

individual completed a Questionnaire for National Security Positions (QNSP) and was the subject of a background investigation. Because these measures revealed information that raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in January 2011. After reviewing the transcript of this Personnel Security Interview (PSI) and the rest of the individual's personnel file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 11 exhibits into the record of this proceeding. The individual introduced 18 exhibits and was the sole witness who testified at her hearing.

II. THE NOTIFICATION LETTER, DEROGATORY INFORMATION, AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. For purposes of clarity, I will first describe the DOE's security concerns under criterion (l).

Criterion (l) concerns information indicating that the individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation or duress which may cause [her] to act contrary to the best interests of the national security." Such conduct includes, but is not limited to, "criminal behavior [or] a pattern of financial irresponsibility" 10 C.F.R. § 710.8(l). As support for this criterion, the Letter cites the individual's history of financial difficulties, her legal problems, and omissions and misstatements that she allegedly made about these issues to the DOE.

Regarding the individual's finances, the Letter alleges that she (i) filed for Chapter 7 bankruptcy in 2002, an event that was precipitated in part by unnecessary spending by herself and her husband, (ii) wrote checks for which she knew she had insufficient funds in her account to cover and used

over \$13,000.00 of overdraft protection, (iii) had the use of her government credit card suspended for failure to pay her bill after she used the funds remitted to her for payment of the bill to buy “back-to-school” supplies for her children, (iv) failed to file her federal and state income tax returns in 2008 and 2009, and (v), had at least nine accounts that were either referred to a collection agency, charged off in whole or in part, or delinquent. One of the accounts, according to the individual, “wasn’t that much money,” and there “wasn’t much of a reason why I didn’t take care of that before it was charged off.” January 2011 PSI at 26.

Concerning the individual’s legal issues, the Letter states that between 2007 and 2010, the individual was charged with 13 traffic-related violations. The Letter also cites her previously-mentioned failure to file state and federal income tax returns. With regard to the individual’s provision of allegedly false or misleading information, the Letter cites (i) the individual’s representation during her 2005 background investigation that she was not having any financial difficulties, (ii) her statement during a July 2005 PSI that she was financially responsible and intended to pay off all of her debtors, (iii) her failure to disclose on her June 2010 QNSP that she had five collection accounts and had not filed state tax returns in 2008 and 2009, and (iv), her disclosure of only one of her 13 traffic-related violations on the June 2010 QNSP.

Under criterion (f), information is derogatory if it indicates that the individual “has deliberately misrepresented, falsified or omitted significant information from . . . a Questionnaire for Sensitive (or National Security) Positions, . . . a personnel security interview, [or] written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization” As support for this criterion, the Letter again cites the instances of alleged misrepresentation and omission described in the preceding paragraph.

This derogatory information adequately justifies the DOE’s invocation of criteria (l) and (f), and raises significant security concerns. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Illegal activity creates doubt about a person’s judgement, reliability and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations. Conduct involving questionable judgement, lack of candor, or dishonesty can also 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), Guidelines F, J and E.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer 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 or 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 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. 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).

IV. FINDINGS OF FACT AND ANALYSIS

A. The Individual’s Testimony

At the hearing, the individual addressed the DOE’s concerns about her finances, her legal problems, and her alleged misrepresentations and omissions. She admitted that irresponsible credit card use and excessive spending contributed to the Chapter 7 bankruptcy that she and her husband filed for in 2002. An example of that spending, she said, was a motorcycle purchased by her husband. Hearing Transcript (Tr.) at 11-14. After the bankruptcy, however, her spending habits changed. Tr. at 18. She testified that she now has only one credit card, and that her only debt is for her automobile. *Id.* Her financial problems since then, she testified, were caused by her separation from her husband. Tr. at 17. She explained that her husband was a roofer, and when he couldn’t work, he would stay home with the couple’s three children while the individual went off to work. When she and the individual separated in 2005, the children stayed with the husband and the individual assumed the burden of supporting two households. Tr. at 14, 17. However, the individual’s estranged

husband has now found a job and she is no longer supporting him. Tr. at 42-44. The individual further testified that of the nine accounts that were either delinquent, charged off in whole or in part, or referred to a collection agency, eight have been paid off and for the ninth, the alleged creditor has no record of the debt. Tr. at 16-46.

The individual also testified about her legal issues. She said that she did not file state and federal tax returns for 2008 and 2009 because she could not afford to pay a tax preparer to do so. Tr. at 35. She has now filed those returns, and has not been late in filing her returns since then. Tr. at 36-37. Regarding her 13 traffic-related violations, which consisted of three citations for speeding, two for driving without proper registration and/or license plates, five for failure to appear for court dates or failure to pay fines, two for driving on a suspended license and one for driving an uninsured vehicle, the individual cited her financial difficulties as a mitigating factor. She said that her license was suspended when she attempted to pay for an \$80 speeding ticket with a check that was returned for insufficient funds, and that she did not believe that she could register her vehicle or get new tags until she satisfied that debt. Tr. at 52-54. The only times that she drove on a suspended licence or without proper tags or registration, she added, was when she was transporting her children to and from school or extracurricular activities. Tr. at 52-53. Regarding the citations for failure to appear, the individual testified that she did not receive advance notification of her first court date, and that she believes that the later citations were for instances in which she had requested, and received, continuances, because she thought that she had to have everything paid for before her appearance. Tr. at 55-57. The individual drove without insurance, she said, because she could not afford to pay for it. Tr. at 58. She concluded her testimony on this subject by stating that the bulk of her traffic violations occurred during the difficult period in her life from 2007 to 2010, that she has paid the fines for all of the violations and has no outstanding tickets, and currently has a license, registration and insurance on her vehicle. Tr. at 58-62.

Next, the individual addressed the DOE's concerns regarding her alleged omissions and misrepresentations during her communications with the DOE. Concerning her statements during the 2005 background investigation and the 2005 PSI that she was not experiencing financial difficulties, and that she was acting in a financially responsible manner, she testified that they were, in fact, true at the time that she made them. Tr. at 67-68. The individual did not indicate on her 2010 QNSP that she had five collection accounts, she continued, because she did not know at the time that the accounts had been referred to a collection agency. Tr. at 70. Regarding her failure to indicate on that QNSP that she had failed to file her 2008 and 2009 state tax returns, she testified that the omission was inadvertent and that, by indicating that she did not file federal returns for those years, she did not mean to imply that those were the only returns that were delinquent. Tr. at 72-73. Finally, she indicated during her testimony that she only reported one of her 13 traffic citations on this QNSP

because it required the disclosure of only the citations for which there were fines of \$300 or more, and only one ticket fit that description. Tr. at 71.

B. Analysis

After reviewing all testimony before me and the record as a whole, including the individual's exhibits, I conclude that the individual has adequately addressed the DOE's concerns regarding her finances, but that valid concerns remain concerning her willingness to abide by laws, rules and regulations and her honesty and reliability.

As an initial matter, the record in this matter is devoid of evidence of irresponsible spending by the individual after her 2002 bankruptcy. Instead, the evidence supports the individual's testimony that her financial problems were caused primarily by her separation from her husband and her husband's inability to provide for himself and the couple's two children. *See* Individual's Exhibit (Ind. Ex.) 17. Furthermore, the individual has made a concerted effort to resolve her indebtedness. She has paid off her government credit card and eight of the nine accounts listed in the Notification Letter as being delinquent. *See* Ind. Ex. 1-8. The individual has demonstrated a sufficient period of financial responsibility after her 2002 bankruptcy to convince me that a return to her previous difficulties in this area is unlikely.

I reach a different conclusion, however, regarding the other security concerns set forth in the Notification Letter. As an initial matter, the individual has demonstrated a disturbing inability or unwillingness to conform her behavior to legal and regulatory requirements. Despite being aware of her legal obligation to do so, the individual did not file her 2008 and 2009 state and federal tax returns until April 2011, approximately three months after the Notification Letter was issued to her. She has given differing explanations for this delay. During her 2011 PSI, the individual attributed her failure to file tax returns during the years in question to procrastination on her part. DOE Ex. 9 at 60. However, as previously mentioned, at the hearing the individual contended that she did not file her returns because she lacked the funds to pay a tax preparer. Even if this latter explanation is true, it did not excuse the individual of her obligation to file state and federal tax returns. The individual could have sought assistance from the IRS and prepared the returns herself, or filed for an extension of time while she attempted to acquire the funds to pay a preparer; the record is devoid of any indication that she pursued either of these alternatives.

The individual's large number of driving-related violations are also a cause for concern. She operated a motor vehicle on multiple occasions with a suspended licence and/or without proper tags, registration and insurance. The individual attempted to explain these violations by stating that she believed that she could not register her vehicle or obtain new tags without resolving other previous violations, and by saying that the only time that she drove on a suspended licence or without current tags or registration was when she was driving her children to or from school or extracurricular activities. However, there is no indication in the record that she attempted to confirm her belief about resolving previous issues, and, in fact, a judge later informed her that she did not "have to get everything taken care of all at one time." Tr. at 53. Furthermore, the record also does not indicate whether she sought alternate means to get her children to and from school and related activities, such as through public transportation or rides with the parents of classmates.

I am also concerned about the individual's use of funds disbursed to her for the purpose of paying her government credit card bill to buy "back-to-school" supplies for her children. At the hearing, the individual provided no reason for this violation of applicable regulations. Assuming, however, that this action is attributable to the financial difficulties that the individual was experiencing, that does not excuse the deliberate misuse of the funds in question. Taken as a whole, these actions and omissions demonstrate a pattern of non-compliance with applicable laws and regulations that ill befits a security clearance holder. Although the individual filed her tax returns in April 2011 and has paid her government credit card bill and resolved her traffic-related violations, an insufficient amount of time has passed since the end of her inappropriate behavior to convince me that a return to that pattern of behavior is unlikely.

Finally, I continue to harbor serious doubts about the individual's honesty and candor. In addition to her changing explanation for why she did not file her tax returns in a timely fashion, she has also provided inconsistent information as to why she initially defaulted on one of her debts. Regarding her debt to Credit One Bank that was sold to a collection agency, she stated during her 2011 PSI that

it really wasn't [for] that much money. So there really wasn't much of a reason why I didn't take care of that before it was charged off either.

Q. So, . . . there's no logical reason why you didn't just handle it?

A. No.

However, during the hearing, she indicated that she didn't have enough money to pay the bill. Tr. at 45-46. Although the unsupported explanations that she gave during the hearing for the misrepresentations and omissions alleged in the Notification Letter about her collection accounts, her tax returns and her traffic violations, might be true, given the inconsistencies set forth above, I cannot assume that this is the case. For these reasons, I conclude that substantial security concerns

remain under criteria (f) and (l) concerning her honesty and her ability or willingness to abide by applicable laws, rules and regulations.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not successfully addressed the DOE's security concerns under criteria (f) and (l). I therefore conclude that she has not demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: July 11, 2012