



before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Hearing Officer in this case. The DOE introduced 18 exhibits into the record of this proceeding. The individual introduced three exhibits, and presented his own testimony.

## II. 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 and unfavorable, that has a bearing on the question of whether restoring the individual’s 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). 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).

## III. FINDINGS OF FACT AND ASSOCIATED SECURITY CONCERNS

The individual has an undisputed history of financial difficulties. He filed a Chapter 7 bankruptcy petition in 2004, through which his prior debts were discharged. Exhibit 17 at 8; Exhibit 9 at 10. He purchased a home in May 2005, but had difficulty making his mortgage payments and lost the home to foreclosure in 2006. Exhibit 1 at 4. By 2011, the individual had accumulated new debts and was again having difficulty meeting his financial obligations. Exhibit 1 at 5-8. Finally, at the hearing in this matter, the individual presented documentation that he had filed a second Chapter 7 bankruptcy petition on May 27, 2012. Exhibits A through C.<sup>3</sup>

In the Notification Letter, the LSO cited derogatory information within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criteria F and L, respectively). Exhibit 1.<sup>4</sup> Under Criterion F, the LSO cites

---

<sup>3</sup> Though the individual claims that he notified the LSO at the time of his May 2012 bankruptcy filing, the individual’s personnel security file contains no documentation of any notice from the individual, either verbally or in writing. Hearing Transcript (Tr.) at 78-84 (testimony of personnel security specialist that he did not recall any notice provided by the individual and that his personnel security file contains no record of such notice). Thus, the Notification Letter makes no reference to this most recent filing or the individual’s obligation to report it to the LSO. See DOE O 472.2 (July 21, 2011) at 18 and Attachment 4.

<sup>4</sup> Criterion F defines as derogatory information that an individual has an has “[d]eliberately misrepresented,

the individual's omission of numerous debts in answer to questions regarding his finances on a June 14, 2011, Questionnaire for National Security Positions (QNSP). *Id.*; Exhibit 17.<sup>5</sup> The Notification Letter further cites information omitted from a March 2006 response by the individual to a Letter of Interrogatory (LOI) from the LSO. Exhibits 1, 15.

Under Criterion L, the Notification Letter cites statements made by the individual during his November 2011 PSI discussing his past and current delinquent debts and the circumstances leading to the 2006 foreclosure on his home and a 2004 repossession of a vehicle, as well as admissions in the PSI that he has been financially irresponsible, does not have a budget, lives "paycheck to paycheck", is having difficulty meeting his financial obligations, and has not taken actions to resolve his delinquent accounts. Exhibit 1 at 5-8. Also cited under Criterion L are a statement by the individual that his wife, without his knowledge, had been giving \$200 to \$300 per paycheck to her children, and three Personal Financial Statements submitted by the individual in December 2011 and February 2012, the last of which showed a net monthly remainder of \$397.88, but did not account for payments needed to satisfy an outstanding debt of over \$40,000 remaining from a second mortgage on the house that was foreclosed on in 2006. *Id.* at 8-9.

The individual does not dispute the factual accuracy of the allegations in the Notification Letter. Tr. at 40, 66-67. With one exception,<sup>6</sup> I find that these allegations raise serious security concerns under Criteria F and L. First, any failure to provide truthful and candid answers during the security clearance

---

falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, 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, or proceedings conducted pursuant to §710.20 through §710.31." 10 C.F.R. § 708.8(f). Criterion L defines as derogatory information indicating that the individual 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(i).

<sup>5</sup> In response to several of the questions on the QNSP pertaining to finances, the individual referenced a Chapter 13 bankruptcy filing, and the credit report obtained by the OPM references a dismissed Chapter 13 bankruptcy petition filed in July 2006. Exhibit 14 at 35-38; Exhibit 1 at 3. Under Criterion F, in a discussion of the November 2011 PSI, the Notification Letter states that the individual "could not provide a reason why you failed to notify [the LSO] that you filed for a Chapter 13 bankruptcy." The Notification Letter does not allege that the individual was obliged to report his Chapter 13 bankruptcy filing to the DOE. In any event, the individual's apparent failure to report this bankruptcy filing would not raise a concern under Criterion F, as it does not concern information provided in response to a "Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview" or an "official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to §710.20 through §710.31." 10 C.F.R. § 708.8(f).

<sup>6</sup> Regarding the individual's March 2006 response to an LOI, of concern to the LSO was the fact that the individual did not reveal in his response difficulties he was experiencing in making mortgage payments on the house he purchased in May 2005, Exhibit 1 at 4, though he did state in the response that his credit was in good standing when he purchased the home. *Id.* at 2 (quoting Exhibit 15 at 1). However, having reviewed the LOI and response, I cannot find that the individual "[d]eliberately misrepresented, falsified, or omitted significant information . . . in response to" the LOI, such that it would raise a concern under Criterion F. 10 C.F.R. § 708.8(f). I note that the LOI requested specific information from the individual regarding particular delinquent debts, delinquent rent payments, and the circumstances under which he left the residence he rented through May 2005. The LOI did *not* request any information regarding his then-current finances at the time of his March 2006 response. Thus, while the individual could have, in his LOI response, volunteered additional information regarding any problems he was having with mortgage payments at that time, his failure to do so does not raise a concern under Criterion F.

process demonstrates questionable judgment, lack of candor, dishonesty, and/or unwillingness to comply with rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at Guideline E. Second, the failure or inability of an individual to live within one's means, satisfy debts, and meet financial obligations 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. Moreover, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Adjudicative Guidelines* at Guideline F.

#### IV. ANALYSIS

##### A. The Concerns Under Criterion F Have Not Been Resolved

The DOE security program is based on trust, and when a clearance holder or applicant breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *Personnel Security Hearing*, Case No. PSH-12-0059 (2012) (citing *Adjudicative Guidelines* at Guideline E). Moreover, to make meaningful determinations regarding a person's eligibility for access authorization, the DOE must rely upon applicants to provide accurate information in response to any questions it may have.

Here, a comparison of the individual's responses on the June 14, 2011, QNSP to the results of a June 22, 2011, credit report obtained during the OPM background investigation reveals that the individual failed to list accounts responsive to questions regarding (1) bills or debts turned over to a collection agency (nine accounts not listed); (2) judgments entered against him (four accounts); (3) debts over 90 days delinquent currently and debts over 180 delinquent in the last seven years (one account); (4) possessions or property repossessed or foreclosed (one account); and (5) loans defaulted on (one account). Exhibit 1 at 3-4; Exhibit 14 at 32-38. Particularly given the fact that the DOE had previously raised concerns about the individual's finances, information provided in response to these questions logically would have been of keen interest to DOE security officials, and it is fair to presume that the individual knew this at the time he completed the QNSP. *See* Tr. at 19 (testimony of individual that he was concerned about losing clearance when he reported financial information on the June 2011 QNSP).

The only explanation offered by the individual at the hearing for these omissions was that he was "not sure I had my credit report at the time I was filling this out," and so was not aware of the information that he omitted from the QNSP. *Id.* The individual affirmed that the accounts he listed were the only "ones that came to mind" when he was filling out the QNSP. *Id.* As noted above, the individual denies that he intentionally deceived the government. *Id.* at 40.

I do not find the individual's testimony to be credible. First, for the accounts that the individual did report on the QNSP, he provided detailed information, including balances, account numbers, and addresses of creditors, Exhibit 14 at 34-38, an indication that the individual was not providing this information solely from memory. Further, whether the individual had a copy of his credit report to reference when filling out the QNSP is of little relevance. I simply do not believe that the individual would have been completely unaware of, for example, all of the nine omitted accounts that had been turned over to collection agencies, or the four omitted delinquent accounts for which judgment were entered against him. And although the individual testified that both he and his wife handle his household's finances, Tr. at 20, he stated in the November 2011 PSI that his wife was legally blind, Exhibit 10 at 45, making it even more likely that he would have been the person in the household responsible for reading and responding to bills or notices arriving in the mail. The evidence in this case, therefore, clearly supports a finding that the individual's omissions from the June 2011 QNSP were deliberate.

Considering whether concerns raised by an individual's deliberate omission and false statements remain unresolved, Hearing Officers have generally taken into account a number of factors, including whether the individual came forward voluntarily to renounce his falsifications, the timing of the falsification, the length of time the falsehood was maintained, whether a pattern of falsification is evident, and the amount of time that has transpired since the individual's admission. *Personnel Security Hearing*, Case No. TSO-0307 (2007), and cases cited therein. *See also Adjudicative Guidelines* at Guideline E (listing among potential mitigating conditions "prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts").

Here, the omissions at issue, having occurred in June 2011, are quite recent. The individual obviously has not renounced his falsifications, as he denies that his omissions were deliberate. While these omissions do not, themselves, amount to a pattern of falsification over time, the fact that the individual continues to deny, including under oath at the hearing, any intent to omit information from the QNSP is a troubling indication of an ongoing pattern of dishonesty. Taking these factors into account, based on the information in the record, including the individual's hearing testimony, I cannot find that the individual has resolved the grave concerns raised in this case under Criterion F.

## **B. The Concerns Under Criterion L Have Not Been Resolved**

Regarding the concerns under Criterion L, there is evidence of the individual's inability or unwillingness to come to grips with his financial situation and the security concerns it has raised. In addition to his failure to fully report his debts on his QNSP, as discussed above, the individual admitted in his PSI that he did not inquire into the status of any of the debts after he was questioned about them in an August 2011 interview with an OPM investigator, stating that the interviewer "said she was going to look into it" and he "thought she was going to find out what they were and contact them." Exhibit 10 at 51. During the PSI, the individual admitted that he had been financially irresponsible and was living from "paycheck to paycheck," *id.* at 54, 71, but stated: "I will get financial counseling. And a budget plan, and stick to it." *Id.* at 71.

In February 2012, the individual submitted to the LSO documentation that he had contacted a credit counselor for the purpose of setting up a payment plan to satisfy at least some of his debts. Exhibit 8. However, that plan clearly did not succeed given that, as noted above, less than four months later the individual filed a Chapter 7 bankruptcy petition to have his debts discharged. As for a budget, the individual testified that he had created one in late 2011 or 2012, though he had not submitted documentation of this prior to the hearing. Tr. at 22-23, 31.

At the hearing, I offered the individual the opportunity to submit a post-hearing document setting forth his monthly income and expenses, along with a current credit report and bank statements. Tr. at 72-75. However, while he did provide statements showing bank account savings of \$4,920.77, retirement savings of \$56,450.06, and a credit report dated October 4, 2012, the individual did not take advantage of the opportunity to provide an accounting of his current income and expenses.

The individual has submitted a September 7, 2012, order of the court in his Chapter 7 bankruptcy case, granting a discharge of his debts. Exhibit A. Based on this, even without an accounting from the individual of his current income and expenses, I can assume that the individual's monthly financial obligations have been lessened by the discharge of his debts. However, the discharge of debts through bankruptcy, *per se*, does not resolve security concerns resulting from a pattern of financial irresponsibility.

First, Hearing Officers in prior cases have held that, once 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, e.g., Personnel Security Hearing, Case No. TSO-1048 (2011), and cases cited therein.* Here, given the lack of any evidence of a pattern of financial responsibility, I find there to be a substantial risk that the individual's pattern of financial irresponsibility will be repeated, resulting in new, unsustainable debt, particularly given the fact that he was granted a discharge of debts in 2004, yet ended up having to do so again seven years later.

Moreover, aside from the security risk that future financial troubles would pose, there are unresolved concerns in this case going to the individual's lack of judgment and reliability, amply demonstrated by his repeated accumulation of debt and by his failure to take action, aside from serial bankruptcy filings, to come to terms with the results of his financial irresponsibility. Thus, because of both the continued risk of the individual's future financial instability, and the issues of judgment of reliability raised by his behavior related to finances, I cannot find that the individual has resolved the concerns in this case related to his handling of finances.

## V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns under Criteria F and L. Therefore, the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: November 29, 2012