

personnel security file, the LSO informed the Individual in an August 2012 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8(l) (Criterion L). *See* Notification Letter, August 2, 2012. The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed as Hearing Officer. At the hearing, the Individual presented her own testimony, as well as the testimony of her husband. The Individual submitted seven exhibits (Indiv. Exs. A-F, including Indiv. Ex. E.1). The DOE counsel presented no witnesses, and submitted eighteen exhibits into the record (DOE Exs. 1-18). *See* Transcript of Hearing, Case No. PSH-12-0114 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including “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 of the individual at the time of the conduct; the voluntariness of 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,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See* 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).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id. See generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT

During the course of their marriage, the Individual and her husband have held separate bank accounts, and their paychecks are automatically deposited into their own accounts. Tr. at 11. The Individual's husband is responsible for maintaining the family's major financial obligations, including the home mortgage and insurance, as well as for filing the couple's tax returns. *Id.*; see also DOE Ex. 14 at 7-9. The Individual, in turn, handles the family's day-to-day finances, such as household groceries and childcare-related expenses. Tr. at 11. The Individual admits that she has relied on her husband to manage the family's finances and does not know many of the specific details of the family's finances, but states that she is able to look up their financial information when necessary. Tr. at 26.

The Individual attributes her family's financial difficulties to an unexpected tax debt in 2008. Tr. at 38. Since 2000, the Individual and her spouse claimed twenty exemptions on their federal income tax withholdings in an effort to ensure both that sufficient funds were withheld to cover the taxes that they owed, and that they would not have a large refund at the end of each year. Indiv. Ex. A. As a result, the Individual and her husband received small refunds each year from 2000 to 2007. *Id.* In 2008, the couple's taxable income increased, but they did not adjust their withholdings. Consequently, rather than receiving a small refund, they owed approximately \$13,500 and were unable to pay the bill.² Tr. at 38-39. Moreover, they could not adjust their withholdings in 2008 to cover the increased tax owed due to their higher taxable income, because doing so would have reduced their take-home pay, which they could not afford. Tr. at 53. As a result, they owed approximately \$18,300 in federal taxes in 2009, \$21,500 in 2010, and \$17,500 in 2011. DOE Ex. 51-53; Indiv. Ex. A.

The Individual maintains that the 2008 tax debt caused her and her husband to fall behind on other bills, such as their state taxes and one of her husband's credit card accounts. Tr. at 38. In addition, her home mortgage was an adjustable rate mortgage and, once the interest rate adjusted upward, she and her husband could no longer afford the payments. Tr. at 40. She stated that they attempted to refinance the mortgage prior to the interest rate's adjustment, but were unable to do so due to the home's decreased value. Tr. at 40-41. They then attempted to obtain a modification of their mortgage, but were told that the lender would only negotiate a modification if the mortgage was in arrears. *Id.*, Indiv. Ex. E. Therefore, the Individual and her husband allowed themselves to fall behind on their mortgage in the hopes of negotiating a modification. *Id.* The Individual and her husband have engaged legal counsel to help them work with their

² While the Individual maintained at the hearing that the unexpected 2008 federal income tax bill was the catalyst for her family's financial hardship, the record of this proceeding indicates that it is more likely that the Individual and her husband were either living above their means or were barely living within their means prior to the 2008 tax bill and, as a result, were unable to weather the additional debt when it arose. For example, they borrowed \$170,000 from the Individual's mother in 2005, which her mother ultimately designated as a gift, for expenses related to their home purchase, including furniture, paint, and window treatments. Tr. at 15, 32. In addition, the Individual recently borrowed \$13,000 from her father to pay an existing loan on her 401(k) account so that she could take a new loan from the same 401(k) account in the amount of \$38,000. According to the Individual, the borrowed funds have been put toward their taxes and other bills, but at the hearing she was unsure of how the money was spent. See Tr. at 33-36. Finally, the Individual's husband has been previously interviewed by the DOE regarding the couple's finances. In his interview, he specifically attributed the couple's financial delinquencies to the fact that they did not pay attention to their finances and lived beyond their means for several years. See Tr. at 55-57; see also DOE Ex. 18 at 33, 42.

lender to modify their mortgage. Tr. at 22, 50-51; Individ. Ex. E. Their lender is currently reviewing their case and has not yet informed the Individual and her husband whether they will be approved for a modification. Tr. at 22-23; Individ. Ex. E.1.

As of the hearing, the Individual had paid her outstanding state taxes. Tr. at 27-28; Individ. Ex. C. She paid that debt by borrowing from her 401(k) retirement account. Tr. at 43. Currently, she and her husband owe approximately \$33,000 in federal income taxes. Tr. at 33, 54. They are on a payment plan with the Internal Revenue Service (IRS) to satisfy that debt. Tr. at 23-24, 54; Individ. Ex. B. In an attempt to pay the federal tax debt more quickly, the Individual and her husband have made an offer in compromise to the IRS. *Id.* They expect to be notified by January 2013 whether the IRS will accept the offer in compromise. *Id.* In addition, the Individual and her husband owe approximately \$3,800 on a charged off credit card account used by the Individual's husband. Tr. at 44. They are currently on a payment plan to settle that debt, paying approximately \$350 per month, and they expect to pay off the amount by April 2014. Tr. at 28, 44; Individ. Ex. D.

The Individual acknowledged that the DOE made her aware of its concerns regarding her finances in 2012. Tr. at 15, 25; *see also* DOE Ex. 15. She intended to be more involved in maintaining the family's finances from that point forward, but she "allowed him to take more of the lead" while she focused on their children. Tr. at 16. Nonetheless, the Individual contends that she is involved in managing their finances because, even though she does not know specific details or numbers with respect to her finances, she and her husband have set up an area in their home containing all of their financial information, allowing her to access information regarding their finances when necessary. Tr. at 25-26. According to the Individual, she and her husband have taken several other steps to resolve their financial situation in addition to setting up payment plans for their outstanding debts and attempting to secure a modification of their mortgage. Specifically, they have reached out to, and intend to meet with, a financial counselor whose services are provided through their employer. Tr. at 16. In addition, the Individual's husband has adjusted their tax withholdings to prevent a recurrence of the unexpected tax liability that exacerbated their financial struggles. *Id.* Finally, they have created a family budget that they intend to follow. Tr. at 16. According to the budget, their monthly net income is approximately \$15,430, and their monthly expenditures total \$15,350.³ Individ. Ex. F.

IV. ANALYSIS

A. The Notification Letter and Associated Security Concerns

As stated above, after reviewing the Individual's personnel security file, the LSO issued a Notification Letter identifying security concerns under Criterion L of the Part 710 regulations. *See* Notification Letter, August 2, 2012. Specifically, the LSO found that the Individual's delinquent federal and state income taxes, her delinquent debt on the charged off credit card account, and her past due mortgage constituted derogatory information raising security concerns under Criterion L. *Id.* The LSO further noted that the Individual's alleged continued financial

³ According to the Individual's budget, their current daycare bill, \$395 per month, will end in May 2013. In addition, the payments on the Individual's husband's credit card are scheduled to decrease as follows: from \$1407 to \$949 in April 2013, to \$600 in April 2014, to \$0 in July 2014. *See* Individ. Ex. A.

irresponsibility, despite her awareness of the DOE's concerns regarding her finances, also raised Criterion L concerns. *Id.*

Criterion L concerns conduct tending to show that the Individual was "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). In this case, the Criterion L concerns arise from the Individual's delinquent debts and purported financial irresponsibility. *See* Adjudicative Guidelines, Guideline F, ¶ 19 ("[An] inability or unwillingness to satisfy debts," "a history of not meeting financial obligations," and a "failure to file annual Federal, state, or local income tax returns as required" raise security concerns); *see also Personnel Security Hearing*, Case No. PSH-12-0053 (2012); *Personnel Security Hearing*, Case No. TSO-1005 (2011); *Personnel Security Hearing*, Case No. TSO-0916 (2010). Given the Individual's extent of the Individual's delinquent debts, the LSO had ample grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

Among the factors that may serve to mitigate security concerns raised by an individual's financial problems are that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," "the conditions that resulted in the financial problem were largely beyond the person's control ... and the individual acted responsibly under the circumstances," "the [individual] has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," and "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]" Adjudicative Guidelines, Guideline F, ¶ 20.

In this case, I am unable to conclude that the Individual has resolved the Criterion L concerns raised in the Notification Letter. The Individual and her husband have made some progress in addressing their finances by paying their delinquent state taxes, setting up payment plans to address their federal tax debt and the charged-off credit card debt, and beginning the process of seeking a modification of their home mortgage. Tr. at 23-24, 27-28, 40, 44. The Individual also appears to have identified a resource at her place of employment to obtain financial counseling. Tr. at 16. Finally, she and her husband have outlined a budget that they intend to follow in order to pay off their remaining debts. Tr. at 16; *Indiv. Ex. F.*

While these are all positive steps, the Individual is a long way from establishing financial stability. The Individual's largest debts – the delinquent federal taxes and the home mortgage – remain in an uncertain state. While the Individual expects that the IRS will accept the offer in compromise, she will not know whether that is the case until January 2013 at the earliest. *See Indiv. Ex. B.* Similarly, the Individual had not yet been informed whether her mortgage lender approved a modification of the mortgage. *See Indiv. Ex. E.1.* Moreover, a review of the Individual's family budget indicates that the current household income is barely enough to cover current expenses. *See Indiv. Ex. F.* While the Individual expects her household's expenses to decrease, they currently appear to have no room for error with respect to their finances. *Id.* Consequently, should they be faced with an unexpected or emergency expense, the progress they

have begun to make in righting their finances could easily be reversed. Finally, I am troubled by the fact that the Individual apparently has little specific knowledge of her own finances. It became clear at the hearing that the Individual relies on her husband to manage the family's major financial decisions, despite the fact that they carry their debts and financial obligations equally. For example, the Individual was unsure at the hearing of exactly how the money she borrowed from her 401(k) account was spent and even the specific amount of the loan. Tr. at 33-36. This leads me to conclude that the Individual is not yet well in control of her own finances.

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-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0732 (2009); see also *Adjudicative Guidelines*, Guideline F, ¶ 20. Given the facts of this case, including the tenuous state of the Individual's current financial situation as described above, as well as her apparent lack of insight into her own finances, I cannot conclude that the Individual's financial situation is stable at this time or that her financial difficulties are in the past and unlikely to recur and, therefore, do not cast doubt on her current reliability, trustworthiness, or good judgment.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I further find that the Individual has not presented sufficient information to fully resolve those security concerns. Therefore, I cannot conclude that restoring the Individual access authorization “would not endanger the common defense and security and would be 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 suspended access authorization at this time.

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

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: November 13, 2012