



In June 2012, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the 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). <sup>1/</sup>

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented the testimony of two witnesses, his supervisor and his wife. He also testified on his own behalf. The DOE counsel did not present any witnesses. The DOE and the individual submitted a number of written exhibits prior to the hearing.

## **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 denial"); *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).

The individual must come forward at the hearing 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2/</sup> Criterion L relates, in relevant part, 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).

## **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 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 in favor of the national security. *Id.*

## **III. Findings of Fact**

The individual does not dispute that he has experienced financial difficulties dating back to 2000. On July 19, 2011, the individual's employer notified the LSO that the individual's wages were being garnished by the IRS to satisfy a debt relating to the individual's tax liability for the 2007 tax year. DOE Exh.1. The amount due as noted by the IRS was \$30,699.59. *Id.* In response to a LOI in August 2011, the individual asserted that his wife, who was self-employed at the time, had not paid her quarterly taxes and that he incorrectly believed that she had set up a payment plan with the IRS. *Id.* He further revealed that he and his wife owed about \$80,000 for tax years 2007, 2008, 2009 and 2010 (the years his wife had her own business) and that he anticipated filing a Chapter 13 Bankruptcy. *Id.* The individual acknowledged that because his wife "has always taken care of the bills," he did not pay close attention to what was paid. *Id.*

On September 14, 2011, the individual provided additional information to the LSO revealing that he received a Notice of Federal Tax Lien on August 30, 2011. He also provided a copy of his IRS payment history from January 2007 to November 2009 showing no payments since November 26, 2009, a copy of his 1040 A for the 2010 tax year that listed a tax amount due of \$13,732 and a letter from the IRS dated June 11, 2010, rejecting the individual's installment agreement because he refused to comply the requirement to make estimated tax payments. The individual acknowledged that these tax issues arose as a result of his wife's business and not making quarterly tax payments.

In addition, the individual provided the LSO with a Personal Financial Statement (PFS) indicating a net monthly income of \$6,548 and a net monthly remainder of negative \$1,471. *Id.*

In his response to a March 2012 LOI, the individual further acknowledged that he and his wife "were living paycheck to paycheck." He indicated that there were various events that led to his financial issues, including spending a great deal of money on dining out and entertainment. *Id.* Finally, on October 21, 2011, the individual filed a Chapter 13 Bankruptcy Petition. *Id.*

## **IV. Analysis**

I have thoroughly considered the record in 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). <sup>1/</sup> After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find 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). The specific findings that I make in support of this decision are discussed below.

**A. Derogatory Information and Associated Security Concerns**

As previously noted, the LSO cites one potentially disqualifying criterion as the basis for suspending the individual's security clearance, Criterion L.

To support its reliance on Criterion L, the LSO states that the individual has established a pattern of financial irresponsibility and has demonstrated an unwillingness or inability to satisfy his debts. The LSO cites the individual's wage garnishment, tax liens, as well as a number of instances of financially irresponsible behavior. The individual's failure or inability 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 which also call into question the individual's reliability, trustworthiness and ability to protect classified information. *See* Guideline F of the *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).

**B. Mitigating Evidence**

During the hearing, the individual acknowledged his pattern of financial irresponsibility and failure to meet his financial obligations. He testified that although family financial decisions were made jointly by him and his wife, he was negligent in not following up with delinquencies. Transcript of Hearing (Tr.) at 89. He also admitted that although he was aware of several tax liens brought against him prior to 2007, which he eventually paid, he did not change his poor financial habits or his approach to spending. *Id.* at 88 and 91. The individual admitted that he and his wife had a practice of holding off on paying their taxes until they became due, but that in 2007 they did not have the money to pay taxes at the end of the year. *Id.* at 111. He testified that he pulled money from both investment and retirement accounts to attempt to pay bills and taxes.

He acknowledged that around 2010, his annual income was between \$75,000 and \$80,000 and his wife's annual income, prior to 2010, was around \$100,000. *Id.* at 104. However, despite

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<sup>3/</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding her conduct, to include knowledgeable participation, the frequency and recency of her conduct, the age and maturity at the time of the conduct, the voluntariness of her participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for her conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

their incomes, their extravagant lifestyle did not allow them to have enough money to pay their bills and taxes. The individual testified that, at one point, he and his wife spent \$1,000 a month dining out. He admitted that they were “lazy.” *Id.* He further testified that he and his wife no longer had the tax write-offs they had in the past, which also contributed to their tax delinquencies. He reiterated that he led a lifestyle he could not afford anymore, explaining that he opened second and third mortgages to consolidate credit cards and to pay taxes.

During the hearing, the individual acknowledged that his Chapter 13 Bankruptcy Petition was dismissed because he and his wife failed to adhere to the terms of the Chapter 13 payment plan. DOE Exh. 17. Specifically, he testified that as of July 24, 2012, he was approximately three months (\$12,242) behind in bankruptcy payments. The individual explained that when the Chapter 13 payments were calculated, his wife was working a lot of overtime and when the payments became due his wife was no longer working the overtime and thus they were making substantially less money. *Id.* at 135. The individual testified that going forward he and his wife plan to live within their means and are now on the “right track” financially, stating that he no longer has as many expenses. He did, however, acknowledge that he and his wife are still slightly behind on mortgage payments and that his current tax liability is about \$60,000. The individual testified that he and his wife are also planning to file for a Chapter 7 or Chapter 13 bankruptcy. *Id.* at 134. He stated that he would rather file a Chapter 13 bankruptcy so that all debt, not just tax delinquencies, get addressed. *Id.* at 131.

### **C. Hearing Officer Evaluation of Evidence**

In considering the evidence before me, I looked to the Adjudicative Guidelines. First, because the individual’s financial problems happened recently and repeatedly, I cannot mitigate the individual’s financial issues under Guideline F at ¶ 20 (a), *i.e.* 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.

Second, I cannot mitigate the security concerns at issue here under Guideline F at ¶ 20(b) because the conditions that resulted in the individual’s financial problems were not largely beyond his control. While the individual asserted during the hearing that his wife’s business contributed to their tax issues, he admitted that they were also living a lifestyle beyond their means and were negligent in the handling of their finances.

Third, while the individual stated that he is using a new accountant and has retained a bankruptcy attorney, I cannot find for purposes of Guideline F at ¶ 20(c) that there are clear indications that the individual’s financial problem is under control. As of the date of the hearing, the individual has not yet re-filed for Chapter 13 Bankruptcy. Moreover, because he previously failed to adhere to the payment plan established in his first Chapter 13 Bankruptcy, I have no confidence that he will be able to maintain whatever Chapter 13 payments might be established in any new bankruptcy filing. I also cannot find that the individual has made a good-faith effort to repay overdue creditors or otherwise resolve debt. Finally, the individual does not have a reasonable basis to dispute the legitimacy of the past-due debt which is the cause

of the problem. Therefore, I am unable to mitigate the security concerns at issue under Guideline F at ¶ 20(d) and (e).

Although, it is a positive factor that the individual has begun to address his financial problems, 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). Here, 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. Although the individual maintains that he has adjusted his lifestyle and is now living within his means, he only recently began to address his financial issues. While he claims he will be filing another bankruptcy petition, he still owes \$60,000 in back taxes and has other outstanding debt. The individual’s period of reformation has not yet begun. Based on the foregoing, I find that the individual has not yet mitigated the security concerns associated with Criterion L.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in 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 find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criterion L. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find 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.

Kimberly Jenkins-Chapman  
Hearing Officer  
Office of Hearings and Appeals

Date: November 21, 1012