



show that he is not honest, reliable or trustworthy under the provisions of 10 C.F.R. § 710.8(l) (Criterion L). Enclosure 2, DOE Ex. 1.

In September 2011, the individual requested a hearing (hereinafter “the hearing”) to respond to the concerns raised in the Notification Letter. DOE Ex. 2. On September 21, 2011, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter, the individual testified concerning the circumstances that contributed to his financial problems, and the efforts he has made to resolve his tax issues and 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 (9<sup>th</sup> 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 Failure to Comply with Tax Laws and 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 the individual admitted at his July 2011 PSI that he had not yet filed his 2010 federal income tax return because he could not afford to file them, and that he had not requested an extension of time from the Internal Revenue Service (IRS). It also finds that at the 2011 PSI, the individual admitted to owing \$4,000 in additional taxes to the IRS for tax year 2009 and \$4,000 in additional taxes to his state government for tax year 2009. Enclosure 2, DOE Ex. 1. In his request for a hearing, the individual acknowledged the validity of these concerns, and offered two factual corrections. He stated that at the 2011 PSI he mis-stated the year, and that the IRS and his state identified additional tax liability for tax year 2008 rather than tax year 2009. He also stated that the IRS found new tax liability in the amount of \$4,060 in tax year 2008, but that his state government has not yet assessed his additional liability. DOE Exhibit 2. I accept these factual clarifications provided by the individual.

In addition to his tax issues, the LSO finds that despite certifying his intention in July 2008 to fulfill all of his financial obligations and to pay off his overdue accounts, the individual has not done so. Specifically, it finds that the individual's wages currently are being garnished by a creditor for the amount of \$7,172, and his January 2010 credit report reflects an additional \$7,866 in overdue debt. Enclosure 2, DOE Ex. 1. In his request for a hearing, the individual acknowledged the validity of these concerns. DOE Ex. 2 at 2.

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).<sup>1</sup> 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 failure to file his 2010 income tax return in a timely manner was the result of his misunderstanding of tax requirements, and that he filed that return shortly after his 2011 PSI. He stated that the additional taxable income identified by the IRS on his 2008 return resulted from his ex-wife's failure to report the cancellation of a debt as income, and that the IRS is no longer assessing additional tax liability for this cancelled debt. With respect to his personal financial problems, he contends that he has lived frugally in recent years and that his current indebtedness is the result of the failure of his ex-wife's business in 2007 and his divorce in 2010. He stated that he is continuing to pay off his overdue debts, and expects to have additional income for that purpose in 2012.

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)<sup>2</sup> and the Adjudicative Guidelines. As discussed below, I conclude that the individual's access authorization should not be restored at this time.

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<sup>1</sup> 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>.

<sup>2</sup> 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

## 1. The Individual's Explanations Concerning his Tax Problems

The individual testified that he and his wife incurred substantial debt due to the failure of his wife's home-based business in 2007. He stated that in 2008, one of their creditors agreed to cancel \$15,357 of debt, and his wife failed to report the cancelled debt as income when she filed their joint income tax return. The individual stated that he was not aware of the tax consequences of the debt cancellation, and that his wife prepared their tax returns. He stated that in August 2010, the IRS wrote to them and stated that it proposed to count the cancelled debt amount as income and to raise their 2008 tax liability by \$4,060. TR at 11-14. *See* Individual's November 14, 2011, submission at 3-16 (IRS' August 16, 2010 Notice of Proposed Changes for Tax Year 2008). The individual stated that he and his wife contested the additional tax liability and provided information to the IRS that they were insolvent in 2008 in the amount of \$45,889. TR at 15-18. *See* Individual's November 14, 2011, submission at 64 (2008 Tax Insolvency Figures). He reported at the hearing that the IRS had not yet issued a ruling on the issue. TR at 18. *See* Individual's November 14, 2011, submission at 17-18 (August 29, 2011 IRS letter stating that it had not resolved the matter of his 2008 tax liability because it had not completed "all the processing necessary for a complete response").

Following the hearing, the individual's ex-wife informed him by e-mail that in a November 16, 2011, telephone conversation, an IRS representative informed her that the 2008 insolvency information that they had submitted to the IRS had been accepted, and that the IRS would not require that the cancelled debt be added as income for 2008. *See* Individual's November 30 2011, submission at 4 (November 18, 2011, e-mail from individual's ex-wife). *See also Id.* at 2 (November 10, 2011, IRS letter to the individual and his ex-wife stating that their total underreported income for tax year 2008 is \$0.0). This ruling by the IRS also resolves any issue of underreported income on the individual's 2008 state tax return. TR at 30-31.

With regard to the late filing of his 2010 tax return, the individual explained at the hearing that he did not purposefully violate IRS tax rules. He testified that he believed that he would receive a tax refund for 2010, and that therefore he did not have to file his 2010 tax return by April 15, 2011 or request an extension of time from the IRS. TR at 43-44, 47. The individual stated that he delayed filing his tax return because he thought that filing tax forms would "complicate things further down the road" when the IRS ruled on the 2008 tax liability issues. He also stated that because his on-line tax filing program cost more than \$50, he wanted to avoid multiple filings for the 2010 tax year. TR at 44-48. The individual testified that when he was informed at the July 2011 PSI that his delay in filing his 2010 federal and state tax returns was a violation of tax law, he filed his federal and state tax returns within a week. TR at 31, 46. He further stated that he had not yet received his 2010 federal tax refund of \$497 because of the unresolved 2008 tax liability issues. *See* Individual's November 30, 2011, submission at 5 (IRS Refund Status Results).

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pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

Based on the individual's explanations and evidence, I find that he has mitigated the concerns arising from his 2008 tax issues and his late filing of tax returns in 2010. The individual's 2008 tax issue involved potential unreported income arising from the cancellation of debt. I find that the individual's explanations resolve the concern that he intentionally failed to report taxable income, and the recent ruling in the individual's favor by the IRS also supports this finding. The individual's failure to file timely 2010 income tax returns or to seek filing extensions is troubling, but I accept the individual's explanation that he did not purposefully violate tax rules, and that his decision to delay filing his returns arose from unusual circumstances involving his unresolved 2008 tax issues. His prompt filing of the returns when he was informed of his violation at the 2011 PSI convinces me that he is unlikely to repeat this violation. I therefore conclude that it 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.

## 2. The Individual's Explanations Concerning his Financial Difficulties and his Efforts to Manage his Finances

At the hearing, the individual stated that he has made substantial progress in reducing his overdue debt since 2008, despite his 2010 divorce that required legal payments, child support payments, and the expenses of establishing a separate household. He stated that from 2008 until the present, he has reduced his insolvency from \$46,000 to \$9,900. However, three of his four remaining debts originated in 2008, and two of them arose from purchases of a new automobile and a very, expensive vacuum cleaner that appear unwise in light of his insolvency. The third was a high interest loan used to make a payment to a credit counseling agency. TR at 61-65. None of the individual's current overdue debt originated after 2008. *See* Individual's November 14, 2011, submission at 47-64 (Individual's November 10, 2011, credit report).

The individual testified that, aside from a wage garnishment, he is not paying down his remaining overdue debts because his creditors want larger payments than he can currently afford. TR at 56. He asserted that he expects to have more income to pay off these debts in 2012, when his current wage garnishment ends, and when he anticipates that his court ordered child support payments will decrease. TR at 50-52, 68.

The individual testified that a creditor is garnishing his wages by \$300 a month, and that the garnishment will end in about seven months. TR at 68. He stated that the garnishment arose from a personal loan for about \$5,000 that he took out in January 2005 to pay for Christmas expenses. TR at 76. He stated that in about 2008, he and his wife attempted to consolidate their debts with a credit counseling agency, and stopped making payments to this creditor. TR at 78. He stated that the attorney for the creditor then obtained a court ordered wage garnishment. TR at 78-79.

The individual stated that his ex-wife, who is in school, has substantially increased her part-time income, so he has petitioned the court to reduce his monthly child support payment from \$1,589 to about \$1,000. He testified that when she graduates in 2012, her income should increase further, and that eventually they will share child care expenses equally. TR at 68-71.

The individual stated that he has lived frugally since his 2010 divorce. He testified that he purchased a used car in December 2010 for \$1,700 cash that he earned working overtime. TR at 84. His monthly budget indicates that his rent is \$740. However, with his wages reduced by the garnishment, and with monthly child support payments of \$1589, he currently has only \$61 a month available for paying off overdue debts to four creditors totaling \$9,933. TR at 59. *See* Individual's November 14, 2011, submission at 2 (Individual's Monthly Budget) and 47 (Individual's November 10, 2011, credit report).

In considering this evidence in light of the Adjudicative Guidelines, I find that the individual's financial problems involved purchases, *i.e.*, Christmas gifts, a new car, an expensive vacuum cleaner, and a high interest loan, that were voluntary in nature, and that in at least three instances appeared to be unwise in light of his financial condition. Although the individual's 2010 divorce created additional financial strain, it cannot be viewed as the cause of his indebtedness. Under these circumstances, I cannot conclude that his financial problems are mitigated under Guideline F at ¶ 20 (b), *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control.

With regard to the individual's current efforts, I find that since 2008, the individual has successfully avoided new debt, and that since his 2010 divorce, he has lived frugally and exercised good judgment concerning his living expenses. I am convinced that the individual now fully understands the importance that the DOE places on financial responsibility as a basis for holding an access authorization, and that he has begun to demonstrate personal financial responsibility. However, I find that the individual has been unable to voluntarily reduce his outstanding debt in recent months, and I am not convinced that he will be able to discharge his remaining overdue debt in a timely manner. The individual admits that he currently does not have the financial resources to make any payments to his four remaining creditors due to his wage garnishment and his child support payments. While he expects to have some additional income in the second half of 2012 when the garnishment ends, that additional \$300 per month may not be sufficient to pay off his creditors at a rate that will avoid additional legal problems. His expectation that he can reduce his child support payments in 2012 appears speculative, as it is dependent on court action and the anticipated increased earnings by his wife when she finishes school.

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-01078 (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). At this point, it is too early for me to find that the individual has demonstrated that his financial problem is under control and that he can maintain responsible financial practices. Accordingly, based on the foregoing, I find that the individual has not yet mitigated the security concerns associated with Criterion L.

#### 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 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: January 11, 2012