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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: March 15, 2016)
_____)

Case No.: PSH-16-0018

Issued: June 23, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “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, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s security clearance should not be restored.²

I. BACKGROUND

A Local Security Office (LSO) obtained information that raised security concerns about the Individual. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on September 16, 2015. Because the 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. The Individual requested a hearing and the LSO forwarded the Individual’s request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on April 15, 2016.

¹ 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-16-0018 (hereinafter cited as “Tr.”). The LSO submitted five exhibits, marked as Exhibits 1 through 5. The Individual submitted three exhibits, marked as Exhibits A through C.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraph (l)³ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

To justify its reliance on Criterion L, the LSO alleged that the Individual was \$16,941 past due on his primary mortgage, had an outstanding collection account that was \$98 past due, had admitted during a September 16, 2015, PSI that his financial difficulties were the result of being financially irresponsible, by overspending and not living within his means, and had admitted that he had not made any payments on his outstanding second mortgage for seven months.

The Individual’s pattern of financial irresponsibility, as alleged, adequately justifies the LSO’s invocation of Criterion L, and raises significant security concerns. The Adjudicative Guidelines state in pertinent part:

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 Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . and (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶¶ 18, 19. The Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of

³ 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).

human nature, Administrative Judges apply the guidelines in conjunction with the information available in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On March 10, 2015, the LSO obtained a credit report for the Individual which showed that the Individual was past due on his primary and second mortgages, and had a number of other past due accounts.

On September 16, 2015, the LSO conducted a PSI of the Individual where he was questioned about his financial issues. The Individual reported that he had refinanced his home mortgage on a number of occasions, over a period of 25 years, in order to obtain cash to pay off debts. Ex. 5 at 19-46. The Individual reported that he and his wife had fallen behind on their bills because of “too much spending,” were “not living within our means like 90 percent of the people in the world,” and that his family was spending more than he and his wife were making. Ex. 5 at 26, 35-36, 72, 81-83. The Individual reported that he fell “a month or two behind” on his primary mortgage and began to incur late fees, in the 2012 to 2014 time frame. Ex. 5 at 47-51, 54-55, 65-66. He estimated that he owed from \$10,000 to \$20,000 in late fees at one point. Ex. 5 at 58, 70-71. The Individual subsequently reported that he may have fallen s behind in his primary mortgage payments on three or four occasions. Ex. 5 at 57. The Individual reported that he entered into a loan modification agreement with his primary lender, which waived his late fees and allowed him to catch up on his payments. Ex. 5 at 47-48, 51, 60, 73-78, 127. As a result, the Individual reported, he is now current on his primary mortgage. Ex. 5 at 48, 124-135, 146.

Eventually, the Individual obtained a second mortgage on his home for approximately \$40,000 to \$45,000, in order to utilize some of the equity he had gained from its appreciation in value to pay his outstanding bills, and to make some home improvements. Ex. 5 at 31, 33, 37-40. The

Individual estimated that the payments for the second mortgage were \$640 to \$680 a month. Ex. 5 at 41. In approximately 2012, the Individual began having problems making the payments on the second mortgage. Ex. 5 at 81. During the period from 2012 to 2015, the Individual missed several payments on the second mortgage. Ex. 5 at 95. As a result he has incurred late fees on the second mortgage. Ex. 5 at 83-5. The Individual estimated that he now owes \$40,000 in late fees on his second mortgage. Ex. 5 at 84-85. The Individual further reported that he has not made a payment on his second mortgage for at least 180 days, indicating that the last payment on the second mortgage occurred in January, February, or March of 2015. Ex. 5 at 86-88, 93, 107, 149. The Individual estimated that during the past 18 months (since mid-2014) he had only made five or six payments on the second mortgage. Ex. 5 at 108-109. The Individual reported that the holder of the second mortgage had initiated foreclosure proceedings. Ex. 5 at 90, 93. The Individual further reported that he had begun settlement talks with the holder of the second mortgage. Ex. 5 at 94.

The Individual indicated that he intends to refinance both mortgages, combining them into a single loan. Ex. 5 at 120, 152, 162-163. The Individual stated that first, he would have to improve his credit score so that he would be eligible for the new loan. Ex. 5 at 121. The Individual stated that if he cannot refinance the house on terms he can handle, he will sell his home, using the estimated \$207,000 in equity to pay his outstanding debts. Ex. 5 at 121-122, 154. The Individual stated that he had learned some financial lessons the “hard way” and had closed all of his credit card accounts. Ex. 5 at 223.

V. ANALYSIS

The Statement of Charges (SSC) cites three specific alleged debts for its conclusion that the Individual has been financially irresponsible: (1) the primary mortgage on the Individual’s home which the SSC alleged was \$16,941 past due, and over 180 days past due (in January 2015); (2) an outstanding collection account with a furniture store which was \$98 past due; and (3) the secondary mortgage for which the Individual had not made a payment since February 2015. SSC at ¶¶ A.1 and 2, ¶ B.1. The SSC also cites the Individual’s admissions during the PSI that his financial difficulties were a result of being financially irresponsible, by overspending and not living within his means. SSC at ¶ B.2.

As an initial matter I note that during the September 16, 2015, PSI, the Individual repeatedly asserted to an apparently unbelieving interviewer, that he had entered into a loan modification agreement with the holder of his primary mortgage. Moreover, the Case Evaluation Sheet prepared by an LSO analyst corroborates the Individual’s assertion that he was no longer past due on his primary mortgage, it reports that: “On 9/17/2015, [the Individual] provided a copy of account information for [the holder of the primary mortgage note] that reflects a principle [sic] balance of \$224,834.87 and that a payment of \$1,567.13 was made on 9/03/2015. No past due amount is reflected for the account.” Ex. 3 at 2. The Individual submitted Exhibit A, a record allegedly from the primary mortgage holder dated April 17, 2016. This document indicates that the mortgage to which it pertains was current to that date. However, Exhibit A is incomplete, (it only consist of two pages of a four-page document) and does not include any identifying information that indicates that it pertains to the Individual. At the hearing, I suggested that the Individual submit a recent credit report in order to resolve this concern. Tr. at 46. The

Individual did not do so. Accordingly, I find that the security concerns raised by the Individual's failure to stay current on his primary mortgage remain unresolved.

The Individual has also submitted Ex. B, a copy of a personal check to the furniture store for \$140. The Individual testified at the hearing that this check paid his debt on the furniture store account in full. Tr. at 14, 18. This evidence resolves any concerns arising from the outstanding collection account cited in the SSC concerning the furniture store debt.

Accordingly, that leaves two remaining areas of concern: the Individual's past due status for his second mortgage, and the security concerns raised by the Individuals demonstrated inability to manage his finances responsibly.

At the hearing, the Individual attempted to resolve or mitigate the security concerns about his financial responsibility, judgment, reliability, and trustworthiness raised by the information set forth in the SSC.

The Individual testified that he is still past due on the second mortgage. Tr. at 16. The Individual further acknowledged that he is in default on this loan, and that he is unable to afford the monthly payments on this loan at this time. Tr. at 16, 19. However, the Individual contends that he has a realistic plan to address his secondary mortgage delinquency. Specifically, the Individual testified that he intends to use the alleged equity in his home to refinance his home in order to pay off both the primary and secondary mortgages and substitute them with one loan at a more favorable interest rate. Tr. at 15-23. The Individual testified that he believes his home is worth "around \$550,000," that he owes a total of \$224,00 on his primary mortgage, \$85,000 on his second mortgage and that he has about \$200,000 worth of equity in his home. Tr. at 16, 25-27. He testified that he bases his estimate of his home's worth on what other houses in his neighborhood have been selling for. Tr. at 27. He also testified that interest rates have fallen. Tr. at 20, 23. The Individual testified that he has "complete documentation" that there is a "financial institution that supposedly says they can help us." Tr. at 17-18. He testified that he is actively seeking to refinance and was getting ready to submit paperwork to two potential lenders. Tr. at 19-20. The Individual never submitted the proffered documentation that he was nearing an agreement to resolve his outstanding secondary mortgage debt. Therefore, the security concerns arising from this debt remain unresolved.

The Individual has also submitted a proposed budget, Exhibit C, to show that he has a realistic plan for his finances going forward. However, I find that Exhibit C does not support this contention. First, some the information supplied in Exhibit C conflicts with other information in the record. For example, Exhibit C indicates that the Individual and his spouse's combined monthly take home pay is \$2,712.⁴ Tr. at 28. During the PSI, the Individual estimated that he and his spouse's monthly take home pay was \$5,400. Ex. 5 at 191-192. During the PSI, the Individual estimated that his monthly grocery bill was \$700. Ex. 5 at 197. Exhibit C estimates that his monthly grocery bill is \$100. Moreover, Exhibit C does not have any money budgeted

⁴ The Individual testified that he and his spouse's annual incomes totaled \$93,000 before his recent pay increase. Tr. at 29.

for heating or electricity. Most importantly, Exhibit C shows that the Individual and his spouse's monthly take home income totals \$2,712, while his monthly expenses total \$3,393. Tr. at 30-31.

The Individual also attempted to address the concerns about his judgement and reliability raised by his past financial conduct, by arguing that his admissions, during the PSI, that his financial problems were caused by his living beyond his means and overspending, were taken out of context. Tr. at 15, 20-21. Instead, the Individual argued that his financial problems were caused by "carelessness" and "bad decision-making." Tr. at 19. I found this line of reasoning contrary to prior testimony, since my reading of the PSI transcript clearly indicates that the Individual attributed his financial problems to his families' over spending and living above his means. When reading his PSI, I found his willingness to acknowledge the cause of his financial circumstances to be a positive sign that he might be on the right path going forward. When the Individual tried to deflect blame away from his own decisions during the hearing, however, he exhibited a lack of judgment and perhaps candor as well.

At the hearing, I repeatedly asked the Individual to document a number of his assertions. Tr. at 23-24, 36, 39-41, 46. The Individual assured me that he would do so within five to seven days. Tr. at 41. I made it clear that the Individual needed to submit this requested documentation before I received the hearing transcript, and that I would likely receive such transcript within a couple of weeks after the hearing. Tr. at 41, 45. Nevertheless, I did not receive any post hearing documentation from the Individual.

For the reasons stated above, I find that the Individual has not provided sufficient mitigation to resolve the security concerns raised by his outstanding debts and past financial conduct.⁵

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: June 23, 2016

⁵ The Adjudicative Guidelines set forth a number of conditions that could mitigate security concerns arising from an individual's financial difficulties. *See* Adjudicative Guideline F at ¶ 20. However, none of these conditions are present in the instant case.