

alleged actions by the individual raise security concerns under the provisions of 10 C.F.R. § 710.8(l) (Criterion L). *Id.*

In February 2012, the individual requested a hearing (hereinafter “the hearing”) to respond to the concerns raised in the Notification Letter. DOE Ex. 2. On March 9, 2012, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter, I received testimony from five witnesses. The individual, who was represented by counsel, testified and presented the testimony of his wife, a neighbor/co-worker, a military co-worker, and his current bankruptcy attorney.¹ Testimony at the hearing focused on the circumstances that contributed to the individual’s financial problems, and the efforts he has made to resolve his delinquent debts.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing 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). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his 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(d). This standard reflects a presumption against granting or restoring a security clearance. *See Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security test” for the granting of 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).

III. FINDINGS OF FACT AND ANALYSIS

A. The Individual Has Raised Security Concerns Involving Financial Irresponsibility

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 states that, in his 2009 LOI, the individual acknowledged responsibility for \$162,532 in delinquent debts and stated his intentions to settle all his delinquent debts and take charge of his bills. 2009 LOI, DOE Ex. 18. Despite his stated intentions, a credit report dated November 29, 2010, showed that he still owed \$162,807 in collection and charged off accounts. DOE Ex. 17. At his December 2010 PSI, the individual again stated his intentions to resolve his delinquent debts. However, at his November 2011 PSI, the individual admitted that since the December 2010 PSI, he had not taken any action to resolve his delinquent finances, and his October 2011 credit report (DOE Ex. 15) indicated a total of \$185,459 in collection accounts and charged off accounts. Based on these facts, the LSO

¹ The individual’s current bankruptcy attorney has extensive experience in chapter 7 and 13 bankruptcy. *See* Individual’s Exhibit B; Hearing Transcript (TR) at 36-37.

concludes that the individual has demonstrated financial irresponsibility including an established pattern of an unwillingness or inability to satisfy his debts. Enclosure 2, DOE Ex. 1.

The individual's failure to satisfy his debts and to 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.* Similarly, the individual's failure to file his 2010 tax returns in a timely manner, and his failure to correctly report and calculate his tax liability on his 2008 returns may indicate a lack of ability or willingness to comply with laws, rules and regulations in the future. See *Personnel Security Hearing*, Case No. TSO-0457 (2007).² Accordingly, I conclude that the allegations raised by the LSO raise valid concerns regarding the individual's eligibility for access authorization. The burden is with the individual to come forward with evidence to mitigate those concerns.

B. The Individual's Contentions at the Hearing

At the hearing, the individual contended that his overdue debt was incurred during a period prior to August 2009 when his wife was managing the family finances. He stated that his wife acted without his knowledge when she incurred extensive credit card debt, and when she failed to make payments on their home mortgage loan and their home equity line of credit. He stated that, as a result, their house was foreclosed in December 2009, and they were required to move to a rental property. He stated that he took complete control of the family finances in about August 2009, and that his family has lived within a budget and not incurred additional debt since that time. With regard to his existing overdue debt, he asserted that in 2010 and 2011, he and his wife consulted with bankruptcy attorneys but had difficulty agreeing on how to proceed. He stated that in 2012 they filed a petition for Chapter 7 bankruptcy which will resolve their existing debts.

I have carefully considered the record of this proceeding, including 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)³ and the Adjudicative Guidelines. As discussed below, I conclude that the individual's access authorization should not be restored at this time.

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>.

³ 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.

1. The Individual's Financial Problem Arose from Circumstances Outside his Control

The Adjudicative Guidelines indicate that security concerns relating to failure to meet financial obligations can be mitigated by showing that the conditions that resulted in the financial problem were largely beyond the person's control and that the individual acted responsibly under the circumstances. *See Adjudicative Guidelines*, Guideline F, ¶ 20(b). The individual asserted that he managed his finances in a responsible manner prior to his marriage in 2004. TR at 240. The individual's current bankruptcy attorney testified that she reviewed the individual's credit record for the last decade to verify that he was not a serial filer of chapter 7 bankruptcy petitions. She testified that the individual's earlier credit reports show his accounts as paid or "no balance" with available credit. TR at 126.

The individual testified that his wife took over management of the family finances when he had deployments with the military overseas in 2004 and 2005. He stated that on his return in 2005, he was counseled by the military that he should not disturb his spouse's household management by asserting authority over financial matters. TR at 243-246. He presented the testimony of a military co-worker who recalled that they received this counseling from the military. TR at 31. The individual testified that his wife assured him that she was managing their financial affairs responsibly. TR at 249. His wife testified that when she began to lose control of credit accounts in 2007, 2008 and 2009, and that she kept this information from her husband. She stated that she had the only key to the family's mailbox in their residential complex, and that she made certain that the individual never saw credit statements with overdue balances. TR at 182-186. The individual's neighbor/co-worker testified that she observed the individual's wife during this period engaged in apparent efforts to hide her purchases from the individual. TR at 25-26. The individual stated that it was not until the summer of 2009, when he accessed his credit report, that he discovered the overdue credit card, home equity loan, and mortgage debt. TR at 249-252.

Based on this testimony, I find that the individual's debts incurred in 2007, 2008 and 2009 were not attributable to the individual's poor self-control, lack of judgment concerning financial expenditures, or unwillingness to abide by rules and regulations regarding the payment of financial obligations. The evidence indicates that the individual reasonably relied on his wife's assurances that she was adequately managing the family's finances, and that this reliance was misplaced. As discussed further below, the individual has demonstrated that he can take control of his family's finances and manage their living expenses appropriately. He testified that he intends to remain in control of the family finances. Accordingly, I find that the individual has mitigated the concerns arising from his accumulation of overdue debt during the period from 2007 until 2009. However, the individual also must show that he has acted responsibly to resolve his financial problem.

2. The Individual Has Not Incurred Significant Additional Overdue Debt in the Last Two Years

The individual testified that following his discovery of his family's indebtedness in August 2009, his wife continued to make efforts to obtain a refinancing of the family's home mortgage. He

stated that these efforts ended in failure, and that he was shocked when he arrived home in December 2009 to find an eviction notice placed on his front door. TR at 253, 265. His wife confirmed this account, stating that she reassured the individual that she was working on refinancing the mortgage. TR at 187. The individual testified that following his family's move to a rental property in January 2010, he has exercised complete control over his family's finances. He testified that no one in his family currently is using credit cards, and that he is insistent that his family follow the advice of their bankruptcy attorney and live frugally. His bankruptcy attorney testified that the family has adopted a lower cost telephone plan, and has curtailed some expensive educational programs for their children. TR at 163. The current income and current expenditure schedules attached to the individual's Petition for Bankruptcy indicate that the individual's family income and expenses are evenly balanced at the present time. The individual testified that he is considering eliminating his older child's school tuition expenses by sending her to public school, but that this decision is difficult because his child has a learning disability. TR at 228-229.

The documentary evidence indicates that the individual and his family have not incurred significant additional indebtedness since January 2010.⁴ The individual's April 2012 credit report shows no new debts originating since January 2010. DOE Ex. 24. While the individual's overdue debt increased from \$162,807 reflected on his November 2010 credit report (DOE Ex. 17) to \$185,459 on his October 2011 credit report (DOE Ex. 15), the individual's bankruptcy attorney testified that this increase appeared to be attributable to additional fees attached to the old debts, and to double reporting of some of the credit card debt by both the original lender and the collection agency. TR at 63-64.

Based on the individual's explanations and evidence, I find that he has mitigated the concerns that his extensive indebtedness indicates that he cannot responsibly manage his family's finances. His financial record from January 2010 to the present indicates that, under his financial management, his family has acted responsibly to avoid incurring additional debt, is living within its means, and that the individual is open to additional measures to reduce his family's living expenses. I therefore conclude that the situation resulting in his substantial overdue indebtedness is "unlikely to recur in the future" and "does not cast doubt on [his] current reliability, trustworthiness, or good judgment." See *Adjudicative Guidelines*, Guideline F, ¶ 20.

3. The Individual Has Made Sporadic Efforts Since 2009 to Resolve His Extensive Overdue Debt

However, in order to mitigate the LSO's concerns, the individual must show that he is capable not only of responsibly managing his family's current finances, but also of resolving his substantial overdue indebtedness. As noted above, the Statement of Concerns asserts that the individual repeatedly assured the LSO in 2009, 2010 and 2011 that he was making efforts to resolve his indebtedness, while his credit reports indicated no progress towards this objective. At the hearing, the individual asserted that after he learned of his overdue debt, he contacted a

⁴ The individual's 2012 credit report indicates that two collection accounts were opened in 2011, one for \$422 and one for \$194. 2012 credit report at 1, DOE Ex. 24. The individual's bankruptcy attorney testified that the debts for these collection accounts could have been incurred up to four years prior to the collection account being opened. TR at 105-108.

financial counseling law firm to obtain advice on how to resolve his overdue debt, and was advised not to pay any of his charged-off debts if he intended to file for bankruptcy. TR at 286-287. In a post-hearing clarification, the individual's counsel stated that a letter from this firm indicates only that the individual and his wife met with an attorney from that firm on September 28, 2009. See April 27, 2012, letter from the financial counseling firm attached to individual's counsel's May 3, 2012, letter. According to his counsel, the individual and his wife are confident that they communicated with this attorney on several additional occasions following the initial consultation. The individual's counsel notes in his May 3, 2012, letter that, as late as December 2009, the individual assured the LSO that this attorney would soon file a petition for the reorganization of the individual's debt in chapter 13 bankruptcy. See May 3, 2012, letter at 2 *citing* individual's January 2010 QNSP at 21, DOE Ex. 19. The individual's wife testified that their former bankruptcy attorney seemed unsure as to whether they would qualify for either chapter 13 or chapter 7 bankruptcy. TR at 206. She stated that she and her husband finally decided not to proceed with that attorney because of the warnings he gave them about the financial strain that chapter 13 bankruptcy would place on them, and because they did not believe that they could afford the cost of filing the petition. She testified that they later realized that the individual had legal insurance through his employer that would cover the cost of filing for bankruptcy. After speaking with friends at his workplace, the individual first contacted their current bankruptcy attorney in late 2010. TR at 205-209.

The individual's bankruptcy attorney testified that she had several telephone conversations with the individual and his wife beginning in early 2011, and finally had a formal meeting with them in December 2011. TR at 41. She stated that initial consultations often take a year or more because couples have to evaluate all of the options and reach agreement on their approach. She testified that the individual was prepared to go forward, but that the individual's wife was opposed, so she suggested couple counseling to help them resolve their differences. She stated that over several months, the individual and his wife made good progress in reaching agreement concerning their present chapter 7 bankruptcy filing. TR at 42-44. She stated that having a joint petition was important because, in their state, creditors could seek to collect the debt from a non-filing spouse. TR at 40.

Based on this record, I find that while the individual has been engaged in efforts to resolve his indebtedness through most of the period from August 2009 to the present, he has been dilatory in committing himself to a course of action to resolve his debts. The individual admits that the resolution of his debts through bankruptcy has taken "longer than it should have" and "longer than necessary at some points." TR at 272. However, I also accept the current bankruptcy attorney's testimony that couples need time to evaluate options, and reach agreement on a financially viable resolution to their debt. Under these circumstances, I conclude that the individual's efforts over this period and his recent bankruptcy filing have mitigated the concern that his failure to take decisive action to resolve his overdue debts until early 2012 indicates a willful pattern of financial irresponsibility.

4. The Completion of the Individual's Bankruptcy Will Resolve his Overdue Debt

The individual asserts that the filing of his chapter 7 bankruptcy proceeding resolves the issue of his outstanding debt. The individual's bankruptcy attorney testified that she recommended that

the individual and his wife file a chapter 7 bankruptcy petition because she concluded that the individual's wages were not so high that he could fund a chapter 13 plan, and because the individual had had a second mortgage on his home that had not been discharged by the foreclosure. TR at 46-47. She stated that in January 2012, she filed a petition for a chapter 7 bankruptcy for the individual and his wife. She stated that after this filing, she had two weeks to provide all required documentation. TR at 100. She testified that although the individual was "pretty responsive" in providing this documentation, but that she was not absolutely certain of all of the dollar amounts, so she withdrew that petition. TR at 101. His bankruptcy attorney testified that a second fully documented petition was filed in April 2012 that is now pending before the court. She testified that the individual's creditors will be notified and have an opportunity to meet with the individual, his wife and the bankruptcy trustee. This meeting is followed by a statutory period where the creditors have an opportunity to object. Once that time period has expired, the court can discharge the debts. She stated that if there are no objections, the court could discharge the debts by mid-August 2012. TR at 101-103.

I find that completion of the chapter 7 bankruptcy will resolve the individual's substantial overdue debt and mitigate the concerns arising from his indebtedness. *See Adjudicative Guideline F*, ¶ 20(d). Resolving these debts is important in that it means the individual will not be, due to his financial situation, "subject to pressure, coercion, exploitation, or duress" which may cause the individual "to act contrary to the best interests of national security." 10 C.F.R. § 710.8(l). Moreover, the circumstances surrounding the individual's decision to file for bankruptcy protection in the present case compare favorably to the kind of abuse of the system demonstrated in other cases before this office. *See, e.g., Personnel Security Hearing*, Case No. VSO-0386 (2000) (credible testimony that the individual, after planning to file for bankruptcy, went on to accumulate significantly more debt in anticipation of having the additional debt eventually discharged). However, the court has not taken action to discharge the individual's debts, so I cannot find at this time that the concerns arising from the individual's substantial overdue debt have been resolved. The testimony of the individual's bankruptcy attorney indicates that the individual's creditors may submit objections to the court concerning the discharge of these debts.

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-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). However, in the present case, the individual has shown that the circumstances leading to his indebtedness were largely outside his control. Moreover, he has demonstrated two years of financial responsibility with regard to his management of his family's finances. Accordingly, I conclude that once the bankruptcy court has discharged the individual's overdue debts, the individual will have mitigated the LSO's Criterion L security concerns.

IV. 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 of 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 at this time. 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.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: June 11, 2012