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

In the Matter of:	Personnel Security Hearing ) )	Case No.: PSH-12-0075
Filing Date:	June 25, 2012 ) )	
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Issued : October 25, 2012  
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**Hearing Officer Decision**  
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Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored at this time.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In December 2011, the Local Security Office (LSO) became aware that the individual had been experiencing financial difficulties over a period of several years and, on April 13, 2012, the LSO conducted a personnel security interview (PSI) with him. *See* Exhibit 4.

In May 2012, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created substantial doubt regarding his

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<sup>1</sup> 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.

continued eligibility to hold a security clearance. 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>2</sup>

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, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented the testimony of four witnesses, including himself and his wife. The LSO submitted seven exhibits into the record; the individual tendered two exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>3</sup>

## 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 (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 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.

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<sup>2</sup> 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).

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).

## **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 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 notes, *inter alia*, (1) the individual's delinquent and collection debts totaling approximately \$120,000; (2) the individual's unpaid state income taxes in the amount of \$800; (3) the repossession of the individual's camping trailer for nonpayment; (4) a series of financings secured by the individual's residence between 1990 and 2004, the proceeds of which were primarily used for consumer purchases and the payment of credit cards; and (5) the individual's failure to pay delinquent consumer debts since 2009. 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 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. 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)<sup>4</sup> 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

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<sup>4</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 pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

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**

The individual and his wife testified that they have been experiencing financial difficulties since at least 2009. Tr. at 58-59, 74. They reside in an area of the country which experienced rapid escalation of real estate values prior to 2008 and, during this period of escalating real estate values, they financed their home multiple times. *Id.* at 25. Their home, which they once owned free and clear of any debt, is currently subject to a mortgage of approximately \$450,000. *Id.* at 73. The housing market in their region has experienced a dramatic downturn and their locality has one of the highest foreclosure rates in the country. *Id.* at 77. Their home, which appraised for \$525,000 in 2006, was valued at \$250,000 in August 2012. *Id.* at 27-28, 34.

Some of the proceeds from the financings of their residence went towards home renovations, adoption expenses, a private high school education for a child and the purchase of a vehicle; however, the primary use of the proceeds was to pay credit card debt. *Id.* at 25-26. The individual and his wife acknowledged that they were probably “living above” their means and that their pattern was to “charge up” their credit cards and, then, to periodically refinance their home to pay down their credit cards. *Id.* at 25-26, 58.

The wife stated that they were aware that they were spending the equity of their home, but always expected that upon the individual’s retirement they would be selling their home and moving to a smaller house which would reduce their retirement expenses and provide cash for the payment of their outstanding credit cards. *Id.* at 27, 40. Their spending on credit cards was premised on the available equity in their home and, based on a 2006 appraisal of \$525,000, they believed they had sufficient resources (in the form of home equity) to cover their credit card expenditures. *Id.* at 27-28. In late 2008, realizing that real estate values were decreasing and they no longer had equity in their home, they concluded that they were overextended. Subsequently, the wife called their various creditors to request that their accounts be closed. *Id.* at 28, 30, 34. Since that time they have lived on a cash basis, using only two credit cards: a gas credit card which they pay monthly and a credit card which is secured by a savings account. *Id.* at 30, 59, 75.

The individual and his wife testified that, prior to the “housing drop,” they had always paid their bills and had good credit. *Id.* at 30. Beginning in 2009, they made the decision to discontinue their practice of paying a small amount to each creditor and, instead, to focus on paying off one creditor at a time. *Id.* at 29, 32. They continued to pay certain creditors until December 2010, but most of their consumer accounts were in a collections or charge-off status by that time. *Id.* at 57.

With the exception of a \$50 charge claimed by a cable provider which they are disputing, they fully acknowledge that they owe the amounts claimed by their creditors. *Id.* at 27, 33, 50. They testified that the amounts listed on their credit report as “charged off” are still owed by them and they intend to pay those accounts. *Id.* at 78. Since their financial

difficulties began, they have explored the possibility of filing for bankruptcy, but believe it would be unethical to either file bankruptcy or turn their house “back to the bank.” *Id.* at 28, 77-78. The individual has a 401(k) account with a balance of approximately \$86,000 which they plan to liquidate following the individual’s retirement in order to satisfy the outstanding creditors. Their income will be smaller after the individual retires which will reduce the tax rate payable on the liquidated 401(k) account and, with less taxes payable from the proceeds of the account, more funds will be available to pay creditors. *Id.* at 32-33.

With respect to past due state taxes, they are presently making monthly payments of \$200 and expect to fully pay the taxes by March 2013. *Id.* at 31. The outstanding balance on their past due state taxes is approximately \$1200, which is in excess of the \$800 listed in the Notification Letter. The deficiency in their state tax payments arose when they withdrew funds from a 401(k) account when the individual turned 59½ years old and insufficient state taxes were withheld. The withdrawn funds were needed for home repairs. *Id.* at 52-54.

## **B. Hearing Officer Evaluation of Evidence and Findings of Fact**

The individual and his wife are to be commended for discontinuing their use of credit beginning in 2008-2009 following their realization that they were overextended. Notwithstanding their present practice of living on a cash basis, the individual’s accumulated debt and the practices that led to that accumulation are unresolved. The debt that is of concern is in three categories: (1) mortgage debt; (2) consumer debt which is delinquent or in collection status; and (3) unpaid state income taxes. I noted that in addition to the individual’s salary from his employer, the individual receives approximately \$4000 a month from a pension plan on which he has been collecting for approximately seven years. *Id.* at 44, 64.

### **1. Mortgage Estate Debt**

The individual acknowledges that, while residing in the same home, his mortgage debt has grown from zero in 1990 to approximately \$450,000 today. The mortgage debt is a result of multiple financings and re-financings over the years. *Id.* at 73. During the PSI, the individual stated that \$50,000 of the proceeds from these mortgage financings was used for home repairs and renovations and that the balance was used for consumer purchases and to pay credit cards. Ex. 6 at 13-28. At the hearing the wife testified that that characterization was misleading and that mortgage proceeds were also used for matters such as adoption expenses and fees for a child’s private high school education. Tr. at 26. I requested that the individual submit a list of the mortgage financings and a description of the use of proceeds from each of financing. *Id.* at 73. Although I left the record of the hearing open to allow this submission, such submission was not made. Based on the record as a whole, the individual’s pattern, until the decline in real estate prices starting in 2008, has been to consistently spend beyond his means and to periodically borrow against his home to shift his consumer debt to long-term mortgage debt. This practice was premised on the assumption that real estate would continue to increase in value and reflects a philosophy that was stated in the hearing in regard to a

different matter that “the future will take care of itself.” *Id.* at 79. During the PSI, the individual attributed their spending behavior as having been “greedy.” Ex. 6 at 17-18. In his testimony, he modified this characterization of their spending behavior and stated that the consumer spending resulted from a failure to distinguish between “wants” and “needs.” Tr. at 65-66. Either characterization affirms a consistent, long-term pattern of spending beyond his means. This pattern ceased only following the intervention of an external factor (i.e., rapidly declining property values) which prevented further refinancing of the individual’s home.

## 2. Consumer Debt

The second category of debt which is a security concern is the individual’s consumer debt which is delinquent or in a collections status. At the time of the individual’s PSI, the individual was questioned about the delinquent and “charged-off” debt that appeared on his credit report dated December 24, 2011. He believed that many of those entries were inaccurate or duplicates and the LSO spent considerable effort to identify and eliminate from evaluation those items that the individual believed to be erroneous. Even after the elimination of those items, there were 13 collection accounts totaling \$118,031 and one account delinquent for over 120 days for \$2,580. *See* Ex. 6. At the hearing, the individual presented an updated credit report dated September 17, 2012 (the “updated credit report”). *See* Ex. A. He believed that updated credit report also contained duplicate items and inaccurate amounts; however, with the exception of the cable charge of \$50, he was not able to specify those errors. Tr. at 50. I requested that the individual submit a list of his outstanding accounts and amounts since he was questioning the accuracy of his own exhibit. *Id.* at 41-42. Although I left the record of the hearing open to allow this submission, such submission was not made. The individual undertook to provide information on the disputed item with the cable provider. The post-hearing submission which was made with respect to the dispute with the cable provider is an illegible receipt and does not include any documentation of the cable provider being notified of the dispute or of any attempts to resolve the matter. Ex. B at 30. This is insufficient and the individual has not met his burden to document a legitimate dispute with respect to a past due financial account.

If I limit my evaluation to the 14 accounts referenced in the Notification Letter, all of those accounts are still listed in the updated credit report without any evidence that any payment has been made on any of those accounts since the earlier credit report. Ex. A at 6-7, 14-32. Further, three of those accounts have been sold to a third party and the aggregate balance on those accounts has increased from \$13,477 on the earlier credit report to \$14,771 on the updated credit report. Ex. 4 at 5-6; Ex. A 27-29. The individual offered no documentation or testimony that would indicate any payment has been made since the earlier credit report. Based on the evidence in the record, the individual presently has at least \$119,325 in outstanding collection accounts and \$2,580 in an account delinquent over 120 days.

In the Notification Letter, the LSO noted that the individual admitted that he had not paid his delinquent accounts since 2009. In her testimony, the wife stated that they had been making small payments to each creditor until January 2011. Tr. at 29. No documentation

was offered to corroborate such payments. The updated credit report that was submitted into evidence by the individual indicated that nonpayment on the collection accounts began in early 2009 and, by mid-2010, almost all of the collection accounts were already in a nonpayment status. *Id.* at 57; Ex. A at 6-7, 14-32. The record reflects that the individual has not been meeting financial obligations for over three-and-one-half years, thereby establishing that the individual has a history of not meeting his financial obligation.

To their credit, the individual and his wife testified that they acknowledge their liability on the collections accounts, feel ethically obligated to make payment and intend to pay those accounts. Tr. at 78. I was convinced that they would willingly satisfy these accounts if they were capable of doing so. At the hearing, DOE Counsel suggested that the individual submit a plan showing how and when these accounts would be paid. *Id.* at 41-42. Although I left the record of the hearing open to allow this submission, such submission was not made. Following the hearing, the individual did submit a monthly budget which made no allowance for payment of any of the collection or delinquent accounts. The monthly budget shows that the individual collects a pension which is larger than his monthly income from his employer and, notwithstanding such pension income, he and his wife only have \$575 per month available to allocate to debt repayment. Ex. B at 1-3.

As noted above, the individual and his wife testified that, upon the individual's retirement, they plan to liquidate a 401(k) account containing \$86,000 and use the proceeds to satisfy their outstanding consumer and credit card debt. Tr. at 32-33. No timetable was given for such liquidation or payments. No consideration was given for increases in the unpaid debt, which as noted above is occurring with respect to at least three of the accounts. Regardless of their tax bracket at the time of retirement, some taxes will be payable from the proceeds of the 401(k) account. Even if no taxes would be due upon liquidation, the balance in the 401(k) account is insufficient to satisfy their presently existing collection and delinquent accounts.

The individual and his wife did not provide evidence of any other resources or assets other than their house, which is presently worth \$200,000 less than their outstanding mortgage. In light of their income, expenses and limited resources, the individual and his wife do not have the ability to satisfy their collection and delinquent accounts which aggregate approximately \$120,000 even though they have sincerely expressed their desire and intent to do so. This inability is a presently existing inability with respect to debt that is presently outstanding, all of which was incurred by the individual and his wife while mature adults.

### **3. State Income Taxes**

The third category of debt which is a security concern is the individual's unpaid state income taxes. The Notification Letter stated that the individual owed \$800 in state income taxes for the tax year 2011. The individual and his wife testified that they have been paying \$200 per month to resolve state tax delinquencies that arose in 2011 from insufficient withholding on the proceeds from a 401(k) account and that the balance on

their unpaid taxes is approximately \$1200. *Id.* at 30, 54. The documentation submitted by the individual following the hearing confirms that the individual has been making monthly payments of \$200 to their state tax authorities; however, those payments commenced in January 2011 and, according to the individual's documentation, relate to tax years 2008, 2009, 2010 and 2011. Ex. B at 22-23. Additionally, documentation submitted in support of the budget that the individual submitted following the hearing showed that the individual and his wife are making month payments on delinquent real property taxes to their local jurisdiction. *Id.* at 1-3, 24-25.

Although the individual and his wife testified that they moved to payment of their expenses on a cash basis beginning in the 2008-2009 timeframe, their inability to pay their state and local taxes on a current basis is inconsistent with their assertion.

#### 4. Mitigation Factors

The Adjudicative Guidelines suggest five possible conditions which could be relevant to the individual's situation to mitigate the DOE's security concerns. In analyzing the record, the individual has not met his burden to establish any of the mitigation factors. The individual's financial irresponsibility was part of an on-going established pattern that occurred for many years and, with respect to his consumer spending, only stopped approximately three years ago when external factors intervened. Debt that accrued during this time has been in a non-period status for approximately three and one-half years and such non-payment continues through today. Ex. A at 6-7, 14-32. His accrual of delinquent state tax obligations is even more recent date than his accrual of delinquent consumer debt. As a result, I find no mitigation of the security concerns at issue here under Guideline F at ¶ 20(a).

During the hearing, the individual and his wife were asked about the genesis of their debt and whether it resulted from any financial problems that were outside of their control. It did not. Tr. at 57. They were also asked if they had received any counseling for their financial problems. They had not. *Id.* at 59-60. Their present level of unserviced delinquent and collections debt demonstrates that their financial problem is not resolved or under control. As a result, I do not find mitigation of the security concerns at issue here under Guideline F at ¶ 20(b) or (c).

The individual has not initiated an effort to repay overdue creditors. *See Id.* at 31. In fact, many of their creditors have received no payments since early 2009. Ex. A 6-7, 14-32. The aspiration to repay creditors at some future date upon the individual's retirement and the liquidation of a 401(k) account, the balance of which is smaller than their current collection accounts, is too vague to constitute a repayment plan. As a result, the individual has failed to mitigate the security concerns at issue here under Guideline F at ¶ 20(d).

The individual is not disputing the legitimacy of any of the items set forth in the Notification Letter, with the exception of a single \$50 item. Even if he had met his burden on this item, which as noted above he has not, a single \$50 item would not change the overwhelming concerns created by the remainder of his financial situation. As a



result, I find that the individual has also failed to mitigate the security concerns at issue here under Guideline F at ¶ 20(e).

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, the individual has not even begun rectifying his financial difficulties so any period of reformation has not begun to run. With regard to the delinquent taxes, it is too early for me to opine whether he will remain current in his tax payments.

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.

Wade M. Boswell  
Hearing Officer  
Office of Hearings and Appeals

Date: October 25, 2012