

LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented his own testimony and that of his wife. The LSO submitted 24 exhibits into the record; the individual tendered 11 exhibits.³

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting 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).

The individual must come forward with evidence to convince the DOE that restoring his 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 individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after

² Criterion L relates to information that a person 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. §710.8(l).

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's 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 am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

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 lists the individual's current delinquent debts, which total approximately \$19,000, and chronicles a pattern of unwillingness or inability to satisfy delinquent debts that dates back to 2005. The individual's failure to live within his means, 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.*

IV. Findings of Fact

In 2005, the LSO questioned the individual about his financial status. During a Personnel Security Interview (PSI), the individual explained that he had failed to surrender a car after the term of its lease expired; the vehicle was repossessed and auctioned and he owed the difference between its value and its auction price. Exhibit 24 (Transcript of May 10, 2005, Personnel Security Interview) at 38-40. He was delinquent on a number of bills, including his water, gas, electricity, and credit card accounts and medical and hospital bills. *Id.* at 17, 21, 23, 27, 30, 31, 33. He admitted that his family was overspending in relation to his income. *Id.* at 55. He maintained, however, that he now had taken control of the problem and intended to pay off his debts. *Id.* at 49, 57, 91.

In November 2009 the individual completed a Letter of Interrogatory for the LSO, in which he acknowledged six accounts in collection, many of them the same debts that he carried in 2005. Exhibit 17. He also committed to begin paying them in December 2009. *Id.*

A second PSI in 2010 revealed that the individual owed, and was slowly paying, property taxes on the family home and on mineral rights that produced monthly oil royalties. Exhibit 23 (Transcript of July 21, 2010, Personnel Security Interview) at 9, 18, 21, 27, 30. As in 2005, he had fallen behind on his monthly phone, electricity, and cable bills. *Id.* at 34-36. He stated that he intended to pay his debts, but expensive house and truck repairs had taken the money he would have used to pay those debts. *Id.* at 33, 76. He also stated that he had taken out payday loans, at exorbitant interest rates, on two

occasions to cover expenses. *Id.* at 59, 73. He recognized that he had grown to depend on his monthly oil royalty checks as income; though the checks were consistently for about \$2000 a month when he started receiving them in 2007 or 2008, they then dropped to about \$600 a month. *Id.* at 56-58. He further recognized that he needed to reduce his standard of living so that he and his family could live off his paychecks alone, without depending on oil revenue, since his current expenses exceeded his take-home pay by about \$1000 a month, not including debts he was not paying at all. *Id.* at 132-36. He committed to contacting all of his creditors, and to reducing some of his less necessary expenses, such as eating out and buying books. *Id.* at 69, 117, 123.

In February 2012, the LSO conducted a third PSI. Exhibit 22 (Transcript of February 14, 2012, Personnel Security Interview). The individual admitted that he still had not paid many of the debts that were outstanding in 2005, and was still delinquent on his property taxes. *Id.* at 57, 80. He explained that his young daughter developed diabetes late in 2010, which added unforeseen expenses and stress for his family. *Id.* at 13, 41, 64, 69. His wife needed to stay home to be available in case their daughter needed immediate attention; she had not, however, worked before the diagnosis, either. *Id.* at 21. He had not contacted many of his creditors, and with those that he did contact he did not follow up, because he was overwhelmed. *Id.* at 80, 90. For the same reason, he ignored bills and letters from collection agencies. *Id.* at 101-02.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and 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)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Testimonial Evidence

In their testimony, the individual and his wife focused on unforeseen expenses and their ability to live within their current income. As examples of unforeseen expenses, they pointed out, first and foremost, their daughter's recent diagnosis of diabetes. Although insurance covered most of the costs arising from treating this disease, including the bulk of a hospitalization and doctor visits, they have faced a co-pay (\$20) and gas for

⁴ 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.

transportation (\$40), for each of the nine visits to date, monthly medical costs (\$25-30), and the occasional meal on the road, if the child needs to eat while they are en route to or from the doctor. Transcript of Hearing (Tr.) at 33-34, 71. Because the daughter is nine years old, she needs fairly constant supervision to measure her blood sugar levels, which are extremely volatile. *Id.* at 12, 14, 18, 25. Consequently, the wife does not work outside the home; she maintains that any job she might qualify for would not be flexible enough to permit her to leave the workplace to respond to her daughter's needs. *Id.* at 16, 45. The wife identified as additional unforeseen expenses a brake repair on her vehicle, which she needs in case a child needs medical attention, and a school fee assessed to another of their children for damaging a computer. *Id.* at 58, 61-63.

The individual and his wife also testified that they can meet their current monthly expenses. *Id.* at 39-40, 52, 93. The individual has received a raise in salary, and his wife has recently started an online publishing house that they anticipate will bring additional income into the home. *Id.* at 47, 123-24. He estimates that his current monthly household expenses are \$4884, and his monthly income is \$5630, including \$2200 in oil royalties. Exhibit E; Tr. at 73-74. When questioned about the availability of the estimated \$750 of surplus income, the individual conceded that the estimates must not be accurate, because they continue to live from "paycheck to paycheck." Tr. at 104-05. To demonstrate that he can become solvent at any time, the individual testified that a number of people have offered to purchase his mineral rights outright for between \$45,000 and \$88,000. *Id.* at 76. In addition, he recently received a mail offer to loan him up to 25 times his monthly royalty amount. Exhibit H; Tr. at 77, 81-83.

The individual testified that, while he intends to repay all of his debts, he is taking care of his family first, and then addressing the debts. *Id.* at 107, 109, 136. His wife conceded, however, that they cannot address their old debts at this time. *Id.* at 67-68, 93. The individual has now contacted the creditors and explained his situation. *Id.* at 135. He made one payment of \$120 to satisfy two doctors' bills shortly before the hearing. Exhibit J. The individual pointed out that no drugs, alcohol, or gambling were involved in the creation of the old debts, they have not incurred any new debt in the past two to three years, and they do not intend to amass new debt. *Id.* at 109, 140-42.

The individual's wife testified that they develop budgets to account for their household expenses. *Id.* at 37. On further questioning, the wife explained that they look ahead two to three paychecks and decide which bills will be paid from which paycheck (and anticipated royalty check). *Id.* at 38, 145. They attempt to set aside some money for paying off debts, but that money often gets used for "the extra things that come up, like getting the brakes fixed." *Id.* at 39. Money is set aside for emergencies only to the extent there is any available after earmarking the income for paying current expenses. *Id.* at 40, 45. As of the hearing, the emergency fund contained between \$60 and \$100. *Id.* at 93. As a result, the individual and his wife remain delinquent on their property taxes, and still face most of the debts that concerned the LSO in 2005. *Id.* at 116-34, 147.

B. Hearing Officer Evaluation of Evidence

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the individual is living beyond his means. While I fully recognize that he and his family are not enjoying a lavish lifestyle, the fact remains that their estimated expenses far exceed his earned income. Consequently, he must rely on his oil royalty income to meet his expenses, and that income varies greatly from month to month. Moreover, even when the royalty income is substantial, the individual has been unable to make substantial inroads into his existing debt. While he has consistently stated his intention to pay off these debts, he has been unable to act on that intention until recently, and then only to a very limited extent. I cannot mitigate the security concerns at issue here under Guideline F at ¶ 20(a), which addresses behavior that occurred long ago or very infrequently, because the behavior is current and has been ongoing for at least seven years, and I cannot find at this point that the financial problems will not occur again.

Second, though the individual and his wife convincingly testified that they face unexpected medical difficulties dealing with a young daughter's diabetes, the financial consequences of her condition are relatively limited, as much of the associated expense is covered by insurance. There is no evidence that their child's diabetes caused, or even significantly contributed to, the individual's financial problems. To the contrary, the unpaid debts existed before her diagnosis in 2010, the wife did not earn income before then, and they have managed not to create any new debt since then. As for other situations that they consider to be unexpected, such as major vehicle repair, I do not agree; such circumstances occur and are not unforeseeable. Based on these findings, I cannot mitigate the individual's financial issues under Guideline F at ¶ 20(b), *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control.

Third, though the individual has received some advice regarding his finances, Tr. at 94-95, he continues to face routine monthly expenses and unbudgeted expenses, such as home and vehicle repairs, that exhaust his current income, leaving him with no resources to address outstanding debt or to set aside for emergencies. Based on the record before me, I cannot find for purposes of Guideline F at ¶ 20(c) that there are clear indications that the financial problem is under control. The individual has not convinced me that he will be able to maintain the financial discipline to reduce his expenses to fall in line with his reliable income, which consists of his salary alone.

To his credit, I find that the individual's recent payment of \$120 to resolve two outstanding doctors' bills is evidence of his good-faith effort to repay overdue creditors. Guideline F at ¶ 20(d). The recency and limited amount of this repayment, however, in comparison to the age and size of his debt, limit the weight of this mitigating evidence.

While I found the testimony of the individual and his wife credible that they intend to repay the outstanding debts they have accumulated, I am concerned that the individual has made similar representations to the LSO on four other occasions in the past and has not had the resolve or discipline to monitor his finances. Moreover, I am not convinced that the individual's good intentions will be sustainable in the long term. His recent payment of two old doctors' bills, though laudable, does not demonstrate a pattern of

behavior nor his ability to continue paying off his debts. In his testimony, the individual emphasized that he is not unwilling, but merely unable, to address his debts. Tr. at 136. He stated that “[T]hings are looking up. Things are getting better.” *Id.* at 111. Despite his optimism, his financial condition will improve only if (a) his income from oil royalties remains consistently high, (b) his wife’s recent business venture begins to earn income, and (c) no emergencies requiring financial expenditures arise, because they have no savings. Despite their planning for distribution of income from paychecks and royalty income, the individual and his wife have no long-range budgets or financial plans in place that address repayment of their outstanding debts. Although the individual contended at the hearing that he does not face financial difficulties, because he is meeting his monthly expenses, *id.* at 135, I believe that he does, for the reasons stated above.

I am further concerned about the poor judgment the individual demonstrated when he took out payday loans. Although he was well aware of the egregiously unfavorable terms of the first loan, he nevertheless took a second one. He acknowledges that these two loans have contributed to his present financial straits; one was for \$3000, on which he pays \$700 per month in interest charges. *Id.* at 69. Nevertheless, at the hearing he offered as a possible solution a loan based on his royalty income. When questioned about that loan offering, the individual was unable to describe any terms of that offer or provide any assurance that such a loan would be any more advantageous than his payday loans. *Id.* at 149-51. I remain concerned about the individual’s judgment regarding future financial decisions.

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. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). At this point, it is simply too early for me to find that the individual has demonstrated a sustained pattern of financial responsibility for a significant period of time relative to his lengthy past period of financial irresponsibility.

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion L.

C. 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 associated with Criterion L. 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.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: August 9, 2012