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

In the Matter of Personnel Security Hearing)

Filing Date: July 19, 2013)

Case No.: PSH-13-0092

Issued: November 1, 2013

Hearing Officer Decision

Richard A. Cronin, Jr, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold 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 DOE should not, at this time, restore the Individual’s access authorization.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility and was granted a security clearance in 1985. Exhibit (Ex.) 4 at 4. Pursuant to a reinvestigation, the Local Security Office discovered potentially derogatory information regarding the Individual’s financial indebtedness. The LSO conducted a Personnel Security Interview (PSI) with the Individual in November 2012 (November 2012 PSI). At the conclusion of this PSI, the LSO interviewer requested that the Individual sign a form titled “Certificate to Furnish Information/Documentation” (Information form) in which the Individual agreed to provide additional financial information to the LSO. Because neither the November 2012 PSI nor the Individual’s response to the Information form resolved the concerns raised by the Individual’s indebtedness, the LSO concluded that derogatory information existed which cast doubt regarding the Individual’s eligibility for a

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.

security clearance. The LSO informed the Individual, in a June 2013 letter (Notification Letter), that his security clearance was being suspended and that he was entitled to a hearing before a Hearing Officer to present evidence to resolve the doubts created by the derogatory information. Ex. 1. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director appointed me as the Hearing Officer. The DOE introduced 89 exhibits into the record of this proceeding and presented one witness, a Personnel Security Specialist. The Individual presented his own testimony at the hearing.

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 paragraph (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. 1.² 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.

The Individual has an extensive history of financial indebtedness and has been the subject of a number of PSIs, including PSIs conducted in April 1987, August 1989, September 1992, May 1993, two PSIs in June 1993, July 1993, April 2001, September 2001 April 2002, July 2007, October 2010, and November 2012.³ Pursuant to various background investigations, the LSO obtained the following Credit Reports detailed in Table 1 below.

**Table 1
Individual’s Credit Reports**

<u>Date of Credit Report</u>	<u>Delinquent Debt Amount</u>
9/6/2001	\$12,684
2/25/2002	\$15,473
1/21/2004	\$6,249
12/2/2004	\$6,968
10/18/2005	\$18,316
11/2/2006	\$42,765
7/18/2007	\$46,716
11/19/2008	\$1,221

² 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. . . .” 10 C.F.R. § 710.8(l).

³ Two of these PSIs discussed potential issues of falsification by the Individual. The Individual’s security clearance was suspended in 1993 citing the Individual’s financial irresponsibility and his alleged falsification of answers in a Questionnaire for Sensitive Positions. The Individual then underwent an Administrative Review hearing in 1994 in which the Hearing Officer recommended that the Individual’s clearance be restored. Ex. 62.

1/14/2010	\$49,246⁴
8/25/2010	\$82,182
1/31/2011	\$1,089
7/25/2011	\$59,655
9/21/2012	\$2,563
9/23/2013	\$0

Exs. 5, 6, 8, 10, 13, 15, 18, 20, 23-25, 27, 29, 32-33, 35, 37, 41, 86.

Pursuant to a Chapter 13 bankruptcy in September 2001, the Individual agreed to a five-year payment plan for his creditors. Ex. 39. Prior to filing bankruptcy, the Individual, in September 1999, purchased a Lexus automobile agreeing to payments of \$534 a month. In May 2000, the Individual purchased a Ford 150 truck with payments of \$398 per month.

During the April 2002 PSI, the Individual confirmed statements made in his April 2001 PSI that his financial problems resulted from his wife's recent medical procedure and her loss of income from her illness. Ex. 36 at 3.⁵ He further stated that his financial problems also originated from his misuse of several credit cards to purchase various items. Ex. 36 at 17. The Individual also stated that, he had made payment arrangements with his creditors. Ex. 36 at 4-13, 19. The Individual asserted that he would meet all future financial obligations, not obtain or use credit cards and would consult with a financial advisor to plan to save money for his children's future college expenses. Ex. 36 at 18, 20, 21. The Individual reported in the April 2002 PSI that his Chapter 13 bankruptcy payment plan, along with his other remaining financial obligations, were within his budget and would not cause him any financial problems. Ex. 36 at 20. Nonetheless, the Individual subsequently obtained three new credit cards. Ex. 22 at 15

The Individual underwent the July 2007 PSI in an attempt to clarify new issues that had arisen concerning his finances during a reinvestigation. Ex. 22 at 2. With regard to the three credit cards obtained after the April 2002 PSI, the Individual was delinquent with regard to each of the cards. Ex. 22 at 15. The Individual stated during this PSI that he was going to use the approximately \$4,000 from the sale of his mother's home and an estimated \$50,000 resulting from the sale of family property to repay his current debts and again stated his intention to be financially responsible. Ex. 22 at 18, 31, 33-34. With regard to his two sons' college tuition, the Individual stated that one son was eligible to receive student loans and the other son had received a scholarship. Ex. 22 at 18, 23. After this PSI, the LSO sent the Individual a Letter of Interrogatory in February 2008 in which it inquired about two delinquent accounts totaling approximately \$1100. Ex. 17. Despite his statements in the July 2007 PSI regarding these debts, the Individual reported that the debts had not been resolved. Ex. 17.

As part of a reinvestigation to retain his security clearance, the Office of Personnel Management (OPM) conducted a background investigation of the Individual and summarized its findings in a

⁴ The two 2010 Credit Reports include debts arising from mortgages on the Individual's home. The mortgages were included as secured collateral in the Individual's 2001 Bankruptcy filing. Ex. 40. At the time of the credit reports, the Individual was in the process of negotiating a home mortgage modification agreement with the mortgage holders. Ex. 12 at 11.

⁵ The Notification Letter cited the April 2001 PSI but, in fact, this exchange occurred during the April 2002 PSI. See Letter from DOE Counsel to the Individual's counsel (September 19, 2013).

March 2010 report (March 2010 OPM Report). Ex. 85. The March 2010 OPM Report indicated that the Individual informed the investigator that his 2001 bankruptcy resulted from overextending himself in obtaining a second mortgage for his house. Ex. 85 at 4.

During the October 2010 PSI, the Individual admitted that he had received a home loan modification because he was \$38,000 past due on his home loan. Ex. 12 at 7. He also asserted that his then current financial difficulty was caused by his having two sons in college and the need to pay approximately a combined \$4,200 per semester for both sons' tuitions. Ex. 12 at 7-9, 14. The Individual expressed his intention not to get in "over his head" with regard to his finances. Ex. 12 at 28. The Individual, in November 2010 purchased a 2009 Mercedes Benz for his wife's use with a monthly payment of \$636 per month for 72+ months (GM Financial). Ex. 2. In March 2012, the Individual purchased a 2002 Lexus (Toyota Motor Credit) with a monthly payment of \$496 per month for 60 months. Ex. 2.

When asked about his financial status during the November 2012 PSI, the Individual stated that he was not current regarding two automobile loans (GM Financial and Toyota Motor Credit - \$1,270 and \$991 past due, respectively), a furniture credit account (\$168 past due), and another credit account (GE Capital - \$134 past due) because one of his sons had elected to take summer courses at the college he was attending. Ex. 4 at 6, 8-9. During this PSI, the Individual "promised" that by December 2012 "all of this will be cleared up." Ex. 4 at 8-9, 10. The Individual signed, at this interview, the Information form in which the Individual agreed to provide additional financial information to the LSO to confirm that the accounts had been paid off and to provide the information no later than December 17, 2012.⁶ Ex. 4 at 10, 12.

On December 4, 2012, the Individual requested an extension of the deadline due to his son's being injured in an automobile accident and the LSO subsequently extended the deadline until January 28, 2013. Ex. 3(A) at 1. On March 12, 2013, the LSO contacted the Individual to ask why he had not provided the financial information requested in December. The Individual stated that because of his son's accident, and the death of a neighbor in December 2012, the need to send the documents "slipped his mind." Ex. 3(A) at 1. The Individual eventually provided the LSO with some financial documents on March 14, 2013. Ex. 3(A) at 1.

Among the documents the Individual provided the LSO in March 2013 was one page of a credit report dated January 2013 (January 2013 Credit Report) which reported that his General Motors and Toyota automobile credit accounts were current.⁷ Ex. 2. The January 2013 Credit Report indicates that the Individual had been past due on the General Motors account during August and September 2012 for approximately \$1,270. Ex. 2. The report also indicated that the Individual had been past due regarding his August, September, and October, 2012 Toyota payments of \$496

⁶ The Information form states that "I fully understand that my failure to furnish said information/documentation, as agreed, may prevent the DOE from reaching an affirmative finding required for granting, or continuing, my access authorization (security clearance), and may result in the termination of my security clearance" Ex. 4 (Certification to Furnish Information/Documentation)

⁷ On this document, the sections related to the monthly history of these accounts were apparently blacked out. However, the DOE Counsel stipulated to the fact that the markings (highlighter markings that appear dark upon copying) had been placed by DOE officials and not by the Individual. Tr. at 16-19.

per month. Ex. 2. The January 2013 Credit Report appeared to be a photocopy where various portions of the credit report had been cut out and reassembled into one document.

The Individual provided two other financial documents regarding the GM and Toyota accounts that provided information regarding his payments on these accounts through February 2013. Ex. 2. Another document, a letter dated February 5, 2013, indicated that the Individual was current on his furniture credit account if his February 5, 2013, payment was not returned due to insufficient funds. Ex. 2. Another letter, dated March 12, 2013, indicated that the remaining credit account (GE Capital) had been paid in full. Ex. 2.

Given the evidence before me, I find that the LSO had ample grounds to invoke Criterion L. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See Adjudicative Guidelines*, Guideline E, ¶ 15. Further, the 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. *See Adjudicative Guidelines*, Guideline F, ¶ 18. Given the Individual's failure to cooperate with the LSO by providing timely information to its inquiries and the Individual's extensive history of indebtedness, I find that the LSO had ample 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 dictates 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

The Individual does not dispute the factual accuracy of the allegations made in the Notification Letter. Tr. at 24-25, 143. Nonetheless, the Individual believes that the only relevant facts that should be considered with regard to his security clearance are the four delinquent financial accounts which were the subject of inquiry and his subsequent resolution of these accounts. With regard to his failure to meet the deadline to provide information on these accounts, the Individual asserts that events which occurred before the deadline excuse, in part, his failure to provide timely information. Nonetheless, after reviewing the record and the testimonial evidence in this case, I must conclude that the Individual has not resolved the security concerns raised by his history of indebtedness and his failure to cooperate with the LSO regarding its request for financial information.

The Individual testified that his financial difficulties over time have been caused by “credit card issues,” his children’s college expenses and “not being budget savvy.” Tr. at 85. He admitted that he and his family has, in the past, “overextended [themselves] on certain things we shouldn’t have.” Tr. at 85. Nonetheless, the Individual does not believe that his family has a lavish or extravagant lifestyle. Tr. at 86.

The Individual believes that his sons’ college educations were a priority with regard to his spending. Both of his sons have recently graduated from college the Individual and his wife have incurred loans of approximately \$60,000 to pay for their sons’ education.⁸ With regard to his most recent automobile purchases (a 2002 Lexus for \$18,900 and 2009 Mercedes Benz for \$23,500), the Individual stated that he purchased his 2002 Lexus after his prior vehicle, a 1998 Ford F150 Pickup with 357,000 miles became unreliable. Tr. at 82. He purchased the Mercedes Benz for his wife to commute to work when she gave one of their sons her 2006 SUV for the son’s use to commute to college. Tr. at 84.

At the hearing, the Individual and the Personnel Security Specialist confirmed the narrative provided in the factual findings above regarding the Individual’s failure to timely provide the information requested by the Information form. The Individual testified that his son had been injured on November 28, 2012, in an automobile accident and that he had contacted the Personnel Security Specialist on December 4, 2012, to request an extension of the deadline to submit information regarding the four delinquent accounts. Tr. at 90; *see* Tr. at 31. The Personnel Security Specialist extended the deadline until January 28, 2013. Tr. at 90. The Individual admitted that he did not comply with the information request until contacted by the LSO in March 2013. Tr. at 90. The Individual attributes his failure to provide the requested financial information on his son’s accident and the gunshot death of his next-door neighbor on

⁸ His sons attended college from 2006 thru 2013. Tr. at 72, 78.

December 10, 2012. Tr. at 90. The Individual was especially affected by this event because of his belief that he, instead of his neighbor, could have been shot outside of his house. Tr. at 91. Given these events, the Individual asserts that he “forgot” that he had promised to provide the requested financial information to the LSO. Tr. at 91. As to the January 2013 Credit Report, the Individual stated that because the information request pertained to four specific accounts, he took the request literally and cut and attached in his response only the information in his credit report pertaining to the four accounts. Tr. at 97.

The Individual has argued that the only relevant period of indebtedness is the period surrounding the November 2012 PSI. During this time, the Individual had four delinquent accounts totaling approximately only \$2,500 and that by March 2013, each of these account were made current. Ex. 86. Further, the Individual’s argues that his delay in providing the information was an isolated event somewhat excused by his son’s automobile accident. As to the relative limited nature of the Individual’s indebtedness, I cannot restrict my review to the Individual’s recent financial history. Part 710’s section 710.7(a) requires me to consider “all relevant information, favorable and unfavorable.” 10 C.F.R. § 710.7(a). The Individual’s undisputed history of indebtedness is extensive and the Individual’s recent period of financial stability is relatively recent. Further, I find that none of the potentially mitigating factors listed in Guideline F of the Adjudicative Guidelines are applicable.⁹ As of the date of the hearing, the Individual has not demonstrated a significant period of current financial responsibility. *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). Further, while I commend the Individual for resolving his recent accounts and in recently adopting a budget, the Individual has not provided any evidence indicating that he will, in the future, act to avoid future financial issues. The Individual plans to, but has not as of the date of the hearing, undertaken any programs to address finances. While the Individual presumably will not be taking on additional college tuition expenses, he has not yet begun planning repayment of the some \$60,000 in educational loans for which he is responsible and must make payments beginning in 2014.

The security concern raised by the Individual failure to comply with LSO’s request for information regarding the four delinquent accounts also has not been resolved. The Individual admits that his failure to provide the requested information is irresponsible and he takes full responsibility for this failure. While the evidence indicates that the Individual collected some of the requested documents before being contacted in March 2013, the Individual apparently did not obtain some of the requested documents until the day in March 2013, when he was contacted by the LSO. Ex. 3 (dates on submitted documents indicating that they were generated on the day in March 2013, when he was contacted by the LSO). The documents were submitted over a month late and only upon prompting by the LSO. The Individual’s admission that he “forgot” to provide

⁹ I note that paragraph 20(c) references as a mitigating factor that an individual “initiated a good-faith effort to repay overdue creditors or otherwise resolve the debts.” Adjudicative Guideline, Guideline F, ¶ 20(c). I find that the Individual only initiated efforts to resolve his most recent overdue accounts on prompting by the LSO pursuant to the November 2012 PSI. Consequently, I do not find that this mitigation factor is applicable in the Individual’s case. However, even if I found this factor was applicable, it does not outweigh the other derogatory information present in this case, especially the Individual’s extensive history of financial problems and the recency of his latest overdue accounts.

the documents is baffling since the Individual, given the instructions given during the November 2012 PSI and the Information form, must have known the importance of cooperating with the LSO to resolve this security concern. I find none of the mitigating factors listed under Guideline E ¶ 17 of the Adjudicative Guidelines to be applicable in this case. From the information available to me, I recognize that the Individual's failure to cooperate appears to be a relatively isolated event. However, the Individual's failure to provide the information is recent. Further, the Individual was given specific deadlines to submit the information and was apprised of the potential consequences of failing to complying with the deadlines. After weighing all of the evidence, I cannot find that the security concern raised by the Individual's failure to cooperate with the LSO's information request has been resolved.

After reviewing the testimony presented at the hearing along with the evidence in the record, I find that the Individual, at this time, has not resolved the Criterion L concerns raised by his history of financial irresponsibility and his failure to cooperate with an information request related to the determination of his fitness to possess a security clearance.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the DOE's security concerns under Criterion L. Therefore, the Individual has not demonstrated that restoring 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 restore the Individual's 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: November 1, 2013