

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of Personnel Security Hearing)

Filing Date: March 8, 2016)

Case No.: PSH-16-0014

Issued: August 19, 2016

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXX XX XXXX. (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and 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), I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is a DOE employee who works in a position that requires that he hold a DOE security clearance. Responding to a Letter of Interrogatory, the individual revealed to the local security office (LSO) that he was experiencing financial difficulties. Exploring this concern in Personnel Security Interviews (PSIs) conducted in October 2014 and April 2015, the LSO learned that the individual had been supporting people unrelated to him since 2001, and had given away nearly \$600,000 to them. Providing this assistance, as well as being the victim of at least two on-line loan scams, contributed significantly to the individual’s inability to keep current with his own family’s expenses. He ultimately filed for bankruptcy.

On December 28, 2015, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the attachment to the Notification Letter, the LSO explained that the

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

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

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of three witnesses—his supervisor, his counselor, and his financial coach—and testified on his own behalf. After hearing the testimony of the other witnesses, a DOE consultant psychologist testified on behalf of the DOE. In addition to the testimonial evidence, the LSO submitted 14 numbered exhibits into the record. The individual submitted 18 exhibits, which I have labeled Exhibits A-R. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or letter designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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 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.

B. Basis for the Administrative Judge’s Decision

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

² Criterion L concerns information that indicates that the individual has “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 . . . a pattern of financial irresponsibility. . . .” 10 C.F.R. § 710.8(l).

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 cited one criterion as the basis for administrative review of the individual's request for security clearance, Criterion L. It is well established that 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. Adjudicative Guidelines at Guideline F, ¶ 18.

In support of its security concerns under Criterion L, the LSO relied on the following information, all of which was provided by the individual:

- A. His financial problems caused him to file for bankruptcy in October 2014; his Chapter 13 bankruptcy plan was approved in March 2015, wherein he will pay his creditors 100 percent of his debt;
- B. He supported a friend of his step-son by providing him with a total of \$80,000 for rent, bail, and medical bills between 2001 and 2006;
- C. He supported the XX Family, whom he met tangentially while providing assistance to his step-son's friend, with a total of roughly \$500,000 since 2003; significant amounts of this total were payments for legal bills, insurance premiums, and medical bills for which he anticipated being reimbursed;
- D. He applied for two \$10,000 loans on-line, to help meet his financial shortage in 2014; he did not realize that the first one was a scam until he had paid out \$12,000, after which he applied for the second one, paying \$7,300 before realizing that it too was a scam;
- E. He was evaluated by a DOE consultant psychologist, who determined that he has a "self-defeating personality disorder," the characteristics of which are detrimental to his welfare but would not impair his ability to conform to rules, responsibilities, and regulations.

Ex. 4.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion L. I note that the cause of the individual's indebtedness is, from a humanistic point of view, more honorable than those we typically see in cases of financial irresponsibility—the desire, for whatever underlying reasons, to help others less fortunate. Nevertheless, from the perspective of national security, the concerns are the same: Does the individual willfully ignore laws and rules? Does his indebtedness make him vulnerable to engaging in illegal acts to generate funds? Does he employ poor judgment or self-control?

IV. Findings of Fact

A former Eagle Scout, the individual has helped people less fortunate than he all his life. When a friend of his step-son found himself addicted to drugs and homeless, the individual paid his rent and provided other financial support until the young man died. Ex. 9 at 7-8. When he learned that the XX Family, who were managing the motel where the young man was living, was also needy, he began to support them as well. *Id.* at 9. Over a period of five years, the individual gave the young man about \$80,000, and over a period of ten years, he gave the XX Family about \$500,000. Ex. 9 at 7-10; Ex. 10 at 9-10. The individual considered the money to be loans; both the young man and the father of the XX Family had applied for Social Security disability payments, and the individual hoped that when their respective applications were granted, they would reimburse the individual. Ex. 10 at 13; Ex. 9 at 9-10. He also gave the XX Family money so that they could continue to pay the monthly premiums on a life insurance policy for the father's mother, who lived in a nursing home and was expected to die shortly. Ex. 9 at 11. In addition, he has paid the daughter's legal fees and medical expenses that arose from a work-related accident in about 2011. Ex. 10 at 18-22. As recently as April 2015, the individual remained hopeful that he would receive sizeable payment on the grandmother's death and the settlement of the daughter's lawsuit. Ex. 10 at 29, 39-40. He has never received any remuneration from either the young man or the XX Family, and at the hearing stated that he no longer believes that he will. Tr. at 143. Despite the individual's relatively high salary and other forms of income, his generosity ultimately placed his own family in financial straits. *Id.* at 10. He applied for loans over the internet in 2014, and recognized that he was being scammed only after paying the loan company exorbitant fees and charges, in one instance in excess of the requested loan amount. Ex. 9 at 14-16.

Eventually, the individual realized that his debts exceeded his resources and, in April 2014, he sought counseling to address his desire to help others to his own detriment. Tr. at 18. Over time, the counselor, a licensed clinical social worker, grew to understand the extent of the individual's indebtedness and suggested bankruptcy as a means of addressing the problem. *Id.* at 21. In October 2014, the individual filed for a Chapter 13 bankruptcy, through which he is now repaying his creditors. Ex. 9 at 24-25.³

Through therapy, the individual gradually accepted that he had no responsibility to continue to assist the XX Family to whom he had already given half a million dollars, and that he was instead enabling them to remain dependent on others. Tr. at 19, 23. According to the counselor, he formally broke off contact with the family in March 2015. *Id.* at 22. Unbeknownst to his counselor or the bankruptcy trustee, however, the individual continued to provide support to the family, in reduced amounts, until February 2016. Ex. 10 at 17; Tr. at 54, 149. The counselor testified that she was surprised when she learned that the individual had not stopped giving money to the XX Family in March 2015, confronted him about it in a "fairly significant" session, and to her knowledge the behavior stopped. Tr. at 46-49. Her confidence in his reformed behavior stems from her good relationship with the individual and the high degree of openness and trust they have developed with each other. *Id.* at 32. For example, he self-reported the fact that he gave the XX Family more money in February 2016. *Id.* at 48. In her opinion, the likelihood of the individual having any further contact with the XX Family or giving them any

³ Payments to the bankruptcy trustee are deducted automatically from his biweekly DOE paycheck, leaving a net take-home pay of about \$30 per pay period. Additional family expenses are met through monthly retirement benefits paid to him and his wife. Tr. at 156.

additional money was very low, and his prognosis for sustaining his newly acquired behaviors in this regard was very high. *Id.* at 36.

Since March 2016, he has completed a nine-week course on financial health and has supplemented his knowledge with individual financial coaching that continues into the present, as does his counseling. *Id.* at 72-75. The coach testified that she works with the individual weekly, helping him develop, refine, and live within a budget and reinforcing good financial principles. *Id.* at 78, 95. The coach characterized the individual as a hard worker, invested in the process, diligently applying his new behaviors, and very willing to heed her advice. *Id.* at 79, 97-98.

A DOE consultant psychologist also testified at the hearing. The LSO referred the individual to the DOE psychologist, who evaluated him in March 2015. The DOE psychologist issued a report in which he stated that, in his opinion, the individual did not suffer from any illness or mental condition that might cause a significant defect in judgment or reliability. Ex. 12 at 13. He did, however, conclude that the individual displayed a personality pattern reflecting a syndrome known as “self-defeating personality disorder,” in which he overextends himself for others, to his own detriment. *Id.* at 9-12. At the evaluation, the individual failed “to demonstrate convincing insight” and did “not show resolve to amend his ways” regarding matters of his “personal self-care” which, the DOE psychologist noted, was a different “domain of concern” from his behavioral functioning pertaining to security awareness and maintenance of security safeguards. *Id.* at 12. On the other hand, the DOE psychologist observed that the individual is highly conscientious and responsible, and did not “demonstrate a defect in judgment or reliability with respect to conforming to rules, responsibilities, and regulations—which is the precise area of psychiatric/psychological concern in his case.” *Id.* at 12-13.

After hearing the testimony of the other witnesses and conferring with the counselor, the DOE psychologist testified that he was even more confident that his assessment of the individual was correct. Tr. at 175. In his opinion, the counseling the individual is now receiving is helping him rein in his old habits and replace them with new ones. *Id.* at 176. He observed that personality disorders are deep-seated and slow to respond to change; the individual still has underlying proclivities to self-defeat, but he is learning behaviors that keep him in check. *Id.* at 177. Moreover, his proclivities are more appropriately focused now, on his own family and himself, for whom he has true responsibility. *Id.* at 185. Nevertheless, the DOE psychologist observed that the individual’s destructive behavior stopped only recently, after February 2016. In addition, despite the counselor’s assertion that he had not exhibited self-defeating behavior while in counseling, in fact he had done so, by continuing to give money to the XX Family until recently, to the surprise of the counselor. *Id.* at 178-79.

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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s security clearance should not be restored at this time. 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.

The LSO concerns about the individual's eligibility to hold an access authorization center on his financial irresponsibility, which was fueled by a deep-seated personal need to help others less fortunate than himself. Helping those in need is an extremely favorable human quality, in my opinion. But helping others to such a degree that it sacrifices the financial stability of oneself and one's dependents raises a question about a person's judgment and ability to make responsible decisions, which may also affect his handling of classified material. Moreover, once a person is financially overextended, an additional security concern arises concerning his vulnerability to take actions in order to alleviate his financial position that are contrary to national security interests.

To his credit, the individual has taken steps to address the LSO's concerns. He has been engaged for more than two years in counseling that addresses his need to help others to his own detriment. As evidence of his progress, the individual stated at the hearing that he no longer provides any support to the XX Family and no longer holds any expectation of receiving reimbursement of any of the money he has given to them. The DOE psychologist testified that, in his opinion, the individual's treatment was appropriate, his symptoms are reduced, and the likelihood of future self-injurious financial behavior is likewise reduced. Tr. at 184-85. In addition, the individual has completed a nine-week course in financial literacy and is reinforcing what he has learned with ongoing one-on-one financial coaching.

Despite this education, however, the individual maintained at the hearing that his gifts of nearly \$600,000 did not contribute significantly to his financial difficulties; it was, he believes, the on-line loan scams that caused his problems. Tr. at 119-20. This position is unrealistic, given that he withdrew \$250,000 from his Individual Retirement Account about ten years ago, when he first started supporting the family, and later withdrew \$40,000 more from his Thrift Savings Plan Account. Ex. 10 at 6-8, 13. In addition, the counselor testified that the individual is completely open with her, and therefore trustworthy and reliable. Tr. at 32. The record, however, leads me to a different conclusion. The individual withheld from the counselor (as well as from the bankruptcy trustee) the fact that he was continuing to give money to the XX Family as recently as February 2016. That behavior is not evidence of openness, nor of fully recognizing and accepting, until just recently, important elements of his counseling—that he bears no responsibility for supporting the XX Family, and that his generosity is not helping them lead independent lives.

While I do not challenge that the individual has made substantial progress through both his counseling and his financial coaching, I concur with the DOE psychologist that he has "more work to do." *Id.* at 180. As of the date of the hearing, the individual had succeeded in reining in his impulse to support the XX Family for four months. When compared to a life-long practice of responding to calls for help—and often employing poor judgment in doing so, to the detriment of his and his family's financial well-being—this is a very short period of reformed behavior. Moreover, he appears to have not yet accepted the fact that giving away over one-half million dollars has had a negative impact on his own financial standing. I am therefore not convinced that the individual has yet adopted a new frame of mind that will allow him to control self-defeating, though honorable, behavior in the future.

I have reviewed the mitigating factors set forth in the Adjudicative Guidelines regarding financial irresponsibility. *See* Adjudicative Guidelines, Guideline F at ¶ 20. Of the conditions listed, only two apply to the facts of this case:

- (c) the person has received or is receiving counseling for the problem and/or there are clear indication 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.

Id. Although the individual is receiving counseling for the problem, I find that the counseling has not achieved sufficient success to indicate that the problem is under control at this time. Reaching this conclusion in no way belittles the serious effort and progress that the individual has achieved to date; it merely recognizes the difficulty of addressing and reforming the symptoms of a personality disorder. Finally, I acknowledge the efforts the individual has taken to repay his overdue creditors through bankruptcy. I cannot find, however, that these efforts mitigate the broader concern in this case: that the individual may employ poor judgment in the future, engaging in other self-defeating financial outlays that will again place his security clearance at risk. Accordingly, I find that the individual has not resolved the LSO's security concerns under Criterion L.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the individual's DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the individual's DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: August 19, 2016