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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: November 28, 2011)
) Case No.: PSH-11-0026
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Issued : March 27, 2012

Hearing Officer Decision

Valerie Vance Adeyeye, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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, I have determined that the DOE should not restore the individual’s access authorization at this time.

I. Background

The individual works for a DOE contractor and was granted a DOE access authorization in 2007 after a Local Security Office (LSO) mitigated some derogatory information, including concerns about the individual’s finances. Issues regarding the individual’s finances surfaced again in 2010. After two Personnel Security Interviews, one in 2010 and the other in 2011, failed to resolve the derogatory information regarding the individual’s finances, the LSO suspended the individual’s access authorization and sought permission to initiate administrative review proceedings.

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.

In October 2011, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created a substantial doubt regarding her continued 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

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Hearing Officer in the case. At the hearing which I conducted, the individual was the only witness to testify. Both parties submitted exhibits in the case. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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 Hearing Officer’s Decision

² Criterion L relates in relevant part 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).

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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); 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). 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

The LSO recites several allegations to support its reliance on Criterion L in this case: (1) a judgment in the amount of \$4,477 against the individual; (2) 24 delinquent accounts totaling \$24,639; (3) the individual's failure to resolve her financial delinquencies despite representations to do so in personnel security interviews; and (4) the individual received a \$160,000 inheritance between 2007 and 2009 yet during that same period accumulated a judgment of \$7,440, 11 collection accounts totaling \$10,529, and four charge-off accounts totaling \$9,328. I find that the LSO properly invoked Criterion L in this case based on my review of the allegations cited in the Notification Letter. The individual's failure or inability to live within her means, to satisfy her debts and to meet her financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all which call into question her reliability, trustworthiness and ability to protect classified information. *See* Guideline F of the Adjudicative Guidelines.

IV. Findings of Fact and Analysis

As an initial matter, the individual does not dispute any of the allegations contained in the Notification Letter. Instead, she offers several explanations for her financial plight. She claims that she cared for her father who died of cancer in 2006, that she was not able to work as much overtime as she would have liked because she ruptured a disk in her spine, and that she had to care for her adult daughter who suffers from aplastic anemia. Tr. at 12. She admits, however, that she mismanaged her money and overextended herself financially. *Id.* at 13, 15.

At the hearing, the individual suggested that her 2006 divorce may also have contributed to her financial difficulties because she was raising one of her four daughters on her own. However, she revealed at the hearing that she received a parcel of land in the divorce proceeding from which she took \$38,500 in equity to pay her bills. *Id.* at 32. She also admitted that her ex-husband is paying some of her adult daughter's expenses until the daughter receives social security benefits. *Id.* at 40. The individual also admitted that she received an inheritance in the amount of \$160,000 in 2007. Under questioning, the individual stated that she had spent the entire \$160,000. *Id.* at 31. Among the items that she purchased with her inheritance were \$39,000 on a new car, \$20,000 on new furnishings for a 4,000 square foot house, an undetermined amount for clothing, \$13,000 to rent a house for six months, \$11,000 for lawn mowing equipment, \$12,000 in

landscaping materials so her new husband could start a landscaping business, and miscellaneous items for one of her daughter's apartments. *Id.* at 31-34, 61-63. The individual admitted at the hearing that she spent her entire inheritance even though she had an outstanding judgment of \$7,440 pending against her at the time. *Id.* at 31, 34-37, 63.

As for why she did not contact her creditors and attempt to resolve her debts despite assuring the LSO that she would do so, the individual provided two explanations. First, she claimed that she thought she would be receiving an additional inheritance but it was "not coming through." *Id.* at 30. Second, she stated that she had missed a lot of work due to her back ailment. *Id.* at 28-30. Implicit in both of these explanations is that she did not have the funds to resolve her debts at the time.

The individual claimed at the hearing that she will not incur any more debt; that she will not buy anything new; and that she currently does not have any credit cards. *Id.* at 42. She also revealed that four days before the hearing, she filed a Chapter 13 Bankruptcy Petition. *Id.* at 7-9.³ The individual expects that the Bankruptcy Trustee will propose a five-year payment plan so that she can repay her creditors over that time period. *Id.* at 9. However, due to the recency of the bankruptcy filing, no details relating to the process were known as of the date of the hearing. The individual testified that it is her intention to pay all her debts through the bankruptcy process nevertheless. *Id.* at 55. She acknowledged the DOE Counsel's concern that she had previously promised the LSO on other occasions that she would pay her creditors but had not done so. *Id.* She tendered into the record a monthly budget which she created as part of the credit counseling course requirement of her bankruptcy filing. (Ex. G).

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the individual's 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)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. 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).

As an initial matter, I am not able to mitigate the individual's financial problems on the bases that the behavior happened so long ago, was infrequent, or occurred under such circumstances that it is unlikely to recur. Guideline F at 20 (a). In fact, the behavior was

³ The DOE provided documents relating to the individual's Chapter 13 filing after the hearing which corroborated the individual's testimony.

⁴ 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.

recent, and spanned from at least 2006 until the present. While the individual did suffer several stressors that might have distracted her from attending to her debts in a timely manner, it is significant, in my view, that she also inherited \$160,000 in 2006, a sum that could have been used to resolve all her outstanding debt. Instead, she spent her inheritance largely on purchasing discretionary items.

I also cannot find that the debts the individual incurred were largely beyond her control. Guideline F at 20 (b). Instead, it appears that she was living beyond her means when her father and daughter became ill in that she was relying on overtime to meet her basic expenses. In any event, the \$160,000 inheritance made it very much “within her control” to pay off all her financial obligations.

As for Guideline F at 20 (c), it is true that the individual recently received counseling for her financial difficulties as a pre-condition of filing for bankruptcy. However, it is significant that the individual also received credit counseling and developed a budget in 2007 (Tr. at 36, Ex . F), none of which resolved her financial problems. In the end, I am not able to find that the individual has her financial problems under control when she has not yet emerged from the jurisdiction of the bankruptcy court and demonstrated a significant period of time living within her means. In our prior cases involving financial irresponsibility, Hearing Officers 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. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010), *Personnel Security Hearing*, Case No. TSO-0746 (2009), *Personnel Security Hearing*, Case No. TSO-0732 (2009).⁵ Here, there simply is not enough time for me to determine whether the individual will remain financially responsible after she has completed being monitored by the bankruptcy court for compliance with a repayment plan.⁶

With regard to Guideline F at 20(d), I cannot find at this time that she has made a good faith effort to resolve her debts. Guideline F at 20(e) is not applicable in this case as the individual is not disputing the legitimacy of any of the past due debts.

In the end, I find that the individual has not mitigated the security concerns connected to her pattern of financial irresponsibility.

V. 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

⁵ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

⁶ In fact, as of the date of the hearing, no repayment plan had been established. If the individual’s belief is correct, that repayment period will be five years.

presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns at issue. 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.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: March 27, 2012