

The Individual is a DOE contractor employee who participated in the DOE's Human Reliability Program (HRP),² and currently holds a suspended DOE access authorization. DOE Exhibit ("Ex.") 3. As a holder of a DOE access authorization and participant in the HRP, the Individual routinely completed Questionnaires for National Security Positions (QNSPs), most recently in January 2013. DOE Ex. 18. In addition, the Local Security Office (LSO) conducted Personnel Security Interviews (PSIs) with the Individual in July 2011 (DOE Ex. 22), August 2011 (DOE Ex. 21), August 2012 (DOE Ex. 20), and July 2013 (DOE Ex. 19) in order to discuss concerns related to the Individual's finances. In November 2013, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (f) and (l) (Criteria F and L, respectively).³ See DOE Ex. 1 (Summary of Security Concerns). The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge⁴ in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual, represented by counsel, testified on his own behalf and offered the testimony of three witnesses: his co-worker, his second-line supervisor, and his manager. In addition, the Individual submitted five exhibits into the record (Indiv. Exs. A-E).⁵ The DOE counsel presented no witnesses, and tendered twenty-four exhibits (DOE Exs. 1-24). See Transcript of Hearing, Case No. PSH-14-0001 (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.

² The Human Reliability Program is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs, meet the highest standards of reliability and physical and mental suitability. See 10 C.F.R. § 712.1.

³ Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual's eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such statements raise serious doubts regarding an individual's honesty, reliability, and trustworthiness. 10 C.F.R. § 710.8(f). 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).

⁴ Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1 n.1 (2014).

⁵ The hearing transcript identifies several additional exhibits that the Individual stated he would submit following the hearing (Indiv. Exs. F-H and A-1) in order to clarify or corroborate certain assertions he made throughout the hearing. However, the Individual did not submit any additional documents as of this date.

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 Administrative Judge 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 Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *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 decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(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. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter informing the Individual that the DOE possessed certain derogatory information which raised doubts regarding his eligibility to hold DOE access authorization. According to the Notification Letter, this information raises security concerns under Criteria F and L of the Part 710 regulations. DOE Ex. 1. To support its Criterion F concerns, the LSO alleged that the Individual indicated on his January 2013 QNSP and during the July 2013 PSI that he filed his 2011 federal income taxes, but the Internal Revenue Service (IRS) records did not reflect that the Individual had filed a return for the 2011 tax year. *Id.* In addition, as a basis for its Criterion L concerns, the LSO alleged that the Individual: (1) failed to file his 2011 federal income taxes; (2) had delinquent federal tax debt totaling approximately \$23,500, collection accounts totaling approximately \$69,300, charged-off debts totaling approximately \$77,300, outstanding judgments totaling approximately \$59,700, and additional debts totaling approximately \$1,050; and (3) failed to settle or make payment arrangements for his delinquent accounts, despite his past assurances to the DOE that he would contact his creditors and make efforts to resolve his debts. *Id.*

Regarding the Individual’s statement on the January 2013 QNSP and July 2013 PSI that he filed his 2011 federal income taxes, it is well-settled that lack of candor or dishonesty may raise

security concerns, particularly if such conduct occurs during a background investigation in connection with an individual's security clearance. *See Id.*, Guideline E, ¶ 15 (“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”). The deliberate falsification of information on a QNSP and false statements made during security interviews are examples of conduct which would give rise to such a concern. *Id.*, Guideline E, ¶ 16(a). Given the inaccurate information that the Individual provided during the security clearance process regarding his 2011 taxes, the LSO properly invoked Criterion F.

As to the cited security concerns pertaining to the Individual's delinquent debts and purported pattern of financial irresponsibility, 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,” which, in turn, may call into question an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F, ¶¶ 18, 19. Given the facts in this case, there was ample information in the record that raised valid security concerns. Therefore, I find that the LSO properly invoked Criterion L.

IV. FINDINGS OF FACT

A. The Individual's Finances and Related Information

The Individual has worked for a DOE contractor since 2002. Tr. at 48. Between 2007 and 2010, he was also involved in several side businesses. Tr. at 48-52; DOE Ex 22 at 8, 60. Sometime in 2007, after his first business failed due to outside competition, the Individual started another business in partnership with a long-time friend. Tr. at 49, 138. Because of the Individual's full-time work schedule, he entrusted the day-to-day operations of the business to his partner. Tr. at 50, 141. In 2009, the Individual learned that the partner had failed to pay the business' bills and taxes for the past two years, and was allegedly siphoning money from their joint business into another of the partner's ventures. Tr. at 51-52, 138. Ultimately, they sold the business, used the money from the sale to pay overdue rent, and “the rest went to the IRS.” Tr. at 141. Although they dissolved the partnership, the Individual remained liable for half of the defunct business' debts, including delinquent taxes. DOE Ex. 22 at 58-65, Tr. at 51-53.

Over the next several years, the Individual's debts continued to accrue, as set forth in the Notification Letter. DOE Ex. 1. While the record is unclear as to the specific origin of each of the debts, the Individual attributed most of them to his failed side businesses. *See, e.g.*, DOE Ex. 19 at 74, 122, 211-212; DOE Ex. 22 at 8-11. The Individual made various attempts to resolve his outstanding debts by contacting creditors and making numerous settlement offers, but his efforts were largely unsuccessful. *Id.* at 72-200. In October 2013, the Individual recognized that he did not have the means to resolve his outstanding debt and decided to file for Chapter 7 bankruptcy. DOE Ex. 12. With the exception of his federal tax debt, all of the Individual's outstanding debts were included in the filing. *Id.*; Tr. at 78-93. The bankruptcy court granted

the Individual a discharge of his debts in January 2014. *Indiv. Ex. A.*⁶ The Individual's federal tax debt remains unresolved. *DOE Ex. 13.*

B. The Individual's 2011 Federal Income Taxes

In April 2012, the Individual timely filed with the IRS a request for an extension of time in which to submit his personal income tax return for the 2011 tax year. *DOE Ex. 13.* Therefore, his 2011 tax return was due in October 2012. *Id.* The Individual filed the return in February 2014, two days before the hearing in this case. *Indiv. Exs. C - E.*

IV. ANALYSIS

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to conclude at this time that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

A. Criterion F - Alleged Falsification or Misrepresentation of Information

The Individual does not dispute that he represented that he had filed his 2011 federal income tax return when he, in fact, had not done so. However, he maintains that his statements to that effect were not a deliberate attempt to falsify or misrepresent information to the DOE. The Individual asserted that he was unaware that he neglected to file his 2011 federal income tax return until October 2013, when his bankruptcy attorney discovered the matter while preparing his bankruptcy filing. *Tr. at 122.*

As indicated above, deliberate omissions, concealments, or falsifications of information call into question an individual's honesty, reliability, and trustworthiness, and raise security concerns. *Adjudicative Guidelines, Guideline E, ¶ 16(a).* Having reviewed the entire record, including the Individual's explanation regarding his inaccurate statements and the testimony from other witnesses about the Individual's general honesty and character, I find it unlikely that the Individual deliberately attempted to deceive the Agency. *See, e.g., Tr. at 13-14, 26, 30-31, 38-39.* My finding in this regard is supported by the general candor and honesty that the Individual has exhibited throughout the security clearance process, including his forthrightness in discussing the sensitive subject of his finances. *See DOE Exs. 18 - 22.* The Individual's misstatements may have resulted from a faulty memory, confusion, or even carelessness. In any

⁶ I note that while the Individual represents that the January 2014 bankruptcy discharge included all of the debts that were listed in the October 2013 filing, there is no documentation in the record substantiating that assertion. The Individual submitted the first page of the bankruptcy court's discharge order as an exhibit. There was some question at the hearing regarding whether certain debts had been discharged. The Individual did not submit any additional documentation clarifying the status of those debts. *See Tr. at 91, 97-98, 157.*

event, they lack the requisite element of deliberateness to call into question the Individual's honesty, reliability, and trustworthiness. Therefore, I find that to the extent that the Individual's inaccurate statements with respect to his 2011 federal income taxes on his January 2013 QNSP and during the July 2013 PSI raised security concerns under Criterion F, those concerns have been adequately mitigated.

B. Criterion L - Purported Pattern of Financial Irresponsibility

The Individual did not dispute that the information regarding his delinquent finances and related matters raised security concerns under Criterion L. Rather, he attempted to establish at the hearing that those concerns have been fully mitigated.

Regarding the Individual's 2011 federal income taxes, the Individual maintained that his failure to file the tax return was an inadvertent error on his part, and he attributed the lapse to a protracted medical issue with which he struggled in early 2012 that impacted his ability to keep up with routine matters. Tr. at 136. To support this assertion, the Individual submitted a letter from his physician detailing the seriousness of the medical condition. Individ. Ex. B. However, somewhat surprisingly, the letter contradicts the Individual's testimony, in that it indicates that the Individual's medical issues arose in 2011, impacting his ability to complete his 2010 taxes. *Id.* The Individual testified that his physician simply cited inaccurate dates in his letter. Tr. at 56. He added that he would supplement the record with additional documentation in order to clarify the dates. Tr. at 157. Yet, the Individual submitted no additional documents. Consequently, in light of the discrepant information in the record, which the Individual himself provided and did not correct despite his opportunity to do so, I am unable to accord much weight to the Individual's explanation for his failure to file his 2011 taxes.

As to the concerns raised by his delinquent debts, the Individual maintained that he has since resolved any related security concerns because, other than his federal tax debts, his delinquent debts were discharged in bankruptcy.⁷ Tr. at 77-79. The Individual intends to now focus on resolving his outstanding tax issues. Tr. at 110-11. To that end, because he does not currently know the specific amount that he owes the IRS, he has requested a summary of his current tax debt so that he can begin making arrangements for the repayment of the debt. Tr. at 126-29. Finally, the Individual testified that he keeps a budget of his living expenses that he intends to follow in order to allow him to pay his bills. Tr. at 143. He acknowledged, however, that at present his budget involves "minimal" income and is sufficient for his basic expenses. *Id.* According to the Individual, his ability to address his debts hinges on the restoration of his suspended security clearance, and the related potential overtime income. Tr. at 144. He has not accounted for the alternative outcome, and does not have a contingency plan in place. *Id.*

In considering whether the Individual has mitigated the Criterion L concerns regarding his purported pattern of financial irresponsibility, I note as an initial matter that filing for bankruptcy is a legal means of resolving debt and does not, *per se*, raise security concerns. Rather, it is the underlying causes of the indebtedness which may raise concerns. *See generally* Adjudicative

⁷ As noted above, the record is unclear as to whether every debt listed in the Individual's October 2013 bankruptcy filing was, in fact, discharged by the bankruptcy court's January 2014 order. *See* n.6, *supra*.

Guidelines, Guideline F; *see also Personnel Security Decision*, OHA Case No. PSH-12-0135 (2013). Thus, the mere fact that an individual is successful in obtaining a discharge of debts through bankruptcy is not, without more, sufficient to fully resolve any security concerns which have arisen from the financial problems which led to the bankruptcy filing.

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 must first note that several of the Individual's assertions or explanations remain uncorroborated in the record. This is true despite the fact that the Individual had ample opportunity to submit supporting information at the outset of this proceeding, or to supplement the record after the hearing, yet did not do so. Nonetheless, even assuming *arguendo* that the Individual's assertions are true, upon consideration of the record in this case, I am unable to conclude that the Individual has resolved the Criterion L regarding his pattern of financial irresponsibility.

While it is possible that the Individual's financial problems were caused by factors outside his control, such as business downturns or medical emergencies, and he has attempted to resolve his debts in the ensuing years, he is currently in the very early stages of righting his finances. The Individual is likely in a better financial position now than he was in prior to the discharge of his debts in bankruptcy, but he did not offer any evidence at the hearing regarding the specifics of his current finances, such as an itemization of his current household expenses and income. In addition, the Individual's grasp of his path forward seemed nebulous at best. The Individual stated that he has a budget, but offered little in the way of details. Tr. at 143. Nonetheless, it appeared from his testimony that his current household income is barely enough to cover his routine expenses at this time. *See* Tr. at 143-44. Consequently, should he be faced with an unexpected or emergency expense, any progress he has begun to make in righting his finances could easily be reversed.

In prior cases involving financial irresponsibility, we 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. In this case, while it appears that the vast majority of the Individual's old debts have been discharged through bankruptcy, I am unable to find that his financial situation is currently stable such that his financial difficulties are in the past and unlikely to recur and, therefore, do not cast doubt on his current reliability, trustworthiness, or good judgment. Therefore, I cannot conclude at this time

that the security concerns cited under Criterion L regarding the Individual's pattern of financial irresponsibility have been fully resolved.

V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria F and L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has resolved the Criterion F concerns. However, I have also concluded that the Individual has not presented sufficient information to resolve the security concerns cited under Criterion L. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE 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
Administrative Judge
Office of Hearings and Appeals

Date: May 29, 2014