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

In the matter of Personnel Security Hearing)
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Filing Date: October 18, 2011) Case No.: PSH-11-0039
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Issued: March 27, 2012

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) for access authorization 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.”¹ For the reasons set forth below, I conclude that the DOE should not restore the individual’s access authorization at this time.²

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. On September 8, 2011, the individual notified the DOE that the Internal Revenue Service (IRS) began garnishing his wages in August 2011, due to his failure to file a 2006 federal tax return. Exhibit 7. A Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on September 28, 2011. Exhibit 7. After the PSI, 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. Letter from LSO to Individual (November 1, 2011) (Notification Letter); Exhibit 1 (Summary of Security Concerns). The

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² 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>.

Notification Letter also informed the individual that he was entitled to a hearing 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 I was appointed the hearing officer. The DOE introduced eleven exhibits into the record of this proceeding. The individual introduced six exhibits, and presented the testimony of one witness, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Exhibit 1.³ Under this criterion, the LSO cited (1) the individual's delinquency on accounts in collection totaling \$6,226; (2) his delinquency on property taxes, for tax years 2008 through 2010, totaling \$2,127; (3) his debt to a bank of approximately \$1,200 for writing bad checks; and (4) his failure to file a federal income tax return for 2006 and the resulting garnishment of his wages, beginning in August 2011, for estimated taxes due of \$11,266. Exhibit 1. On December 6, 2011, the individual filed a response stating that he was not disputing any of the allegations. Exhibit 2.

The above information adequately justifies the DOE's invocation of criterion (l), and raises significant security concerns. The failure or inability to live within one's means, satisfy debts, and meet financial obligations, including the failure to file tax returns as required, 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 Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005), Guideline F (Adjudicative Guidelines). Further, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

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 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

³ Paragraph (l) defines as derogatory information that an 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. § 708.8(l).

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).

IV. ANALYSIS

As noted above, the individual has not disputed the allegations set forth in the Notification Letter. Exhibit 2. He has, however, offered some evidence of progress toward resolving the concerns raised by the allegations. Nonetheless, as discussed below, there are still outstanding financial issues that the individual has not addressed, and circumstances that contributed to his difficulties appear likely to continue into the future. Thus, I do not find that the concerns in this case have been sufficiently resolved such that the individual’s clearance should be restored.

First, regarding his \$1,200 debt to a bank related to bad checks, the individual testified that he had reached an oral agreement with the bank to pay \$50 per month toward this debt, with the balance to be paid in full upon his receipt of an expected tax refund. Hearing Transcript (Tr.) at 21; *see* Guideline F at ¶ 20 (d) (concern can be mitigated where individual makes “good-faith effort to repay overdue creditors or otherwise resolve debts”). In addition, the individual submitted proof of payment of his past due 2008 property taxes. Exhibit F.

Regarding his federal income tax obligations, the individual testified that he filed his 2006 tax return in early February 2012. Tr. at 24. He stated that he attempted to get confirmation of receipt of his return by the IRS, but was told that this would not be possible for four to five weeks. *Id.* at 25. He did, however, provide a copy of the completed return, prepared by a commercial firm, and showing that he would be due a refund of \$2,648 for tax year 2006. Exhibit A.⁴ It would, therefore, appear that the individual has, albeit belatedly, satisfied his obligation to file federal income tax returns. *See* Exhibits B, D, and E (IRS records showing receipt of tax returns for 2005, 2007, and 2008, respectively).

Unfortunately, however, the individual still has yet to address the remainder of his outstanding debt. He testified that, as of the hearing, he had taken no action toward paying off the \$6,226 he owes on delinquent accounts in collection. Tr. at 20. Moreover, while he has paid his past due 2008 property taxes, he has yet to pay those due for tax years 2009 and 2010, which together total \$1,593, exclusive of penalties and fees, which proved to be substantial when he paid his tax for 2008. Exhibit F (\$523 in penalties and fees added to tax bill of \$534 for 2008).

⁴The individual’s testified that, because of the lateness of his filing, he will not receive this refund. Tr. at 47-48; *see* 26 U.S.C. § 6511(a) (2010) (“Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.”).

Of additional concern is that the individual has no apparent plan for paying off these debts, nor any idea how long it will take to do so. Tr. at 39 (“I have to take it one step at a time, one account at a time and try to get it resolved. It is not going to be one day longer than what I want it to be or what it can feasibly be.”). I offered the individual an opportunity to submit, after the hearing, a list of his monthly income and normal expenses, “just to give the DOE an idea of how you are set in terms of dealing with the day-to-day expenses.” Tr. at 57. The individual, however, did not provide this information, thus making it difficult for me to make even a rough assessment of his future financial stability.

Finally, there are circumstances in this case that both mitigate and exacerbate the concerns in this case going forward. The individual testified at the hearing that his wife has suffered from various medical problems since the mid-1990s, and that most of his outstanding debts are due to unpaid medical bills. Tr. at 40-41. I note here that the Adjudicative Guidelines state that concerns related to finances can be mitigated where “conditions that resulted in the financial problem were largely beyond the person's control . . .” Guideline F at ¶ 20 (b). The LSO, aware of the individual’s debts in March 2011, noted these circumstances and this provision of the guidelines in deciding to grant the individual’s application for a clearance. Exhibit 5 (case evaluation sheet).⁵

These circumstances do, in fact, partially mitigate the security concern in this case, at least to the extent that the absence of such circumstances would indicate that financial problems were more likely to have resulted from poor self-control, bad judgment, or a simple unwillingness to satisfy financial obligations. Thus, here, the individual’s financial troubles may be less reflective of his general reliability, trustworthiness and ability to protect classified information.

There is, nonetheless, as noted above, a separate concern noted in the Adjudicative Guidelines, that “[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” Guideline F at ¶ 18. Such a concern exists independent of the circumstances leading to an individual’s financial distress. That this concern is more than just theoretical is demonstrated by the fact that the individual engaged in an illegal act by not timely filing his 2006 federal income tax return, citing the fact that he “just didn’t have the money” to pay the cost of preparation of his return. Tr. at 29.⁶

Looking forward, then, the question comes back to an assessment of the individual’s likely future financial situation. And in this case, there is really no basis for me to conclude that the individual will not face similar financial problems in the future. Aside from the lack of any plan or budget by the individual, there might be cause for hope if his wife’s medical issues were behind her. However, those problems, unfortunately, appear to be chronic in nature. See Tr. at 15-16 (individual’s testimony detailing wife’s struggle with degenerative arthritis and Lupus, and noting that she was scheduled for surgery to remove her thyroid the week following the hearing).

⁵ The individual’s report in September 2011 that the IRS was garnishing his wages triggered a reevaluation by the LSO, resulting in the suspension of the individual’s clearance. See Exhibits 3 and 4 (September 2001 case evaluation sheets).

⁶ This reasoning, in addition to clearly not excusing a violation of law, is puzzling given the fact that the amount of his anticipated 2006 refund, \$2,648, would have easily covered the cost of preparation, which the individual stated was “between three and five hundred dollars.” *Id.*

In prior cases involving financial issues, 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, e.g., Personnel Security Hearing, Case No. TSO-1078 (2011); Personnel Security Hearing, Case No. TSO-0878 (2010); Personnel Security Hearing, Case No. TSO-0746 (2009)*. Similarly in this case, even to the extent that the individual’s financial problems may not be due to irresponsibility, I find that he would need to show a sustained pattern of financial stability for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely. As the individual clearly has not made such a showing, I cannot find that his clearance should be restored at this time.

V. 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 at issue. 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.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: March 27, 2012