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

In the Matter of Personnel Security Hearing))	
Filing Date: January 5, 2012)	Case No.: PSH-12-0037
_____)	

Issued: July 19, 2012

Decision and Order

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXX (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 Individual’s access authorization should be restored.

I. Procedural History

The Individual is employed by a Department of Energy (DOE) contractor in a position that requires a DOE security clearance. Based upon the receipt of derogatory information relating to an unpaid debt, the Local Security Office (LSO) called the Individual in for a Personnel Security Interview (PSI). DOE Ex. 7. After the PSI, the LSO informed the Individual that unresolved derogatory information created a substantial doubt concerning his eligibility for access authorization. Notification Letter dated March 5, 2012; DOE Ex. 1; 10 C.F.R. § 710.8(l) (Criterion L).

The Notification Letter 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 access authorization. The Individual requested a hearing on this matter, and I was appointed 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 also be referred to in this Decision as a security clearance.

Hearing Officer. I conducted a hearing within the required regulatory time frame. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding. The Individual submitted 17 exhibits and presented the testimony of one witness, in addition to testifying himself.

II. Regulatory Standards

Under Part 710, certain types of information raise concerns about whether an individual is eligible for access authorization. In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, 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). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, both favorable and unfavorable. *Id.* § 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.” *Id.* § 710.27(a).

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).

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.” *Id.* § 710.27(d). “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) (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.”) 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).

III. Findings of Fact and Analysis

A. Criterion L Concern

Criterion L applies where an individual has engaged in conduct casting doubt on whether he is “honest, reliable, and trustworthy.” 10 C.F.R. § 710.8(l). The Adjudicative Guidelines list criteria under Personal Conduct that support a Part 710 Criterion L Concern. Adjudicative Guidelines ¶ 16(e) (personal conduct that creates a vulnerability to exploitation, manipulation, or duress). In addition, the Adjudicative Guidelines list criteria under Financial Considerations that also support a Criterion L Concern. Adjudicative Guidelines ¶ 19(a) (inability or unwillingness to satisfy debts). Financial issues raise a Criterion L concern because they can indicate an unwillingness to follow rules and also brings into question whether an individual is honest, reliable, and trustworthy in his financial dealings.

At the time of the Notification Letter, the Individual was a co-signer on a mortgage loan that was overdue. DOE Ex. 1 at 1. Accordingly, I find that the LSO properly raised a security concern under Criterion L.

B. Possible Mitigation of Criterion L Concerns

The Adjudicative Guidelines list a number of conditions that potentially mitigate the concerns raised under Criterion L regarding financial difficulties. The conditions are:

- (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 debts;

Adjudicative Guidelines ¶ 20 (b), (c), (d).

Security concerns arise in these types of cases where an individual has engaged in a pattern of financial irresponsibility. Even in cases involving bankruptcy, the security concern arises not from the bankruptcy filing *per se*, but rather from the circumstances surrounding a person's bankruptcy and his attendant financial problems. See *Personnel Security Hearing*, Case No. VSO-0509 (2002); *Personnel Security Hearing*, Case No. VSO-0414 (2001), *aff'd*, OSA, (2001).^{2/} Once a pattern of financial irresponsibility has been established, it is the individual's burden to demonstrate a new pattern of financial responsibility. In prior cases involving

^{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>.

financial irresponsibility, Hearings 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).

The Individual testified that he co-signed on a mortgage loan for his friend in 2007. He stated that he had previously co-signed for two relatives and did not have any difficulties, so he was not concerned about signing for his friend. Tr. at 54. The friend testified that the Individual had no property interest in her house. Tr. at 16-17. He did live with her and had paid rent for about 18 months when he first co-signed the loan, however. Tr. at 11. The Individual and his friend both testified that the friend was able to pay the monthly mortgage amount because she was renting her garage, which had been converted into an apartment, and other rooms in her house. Tr. at 12-13, 33, 56. They both testified that when the housing market in their area declined, the people living with her had to move out because they could no longer afford to pay rent. Tr. at 13, 33, 88. The friend’s daughter was the last one to move out in September 2010. Tr. at 32. The Individual testified that they refinanced the loan in 2009 for a lower monthly payment. Tr. at 60. However, without the income from the renters, even with the lower mortgage payment, the Individual’s friend was no longer able to pay the monthly mortgage amount. Tr. at 88.

The friend paid \$145,000 for the house in 2002. Tr. at 19, 95. She refinanced one time prior to 2007 and then for a third time since purchasing the house in 2007 with the Individual. Tr. at 27. In 2007, the loan amount was \$247,000. Tr. at 55. When the mortgage was refinanced in 2009 to lower the monthly payments because of a lower interest rate, the house was valued at over \$300,000. Tr. at 15. The Individual testified that after the 2007 refinance, they intended to refinance two years later, *i.e.*, in 2009, to lower the monthly payments because they could get a lower interest rate after having shown two years of on-time monthly payments. Tr. at 61. The decision to refinance in 2009 was prudent because it lowered the friend’s monthly payments. Tr. at 61. The real estate market had not yet declined, as shown by the \$300,000 value of the home at the time of the refinance. The current offer on the house is \$101,000. Ind. Ex. 17.

The Individual and his friend have attempted to rectify the situation with the mortgage. The friend testified that she contacted the bank in October 2010 about her inability to pay. Tr. at 24-25. She and the Individual have been attempting to work with both the bank and a real estate agent. Tr. at 37. The Individual presented evidence that the house has been on the market since February 2011. Tr. at 74; Ind. Ex. 5. In addition, he presented evidence that there has been an offer made on the house. Tr. at 81; Ind. Ex. 17. Both the Individual and his friend testified that they are presently waiting for the sale to be completed. Tr. at 37, 81. The Individual testified that he attended an event, sponsored by the state government, to give homeowners who are seriously overdue on their mortgages options for future action. Tr. at 78. He and his friend have completed an application required to be considered for a program sponsored by the state for homeowners hit hardest by the mortgage crisis, but they did not submit the paperwork because the realtor told them to wait due to the offer on the house. The realtor was concerned that submission of the application could complicate the sale. Tr. at 80-81.

In evaluating the facts in this case, I find no pattern of financial irresponsibility. Except for the overdue mortgage, there is no evidence of any other unpaid financial obligations on the Individual's record. DOE. Ex. 5; Ind. Ex. 15. The Individual has married since he co-signed the loan and his wife is aware of the situation. Tr. at 94. He has not attempted to hide the loan from his wife. Tr. at 94. On June 29, 2012, the Individual presented evidence that the short sale of the house has been approved by the lender. Ind. Ex. 17. The Individual stated that the closing should occur in July 2012. E-mail June 29, 2012, from Individual to Janet R. H. Fishman, Hearing Officer. At the time of the closing, he believes that he will receive notification that the debt is forgiven. Tr. at 84-86; *Id.*

I find that the Individual has mitigated the concern raised under Criterion L. The Individual has acted conscientiously in reaction to his friend's inability to pay the mortgage. He contacted the bank to determine the options available to them in regard to the loan. He attended an event and completed the application necessary to be considered for a program sponsored by the state for those hardest hit by the mortgage crisis. At this time, he is working with his friend and a realtor to complete a short sale of the home, which would result in forgiveness of the loan. I find that the Individual has acted responsibly under the circumstances. There are clear indications that the mortgage problem is being resolved by the sale of the house.³ In addition, the Individual has not tried to hide that he co-signed the loan. His wife is aware of the situation as is his employer. I find that his personal conduct in co-signing the loan for his friend shows him to be a helpful person, who believed he was doing something good for a friend in need. He did assume a great risk, but this conduct does not make him vulnerable to exploitation, manipulation, or duress. The fact that the Individual is a co-signer on a mortgage that is seriously overdue could not be used to blackmail him. The Notification Letter raised a concern regarding the Individual's statement that he did not intend to contact the lender or make any payments toward the debt. DOE Ex. 1. As to that concern, the Individual explained that at the time of the PSI, he believed he and his friend had done all they could to rectify the situation. At that time, he was waiting for the house to go into foreclosure. He was not unconcerned about the situation, as he showed by his attempts to correct the problem. Therefore, I find that the Individual has mitigated the Criterion L security concern.

IV. Conclusion

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised 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 presented sufficient information to resolve those concerns. Therefore, I conclude that restoring the Individual's 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(a). Consequently, it is my decision that the Individual's

^{3/} The Individual submitted a summary of the Mortgage Forgiveness Debt Relief Act of 2007, which indicates that the act offered relief to homeowners who would formerly owe taxes on forgiven mortgage debt after facing foreclosure. Ind. Ex. 11.

access authorization should be restored at this time. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: July 19, 2012