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

In the matter of Personnel Security Hearing)
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Filing Date: April 23, 2013) Case No.: PSH-13-0053
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_____)

Issued: July 15, 2013

Hearing Officer Decision

Richard A. Cronin, Jr, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to possess an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Department of Energy (DOE) should not grant the Individual an access authorization.

I. BACKGROUND

In 2012, the Individual was hired as an employee by a contractor at a DOE facility. Exhibit (Ex.) 9 at 3. His employer subsequently requested that the DOE grant the Individual an access authorization. Ex. 3. During the ensuing background investigation, the Local Security Office (LSO) uncovered potentially derogatory information relating to the Individual’s past financial indebtedness, 2005 bankruptcy, employment history, and marriage to an undocumented alien. Ex. 1 (Summary of Security Concerns).

In January 2013, the LSO conducted a personnel security interview (PSI) with the Individual. Ex. 10. After reviewing the available information, the LSO determined that derogatory information existed that cast into doubt the Individual’s eligibility for an access authorization.²

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² With regard to the Individual’s marriage to an undocumented alien, the Notification Letter cited the Individual’s sheltering of his wife despite the fact he knew that she was residing in the United States illegally. Ex. 1 at 3.

The LSO informed the Individual of its determination in a March 2013 letter (Notification Letter). The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The Individual requested a hearing in this matter. The LSO forwarded this request to the Office of Hearings and Appeals (OHA) and the OHA Director appointed me as the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding. The Individual introduced 14 exhibits (Ex. 2; Exs. A-M) and presented the testimony of four witnesses in addition to his own testimony.

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

The Part 710 regulations require that I “make specific findings based upon the record as to the validity of each of the allegations” in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites paragraphs (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L). Ex. 1.³ The Individual does not dispute the factual accuracy of the Criterion L derogatory information described in the Notification Letter. I set forth my factual findings below.

In 1995, local police arrested the Individual, at age 20, for theft and fraudulent use of a credit card. Ex. 5; Ex. 9 at 17-18. The Individual, in 2004, married a foreign citizen who was not residing in the United States legally. Ex. 10 at 138; Ex. 9 at 7-8. In 2005, the Individual filed for a Chapter 7 bankruptcy and received a discharge from his debts in December of that year. Ex. 6 at 1. Between 2006 and 2010, the Individual was fired three times from employment, once for sexual harassment and twice for violating his employer’s work policies. Ex. 10 at 30-38, 38-41, 41-47; Ex. 9 at 4-6.

Between 2007 and 2008, the Individual began to accrue a number of credit accounts which eventually went into collection. Transcript of Hearing (Tr.) at 68-69. A credit report obtained in October 2012 indicated that the Individual had 14 delinquent accounts totaling \$7,567. Ex. 4. During the PSI, the Individual admitted that he had not made any effort to resolve these accounts since his interview with an Office of Personnel Management investigator in late-November 2012. Ex. 10 at 56-85; Ex. 9 at 19-23. Additionally, the Individual admitted that, with regard to an arrest 1995 for stealing a credit card, he had used the stolen credit card to make purchases at a commercial mall. Ex. 10 at 15-30, 50-51.

Conduct involving unwillingness to comply with rules and regulations or criminal activity can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to*

³ Criterion L refers to information indicating that an individual 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. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8 (l).

Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines), Guideline E, J. Similarly, 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds *Adjudicative Guidelines, Guideline F.* Given the Individual's delinquent accounts, his knowingly providing shelter to his wife, an undocumented alien, his admitted theft and fraudulent use of a credit card, and his history of termination from employment, I find that the LSO had sufficient grounds to invoke Criterion L.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

A DOE administrative proceeding under 10 C.F.R. Part 710 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). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

After reviewing the evidence before me, I find that the Individual has not resolved the Criterion L concerns raised by the derogatory information described above.

At the hearing, the Individual testified that he knew of his wife's undocumented status when he met her in 1998. Tr. at 37. Since their marriage, the Individual has consulted several lawyers in an attempt to resolve her undocumented status. Tr. at 37-39. The last time the Individual and his wife consulted an attorney was in 2012. Tr. at 49-50. He and his wife received similar advice from each of the lawyers indicating that, to begin the process of obtaining legal residency status, the Individual's wife would have to return to her native country for a period of up to 10 years. Tr. at 39. This would work an extreme hardship since they have one child together and they also

care for his wife's child. Tr. at 38-39, 46. Additionally, the cost of undergoing the process for legal residency status for his wife would be significant. Tr. at 46.

The Individual testified that he was terminated from his position in a casino in 2006 for sexual harassment. Tr. at 54. The Individual explained that he had made an obscene remark which a female fellow employee interpreted as being made about her. Tr. at 54-55. The Individual testified that he was actually making the remark to describe another individual at whom he was angry. Tr. at 54-55; *see* Ex. 10 at 42-43.

In 2008, the Individual was employed at another casino. Tr. at 53-54. The Individual testified that he was fired for using his casino "players" card while on duty.⁴ Tr. at 53. The Individual knew that such use of the players card was against company policy while on duty at the casino. Tr. at 53.

The Individual further testified that, in 2010, he was terminated from his position at a casino for violating company policy regarding gratuities (tips). Tr. at 51. He explained that he was employed as a supervisor at the casino and that there were two gratuity jars at his workplace – one for tips to be shared with all of the supervisors and a personal tip jar for the Individual. Tr. at 51. All tips from the casino dealers were to be placed in the supervisor tip jar to be shared by all of the supervisors.⁵ Tr. at 51-52. The Individual testified that a dealer, who was leaving his shift at the casino, placed a gratuity into his personal jar and the supervisors' jar. Tr. at 51. Casino officials confronted the Individual and accused him of accepting a personal tip from the dealer instead of directing him to give the tip to the supervisors' jar. Tr. at 51-52. Specifically, casino officials informed the Individual that a casino camera observed the dealer placing money in his personal tip jar and the Individual later going to the jar to see how much money had been placed into it. The Individual testified that he never placed any of the money in his personal tip jar. Tr. at 52-53. Nonetheless, the casino fired the Individual for violating the casino's policy regarding gratuities. Tr. at 51.

With regard to his delinquent debts, the Individual asserted at the hearing that a number of the accounts had been paid off. Tr. at 56; Exs. A, B1, C, K, L, and M. Additionally, he is making payments on some of the outstanding accounts. Tr. at 62. For some of the larger accounts, accounts where the Individual owes amounts of \$1,664, \$1,098, \$1,056, \$400, and \$226, the Individual has not yet set up a payment plan. Tr. 61-68. The Individual has just completed the purchase of his residence and estimates that, after the hearing, he will be able to pay \$300 to \$400 a month to resolve the delinquent accounts. Tr. at 66-67, 72-73. The accounts became delinquent because of two periods of unemployment during 2010-11. Tr. at 68. The Individual believes that he and his family do not have an extravagant lifestyle and that he is in the process of resolving the debt referenced in the Notification Letter. Tr. at 69-70. The Individual has also submitted his family budget which his family has been using for the past three years. Tr. at 74-75, 77; Ex. J. As for the 2005 bankruptcy, the Individual stated that his expenses regarding several vehicles and other items motivated him to declare bankruptcy. Tr. at 76-77. The

⁴ A "players" card is a card that rewards customers for playing at the casino. Tr. at 53; *see* Ex. 10 at 40.

⁵ According to the Individual, the dealer was just coming off duty and still was in his casino uniform. Ex. 10 at 34. Had the dealer been off-duty, the Individual testified that it would have been acceptable for the dealer to tip the Individual directly. Ex. 10 at 38.

Individual admitted that, in the period prior to the bankruptcy, he did not make good financial decisions. Tr. at 76-77.

Two of the Individual's supervisors (Supervisor 1 and Supervisor 2) testified that the Individual is an excellent worker and is very reliable in performing his job. Tr. at 14-16, 33. Additionally, two of the Individual's cousins (Cousin 1 and Cousin 2), who also work at the same DOE facility as the Individual, testified that the Individual is trustworthy, hard working, and honest. Tr. at 19, 29. Both Cousins have spent time at the Individual's house and have not observed the Individual being financially irresponsible or living in a financially extravagant manner. Tr. at 20, 31.

The two Criterion L concerns raised by the derogatory information contained in the Notification Letter are: that the Individual's past employment, criminal and marital history indicates that he may not be counted upon to follow rules and regulations in the future and that the Individual will continue to demonstrate a pattern of financial irresponsibility and unwillingness to meet his financial obligations as demonstrated by his history of delinquent accounts. My review of the evidence before me indicates that the Individual has failed to fully mitigate the Criterion L derogatory information referenced in the Notification Letter.

With regard to Individual's deliberately sheltering his wife as a potential concern regarding the Individual's propensity to not follow rules and regulations, I find mitigation in the fact that the Individual's wife was brought to the United States at 12 or 13 years old by her mother and thus did initially enter the country with intent to violate U.S. immigration laws.⁶ Ex. 10 at 138-39 (Individual's wife's entry into the U.S. at age 12 or 13). Additionally, I do not believe that, when the Individual married his spouse, he intended to violate any U.S. immigration law but married because of his love for her. Tr. at 32; *see Personnel Security Hearing*, Case No. VSO-0409 (2001) (an individual had no intention to sheltering an undocumented alien since relationship based upon love and not criminal intent). I also find that the Individual did consult with at least two lawyers during the previous six years in an attempt to try to resolve his wife's immigration status.⁷ Based upon the presented testimony, I find little change that the Individual could be coerced especially given the Individual's forthright disclosure of his wife's status to the LSO. *See also*, Tr. at 40. Given the nature of the Individual's relationship with his wife, I also find there is little chance that the Individual would repeat his conduct to shelter another undocumented alien. *See Personnel Security Hearing*, Case No. VSO-0409 (2001). Given these findings, I find that the Individual has resolved the concern raised by his sheltering of his wife. I also find that the Individual's 1995 arrest for stealing and using a credit card to be mitigated by the fact that this offense occurred some 17 years ago and is an isolated event. *Adjudicative Guidelines*, Guideline J, ¶ 32(a) (security concerns arising from criminal activity may be mitigated if conduct occurred a significant time ago). Nonetheless, as discussed below, I find that the Individual's history of termination from employment represents an unresolved concern regarding his ability to follow rules and regulations.

⁶ The Individual's sheltering of his wife might constitute a violation of 8 U.S.C. § 1234. *See Personnel Security Hearing*, Case No. VSO-0409 (2001).

⁷ There is also evidence in the record indicating the country of which the wife is a citizen is not a "high risk" country for security purposes. *See* Ex. I (Letter from LSO official stating that he overheard the Individual being informed by a security official located in a different field office that the Individual's wife's foreign citizenship would not automatically disqualify him from applying for a security clearance).

The Individual's history of being discharged from positions because of rule violations is undisputed regarding the 2008 termination. The Individual disputes that he did anything improper to justify his terminations in 2006 and 2010. However, there is simply not enough evidence, outside of the Individual's own testimony, whereby I can conclude that the Individual was improperly discharged in 2006 or 2010. The loss of three positions over four years for failure to observe rules is a concern, especially with regard to a potential security clearance holder. In mitigation, there is no evidence that the Individual has been discharged on similar grounds for the past three years. The testimony of the Supervisors indicates that in his current position the Individual has been an excellent worker over the past year and a half. While I commend the Individual's performance at his current position, I cannot say he has produced sufficient evidence to overcome his relatively recent history of failure to comply with rules or policies in his three previous positions. These terminations raise a significant and yet unresolved concern regarding the Individual's dedication to following rules and regulations.

Nor can I find that the Individual has fully resolved the concerns raised by his past financial history. The Individual presented evidence which indicates that he is taking active steps to resolve his delinquent accounts. I find this to be a mitigating factor in this case. *See Adjudicatory Guidelines*, Guideline F, ¶ 20(d). The Individual testified that his delinquent accounts were caused by periods of unemployment. However, I can only find limited mitigation on this basis because the periods of unemployment were caused, in part, by the Individual's terminations from positions for failure to observe workplace rules. The Individual's recent retirement of his house payments, his submitted budget, and the testimony of the Cousins indicate that the Individual is now living in a financially responsible manner. Despite this evidence, I must note that the Individual's efforts to resolve his delinquent accounts began only after he was made aware of the DOE's concern by an Office of Personnel Management Investigator and that there are several accounts, mainly the larger ones, for which the Individual has not yet begun to address. Tr. at 73-74. Further, I find that the Individual has only had a relatively limited period of responsible financial management, especially considering that the Individual has a somewhat lengthy period of financial problems as evidenced by his 2005 bankruptcy. *See Personnel Security Hearing*, Case No. PSH-12-0069 (2012) (individuals need to demonstrate a sustained pattern of financial responsibility to mitigate a concern raised under Criterion L for financial irregularities).⁸ Given the evidence before me, I cannot find that the Individual, at this time, has resolved the concerns arising from his delinquent accounts and 2005 bankruptcy.

Overall, I cannot find that the Individual has completely resolved the Criterion L security concerns raised by the derogatory information recorded in the Notification Letter.

V. CONCLUSION

⁸ The Notification Letter cites as evidence of a Criterion L concern the allegation that the Individual gave an "assurance" to an OPM investigator during a November 2012 interview that he would try to resolve his delinquent accounts by the end of December 2012. A review of the record in this matter, indicates that the only mention of this "assurance" was a question by the PSI interviewer asserting that the Individual had told the OPM investigator that he "plan[ed]" to make financial arrangements by the end of December 2012. See Ex. 10 at 65. To this question, the Individual replied "yeah." The submitted OPM Report in this case, Exhibit 8, does not contain a summary of the interview with the Individual. Assuming that the account of the "assurance" is accurate, I do not find that the Individual's intention (plan) to resolve his financial issues constitutes a promise or commitment such that a Criterion L concern would be raised. See *Personnel Security Hearing*, Case No. PSH-13-0048 (2013), *slip op.* at 6 n.7.

For the reasons set forth above, I conclude that the Individual has not fully resolved the DOE's security concerns under Criterion L. Therefore, the Individual has not demonstrated that granting his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant, at this time, the Individual an access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: July 15, 2013