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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: November 4, 2011)
)
_____) Case No.: PSH-11-0015

Issued : February 9, 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. For almost 20 years, the individual has experienced financial difficulties which resulted in the Local Security Office (LSO) conducting four personnel security interviews with him.

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

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.

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 his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented the testimony of a personnel security specialist; the individual presented his own testimony and that of his wife. In addition to the testimonial evidence, the LSO submitted 14 exhibits into the record; the individual tendered one exhibit. 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).

The individual must come forward 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion L relates 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).

³ 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.

B. Basis for the Hearing Officer's Decision

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 suspending the individual's security clearance, Criterion L. To support its allegations, the LSO chronicles the events which led to the individual's two bankruptcy filings (one in 1995 and the other in 2011),⁴ including impulsive purchases and imprudent and unnecessary expenses, and debt-based court judgments. The LSO alleges that these events demonstrate a continuing pattern of fiscal irresponsibility and that the individual has not learned from his prior mistakes. In addition, the LSO alleges that the individual willingly provided false information about his financial status in order to reaffirm his home and travel trailer through his recent bankruptcy proceeding.

The individual's failure to live within his means, to satisfy his debts and meet his financial obligations raises a security concern under Criterion L 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 the individual's reliability, trustworthiness and ability to protect classified information. *See* Guideline 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). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* The individual's lack of candor regarding his finances raises additional questions about his reliability, trustworthiness, and ability to protect classified information. *See* Adjudicative Guidelines at Guideline E.

IV. Findings of Fact

In 1990, the individual's wife inherited \$100,000, with which they purchased new vehicles and a boat, renovated their house, traveled, and treated their children, including supporting their involvement in BMX racing. They grew accustomed to having money

⁴ A security concern does not arise from the bankruptcy filing, *per se*, but rather, as here, from the circumstances surrounding the bankruptcy and the attendant financial problems. *See Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-1018 (2011); *Personnel Security Hearing*, Case No. TSO-0692 (2009); *Personnel Security Hearing*, Case No. TSO-0288 (2006); *Personnel Security Hearing*, Case No. TSO-0217 (2005); *Personnel Security Hearing* Case No. VSO-0509 (2002).

and continued to maintain their lifestyle even after the money had been spent. By 1994 or 1995, they had sold their boat and consolidated their debts. They ultimately stopped paying their debts and, with about \$20,000 in debts, filed for bankruptcy in 1997 (Bankruptcy #1). Ex. 10 (Summary of March 18, 1998, Personnel Security Interview (PSI #1)). In the bankruptcy proceedings, they reaffirmed the mortgage on their house, the loan on a truck, and the debt on some of their credit cards. Ex. 14 (Transcript of July 25, 2001, PSI (PSI #2)) at 7-10; Ex. 9 (Transcript of August 28, 2002, PSI (PSI #3)) at 10. After the bankruptcy, they acquired more credit cards, but by 2001 had closed the accounts to prevent overspending. Ex. 14 at 16, 18. By that point, however, they had incurred significant debt and were unable to meet their mortgage obligations. The house was foreclosed upon, and the family moved to a rental property. *Id.* at 7, 15. Contributing to this debt were unanticipated medical expenses, for injuries both children sustained while BMX racing, and for medical procedures both parents required. *Id.* at 6, 11, 13. The individual's and his wife's combined income should have been sufficient to meet their expenses, but they had not budgeted for medical expenses. *Id.* at 11, 13. In fact, the family had no budget at all. *Id.* at 25.

In 2005, the individual and his wife had acquired seven credit cards and had cashed out \$54,000 from his retirement fund. Ex. 8 (2011 Bankruptcy Petition) at Schedule E; Ex. 4 (Transcript of May 3, 2011 PSI (PSI #4)) at 18-19. His wife had surgery in the same year. *Id.* at 14. In June 2008, they purchased the house they had been renting; the monthly mortgage payment exceeding the rent by about \$400. *Id.* at 5-6. Very shortly thereafter, they purchased a travel trailer, securing a loan with a monthly payment of \$372. *Id.* at 8; Ex. 8 at Schedule J. The individual then took out a loan of \$5000 to \$6000 from his retirement account. Ex. 4 at 17-18. By May 2009, a collection agency had obtained a judgment against the individual. *Id.* at 35-36. In early 2010, the individual and his wife each had serious medical procedures; the wife was unable to return to work. *Id.* at 12.

In February 2011, the individual and his wife filed for bankruptcy a second time (Bankruptcy #2). They reported in their bankruptcy petition that they were paying nothing for food and clothing, Ex. 8 at Schedule J. However, when he completed another Personal Financial Statement for the LSO in April 2011, he indicated that his food and clothing costs were \$580 per month. Ex. 6. When questioned at a May 2011 PSI (PSI #4), he could not explain the discrepancy, but stated that his children were buying groceries for them. Ex. 4 at 45-46, 50. Nor could he respond to many of the LSO's other questions about his financial situation. For example, he was not sure whether his home or his trailer was to be reaffirmed through Bankruptcy #2. *Id.* at 41, 48-51.

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's access authorization should not be restored. 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). The specific findings that I make in support of this decision are discussed below.

A. Testimonial Evidence

The personnel security specialist testified that she conducted four PSIs with the individual. In each PSI, she discussed the LSO's concerns about his financial irresponsibility. Until her most recent review of his file, following his report of Bankruptcy #2, she found that the individual had resolved the LSO's concerns. Tr. at 19, 23. Nevertheless, by the third PSI, in 2002, she determined that the individual was not yet in financial difficulties, but expressed her concern to the individual that she was seeing a pattern of acquiring debt through credit card use. *Id.* at 25. She also noted that the individual had failed to report to the LSO two debt judgments against him, one from 2004 and a second from 2009. *Id.* at 26-28. The individual's Bankruptcy #2 raised new concerns for her. When he bought his home and the travel trailer in 2008, his expenses doubled from \$700 in rent to an \$1100 mortgage payment and a \$372 loan payment. Moreover, despite his family's history of medical needs, the individual had not budgeted for emergency or medical expenses. *Id.* at 30. In addition, although he was \$18,000 in arrears on his mortgage at the time of Bankruptcy #2, he continued to pay for cable, internet, cell phones and lawn care. *Id.* at 37-38.

In their testimony, the individual and his wife both drew a distinction between their two bankruptcies. They both testified that Bankruptcy #1 had been caused by overspending: they had grown accustomed to a lifestyle that was beyond their means once the inheritance was spent. *Id.* at 50, 127. On the other hand, Bankruptcy #2, they each contended, was the result of medical expenses for which they had not planned. *Id.* at 72, 167. While both testified that they used their many credit cards to pay for medical expenses, neither produced evidence of how much of their credit card debt could be accounted for in this manner. *Id.* at 61-62, 98. The individual admitted that they had difficulties paying for their house, trailer and vehicles soon after they bought them, and before their substantial medical expenses in 2010. *Id.* at 169. They have now sold all but one truck, which is more efficient than their previous vehicles, and committed to not using credit cards in the future. *Id.* at 67-70, 75. The wife stated that, beginning in January 2012, their son will assume half the monthly loan payment on the travel trailer, thereby reducing the amount of their payment. *Id.* at 92. They also testified that their children no longer require any financial support from them. *Id.* at 93-94, 108. Finally,

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.

the individual has now become involved in the decision making process with regard to finances, something that had not previously occurred. *Id.* at 102. They now work together to plan how to spend the income they receive. *Id.* at 106. Previously, the wife made all but the major purchase and payment decisions without consulting the individual. *Id.* at 105-06.

The individual and his wife also testified regarding the discrepancies between their expenses as reported in the petition for Bankruptcy #2 and those reported on the Personal Financial Statement they prepared for the LSO in April 2011. They explained that during that period, and at the time of the hearing as well, their children and their church were providing them with food. *Id.* at 49, 178. For that reason, they indicated that they had no food or clothing costs in the bankruptcy petition, and their attorney advised them to do so. *Id.* at 180. As for the Personal Financial Statement, they decided that the LSO was interested in how much they would have to spend for food and clothing, rather than what their actual costs were, and provided those figures. *Id.* at 87, 179. Each testified that they did not intend to mislead the LSO with their responses. *Id.* at 87, 194.

With respect to the fact that the individual failed to report to the LSO two judgments against him, the individual's testimony was sparse. At the hearing, the individual stated that he could not recall knowing about the judgment in 2002. *Id.* at 195. He did, however, recall that he learned about the 2009 judgment as he was filing for bankruptcy, and that his bankruptcy attorney advised him that he need not report it as it would be taken care of in the bankruptcy proceeding. *Id.*

B. Hearing Officer Evaluation of Evidence

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the individual was living beyond his means from the time at which his wife's inheritance had been spent (approximately 1992) until the hearing, as evidenced by two bankruptcies, a foreclosure, high credit card debt, and a large number of medical creditors. As for the second bankruptcy filing, I am not convinced that his financial plight at that time was beyond his control. Although the individual attributes the bankruptcy to unforeseen medical expenses, it appears that he was living beyond his means even before his medical expenses arose. Because he had never developed a budget, his approach was to make expenditures he wanted if he "felt comfortable." Ex. 4 at 23, 30 (purchased travel trailer in 2008 while living "from paycheck to paycheck" with no savings or emergency fund, because "wanted it so bad"). Moreover, while medical bills mounted, the individual kept current on his travel trailer payments, and continued to pay for cable, cell phones and lawn care. Based on these findings, I cannot mitigate the individual's financial issues under Guideline F at ¶ 20(b), *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control.

Second, I cannot mitigate the security concerns at issue here under Guideline F at ¶ 20(a) because the behavior happened recently and repeatedly. Furthermore, as explained more fully below, I cannot find at this point that the financial problems will not occur again.

Third, the individual has not sought or received any financial counseling since before Bankruptcy #1 in 1997, nor has he yet developed a family budget. He submitted into the record a financial statement for the month of December 2011, which demonstrates that the monthly expenses far exceed their current income (his unemployment benefits and his wife's disability payment). Ex. A. Were the individual to receive his usual paycheck, this exhibit indicates that he would be able to meet all expenses and start saving a small amount monthly for emergencies, assuming his medical creditors will wait up to two years to be paid in full. *Id.* Based on the record before me, I cannot find for purposes of Guideline F at ¶ 20(c) that there are clear indications that the financial problem is under control. The individual has not convinced me that he will be able to maintain the financial discipline to adhere to the rigors imposed in this financial statement, given his history of yielding to desires beyond his means.

While I found the testimony of the individual and his wife credible that they both intend to act in a fiscally conservative manner in the future, I am concerned that the individual has made similar representations to the LSO on three other occasions in the past and has not had the resolve or discipline to monitor his finances. For example, in PSI #1, the individual stated that he had no plans to establish future credit. In PSI #2, he reported that he had closed all the credit cards he had opened after Bankruptcy #1, and had resolved never to have credit cards again. In PSI #3, he stated that he intended to use cash only in the future and to live within his means. And in PSI #4, he told the LSO that his "needs and wants are more than I can handle, and I don't know finances well enough . . ." Ex. 4 at 73.

Moreover, I am not convinced that the individual's good intentions will be sustainable in the long term. Currently, the individual is receiving unemployment benefits significantly less than the income he received while fully employed, and his children and his church are paying for expenses beyond his current means. His employment income, when he begins to receive it again, combined with his wife's disability income, appears sufficient to cover their current expenses, although they still have outstanding debts to medical providers. My concern lies with their longstanding history of buying what they desire when they "feel comfortable." Fulfilling those desires—purchasing a house and a travel trailer, which doubled their monthly housing costs when they were just making ends meet, for example—has contributed significantly over the years to their financial instability. At this point, I cannot look at a lengthy record of fiscally responsible behavior following Bankruptcy #2. The individual testified that "only time is going to prove" whether their most recent efforts will succeed. Tr. at 197.

In 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-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). At this point, it is simply too early for me to find that the individual

has demonstrated a sustained pattern of financial responsibility for a significant period of time relative to his lengthy past period of financial irresponsibility.

With regard to the LSO's concerns for the individual's truthfulness in providing information about his finances, I also looked to the Adjudicative Guidelines, in this case, Guideline E. Because there is no evidence that the individual willfully withheld the existence of his 1992 judgment from the LSO, and because he did not report the 2009 judgment on the advice of his bankruptcy attorney, I find that the individual did not deliberately conceal relevant facts from a security official or that, taken together, his failure to report on two occasions demonstrate a pattern of intentional deception under the circumstances. Adjudicative Guidelines at Guideline E, ¶ 17(b) (omission caused by improper advice of legal counsel can mitigate concern). The discrepancies between the financial statements provided in the Bankruptcy #2 petition and to the LSO in April 2011 raise some concern, because the LSO contends that, by reporting no food or clothing expenses to the bankruptcy court, the individual intentionally overstated his financial health, in order to obtain approval of his request to reaffirm his debts on his house and travel trailer. Tr. at 36. I cannot find that the individual deliberately engaged in such deception on the basis of the evidence presented, which indicates more accurately that he has little sophistication in the workings of bankruptcy, despite his two experiences with it, and appeared not to know at PSI #4 whether those debts were to be reaffirmed. I therefore conclude that the individual did not engage in conduct that raises concerns under Guideline E of the Adjudicative Guidelines.

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion L.

C. 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 presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with Criterion L. 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.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: February 9, 2012