

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: December 14, 2011)	
)	Case No.: PSH-11-0037
)	
_____)	

Issued: April 19, 2012

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This decision concerns the eligibility of XXXXXX (hereinafter referred to as "the Individual") to obtain a security clearance under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

This case involves an Individual with a pattern of failing to meet his financial obligations dating back to 1993. A Local Security Office (LSO) has been monitoring the Individual's financial situation since his original application for a security clearance in 2000. In 2006, the LSO received information indicating that the Individual had a large number of delinquent debts. The LSO subsequently conducted a series of five Personal Security Interviews (PSI) of the Individual, the most recent on September 29, 2011.

Unable to resolve the security concerns raised by the Individual's continuing financial issues, and by the sometimes inconsistent and contradictory information provided by the Individual, the LSO initiated administrative review proceedings by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R.

§ 710.8, subsection (l).¹

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on December 19, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse, his daughter, his coworker, and a family friend. *See* Transcript of Hearing, Case No. PSH-11-0037 (hereinafter cited as “Tr.”). The LSO submitted 34 exhibits, marked as Exhibits 1 through 34, and the Individual submitted five exhibits, marked as Exhibits A through E.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting or continuation of 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 have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

¹ Specifically, the Notification Letter alleges that the 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.

III. FINDINGS OF FACT

The Individual has exhibited a longstanding pattern of financial distress dating back to at least 1993, when he declared Bankruptcy. In his responses to a Letter of Interrogatory (LOI) the Individual stated that he declared Bankruptcy in 1993 after falling behind on his credit card payments. Exhibit 22 at 1. The Individual's responses to the LOI contained contradictory information. He initially claimed: "All my accounts are paid on time and above the minimum payment that is due," yet he subsequently admitted that he was behind on some medical payments (which he claimed should have been paid by his insurance) and child support payments (which he claimed were incorrectly accessed). *Id.* at 3-5. He also admitted that his wages had been garnished, in 1998, in order to pay child support. *Id.* at 5.

On August 6, 2006, during his five-year reinvestigation, the Individual reported 14 delinquent accounts, totaling \$60,112, as 180 days past due. Exhibit 13 at 1-2. This derogatory information led the LSO to investigate the Individual's finances, a process that ultimately culminated in the present proceeding.

From January 17, 2007, onward, a pattern became apparent where the Individual, under repeated questioning about his finances by the LSO, would always claim that his financial situation would be resolved in the near future when he would file for Bankruptcy. This pattern was often accompanied by the Individual's prevarications. During a January 17, 2007, PSI, the Individual stated that he had been working with an attorney since November 2005 in order to resolve his financial issues by filing for Bankruptcy in the near future. Exhibit 33 at 9, 60, 100. During a February 10, 2009, PSI, the Individual was asked about the status of his second Bankruptcy proceeding. The Individual responded by stating that his attorney had recommended that he delay filing until his daughter's ongoing medical issues were resolved. Exhibit 32 at 10-11.² However, over a year and a half later, during a September 29, 2010, PSI, the Individual admitted that he had not yet filed for Bankruptcy. Exhibit 31 at 8. The Individual then stated that he had delayed filing for Bankruptcy until after he received an insurance settlement for his wife's car accident. *Id.* at 27. The Individual stated that he would proceed with the Bankruptcy in the near future since he had received the settlement. *Id.* at 28. Over a year later, during a September 26, 2011, PSI, the Individual again explained that he delayed filing for Bankruptcy because he knew he was going to receive an insurance payment for the loss of his first home. Exhibit 30 at 127. The Individual indicated that his attorney advised him to wait for two years after receiving settlements before filing for Bankruptcy. *Id.* at 130. However, the record shows that the Individual had received the insurance payment for the loss of his first house by February 2007. *Tr.* at 52.

At the March 14, 2012, hearing, the DOE Counsel asked the Individual to explain why he had not yet filed for Bankruptcy, despite having stated his intention to do so beginning in 2007. The Individual explained that he was following his attorney's advice to delay filing for Bankruptcy. *Tr.* at 93. The Individual testified that his attorney advised him to delay filing in order to ensure

² The Individual did present the interviewer with a letter from his attorney indicating that he intended to file a Bankruptcy Petition on behalf of the Individual in April 2009. Exhibit 33 at 36.

that he and his daughter could retain proceeds from two insurance settlements totaling \$88,000. *Id.* The attorney advised the Individual that if he were to file for Bankruptcy too soon, the Individual's creditors would receive the \$88,000 in insurance settlements. *Id.* The Individual testified that he has now filed for Bankruptcy and was going to court "to get it finalized." *Id.* at 101.

Initially, during the January 17, 2007, PSI, the Individual specifically denied that any of his children were experiencing serious medical issues. Exhibit 33 at 31. Instead, the Individual attributed most of his debt to a number of other factors: his construction company business, medical and dental bills, and a reduction in the number of hours worked by his wife. *Id.* at 39-49. The Individual also stated that his financial situation had worsened when his Human Reliability Program (HRP) certification was suspended in October 2006. *Id.* at 87-88. However, during a February 10, 2009, PSI, the Individual attributed his financial problems to his daughter's illness and the suspension of his HRP certification. Exhibit 32 at 60. The Individual stated that his daughter had been undergoing medical treatment, which required at least two surgeries and frequent out-of-town travel. *Id.* at 10. The Individual indicated that his daughter's health issues had began about three years before this PSI. *Id.* at 33. The Individual further stated that his wife had been in a serious car accident which had kept her from working for four months. *Id.*

The Individual admitted that, in September of 2006, he had voluntarily allowed a 2001 Chevy Suburban to be repossessed, because after making payments on it for five years, he still owed more than it was worth. Exhibit 33 at 22-29, 63-65. During a February 10, 2009, PSI, the Individual stated that he had the 2001 Chevy Suburban voluntarily repossessed because after making payments on it for five and a half years, he still owed \$32,000 for it, even though he had purchased it for \$34,000. Exhibit 32 at 16-17. In another instance when the Individual's story appears to have changed over time, the Individual initially claimed that at the time of the voluntary repossession, he only had six more months of payments left before the loan on the car was paid off.³ *Id.* at 17. At the hearing, however, the Individual testified that he had been making payments on the 2001 Chevy Suburban for four and half years before having it voluntarily repossessed.

The Individual moved his family from his first home (the first home), but left his eldest daughter living in it with the understanding that she would reimburse her parents (the Individual and his wife) for the monthly mortgage, utility, and insurance payments for the first home. Tr. at 50, 55-57; Exhibit 33 at 37. The mortgage and the property title remained in the Individual's and his wife's name. Exhibit 30 at 67, 123; Tr. at 57. The first home then burned down. Exhibit 30 at 68. After the first home burned down, the Individual received an insurance payment of \$70,000 for the first home in 2006 or early 2007. Exhibit 30 at 68, 131; Tr. at 50, 54. The Individual transferred that money into joint bank account shared by him, his spouse, their eldest daughter, and her husband. Tr. at 51. While \$24,000 of the insurance money was used to pay off the mortgage on the first home, the remainder of the \$70,000 was used to pay off his eldest daughter's vehicles and to purchase and to remodel a new home for her (the fourth house) in

³ A copy of the Individual's credit report dated December 10, 2008, indicates that the 2001 Chevy Suburban was financed on an 84-month note. Exhibit 20 at 4.

February of 2007. Exhibit 29 at 15-16.; Tr. at 51-53. Tr. at 133. The Individual stated that he gave his eldest daughter the entire \$70,000 because he considered the first home to be her house. Exhibit 30 at 68, 131.⁴ When the first home burned down, the Individual's eldest daughter had been making payments for approximately a year. Exhibit 30 at 68. The Individual indicated that he had previously been making payments on the first home for ten years. *Id.* at 68-69.

The Individual failed to adequately explain the circumstances surrounding the foreclosure of his second home. During his January 17, 2007, PSI, the Individual stated that he had "skipped" the previous month's mortgage payment on the second home. Exhibit 33 at 82. The Individual claimed that the lender had agreed to let him make this payment at a later date. *Id.* at 33 at 83. By the time of his February 10, 2009, PSI, the Individual had moved his family out of the second home and was now living in a third home (the third home), which he rents. Exhibit 32 at 13. The Individual provided a difficult-to-believe account of the circumstances resulting in the second home's foreclosure. The Individual noted that one reason he was having difficulty making payments on the second home was that its electric bills were higher than expected. The Individual stated that he had purchased the second home with the understanding that he would receive a discount on electricity. Exhibit 32 at 11. However, the Individual stated that his electric bills at his second home averaged \$500 a month. *Id.* at 12. During his September 26, 2011, PSI, the Individual asserted that his electric bill at the second home had increased to \$500 a month from \$250 a month. Exhibit 30 at 18. The Individual's credibility was further damaged when he initially stated that he had fallen five or six months behind on his mortgage payments for the second home, but subsequently stated that he had fallen three months behind on his mortgage payments on the second home. *Id.* at 19, 26. In an attempt to explain his apparent inaction in the face of mounting financial issues, the Individual claimed that the lender for the second home had initially agreed to allow the Individual to move the delinquent payments "to the back of the loan," if the Individual was able to make three mortgage payments in a timely manner. *Id.* The Individual claimed he subsequently received a telephone call from the lender demanding a payment of \$25,000 in order to avoid foreclosure proceedings. *Id.* at 20. The Individual claimed he then decided to abandon the second home and moved his family to the third home. *Id.* at 22-26.

The statements made by Individual during a discussion of his outstanding tax liabilities further eroded his credibility. During his September 26, 2011, PSI, he stated that he owed the Internal Revenue Service (IRS) \$1,100 because of an alleged mistake that his wife's employer's accountant had made. Exhibit 30 at 81-82. The Individual claimed he had agreed to a payment plan with the IRS. *Id.* at 86. The interviewer asked the Individual if he had a written copy of that plan. The Individual claimed that he had not received it yet. *Id.* at 86-87.

IV. ANALYSIS

The record shows that the Individual has engaged in a pattern of financial irresponsibility. The

⁴ The Individual still owns the property where the first home once stood. Tr. at 59. The Individual testified that he was advised not to sell this property because of the Bankruptcy. Exhibit 30 at 134.

Individual's pattern of financial irresponsibility raises significant security concerns under Criterion L. The Revised Adjudicative Guidelines state in pertinent part:

Failure or inability 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; (d) deceptive or illegal financial practices such as . . . intentional financial breaches of trust; [and] (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis. . . .

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) at ¶¶ 18, 19. In addition, the inconsistencies in the information provided by the Individual, in his LOI, PSIs, and at the hearing, raise questions about the Individual's honesty, candor and trustworthiness. The Adjudicative Guidelines state in pertinent part:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Adjudicative Guidelines at ¶ 15. As the discussion above illustrates, several of the financial conditions that could raise security concerns identified by the Adjudicative Guidelines apply to the Individual. As for possible mitigating factors, I find that the Individual has not met any of the conditions set forth at ¶ 20(a) of Guideline F.⁵ His failure to exercise good judgment,

⁵ Conditions that could mitigate security concerns arising from financial irresponsibility include:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve

honesty and reliability in his financial affairs has been a long-term problem dating back to at least 1993, and has not been resolved. The manner in which the Individual has conducted his financial affairs casts doubt on his current reliability, trustworthiness, and judgment. I also find that the Individual has not met the conditions set forth at ¶ 20(b) of Guideline F. While the Individual testified that his financial setbacks have resulted, in part, from the serious illnesses of his spouse and daughter, the pattern of failing to meet his financial obligations began before his spouse and daughter's illnesses.⁶ Moreover, the irresponsible manner in which the Individual has reportedly failed to respond to his financial set-backs has raised significant security concerns. In addition, the Individual has not met the conditions set forth at ¶ 20(c) of Guideline F. While the Individual has sought credit counseling assistance, he has not shown that such counseling has been effective. At the hearing, the Individual admitted that he has only recently implemented a family budget or a financial plan which could reasonably be expected to resolve his financial issues. I was not convinced that the budget presented by the Individual at the hearing and the Individual's filing of a petition for Chapter 7 Bankruptcy would resolve his financial issues going forward. The Individual has presented insufficient evidence to allow me to conclude that he is able to exert and maintain control over his finances. The Individual has similarly failed to meet conditions set forth at ¶ 20(d) of Guideline F, since the Individual has only recently declared bankruptcy. Finally, the Individual has not met the conditions set forth at ¶ 20(e) of Guideline F. He has not shown that he has any reasonable basis to dispute the legitimacy of his past-due debts and has not provided documented proof to substantiate that he has taken sufficient action to resolve his financial issues.

Moreover, the Individual's provision of less than credible information in his LOI and PSIs raises doubts that he cannot be trusted to provide truthful information to DOE security officials. The Individual's lack of candor continued at the hearing, showing that he continues to exhibit poor judgment, and cannot be relied upon or trusted. I was especially concerned about evidence in the record showing that the Individual and his spouse received \$88,000 in insurance settlements in 2007 and 2010 and, for the most part, did not use that money to satisfy outstanding debts, but rather used a substantial portion of those funds to purchase and renovate a new residence for their adult daughter. In addition, since 2006, the Individual has been repeatedly assuring LSO officials that he intended to file for Bankruptcy in the near future. The Individual has only recently done so. Moreover, the Individual has admittedly avoided filing for Bankruptcy in order to prevent his insurance settlements from being included in the Bankruptcy estate and therefore being distributed to his creditors.

The DOE security program is based on trust. *Personnel Security Hearing*, Case No. TSO-0920

debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue. . . .

Guideline F at ¶ 20.

⁶ As of August 6, 2006, the Individual had \$60,112 in debt that was at least 180 days past due. Exhibit 13. In his January 17, 2007, PSI, the Individual stated that none of his children had been having serious medical problems. Exhibit 33 at 31.

(2010).⁷ If the DOE cannot fully trust an individual, then it cannot allow them access to classified information or special nuclear materials. Accordingly, I find that the security concerns under Criterion L raised by the Individual's inconsistent statements and financial conduct remain unresolved.

V. CONCLUSION

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criterion L. Therefore, the Individual has not demonstrated that restoring his security clearance 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. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: April 19, 2012

⁷ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.