

Since the PSI did not resolve the security concerns arising from the individual's finances, the LSO advised the individual in a letter (Notification Letter) dated March 23, 2016, that it possessed reliable information that created 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 in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).² *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented the testimony of one witness, himself. The LSO introduced eight numbered exhibits into the record; the individual tendered five lettered exhibits (Exhibits A – E). 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).

An individual must come forward with evidence to convince the DOE that granting or restoring his or 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 his or 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

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha/office-hearings-and-appeals. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha/security-cases.

appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, 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

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, the LSO cited one criterion as the basis for suspending the individual's security clearance: Criterion L. Criterion L concerns information that an individual has engaged in conduct "which tends to show that the individual is not honest, reliable, or trustworthy...." 10 C.F.R. § 710.8(l). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an "individual's reliability, trustworthiness and ability to protect classified information." See Guidelines E and 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). With respect to Criterion L, the LSO alleges, *inter alia*, that the individual: (1) has not filed his federal or state income tax returns for 2010, 2011, 2012, 2013, and 2014; (2) has unpaid federal tax liens for 2007, 2008, and 2009, and is delinquent \$36,000 on his federal taxes; (3) has 13 outstanding collection accounts aggregating in excess of \$7,200; (4) has an outstanding judgment as a result of a financial default; and (5) filed petitions for bankruptcy protection in 1998 and 2008. Ex. 1 at 1-2.

In light of the information available to the LSO, the LSO properly invoked Criterion L.

IV. Findings of Fact

At the hearing, the individual clarified and updated information previously provided to the LSO; however, his testimony rarely challenged the underlying financial concerns noted by the LSO in the Notification Letter. At times the individual's testimony was inconsistent with respect to certain details of his financial history and the current status of certain matters. In those instances, I have carefully considered the totality of the individual's testimony, the entirety of the written record, and the arguments presented by both the individual and the LSO in reaching the findings of fact set forth herein.

Federal Income Tax Matters. The individual is subject to an outstanding federal tax lien in the amount of \$36,000, which relates to his federal income tax returns for 2007, 2008 and

2009. Tr. at 29, 33. The individual has made no payments on the tax lien and, prior to the issuance of the Notification Letter, initiated no communications with the U.S. Internal Revenue Service (IRS) on these outstanding taxes. *Id.* at 33, 54. The individual filed federal tax returns for 2010 and 2013, without payment of outstanding taxes due for those tax years. *Id.* at 30, 48-49, 64-65. The individual was advised by the IRS in April 2016 that his outstanding federal taxes aggregated \$56,000, including the unpaid \$36,000 federal tax lien. *Id.* at 31.

As of the date of the hearing, the individual had not filed his federal income tax returns for 2011, 2012 and 2014.⁴ *Id.* at 23, 27, 49. The individual had filed his 2015 federal income tax return in a timely manner; however, the IRS rejected it due to an error. For the 2015 tax year, the individual had overpaid federal taxes due for that year. *Id.* at 27, 31, 49.

State Income Tax Matters. The individual's state income tax liability for 2006, 2007 and 2009 was satisfied through garnishment of his wages at a prior place of employment. Ex. 2 at 5-6. Notwithstanding the satisfaction of those tax liens (in 2011 and 2014), the individual has additional outstanding state tax debt for subsequent years (2010 and 2013) in an amount that has not been determined. *Id.*; Tr. at 51, 53. As of the date of the hearing, the individual had not filed his state income tax returns for 2011, 2012 and 2014 and may owe additional amounts for those years. *Id.* at 24, 27-28.

The individual filed his 2015 state income tax return and had overpaid state taxes due for that year. *Id.* at 27-28.

Financial Accounts. The Notification Letter detailed that the individual had 13 collection accounts outstanding. Ex. 1 at 1-2. As of the date of the hearing, the individual had satisfied five of those accounts and made payment arrangements (together with progress payments) on three additional accounts. Ex. B; Ex. D; Tr. at 34-35, 56-57.

The individual testified that two of the listed collection accounts duplicate accounts on which he has made payment arrangements and, with respect to a third account, he does not recognize the debt and received no response to his request for information from a commercial establishment that may have been the source of the information on his credit report. *Id.* at 37-38.

The individual has an outstanding financial judgment which was filed in 2009 in the amount of approximately \$6000. The judgment resulted from a deficiency on an automobile loan following the creditor's sale of a repossessed vehicle. *Id.* at 39-40. The judgment was partially satisfied through wage garnishment (while the individual was working for a prior employer), but the individual is uncertain as to the amount that remains outstanding. *Id.* at 62.

⁴ Following the hearing, the individual submitted a statement that he had completed his federal income tax returns for 2011, 2012, and 2014, and had an appointment to meet with the IRS to submit these returns. *See* Ex. E. During the hearing, the individual testified that it was possible that he owed taxes for these years; however, his post-hearing submission is silent on his federal tax liability for these years. *See id.*; Tr. at 49.

The individual is current on his payments on the vehicle that he now drives (and there are no allegations that he has ever been delinquent on this obligation) and has no current financial delinquencies other than those set forth in the Notification Letter. *Id.* at 40, 63.

Bankruptcy Petitions. The individual's debts were discharged in 1998 as a result of a petition under Chapter 7 of the bankruptcy code. *Id.* at 16. In 2004, the individual petitioned for debt relief under Chapter 13 of the bankruptcy code; however, the petition was dismissed due to the insufficient amount of time that had elapsed since his 1998 Chapter 7 discharge. *Id.* at 40.

In 2008, the individual petitioned for debt relief under Chapter 7 of the bankruptcy code, which the bankruptcy court converted to a Chapter 13 petition. *Id.* at 41. The individual decided to abandon the petition following the calculation of the payments that would be required under Chapter 13, as the monthly payments exceeded the amount he could afford as he was not employed at that time. Ex. A; Tr. at 41-42.

V. 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)⁵ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual should not be granted access authorization at this time. I cannot find that granting the individual a 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.

A. Mitigation Evidence

At the hearing, the individual expressed understanding of the security concerns which arise from a failure of a person to meet his or her financial obligations and the individual acknowledged his financial problems. Tr. at 43, 69. He attributes his financial problems to having been unemployed for two substantial periods of time as a result of workforce reductions in 2007 and 2011 by the same major technology company. *Id.* at 20-21, 44. Contemporaneously with the individual's first lay-off, he and his then-wife went through a tumultuous four-year period in which they separated and reconciled several times before terminating their marriage. *Id.* at 18-19, 22, 45. During the periods of their separation, the

⁵ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

individual was typically the custodial parent of their three children and, subsequent to their final separation in 2011,⁶ the individual has had sole custody and full responsibility for their children. *Id.* at 19.

The individual attributes his inability to resolve his financial delinquencies to having set as his financial priority maintaining a home and supportive environment for his children. *Id.* at 44-45. He notes that he has managed to do so during two substantial periods of unemployment without resorting to any illegal acts. *Id.* at 45.

Since the individual began employment with the DOE contractor, he notes that he has begun the process of correcting his financial irregularities by negotiating and instituting payment plans with certain creditors and by communicating with both federal and state tax authorities with respect to his tax non-compliance. Ex. B; Ex. D; Tr. at 9, 23-24, 34-39, 46. As of the date of the hearing, five collection accounts had been fully settled and progress payments had been made on three additional accounts. Ex. B; Ex. D; Tr. at 34-39. Additionally, the individual was collecting the information he needed from the IRS and his former employers in order to file the income tax returns that he had failed to file when they were originally due.⁷ *Id.* at 23-24.

At the hearing, the individual testified that it was his intention to fully resolve all of his outstanding financial obligations. *Id.* at 69.

B. Administrative Judge Evaluation of Evidence

At the hearing, the individual was candid and direct and, although he acknowledged confusion on certain details of his tax matters and financial accounts, I found his testimony to be highly credible. I also agree that the individual should be commended for maintaining an apparently safe and nurturing home for his three children during the disintegration of his marriage and his two substantial periods of unemployment.

While certain of the individual's financial problems may have resulted from circumstances beyond his control (i.e., his divorce and his losses of employment), the individual's financial irresponsibility originated before these events. The individual's initial separation from his wife and his first job loss both occurred in 2007. *Id.* at 18. However, the individual and his wife had had their debts discharged pursuant to a Chapter 7 bankruptcy petition in 1998 and had unsuccessfully petitioned the bankruptcy court for debt relief again in 2004. *Id.* at 16, 40. The individual's history with the bankruptcy court evidences a pattern of financial irresponsibility commencing prior to his first bankruptcy petition in 1998 and continuing after the 1998 discharge of his debts under Chapter 7.

⁶ The individual and his ex-wife divorced in 2012. Tr. at 16.

⁷ During the period of time that the record was left open to receive additional documentation from the individual, he communicated that he had completed his delinquent federal tax returns and had an appointment with the IRS the following week to present his returns. He anticipated negotiating a payment plan for his outstanding federal tax obligations at that time. *See* Ex. E.

While the individual has made efforts to resolve his financial and tax matters (for which he should also be commended), the record does not reflect any substantial efforts in this regard prior to the LSO's issuance of the Notification Letter.⁸ As of the hearing, the individual continued to have (1) five collection accounts⁹ outstanding, (2) known federal tax debt in the amount of \$56,000, (3) unquantified federal and state tax debt for the five-year period from 2010 to 2014, and (4) a financial judgment (approximately \$6000) resulting from a repossessed car which judgment was only partially paid (in an amount that the individual could not specify) through the garnishment of the individual's wages at a prior place of employment. *Id.* at 23, 29, 30, 33-35, 39-40, 48-49, 51, 53-54, 56-59, 64-65.

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 Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). Here, the individual has not rectified his financial difficulties and, therefore, any period of reformation has not begun to run. *See Personnel Security Hearing*, Case No. PSH-12-0075 (2012).

In addition to the individual's known federal tax debt (\$56,000), he has unquantified federal and state tax liability as a result of having failed to file income tax returns as required for 2011, 2012 and 2014.¹⁰ The individual acknowledged at the hearing that even though he was aware of the legal requirement to file income tax returns annually he had failed to do so for those three years and could provide no explanation for that failure. *Tr.* at 50. As of the hearing, those tax returns had still not been prepared. *Id.* at 23, 27, 49. This evidences not only financial irresponsibility but the knowing disregard of tax laws and regulations. The disregard of laws, rules and regulations raises grave concerns with respect to a person's ability and willingness to comply with security rules and regulations and to protect classified information. *See* Adjudicative Guidelines at Guideline E, ¶ 15. The individual's failure to file his 2014 tax returns is bewildering since he filed his 2013 returns (without payment of taxes due) *and*, having completed his QNSP two months prior to the 2014 tax filing deadline, he was aware of the DOE's concern with respect to the timely filing of income tax returns. *Tr.* at 30, 48-49, 64-65. *See* Ex. 6. This is recent conduct, for which no mitigation has been offered. *Tr.* at 50.

⁸ Only four collection accounts (aggregating \$530, at the same credit union) which were listed in the Notification Letter appear to have been resolved prior to the LSO's issuance of the Notification Letter. *See* Ex. 1 at 2, Ex. 2 at 7.

⁹ If the individual is incorrect with respect to the duplication or inaccuracy of the accounts set forth in the Notification Letter, there are eight outstanding collection accounts. *See* *Tr.* at 37-38.

¹⁰ The individual filed income tax returns for 2010 and 2013 without fully paying the taxes due for those years. He believes that the \$56,000 in outstanding federal tax debt includes amounts for 2010 and 2013; however, he was uncertain as to the amount due to the state tax authorities for those years. *Tr.* at 31, 51, 53.

Based on the foregoing, I find that the individual has not resolved the security concerns associated with Criterion L arising from his collection accounts and outstanding financial judgment, his tax matters, and his pattern of financial irresponsibility.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises additional 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. Accordingly, I have determined that the individual should not be granted access authorization at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: August 31, 2016