

that raised security concerns under 10 C.F.R. § 710.8 (l) (Criterion L).² See DOE Ex. 1 (Notification Letter, January 7, 2014). The Notification Letter also informed the Individual that she was entitled to a hearing before an Administrative Judge³ 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 the Administrative Judge. At the hearing, the Individual testified on her own behalf and offered the testimony of three witnesses: her husband, her pastor/friend, and her former co-worker/friend. In addition, the Individual submitted 52 exhibits into the record (Indiv. Exs. A-AZ).⁴ The DOE counsel presented no witnesses, and tendered 13 exhibits (DOE Exs. 1-13). See Transcript of Hearing, Case No. PSH-14-0012 (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 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).

² 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).

³ 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).

⁴ For ease of reference, the Individual’s exhibits have been identified with sequential letters, with the first 26 exhibits marked Indiv. Exs. A-Z, respectively, and the remaining 26 exhibits marked AA-AZ, respectively.

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 her eligibility to hold DOE access authorization. According to the Notification Letter, this information raises security concerns under one criterion of the Part 710 regulations, Criterion L. DOE Ex. 1. As a basis for its concerns, the LSO alleged that the Individual: (1) had delinquent federal tax debt totaling approximately \$55,000, delinquent state tax debt totaling approximately \$2,400, and other delinquent debts totaling approximately \$7,000, for a combined total of approximately \$64,400; (2) was a party to two Chapter 13 bankruptcies that were dismissed – a November 2007 filing that was dismissed in August 2008 because she did not meet the required payments as scheduled, and a January 2009 filing that was dismissed at her request in February 2009 because she was unable to afford the monthly payment amount set by the bankruptcy court – which, according to the LSO, demonstrated a pattern of financial irresponsibility; and (3) failed to list certain required information on her June 2013 QNSP regarding tax liens and non-payment of federal and state taxes, the omission of which, according to the LSO, indicated that she is not honest reliable and trustworthy. *Id.*

Regarding 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. In addition, as to the Individual’s apparent failure to list required information on her June 2013 QNSP, 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 omission, concealment, or falsification of information on a QNSP is an example of conduct which would give rise to such a concern. *Id.*, Guideline E, ¶ 16(a). 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

The Individual did not dispute the facts set forth in the Notification Letter regarding her finances. She acknowledged that she and her husband incurred federal and state tax debt, had several delinquent collections or overdue accounts, and filed for Chapter 13 bankruptcy as indicated above.

Prior to her marriage in 2002, the Individual typically received small tax refunds after filing her federal and state returns. Tr. at 42. Once she and her husband began filing joint returns, they routinely owed taxes at the end of each year. However, the balances due were manageable for the Individual and her husband in the first few years of their marriage, and their payments were timely. Tr. at 41, 47.

The Individual attributed her family's financial difficulties to a series of events that began in 2005 and worsened over the ensuing years. In early 2005, the Individual was on disability leave for several months after suffering an injury. While she received approximately 70% of her salary during her leave, the Individual reportedly did not realize at the time that her employer did not deduct any income tax from the disability pay, resulting in an unexpectedly high tax bill at the end of the year. Tr. at 47-48. In addition, also in 2005, the Individual and her husband secured an adjustable-rate mortgage (ARM) to finance the purchase of their first home. While seemingly manageable at the time of signing, the monthly mortgage payment increased sharply within the first two years of the life of the loan, as the servicing company for the loan changed several times during that period, with the interest rate on the loan increasing each time. These increases occurred before the routine adjustment of the rate. Tr. at 48-51. Once the ARM's interest rate adjusted upward, the Individual and her spouse soon found themselves unable to remain current in their monthly payments. Tr. at 50. In addition, the home itself required several unexpected and major repairs, further straining the family's finances. Tr. at 53-54. During that period, the couple continued to owe additional taxes each year, despite their various attempts to ensure that sufficient taxes were withheld from their respective paychecks to adequately satisfy their tax liability. Tr. at 55-56.

The couple's debts mounted and they became unable to pay their tax bills on time. By 2007, their financial state had become untenable. In November 2007, the Individual and her spouse filed Chapter 13 bankruptcy in an attempt to avoid the initiation of foreclosure proceedings and keep their home. DOE Ex. 13 at 142; *see also* DOE Ex. 11. However, due to a late payment, the bankruptcy was dismissed in August 2008. DOE Ex. 13 at 135-36. They filed for Chapter 13 bankruptcy again in January 2009. However, the required monthly payment was much higher than they expected or could reasonably afford. As a result, the bankruptcy was dismissed, at their request, in February 2009. *Id.* at 146-52.

As the Individual and her husband focused their efforts on resolving the issues related to their mortgage and the subsequent bankruptcies, their tax situation continued to worsen. Tr. at 51. In an attempt to address their delinquent federal income taxes, the Individual and her husband entered into an agreement in August 2008 with a company purporting to be a group of former Internal Revenue Service (IRS) attorneys with experience in resolving serious tax debts on

behalf of its clients, allegedly often helping the clients settle with the IRS for much less than the original amount owed. DOE Ex. 13 at 28. The Individual and her husband signed a Power of Attorney allowing the company to, *inter alia*, access their personal tax records going back to 1999, file their tax returns, and communicate and negotiate with the IRS on their behalf in order to establish a repayment arrangement to resolve their outstanding tax debt. Tr. at 62, 87-88; *see also* Indiv. Ex. AY. In addition, the couple agreed to biweekly payments of \$250, which were withdrawn automatically from their bank account. Indiv. Ex. AO. According to the Individual, the company was to keep a small fee and use the remainder of the funds to make the payments to the IRS that they negotiated on the couple's behalf. Tr. at 60.

At the time they entered into the agreement with the company, the Individual and her husband owed back taxes to the IRS for tax years 2005 through 2008 in the amount of approximately \$18,000. DOE Ex. 13 at 62. As they continued to owe taxes each year, the couple added tax years 2009 through 2011 to their agreement with the company. Tr. at 62. Over the next four years, they submitted any documentation relating to their federal taxes to the company, not to the IRS, and entrusted the company with preparing and filing their returns. Tr. at 61-62. The Individual and her husband did not communicate or correspond directly with the IRS, nor did they receive any documentation from the IRS or from the company showing any payments or decrease in their debt. *Id.* This arrangement continued until August 2012, when the Individual received a letter from the IRS thanking her for scheduling a final payment in the amount of \$42,000. Tr. at 63. It was at that time that the Individual first recognized that the company defrauded her and her husband. *Id.*; *see also* Indiv. Exs. AP, AU. Between 2008 and 2012, the Individual and her husband made payments to the company totaling approximately \$23,000 under the assumption that most of those funds were applied to their IRS debt. Tr. at 64.

While trying to address her financial situation, the Individual's security clearance was due for a routine reinvestigation. As part of the process, the Individual completed a QNSP in June 2013. DOE Ex. 12. She omitted six IRS tax liens that were filed against her in March 2013 for tax years 2005 through 2010. DOE Ex. 12. She also failed to list her non-payment of federal income taxes for tax years 2005 and 2006, and her non-payment of state income taxes for tax years 2003 through 2009, 2011, and 2012. *Id.*

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).

As noted above, the Individual did not dispute the facts cited in the Notification Letter giving rise to the security concerns. The only remaining question is whether she has mitigated those concerns.

A. The Individual's Omissions of Required Information on the June 2013 QNSP

The Individual does not dispute that she failed to list certain required information, as set forth in the Notification Letter. However, she maintains that the omissions were not deliberate attempts to conceal information from the DOE. DOE Ex. 13 at 132-33; *see also* Tr. at 68-71, Individ. Ex. Y. She explained that she did not list the tax liens on the QNSP because she was not aware that the IRS had filed the liens against her. Tr. at 68; DOE Ex. 13 at 115, 132-33. Similarly, with respect to her omissions regarding her non-payment of taxes, the Individual attributed the omissions to her misunderstanding of the question. Specifically, the Individual believed that she was required to list taxes that remained unpaid at the time she completed the form. Tr. at 69-70. She did not list the state taxes because she and her husband had already repaid the balance for tax years 2003 through 2009, and she was not aware that they owed state taxes for 2011 and 2012 at the time she completed the QNSP. Tr. at 70. With respect to her non-payment of 2005 and 2006 federal income taxes, the Individual testified that she had been more focused on the tax years 2007 to the present, and honestly believed those first two years had been paid at the time she completed her form. *Id.*

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 explanations regarding her omissions and the testimony from other witnesses regard the Individual's honesty and character, I find it unlikely that the Individual deliberately attempted to conceal or withhold information. *See, e.g.*, Tr. at 14-17, 24. My finding in this regard is supported by the general candor and honesty that the Individual has exhibited throughout the security clearance process, including the fact that she listed substantial other negative information on her QNSP, and also disclosed additional information regarding past due accounts during the PSI. *See* DOE Exs. 12, 13. The Individual's omissions on the form appear to result from the fact that she was overwhelmed by the volume of information she had to list and her misunderstanding of what was asked of her, rather than any "deliberate" falsification of the form. Therefore, I find that to the extent that the Individual's omissions on the June 2013 QNSP raised security concerns, those concerns have been adequately mitigated.

B. The Individual's Purported Pattern of Financial Irresponsibility

The Individual testified at length regarding the underlying causes of her financial difficulties, as well as the numerous steps she has taken to address her situation. While the Individual largely attributed her situation to the issues that arose after she and her husband purchased their first home and their involvement with a company that defrauded them, both of which are described above, she acknowledged that, in hindsight, she made some questionable decisions. Tr. at 80-81, 97. She noted, however, that she and her husband have been consistently attempting to address their financial situation since their difficulties first began a decade ago, and they have learned from their mistakes. Tr. at 82-84. The Individual is confident that she and her husband are now taking the appropriate steps to address their finances. The Individual's husband also testified regarding the status of the family's finances and their efforts to resolve their financial issues. His testimony generally corroborated the Individual's statements. Tr. at 103-136.

As of the hearing, the Individual and her husband owed approximately \$55,600 in federal income taxes. They worked with a tax attorney, who assisted them in establishing a repayment arrangement with the IRS, and they expect to have repaid their entire debt by January 2017. Tr. at 138-42; Indiv. Exs. L, AM, AT. In addition, the couple makes monthly payments of \$437 to the state tax authority to resolve their delinquent state taxes for 2010 through 2012. Indiv. Exs. AQ, AZ. The Individual has caught up with the payments on her student loans, which among the delinquent debts cited in the Notification Letter, and the accounts are no longer past due. Tr. at 144; Indiv. Ex. V. Finally, the Individual has made arrangements with the various creditors listed on her credit report to establish schedules for the repayment of her family's overdue accounts. Tr. at 143-48; Indiv. Exs. H - J, V, AB - AD, AI, AJ, AQ, AR.

According to the Individual, in addition to establishing repayment schedules for delinquent taxes and other outstanding debts, she and her husband have made many other changes to their lifestyle and finances which will reduce their regular expenditures and allow them to put more money toward their debts. Among the most significant changes is that they moved to a different home with a lower monthly rent and smaller utility bills. Tr. at 140; *see also* Indiv. Exs. A-F, N-R, X, AK, AN, AQ, AS. They also met with a financial counselor, who assisted them in developing a plan for repaying their debts and a manageable monthly budget. Tr. at 141, 147; Indiv. Exs. U, AF, AZ. In addition, she stated that they will further reduce their expenditures over the next several months, and will redirect the most of the savings toward their debts. For example, they no longer need daycare for their son due to his age, resulting in a savings of more than \$700 per month during the summer and of more than \$300 per month during the school year. Indiv. Exs. K, S, AQ. Finally, while the Individual and her husband are focused on repaying their debts, they are also slowly adding to their savings, with the goal of saving \$1000 at the end of one year, in order to help them cover any unexpected expenses. Tr. at 151-52.

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 regarding her pattern of financial irresponsibility. In the last several months, the Individual and her husband have made significant progress in addressing their finances by setting up payment plans to address their delinquent federal and state taxes and making arrangements with other creditors to resolve outstanding collections accounts. They have also made several lifestyle changes which have resulted in increased savings that they can turn toward their debts. Finally, they now appear to have a structured family budget that they intend to follow as they repay their remaining debts.

While these are all positive steps, the Individual is in the very early stages of establishing her financial stability. The Individual's largest debt, the delinquent federal taxes totaling over \$55,000 as of the date of the hearing, will not be paid off for at least three years. The Individual expects that the remaining debts will be paid off in the next two years. *See* Indiv. Ex. AR. A review of the Individual's family budget indicates that the current household income is enough to cover their expenses and planned debt payments at this time. *See* Indiv. Ex. AZ. However, as they have only been working their new plan for a very short time, they do not appear to have much 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, the financial irresponsibility at issue in this case has persisted for an extended period of time. While the circumstances surrounding the Individual's involvement with the fraudulent tax assistance company were unfortunate, they also raised some doubt regarding Individual's judgment and reliability with respect to her finances. Specifically, that the Individual consistently paid the company for four years without any proof that from either the IRS, or even the company itself, that her tax debt was decreasing is particularly concerning. The Individual herself now recognizes her error in judgment.

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, the steps that the Individual has recently taken in developing an aggressive plan to address her finances are commendable. However, at this early stage, I cannot conclude that 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. Therefore, I cannot conclude at this time that the security concern 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 Criterion 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 not presented sufficient information to fully resolve those security concerns. 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 23, 2014