

The Individual requested a hearing on this matter. At the hearing, the DOE counsel introduced 23 exhibits into the record (Exs. 1-23). The Individual presented his own testimony, as well as the testimony of three co-workers. *See* Transcript of Hearing, Case No. PSH-12-0021 (hereinafter cited as “Tr”). The Individual additionally submitted four exhibits (Exs. A-D) into the record.

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See* 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*).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id. See generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criterion L

1. Failure to File Tax Returns and Delinquent Accounts

The facts of this case are essentially undisputed. Tr. at 41-42, 54-56, 58-59, 67-70. During a 1989 PSI, the Individual confirmed that he had filed for bankruptcy in 1980. Ex. 22 at 39-41. Later, the Individual, in a September 1999 “letter of interrogatory” (LOI) reported that he had filed a Chapter 13 bankruptcy in January 1999. Ex. 16. In two other PSIs, conducted in 2006 and

2008, the LSO informed the Individual as to DOE's concerns regarding financial irresponsibility. The Individual assured the LSO interviewers that he would resolve various outstanding financial issues he was experiencing at the time of the PSIs. Ex. 21 at 134, 150-51; Ex. 20 at 48-49; Ex. 6 at 3

The Individual's 2011 credit report revealed that the Individual had nine credit accounts that had defaulted into collection accounts totaling \$22,392 as well as two credit accounts which had been charged off by the debt holders totaling \$1,968. Ex. 13. In a Questionnaire for National Security Positions (QNSP) completed by the Individual in October 2011, the Individual admitted that he owed the Internal Revenue Service (IRS) \$63,000 for delinquent federal income taxes for the years 2007 through 2010. Ex. 17 at 2.

During the 2012 PSI, the Individual confirmed the debts outlined in the October 2011 credit report and QNSP. Ex. 19 at 91-111, 116-18, 120-23, 130-32, 213-14. Additionally, the Individual revealed that he had two automobiles which were repossessed for failure to make the required payments on a credit balance of totaling \$17,031 for both automobiles. Ex. 19 at 143-47. The Individual also revealed that, as of the date of the 2011 PSI, he had not made any payments on his tax debt since August 2011. Ex. 19 at 119.

2. The Associated Security Concerns

Criterion L concerns circumstances tending to show that an 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). Unwillingness to abide by rules and regulations, such as the requirement to file income tax returns, can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Adjudicative Guidelines* Guideline F, ¶ 19(g); *Personnel Security Hearing*, Case No. TSO-1072 (October 17, 2011). Additionally, failure to honor debts may indicate a questionable judgment and reliability. *Adjudicative Guidelines* Guideline F, ¶ 18; *Personnel Security Hearing*, Case No. PSH-12-0010 (March 5, 2012). Given the information indicating that the Individual has a history of financial delinquencies and has failed to file federal tax income returns for a number of years, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

At the hearing, the Individual presented his own testimony and that of three co-workers to establish that he is now addressing his tax and financial problems and that he has consistently demonstrated good judgment and reliability. This testimony is summarized below.

The Individual attributed his 1980 bankruptcy to expenses from his then-wife's serious illness.² Tr. at 41, 44; *see* Ex. 21 at 6. The 1999 bankruptcy resulted from expenses arising from his

² In a 2006 PSI, the Individual stated that this bankruptcy was caused, in part, from expenses arising from the divorce of his then-wife and financial obligations, such as child support, that resulted from the divorce. Ex. 21 at 6-7.

daughter's illness and excessive purchases made by his wife and daughter. These debts caused the Individual to file his 1999 bankruptcy.³ Tr. at 42-43; *see* Ex. 21 at 8. As for his current indebtedness, the Individual noted that in 2005 he was beginning to experience financial difficulties. Tr. at 47, 67. This financial difficulty was aggravated by the Individual's intermittent financial support of a number of his family members - his daughter and her husband and children, the Individual's son and his children beginning in 2007. Tr. at 44-45, 49. As many as 10 family members have lived in the Individual's house at times from 2007 through 2009. Tr. at 45-46, 49. During this time, the Individual was also paying his daughter's medical expenses. Tr. at 47-49. Additionally, unknown to the Individual until recently, his wife was diverting money to pay for her gambling expenses.⁴ Tr. at 49, 63.

Because of the Individual's financial difficulties, including his daughter's medical expenses, the Individual cashed in his retirement plan savings, when offered the opportunity following a change of employment in 2008. Tr. at 47, 69. Because of the tax liability from the cashing-in of his retirement plan, the Individual incurred a large tax liability in 2008 which he was unable to pay.⁵ Tr. at 47, 69-71, 75-77. As for his failure to file his tax returns in 2007 and 2009, the Individual testified that he gave his wife money to pay the expected taxes for those years but she did not file the returns. Tr. at 69-70. The Individual delayed addressing the problem, in part, because of his realization that he could not pay the accumulated back taxes. Tr. at 71-72, 75. In April 2012, the Individual testified that he employed a firm to resolve his tax problems.⁶ Tr. at 50-52; Ex. A, B, C. The Individual has now filed tax returns for each of the years in question. Tr. at 69. With regard to his potential tax liability, the Individual believes that, with penalties, his liability might be as much as \$80,000. Tr. at 55. The firm representing him before the Internal Revenue Service (IRS) has informed him that it will negotiate a payment plan with the IRS to resolve his tax liability. Tr. at 57; Ex. C.

The Individual testified that, in May 2012, he employed another firm to negotiate with his current creditors. The firm is trying to resolve these debts by establishing a regular payment plan for his creditors. Tr. at 57, 60-62. The Individual did not try to seek professional help sooner because he attempted to work out his financial problems with his wife with professional counseling. Tr. at 64.

The co-workers testified as to the Individual's excellent work record and the fact that the Individual did not have any disciplinary actions taken against him as an employee. Tr. at 12, 26, 31. The co-workers also testified as to the Individual's good character. Tr. at 14, 25, 36. Further,

³ The Individual, in a 2006 PSI, stated that his 1999 bankruptcy also originated from his wife's and daughter's excessive spending. Ex. 21 at 8.

⁴ As of the time of the hearing, the Individual is in the process of divorcing his wife. Tr. at 62, 74; Ex. D.

⁵ The Individual also testified that he had requested his former employer withhold money for the retirement account to pay taxes. Tr. at 72. However, the Individual did not take into account his regular employment income and so he did not have sufficient funds to pay the tax liability. Tr. at 72.

⁶ In February 2012 the Individual contacted another firm to help him resolve his tax difficulties but eventually decided that he could not afford the firm's fees. Tr. at 74.

the co-workers believed that the Individual's judgment and reliability were excellent. Tr. at 14, 25, 35-36.

In deciding whether an individual has mitigated the security concerns associated with his financial issues and failure to file taxes, a Hearing Officer must consider all relevant factors having a bearing on an individual's fitness to obtain or retain a security clearance. *See* 10 C.F.R. § 710.7(c). According to the *Adjudicative Guidelines*, among the factors that may serve to mitigate security concerns raised by an individual's financial problems or his failure to file required tax returns, are that the conduct happened long ago or was infrequent; the financial problems were largely beyond the person's control and the individual acted responsibly under the circumstances; or that an individual has initiated a good faith effort to repay his or her outstanding creditors. *Adjudicative Guidelines*, Guideline F, ¶ 20; *see Personnel Security Hearing*, Case No. TSO-0971 (March 1, 2011) (individual filed tax returns once he received necessary information from bankruptcy trustee); *Personnel Security Hearing*, Case No. TSO-1072 (October 17, 2011).

I find, as mitigation, that the Individual has taken initial steps to resolve his financial problems with the employment of two firms to negotiate with his creditors and create a payment plan to resolve his debts and tax liability. Further, the testimony indicates that the Individual is a capable worker. Nonetheless, after examining all of the testimony and other evidence presented in this case I cannot find that the Individual has resolved the security concerns raised by his financial indebtedness and his failure to file tax returns.

At the hearing, the Individual has attributed many causes to his financial problems over the years – illness of family members, the need to support a significant number of family members, his wife and daughter's excessive spending and his wife's diversion of money for gambling. Nonetheless, I find that the Individual's failure to effectively monitor his finances for significant periods of time and his failure to take prompt measures to address financial concerns are key factors that have resulted in bankruptcies in 1980 and 1999 and his current financial difficulties. *See* Tr. at 75-76 (Individual's work hours and long commute prevented financial discussions with his family); Tr. at 70 (Individual failed to monitor incoming mail); Ex. 20 at 40, 43 (Individual admitting that in regard to financial matters, he should have been "more aware" and was "probably not paying attention as I should"). Despite his testimony that he knew about his family's current financial problems in 2005, the Individual did not undertake effective steps to address his financial problems until 2012. Tr. at 64. I also note that the Individual admitted at the hearing that he has at times assumed financial burdens when he was under financial stress and for which he had no legal responsibility to do so. Tr. at 92. The Individual's failure to balance his financial commitments with his own financial resources also contributes to the security concerns raised by his current financial situation.

The Individual's lack of judgment regarding financial issues is highlighted by the fact that the Individual was informed in two separate PSIs (conducted in 2006 and 2008) as to the DOE's concern with his financial indebtedness. Tr. at 80; Ex. 21 at 150-51; Ex. 20 at 48-49; Ex. 6 at 3. Despite commitments to resolve his financial situation made in the 2006 and 2008 PSIs, the Individual did not fulfill his intention to resolve his debts. Ex. 21 at 134.

These significant concerns have not been resolved by the Individual's very recent and preliminary attempts to address his financial problems. Further, the Individual has not demonstrated a recent period of successful financial management. Given the Individual's significant history of financial problems, his lack of a demonstrated period of successful financial management, and the preliminary stage of his attempts to resolve his debts, I cannot find that the security concerns raised by his indebtedness have been resolved.

I also find that the Individual has not resolved the security concern raised by his failure to file federal tax returns. The Individual has demonstrated several mitigating factors on his behalf – his employment of a firm to negotiate with the IRS, his attempts to establish a payment plan with the IRS, and his filing of the tax returns in question. However, even if I were to accept the Individual's assertion that his wife was responsible for failing to file several of the returns in question, the significant number of years where tax returns were not filed lead me to conclude that the Individual failed to exercise reasonable supervision as to his legal obligation to file federal tax returns. Further, the Individual exercised a significant lack of judgment in not addressing his 2008 tax liability immediately. The Individual has not yet begun a payment plan to pay off his back taxes and the exact amount of his tax liability has not yet been established. Given the factors outlined above, I cannot conclude that, as of the date of the hearing, the Individual has provided sufficient mitigation to resolve the concerns raised by the failure to file timely federal income tax returns from 2007 through 2010.

The record indicates that the Individual is a dedicated employee who performs his job responsibilities well. Nonetheless, the Individual has only recently begun to remedy his tax issues and to address his financial problems. Absent a longer period where the Individual demonstrates compliance with his federal tax and financial responsibilities, I cannot find, as of the date of the hearing, that the Criterion L concerns have been resolved. *See Personnel Security Hearing*, Case No. PSH-12-0044 (July 20, 2012) (despite individual's excellent work, individual's recent repeated failure to file tax returns and resolve his financial indebtedness requires non-restoration of clearance).

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve the concerns raised by the Criterion L derogatory information. Therefore, I cannot conclude that restoring the Individual's suspended access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: August 12, 2012