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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: April 24, 2012 )  
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Case No.: PSH-12-0042

Issued: July 31, 2012

**Hearing Officer Decision**

Steven L. Fine, Hearing Officer:

This decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the Individual") to maintain 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 be restored.

**I. BACKGROUND**

This case involves an Individual who failed to meet his financial obligations during the final years of his first marriage. The Individual reported the repossession of his motor vehicle and a home foreclosure to the Local Security Office (LSO) in 2008. The LSO subsequently conducted a series of three Personal Security Interviews (PSI) of the Individual, the most recent on February 1, 2012.

Unable to resolve the security concerns raised by the Individual's failure to resolve his financial issues, 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).<sup>1</sup>

<sup>1</sup> Specifically, the Notification Letter alleges that the Individual has:

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 April 25, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his ex-spouse, his current spouse, his friend/coworker, and an expert on Bankruptcy law. *See* Transcript of Hearing, Case No. PSH-12-0042 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8, and the Individual submitted 11 exhibits, marked as Exhibits A through K.

## **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.

## **III. FINDINGS OF FACT**

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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.

10 C.F. R. § 710.8(l)

The Individual experienced a discrete period of financial distress during the period beginning in 2006 and concluding in 2008. During the first years of their marriage, the Individual and his first wife were financially comfortable. The Individual was employed by a DOE contractor and his first wife was employed as a bank manager. In 2005, however, the couple purchased a new home, at a time very near to the crest of a real estate bubble. The couple used a mortgage to finance the purchase of this home. That mortgage had a very low fixed interest rate for the first year. After the first year, the interest rate became an adjustable rate mortgage, and the interest rate was set by market conditions. Shortly after purchasing a new home in 2005, the Individual left his employment with a DOE contractor to work for another DOE contractor for considerably less pay. Exhibit 6 at 48. The new employer offered benefits and a chance for upward mobility. Tr. at 89-90. In 2005, the Individual's first wife left her job in order to stay home with their newborn son. Tr. at 15; Exhibit 6 at 61. In 2006, the couple's mortgage reset and their payment increased by "\$1,200 or \$1,300" a month. Tr. at 13. Because of the drastic reversal of the real estate market, the couple found themselves unable to refinance their home. Moreover, they could not pay their mortgage by selling their home, because its value had declined too steeply. Exhibit 8 at 18.

In 2006, the Individual's truck was repossessed. According to the Individual, this was the first time that he became aware of his financial difficulties. Tr. at 95. The Individual testified that he had always entrusted his financial affairs to his first wife and assumed that she was managing them competently. Tr. at 90- 91, 97-99, 101-103. During his February 16, 2010, and February 1, 2012, PSIs, the Individual stated that his first wife had also opened a number of credit accounts, spent large sums of money, and had incurred substantial debt, all without his knowledge. Exhibit 6 at 10, 15, 62, 102; Exhibit 7 at 20, 34, 39, 40. The Individual's first wife testified that she managed the couple's financial affairs and concealed the true magnitude of the couple's financial problems from the Individual. Tr. at 16-21, 30-31. In July of 2008, the Individual and his first wife separated. Tr. at 144. Their divorce became final in 2010. At the time of the Individual's separation from his first wife in July 2008, the Individual and his wife had incurred over \$47,000 in unpaid debts.

The Individual has managed his own financial affairs since he separated from his first wife. In July 2008, the Individual created a series of computer spreadsheets to manage his finances. Exhibits B and C. He has used these spreadsheets to monitor his accounts receivable, his accounts payable and his current assets. Tr. at 108-110, 112. The Individual testified that he had not incurred any unpaid debts since he separated from his first wife, even though his income has undergone a significant reduction. Tr. at 110, 145. However, a significant portion of the unpaid debts incurred by the Individual and his first wife prior to their separation was not repaid. The Individual remarried in 2010, and he and his current wife are in constant communication about their finances. Tr. at 115.

On January 19, 2009, the Individual and his first wife retained an attorney (the Bankruptcy Attorney) with the understanding that he would file a Bankruptcy Petition on behalf of the Individual and his first wife that would discharge the debts that remained at the time of their separation. The Individual paid this attorney a total of \$1,300 to cover attorney fees and filing costs during November and December 2009. The Chapter 7 Bankruptcy Petition was not filed

until March 30, 2012. Exhibit A at 1. The Bankruptcy Court discharged the Individual's debts on July 9, 2012.

During PSIs conducted on April 21, 2008, and February 16, 2010, the Individual was asked about his future intentions concerning his unpaid debt. During the April 21, 2008, PSI, the Individual stated his intention to resolve these debts, either by repaying them, reaching a settlement with his creditors, or by declaring Bankruptcy. Exhibit 8 at 36, 51. The Individual further indicated his intention of resolving his debts. Exhibit 8 at 51. During the April 21, 2008, PSI, the Individual was warned that failure to resolve these debts could result in the loss of his clearance. Exhibit 8 at 42. During the February 16, 2010, PSI, the Individual stated that he had retained the Bankruptcy Attorney in order to obtain the discharge of his outstanding debts. Exhibit 7 at 14.

A credit report obtained by the LSO indicated that the Individual's local government had filed a tax lien against him in the amount of \$871. Exhibit 4 at 3. During the February 1, 2012, PSI, the Individual claimed that he was unaware of this tax lien.<sup>2</sup> Exhibit 6 at 31-38, 117-120. An attorney representing the Individual contacted the County Treasurer and Tax Collector. She was informed that it was unlikely that the Individual received notice of the original tax bill or of the subsequent tax lien. The original tax bill was delivered to the foreclosed property and was returned to the County Treasurer and Tax Collector's office. Exhibit I at ¶ 5. The County Treasurer and Tax Collector's office did not have a forwarding address to send the Individual his original tax bill or notice of the tax lien. *Id.* On June 18, 2012, the Individual paid the full amount due to the local County Treasurer and Tax Collector. Exhibit H.

#### **IV. ANALYSIS**

The record shows that the Individual has a history of failing to meet his financial obligations and has exercised poor judgment by overextending himself financially and by being inadequately proactive when faced with a dilatory legal representative. The 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

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<sup>2</sup> The Statement of Charges incorrectly identifies this lien as "a Federal tax filed in 2006." Statement of Charges at ¶ A.1.

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.

As the discussion above illustrates, several of the financial conditions that could raise security concerns identified by the Adjudicative Guidelines apply to the Individual. The Individual purchased an expensive new home and incurred a large mortgage, in the same time period that his spouse stopped working, and he accepted a position with a new employer resulting in a significantly lower income. While the Individual and his ex-wife have testified that he, like many spouses, let his then wife handle his family's financial affairs, when faced with important life altering financial decisions such as purchasing a new home, forgoing one spouse's income, and accepting a significant reduction in his income, the Individual should have made the effort to verify and understand his financial circumstances before making these decisions. However, his now ex-wife's conduct was a major factor contributing to his financial predicament. Once the Individual's financial affairs were separated from those of his first wife, he no longer incurred debts that he was unable to pay.

The Individual failed to fully resolve the unpaid debts incurred during his first marriage until July 9, 2012, when the Bankruptcy Court granted him a discharge. In most circumstances, OHA Hearing Officers find that a pattern of financial responsibility does not begin until an Individual's debts are discharged. However, special circumstances exist in the present case. Evidence submitted by the Individual shows that the attorney he retained to file a Bankruptcy Petition on his behalf was dilatory in his representation of the Individual. He waited over three years before filing the Individual's Bankruptcy Petition. The Individual's ex-wife testified that she repeatedly contacted the attorney's office attempting to expedite the filing of the Bankruptcy Petition. Tr. at 24-28. The Individual submitted Exhibit E, which is chronology of the ex-wife's contacts with the attorney's office in which she tried to expedite the filing of the Bankruptcy Petition. The Individual testified that he and his first wife met with employees of the Bankruptcy Attorney in hopes of expediting the process. Tr. at 117. The Individual also submitted the sworn affidavit of one of the attorneys representing him in the present proceeding. That Affidavit claims that the Bankruptcy Attorney stated that he delayed filing the Individual's Bankruptcy Petition because his "office was very busy during 2010-2011." Exhibit I at ¶ 11.

As for possible mitigating factors, I find that the Individual has met several of the conditions set forth at ¶ 20(a) of Guideline F.<sup>3</sup> The Individual's financial irresponsibility is limited to a discrete

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<sup>3</sup> 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;

set of circumstances only partially under his control. He is now debt free. Most importantly, by paying all of his debts in a timely manner since July 2008, when he separated from his ex-wife, the Individual has shown that he is able to manage his financial affairs in a manner consistent with the exercise of good judgment and therefore has established a four year pattern of financial responsibility.<sup>4</sup> The Individual testified that his present wife has educated him about financial matters. Tr. at 120. The Individual testified that he recognized that his previous “hands off approach” to his financial matters caused his past problems, and that he has learned from his mistake. *Id.* at 121-122.

The Individual has received a discharge of his debts by the Bankruptcy Court. Exhibit J. The discharge resolves the debts remaining from the Individual’s first marriage. The Individual’s demonstrated ability to avoid incurring any additional unpaid debts since July 2008, establishes a substantial pattern of acting in a financially responsible manner. Moreover, after receiving a discharge of his debts from the Bankruptcy Court, the Individual is now debt-free and is therefore no longer vulnerable to extortion or coercion.

Accordingly, I find that the security concerns raised by the Individual’s financial irresponsibility have been mitigated and are therefore resolved.

## V. CONCLUSION

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has resolved the security concerns raised under Criterion L. Therefore, the Individual has 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 be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

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(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;

(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.

<sup>4</sup> The Individual testified that he was advised to discontinue any payments to those creditors whose debts were to be discharged. Tr. at 111.