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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: April 11, 2016) Case No.: PSH-16-0025
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Issued: July 21, 2016

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 her to hold a DOE security clearance. During an ensuing personnel security interview (PSI) in December 2015 and a credit report review, the Local Security Office (LSO) learned that the individual had a number of collection accounts totaling \$2,830 as well as charge-off accounts totaling \$676. The LSO also learned that the individual had an established pattern of an unwillingness or inability to satisfy debts.

In February 2016, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the

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.

derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon her receipt of the Notification Letter, the individual exercised her 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 testified on her own behalf. The DOE Counsel did not present any witnesses. The LSO submitted 13 exhibits into the record; the individual tendered nine 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 restoring her 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 her 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.

B. Basis for the Administrative Judge’s Decision

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.

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 seventeen outstanding collection accounts totaling \$2,830, and (2) has two charge-off accounts totaling \$676. In addition, regarding the individual's honesty, reliability and trustworthiness, the LSO alleges that the individual has an established pattern of an unwillingness or inability to satisfy her debts.

The individual's failure to live within her means, to satisfy her debts and meet her financial obligations raises a security concern under Criterion L because her 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.* In addition, the individual's vulnerability to blackmail, exploitation, and duress calls into question the individual's judgment, reliability, trustworthiness and his ability to protect classified information. *See id.* at Guideline E.

IV. Findings of Fact

The individual has been questioned about her finances on two separate occasions, in June 2010 and December 2015. On February 23, 2010, the individual signed a Questionnaire for National Security Positions (QNSP) certifying that in the past seven years she has not had any bills or debts turned over to a collection agency. However, she failed to list nineteen collection accounts incurred from 2007 through 2010. During a PSI conducted on June 14, 2010, she admitted that she was aware of her collection accounts at the time she completed her QNSP and she stated her intent to satisfy or make payments on these accounts. The individual was also made aware of and acknowledged her understanding of DOE's concerns regarding financial responsibility. Ex. 1.

On May 11, 2015, the individual signed another QNSP certifying that in the past seven years she has not had any bills or debts turned over to a collection agency, that she has not had a judgment filed against her, that she has not had her wages, benefits or assets garnished or attached for any reason or that she has not had any possessions or property voluntarily or involuntarily repossessed or foreclosed. However, the individual failed to list 30 collection accounts. During a PSI conducted on December 3, 2015, the individual also admitted that she was aware of some the accounts and had no explanation for her failure to list them. She further admitted that she

failed to list three judgment filed against her and that she failed to list a 2010 wage garnishment and a 2012 repossession.⁴ In addition, the individual admitted that she had not followed through on previous payment arrangements to credit companies and had not made any additional attempts to resolve her debts. The individual currently has seventeen collection accounts totaling \$2,830 and two charge-off accounts totaling \$676. *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 her delinquent debt. She testified that she is a single parent of a 10 year-old daughter and is responsible for paying all of her bills and her daughter's expenses on her own as she is not receiving child support. Transcript of Hearing (Tr.) at 26. The individual stated that her delinquencies are the result of not having the money to pay down debt because she must first focus on paying her rent, car expenses and other household expenses as well as necessities for her daughter. *Id.* at 29. She acknowledged her debts, including her current seventeen collection accounts and two charge-off accounts. When questioned about the status of each of her delinquent debts, the individual testified that she contacted two credit companies regarding the \$444 debt and the \$198 debt. *Id.* at 8. According to the individual, the credit companies will not make settlement arrangements with her until she is prepared to make the payments. *Id.* Thirteen of her delinquent debts are medical co-payments that range from \$15 to \$100, with the exception of \$403 co-payment. The individual testified that she has resolved a couple of the smaller co-payments, but was unsure exactly which ones were paid. *Id.* at 11 and 15. She acknowledged that these co-payments resulted when she opted to be billed for doctor's appointments, but never made payments when the bills arrived. With respect to her largest delinquent debt of \$994, the individual testified that this debt is related to unpaid rent. She explained that she co-signed a one-year lease for an apartment for her uncle in January 2013; however during the second year of leasing the apartment, the uncle moved out and stopped paying the rent and the creditor began collection efforts against the individual. *Id.* at 16. The individual stated that the amount owed is actually higher, about \$1400, due to interest and late fees. *Id.* at 17. According to the individual, her most recent installment agreement stipulates that she is to pay \$100 a month on this debt. Ex. H, Tr. at 18.⁵ Regarding the individual's two charge-off accounts which date back to 2008 and

⁴ Also, during an interview with an Office of Personnel Management investigator conducted on July 2, 2015, the individual stated that she was in the process of setting up payment agreements for about fifteen collection accounts. However, during her December 2015 PSI, she admitted that she had not made any attempts to resolve the debts and had no reason for her failure to do so.

⁵ The individual testified that she will actually be making \$200 a month payments towards this delinquent debt.

2009, she testified that although she has contacted the companies, the debts have not yet been paid. She explained that she could not make payments on these debts because she simply did not have the money due to unexpected bills such as car repairs.⁶

In order to address her delinquent debt, the individual testified that she plans to give up her apartment and move in with her father to save money. *Id.* at 21. According to the individual, she is currently paying \$650 a month in rent. *Id.* at 22. She testified that when she moves in with her father, she will only need to pay \$300 a month, saving her about \$350 a month. *Id.* at 23. The individual states that, at that point, she will be in a better position to pay her delinquent debt. She reiterated that she will not be able to work on paying down her debt until she moves in with her father at the beginning of the month. The individual also testified that she is working with a credit repair company to assist her with negotiating arrangements with creditors and is paying \$52 a month for this service. She further testified that she currently has \$200 in savings, no new loans and two credit cards which she does not use. The individual stated that she only spends money on necessities and is focused on paying off her debt. *Id.* at 75.

During the course of the hearing, the individual was also questioned about information related to her finances that she omitted on her February 2010 and May 2015 QNSPs. Specifically, with respect to failing to list a number of collection accounts on her 2015 QNSP, the individual testified that she did not recall whether she reviewed her credit report prior to completing the QNSP and also that she was unsure as to whether she needed to list all of her collection accounts. *Id.* at 49-51. The individual stated that she was not trying to hide this information. Likewise, with respect to failing to list three judgments, a wage garnishment, and a repossession occurring in the past seven years on her 2015 QNSP, the individual testified that she did not believe she was required to list judgments if they had been paid or a past garnishment if her check was not currently being garnished. *Id.* at 52 and 55. Regarding a 2012 repossession, she stated that she was able to obtain her car back, so she did not believe she had to list this information. *Id.* at 56. Again, she testified that she was not attempting to hide or omit any of this financial information on her QNSPs and states that she did not understand some of the questions. *Id.* at 58.

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that her financial problems date back at least six years and are ongoing. Therefore Adjudicative Guideline F, ¶20 (a) is inapplicable. To a certain extent, the individual's financial problems were beyond her control. The individual is a single mother who does not receive child support and must juggle bills when unexpected circumstances arise such as needed car repairs. Nevertheless, I cannot find mitigation under Guideline F, ¶ 20 (b) because the individual did not convince me that she acted responsibly under the circumstances. A number of the individual's delinquent accounts, particularly medical co-payments, are over six years past due. The individual admitted during the hearing that when she received the bills in the mail, she would just put them aside. In addition, at the time of the hearing, other than an installment plan to pay the delinquent debt for an apartment she co-signed for her uncle, the individual has not yet made payment arrangements with any of her other creditors. Furthermore, despite her current financial plight, the individual

⁶ During her 2010 and 2015 PSIs, the individual admitted that she had not followed through on previously made payment arrangements with various creditors and stated that she had no reason for her failure to do so. During the hearing, the individual again acknowledged that she had no reason for failing to pay her debt other than having to prioritize bills as a single mother and handle unexpected expenses such as car repairs. *Id.* at 44.

has not sought financial counseling to assist her with budgeting or otherwise put mechanisms in place to prevent future financial issues. In the end, I am not convinced that the individual's financial problems are under control yet. I, therefore, find that her financial problems are not resolved under Guideline F, ¶ 20 (c). While the individual has made future plans to move in with her father to decrease her bills so that she can pay down her debt, she has not yet established a pattern of repayment on her delinquent debts. Hence, Guideline F, ¶ 20 (d) is inapplicable. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns at this time.

With respect to the individual's omissions on her 2010 and 2015 QNSPs, I find that the individual has not yet provided sufficient evidence to resolve the Criterion L security concerns related to her reliability and trustworthiness. The individual testified that she did not review her credit report prior to completing her QNSPs and believed that some of her debt had been paid so she did not have to list it. She further testified that the questions on the QNSPs were confusing and that she was not attempting to hide information. I am not persuaded by the individual's testimony regarding the circumstances of her incomplete responses on her QNSPs. At this time, I am not convinced that the individual's behavior happened under such unique circumstances that it is unlikely to recur. Guideline E at ¶17 (c) and (d).

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: July 21, 2016