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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: March 7, 2016) Case No.: PSH-16-0013
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Issued: May 26, 2016

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (“the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s access authorization should not be restored at this time.

I. Background

The Individual is employed by the DOE in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s financial stability. In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in December 2015.

In February 3, 2016, 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. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8(l) (hereinafter referred to as Criterion L).²

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.

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

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing on May 11, 2016, 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 twelve exhibits (Ind. Exs. A-L). *See* Transcript of Hearing, Case No. PSH-16-0006 (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 and 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 [or her] 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

III. Notification Letter and Associated Security Concerns

As previously noted, the Notification Letter cited Criterion L as the basis for suspending the Individual’s security clearance. Criterion L concerns information that an individual has engaged in conduct “which tend[s] to show that the individual is not honest, reliable, or trustworthy.” 10 C.F.R. § 710.8(l). Conduct that falls within Criterion L includes “a pattern of financial irresponsibility.” *Id.* Further, federal agencies adjudicating security clearances must consider 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

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).

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.

With respect to Criterion L, the LSO alleges that the Individual has demonstrated financial irresponsibility marked by a failure to file his state and federal taxes since 2010. Ex. 1 at 1-2. Further, the LSO asserts that the Individual admitted, in the December 2015 Personnel Security Interview (PSI), that he did not have a good excuse for why he did not file. *Id.*

IV. Findings of Fact

At the hearing, the Individual did not dispute that he has not filed his taxes for years 2010-2014. However, he stated that all the tax returns are now completed and just need to be mailed. His wife testified that they did not file the taxes for five years because her employment makes completing the tax returns difficult. Tr. at 16. Further, after they had provided the 2010 paperwork to their accountant and filed for an extension, the accountant died. Tr. at 16. Although his wife attempted to find another accountant to work on their taxes, she found that difficult because of her employment and the need to locate the information required to complete the returns. Tr. at 16. The Individual's wife testified that in March of 2015, she found an accountant who could handle all that needed to be accomplished. However, they did not turn the required paperwork over to the accountant until early 2016. Tr. at 29.

The Individual testified that all the tax returns are completed and they filed their 2015 returns on time. Tr. at 51. The Individual and his wife testified that they were waiting to file the other returns because they did not want to set up a payment plan with the state or federal authorities until they knew that the Individual would be able to keep his job. Tr. at 21, 25.

V. Administrative Judge's 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 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.

As an initial matter, I find that the LSO has properly raised a security concern under Criterion L, regarding the Individual's financial irregularities. The Individual does not dispute that he failed to file his tax returns for years 2010-2014.

In considering whether the Individual has mitigated the properly raised security concern, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

Adjudicative Guidelines, ¶ 20(a)-(d).

Regarding the above factors, I cannot find that, as applied to the instant matter, they sufficiently mitigate the security concerns raised by the LSO. With respect to ¶ 20(a), the Individual's irresponsible financial behavior was not so long ago or infrequent that it does not cast doubt on his current reliability, trustworthiness or good judgment. Indeed, the Individual and his wife have not yet filed their 2010-2014 tax returns. Regarding ¶ 20(b), it is true that the Individual's accountant died; however, in the four or five years since that occurred, neither the Individual nor his wife found another accountant to file their delinquent taxes until 2016. Accordingly, I cannot find that he has acted responsibly under the circumstances.

The next two factors, ¶ 20(c) and ¶ 20(d), relate to the Individual's efforts to resolve his delinquent tax returns. I find it concerning that, as of the date of the hearing, he had not yet filed the 2010-2014 tax returns. The Individual has initiated efforts to resolve his delinquent tax status by having the tax returns completed by an accountant. I note that he has filed his 2015 tax returns.

Nevertheless, 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, e.g., 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). In the instant matter, I find that the actions the Individual has taken are still too recent and preliminary to demonstrate a new, sustained pattern of financial responsibility.

VI. Conclusion

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise 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 Criterion L. 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 Individual's access authorization should not 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.

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

Date: May 26, 2016