Tr. at 40-41. The individual continued working in the foreign country until 2011, and then returned to the United States because he “wanted to be home with the family,” and because his employer was shutting down its operations in the foreign country. Tr. at 84. From 2011 until 2013, the individual was employed with a federal contractor at a salary of approximately half of what he was making in the foreign country. DOE Ex. 10 at 79. After he was laid off in 2013, the individual was unemployed for approximately one year. He then went to work at a gas station, making approximately \$1,000 per month. After working there for about six months, he left for his current position, which he has held for a year and a half. Tr. at 38. His current take-home pay is approximately \$4,200 per month. Tr. at 70, Individual’s Exhibit (Ind. Ex.) B. The individual estimated his monthly expenses as being \$2,500 or \$2,600 per month. Tr. at 73-74.

The individual further testified that when he was working in the foreign country, his employer did not withhold income taxes from his paycheck because, they allegedly and incorrectly informed him, the income was tax-free. Tr. at 43. Consequently, the individual did not file income tax returns. In 2007 or 2008, the individual learned that the Internal Revenue Service (IRS) was going to begin garnishing his paycheck to recover the unpaid taxes. He immediately filed his tax returns for 2004, 2005 and 2006, and set up a payment plan for the overdue taxes. Tr. at 44. He also had his employer withhold approximately \$500 a month from his paycheck towards future taxes. He continued to make payments on his taxes while he was working abroad, but he could not continue those payments once he returned to the United States because “the money wasn’t there for it.” Tr. at 47. He was making payments on this debt while he was employed in 2012, but those payments stopped when he was laid off the following year. *Id.* His plan was to offer a lump sum payment in satisfaction of the full amount of his debt, but he testified that the IRS would not consider this since he was planning on filing for bankruptcy. Tr. at 47-48. Consequently, approximately 10 days prior to the hearing, he entered into another payment plan with the IRS, under which he is required to remit \$100 per month. Tr. at 54. He currently owes approximately \$15,625 in past due taxes. Ind. Ex. C. <sup>3</sup>

The individual’s plan for addressing his other debts is to file for bankruptcy, and he has retained the services of an attorney for this purpose. Tr. at 50. Whether it would be a Chapter 7 filing, which would wipe out all of his non-tax-related debt, or a Chapter 13 bankruptcy, under which the individual would be required to adhere to a payment plan, “can still go either way.” Tr. at 79. He has filled out all of the paperwork that his attorney provided to him, and the documents are now in the attorney’s possession.

The individual does not believe that his financial difficulties have been caused by poor or irresponsible decisions. He previously declared bankruptcy in 2000, he testified, because his son was diagnosed with autism. He explained that he left the military and his wife quit her job so that they could move to be near her parents. This was the only place, the individual continued, “where they could get him any help.” Tr. at 77. He admitted that they “had far too much debt to be in that situation,” and they had to file for bankruptcy. *Id.* He left his employment in 2008 in the foreign country to support his wife during her mother’s terminal illness. The individual concluded that his difficulties were caused by decisions that he made in his family’s best interests and by circumstances that were beyond his control. Tr. at 77-78.

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<sup>3</sup> It is not clear whether this amount includes a payment of \$100 that the individual made on February 29, 2016. *See* Ind. Ex. G.

The individual's wife also testified. She said that she handled the family finances during the individual's employment in the foreign country, and that since he has returned, it's been "kind of a mix," with the two of them "still trying to figure it out." Tr. at 18. Their financial problems, she continued, have been the result of "bad decisions" on her part "that he's paying the consequences" for, and his periods of unemployment and under-employment. Tr. at 19-23. Also contributing to their problems was the fact that her cousin and his nephew were living with them, but contributing nothing to the household income. Tr. at 23, 35. Both of these people have now moved out, resulting in substantially lower grocery bills. Tr. at 26. The individual's wife estimated that their household income is approximately \$1,000 per week, and their expenses are approximately \$800 per week. Tr. at 36-37. Both the individual's wife and his supervisor testified favorably as to the individual's judgment and reliability. Tr. at 13, 14, 31.

### **B. Administrative Judge's Determination**

Despite this testimony, I find that the individual has not adequately addressed the DOE's security concerns regarding his finances. As an initial matter, while I am sure that the individual's periods of unemployment and under-employment contributed to his financial difficulties, his irresponsible behavior and poor decisions were also a significant contributing factor. The individual admitted that they were living beyond their means after he returned from the foreign country, spending money as if his income had remained the same, rather than being reduced by more than fifty percent. Tr. at 60-61. Prior to his decision to declare for bankruptcy, the individual had made no attempt to contact his creditors to arrange for the payment of his debts, even though he had been employed with the DOE contractor for over a year as of the date of the PSI. DOE Ex. 10 at 164-165. At least one of those debts, for a car that was eventually re-possessed, had been pending since at least 2012, without any attempt by the individual to contact the creditor. DOE Ex. 10 at 47-48. Another re-possession occurred in 2005-2006. Tr. at 68. This re-possession was for a truck that the individual unwisely co-signed for for a relative of his wife. When the relative stopped making payments, the individual became responsible for the debt. *Id.*, DOE Ex. 10 at 65.

The individual has not established a pattern of financially responsible behavior that is sufficient to convince me that his money problems are now behind him. I base this conclusion primarily on the fact that the individual has made almost no progress towards resolving the debts set forth in the Notification Letter. Although the individual's plan is to file for bankruptcy, as of two weeks before the date of this decision, no such filing had been made. *See* March 23, 2016, e-mail from the individual. It is therefore uncertain whether the approximately \$20,000 in non-tax-related debt described in the Notification Letter will be discharged in Chapter 7, whether the individual will be placed on a payment plan pursuant to Chapter 13, or whether the filing will even be made at all. The individual continues to owe over \$15,000 in back taxes, having entered into a repayment agreement with the IRS only approximately 10 days prior to the hearing. Moreover, given the discrepancy between the individual's and his wife's testimonies concerning the amount of available monthly family income, and the lack of documentation of their expenses, I am unable to determine the extent to which the individual could comply with any plans for the payment of the debts or the time frame within which those financial obligations could be

satisfied. Significant security concerns remain under criterion (1) regarding the individual's finances.

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criterion (1). Consequently, he has failed to convince me that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: April 7, 2016