

security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).^{2/} DOE Ex. 1 at 2-6. In this case, the derogatory information raised by the LSO relates to the Individual's resignation from a previous employment and the circumstances surrounding that resignation, criminal charges brought against the Individual, and three judgments brought against her for unpaid debt. *Id.*

The Notification Letter 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, and I was appointed the Hearing Officer. I conducted a hearing within the required regulatory time frame. At the hearing, the DOE introduced nine exhibits into the record of this proceeding. The Individual submitted nine exhibits and testified on her own behalf.

II. Regulatory Standards

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 his 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 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 concerns information indicating that an 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).

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). 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 cites one criterion as the basis for denying the Individual's security clearance, Criterion L. To support the allegations, the LSO lists a significant amount of derogatory information regarding the Individual, including:

- In 2009, the Individual resigned from a previous employment after being informed she would be terminated because she was observed stealing money from a voluntary coffee fund and she was excessively tardy. DOE Ex. 3 at 1-2.
- Court records indicate that she was charged with Domestic Violence (2008), Theft by Deception (2007), Aggravated Assault (2001); Shoplifting (2000), Disorderly Conduct (1994), Criminal Mischief (1993), and Theft by Unlawful Taking (1992). DOE Ex. at 3-4.
- Three judgments (2006, 2007, and 2011) were entered against her for unpaid debts. DOE Ex. at 3-4.

I find that the LSO properly invoked Criterion L for all three types of derogatory information set forth above. First, the questionable circumstances surrounding the Individual's resignation from a previous employment raise security concerns about her reliability, trustworthiness and ability to protect classified information. Guideline E 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, such personal conduct creates a "vulnerability to exploitation, manipulation, or duress." *Id.* ¶ 16 (e).

With regard to the criminal charges, the LSO lists seven arrests. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and by its very nature calls into question a person's ability or willingness to comply with laws, rules, and regulations. *See* Guideline J.

Finally, with respect to the three judgments entered against the Individual, all three raise security concerns about the Individual's finances. The Individual's failure to live within her means, to satisfy her debts, and meet his financial obligations raise a security concern because his actions 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. *See* Guideline F. Moreover, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. Findings of Fact

In 2009, the Individual resigned from her employment after being told she would be terminated. DOE Ex. 1 at 1. The reason for the proposed termination was that she was caught stealing money from a common coffee fund and that she was excessively tardy. DOE Ex. 1 at 1-2.

In addition, the Individual has a significant criminal background which started in 1992 with a charge of Theft by Unlawful Taking. DOE Ex. 1 at 3. These charges were dismissed. DOE Ex. 1 at 3. In 1993, she was charged with Criminal Mischief for keying another person's car. DOE Ex. 1 at 3. This charge was also dismissed. DOE Ex. 1 at 3. In 1994, she was charged with Disorderly Conduct after being stopped by an off-duty police officer who was not in uniform, not in an official vehicle, and had his daughter in his car. DOE Ex. 1 at 3, 5. She was charged for cursing at the police officer. DOE Ex. 1 at 5. The Individual was found guilty. DOE Ex. 1 at 3. In 2000, the Individual was charged with shoplifting for taking photographs and a DVD from a store without paying for them. DOE Ex. 1 at 3. She was found guilty. DOE Ex. 1 at 5. She justified her actions at the PSI in 2011, stating she was going through a financial struggle. DOE Ex. 1 at 5; DOE Ex. 8 at 24-25, 27-28. In 2001, the Individual jumped on the back of her then boyfriend's ex-wife while the boyfriend and his ex-wife were in the middle of an argument. DOE Ex. 1 at 3. She was charged with Aggravated Assault and sentenced to one year of probation. DOE Ex. 1 at 3, 4. In 2007, the Individual was charged with Theft by Deception when she wrote two checks on an account that had been closed by her husband. DOE Ex. 1 at 3, 4. In 2008, the Individual and her husband got into an argument. The police were called by her stepdaughter. She was charged with Domestic Violence for pinning her husband between the door frame and door. DOE Ex. 1 at 3, 4. The charge was dismissed. DOE Ex. 1 at 3. At the PSI, when asked about all her contacts with the court system, the Individual stated that she was a bitter person who "felt like life was always unfair" to her. DOE Ex. 8 at 41. She added that she no longer felt that way. DOE Ex. 8 at 42.

Finally, the Individual had default judgments entered against her, in 2006, 2007, and 2011, for unpaid debts. DOE Ex. 1 at 3, 4. The 2007 judgment was for her daughter's medical bill. DOE Ex. 1 at 5. She and her husband disputed who was responsible for paying the debt. DOE Ex. 1 at 5. When it was determined that it was her responsibility, she paid it. DOE Ex. 1 at 5. While the LSO did not question her about the 2006 and 2011 debts, she mentioned in passing that she was paying an attorney \$100 per month for her 2011 debt. DOE Ex. 1 at 5.

V. Analysis

A. Testimonial Evidence

At the hearing, the Individual addressed each charge. She denied that she stole money from the coffee fund. Rather she testified that she borrowed it and replaced it the next day. Tr. at 12. However, the OPM report lists three witnesses who stated that the Individual did not replace the money until after she was confronted with the theft. DOE Ex. 9 at 64-66. As to her excessive tardiness, the Individual testified that she was in the midst of a divorce and that she had to meet with her attorney. Tr. at 13. She stated that her supervisor was aware of her tardiness. Tr. at 13.

In addition, the Individual testified that she resigned from her position, not that she was terminated. Tr. at 10. However, the Notification Letter alleges, and is supported by the exhibits, that she resigned after she was told that she would be terminated. DOE Ex. 3; DOE Ex. 9 at 64.

As to the various charges in her background, the Individual could not recall a number of them. She had very little memory of the “Theft by Deception” charges which resulted from her passing two bad checks. She testified that as soon as she was notified of the charge, she went to the police to handle the matter. Tr. at 20. Yet, the record indicates that the charges were not dismissed until over two years after the charges were originally brought. Tr. at 23. In addition, the Individual testified that she passed the bad checks because her husband closed the joint account without her knowledge. Tr. at 19. To support this claim, she submitted a statement showing the account closed. Attachments B & C to Individual’s Request for a Hearing. The statement shows the account was closed in August 2006. *Id.*; Tr. at 21. The Individual could not remember when she wrote the checks. Tr. at 21-26.

The Individual did not remember the “Theft by Unlawful Taking” charge that occurred in 1992. Tr. at 32-22. She testified that the “Criminal Mischief” charge that occurred in 1993 and the “Disorderly Conduct” charge that occurred in 1994 should have been dismissed. Tr. at 32. She admitted to the “Shoplifting” charge in 2000. Tr. at 31. She testified that the “Aggravated Assault” charge of 2001 occurred when she got in the middle of an argument between her now ex-husband who was her boyfriend at the time and her ex-husband’s ex-wife. Tr. at 29-30. She stated that the “Domestic Violence” charge occurred when she and her husband had a disagreement. Tr. at 27. She stated that he accused her of slamming him between a door and door frame. Tr. at 27. She testified that the judge dismissed the charge claiming that “there’s no way my size person could pin someone his size in between a doorway.” Tr. at 27. The Individual testified that all three of the judgments entered against her have been satisfied. Tr. at 28, 31.

B. Hearing Officer Evaluation of Evidence

The Adjudicative Guidelines list a number of factors that could mitigate the concerns raised by the Individual’s personal conduct, criminal behavior, and financial difficulties. The Guidelines indicate that where the offense is minor, and occurred in the distant past, it should not cast doubt on the Individual’s reliability, trustworthiness, or good judgment. Adjudicative Guidelines ¶ 17 (c), 32 (a). The Guidelines continue that infrequent behavior or behavior that happened under unique circumstances could also mitigate the concern. *Id.* That is not the case here. Although the offenses listed are minor and most of them occurred between three and twenty years ago, the behavior was frequent with seven criminal charges being brought against her between 1992 and 2008 and an allegation of theft being levied against her in 2009. Furthermore, none of these offenses appear to be “under such unique circumstance that it is unlikely to recur.” *Id.* at ¶ 17 (c), 32 (a). I cannot find that she has mitigated the concern under paragraphs 17 (c) or 32 (a) of the Adjudicative Guidelines.

In addition, an individual can mitigate concerns about personal conduct by acknowledging the behavior and obtaining counseling to change the behavior. Adjudication Guidelines ¶ 17(d).

The Individual stated at the PSI that in 2000 she was required attend therapy after her shoplifting conviction. Yet, she was charged with “Theft by Deception” in 2007 and she was accused of stealing in 2009. While the Individual has acknowledged the behavior, she has attempted to rationalize her actions. She stated at the PSI that she was a “bitter person,” as the reason for her behavior. Further, in response to the 2000 shoplifting charge, she stated that she was going through a financial struggle at the time. These rationalizations do not serve to mitigate the underlying security concerns. Therefore, I cannot find that she has met the conditions necessary for mitigation in paragraph 17 (d) of the Adjudicative Guidelines.

Moreover, an individual can mitigate questions about her criminal behavior if she could show that she was pressured or coerced into committing the act, a claim that is not present in this case. The Individual attempted to show successful rehabilitation by claiming that she is a different person now than she was when she committed the criminal offenses. She submitted evidence that she is attending college and regularly attends her church. Ind. Ex. 6; Ind. Ex. 7; Ind. Ex. 8. Based on the totality of the evidence in front of me, I cannot find that she has met those conditions necessary for mitigation in paragraph 32 (d) of the Adjudicative Guidelines.

In addition to factors which may mitigate questions about an individual’s personal conduct and criminal behavior, the Adjudicative Guidelines list three relevant factors as mitigation of financial difficulties. Adjudicative Guidelines ¶ 20 (a)-(c). The Individual has not shown that her financial difficulties happened so long ago, were so infrequent, or occurred under circumstances unlikely to recur. The Individual had three judgments entered against her over a period of five years. The most recent overdue debt occurred in 2011. I find no mitigation of her behavior under paragraph 20 (a). In addition, there is nothing in the record to show that the financial difficulties were beyond her control,^{3/} or that she has received counseling for the overdue debts. Therefore, I cannot find mitigation of her behavior under paragraph 20 (b) and (c).

Also in regard to the judgments entered against the Individual, after a showing of a pattern of financial irresponsibility, our case law requires an individual to demonstrate a sustained pattern of financial responsibility to mitigate a concern raised under Criterion L for financial irregularities. *See Personnel Security Hearing*, Case No. TSO-1078 (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). The Individual has not yet established a sustained pattern of financial stability. She stated at the PSI, which occurred in August 2011, that she was still paying her attorney \$100 for the judgment entered against her for the 2011 debt. DOE Ex. 8 at 7.

Finally, I did not find the Individual to be a credible witness. I did not believe that she could not recall some of the criminal charges against her. For example, she could not remember when she wrote the “cold checks” in 2007. Nor could she remember that it took almost two years for the

^{3/} While it is possible that the Individual could have shown that the 2007 judgment for her daughter’s medical bill may have been beyond her control, she did not present any evidence to that effect at the hearing. Therefore, I cannot find that she has mitigated the concern regarding that debt.

2007 charges to be discharged. In addition, she couldn't remember the 1992 "Theft by Unlawful Taking" charge. It is not plausible that someone would not remember criminal charges being lodged against them or the events that led up to those charges. While the Individual did testify that the judgments have been satisfied, a number of the charges were dismissed and that she is a different person now, I find that the Individual has not mitigated the pattern of unusual and criminal behavior raised by the overwhelming number of charges and financial difficulties raised by the LSO. Therefore, I find that the Individual has not mitigated the Criterion L security concerns.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve those concerns. Therefore, I cannot conclude that granting the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be granted at this time. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: October 25, 2012