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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)		
	)		
Filing Date: March 10, 2014	)		
	)	Case No.:	PSH-14-0023
	)		
	)		

Issued: May 22, 2014

Administrative Judge's Decision

Steven L. Fine, Administrative Judge:

This decision concerns the eligibility of Miguel Angel Castro (hereinafter referred to as "the Individual") to obtain a security clearance 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." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

This case involves an Individual with a pattern of failing to meet his financial obligations dating back to at least 2006. Unable to resolve the security concerns raised by the Individual's continuing financial issues, the LSO initiated administrative review proceedings by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised the Individual that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (Criterion L).[1]

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[1] Specifically, the Notification Letter alleges that the Individual has:

> Engaged 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

The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on March 10, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-14-0023 (hereinafter cited as "Tr."). The LSO submitted 17 exhibits, marked as DOE Exhibits 1 through 17, and the Individual submitted 17 exhibits, marked as Individual's Exhibits A through Q.

II. STANDARD OF REVIEW

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FACTUAL BACKGROUND

The instant case concerns an Individual whose spouse became a real estate agent in 2002.[2] Exhibit 15 at 73. As the real estate bubble inflated, his spouse's annual income rapidly increased, eventually reaching a peak of $250,000. Exhibit 13 at 36-362. They invested this windfall in the then-rapidly appreciating real estate market: purchasing three single-family homes as rental properties (financing each of these purchases with adjustable rate mortgages (ARM), and without down payments), and four time-share properties (each of which required

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> 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).

[2] She was also serving as a loan broker. Exhibit 15 at 73.

monthly payments for their ownership interests, and additional fees for maintenance). Exhibit 13 at 171, 181-182, 231; Exhibit 14 at 29; Exhibit 15 at 29; Tr. at 44. They opened Home Equity Lines of Credit (HELOC) on each of the three rental properties, in order to obtain cash.[3] Exhibit 13 at 183. In 2005, they purchased a new residence for their family for $1,150,000, which they financed with three ARMs. Exhibit 13 at 26-27, 243; Exhibit 14 at 62, 67; Exhibit 15 at 75-76; Exhibit 16 at 39. They converted their previous home into a rental property; it too had been financed with an ARM. Exhibit 16 at 54. Beginning in 2008, the Individual's spouse's income rapidly declined because the real estate market came to a near standstill.[4] Exhibit 13 at 36-39; Exhibit 16 at 32-33. Meanwhile, they were making payments on at least ten mortgages, and four time-shares. The interest rates on these ARMs were resetting at higher interest rates, while the values of the underlying properties were falling. Exhibit 14 at 72-73; Tr. at 33. They found themselves unable to refinance any of these properties, because their outstanding obligations on each of these properties exceeded their value. Exhibit 13 at 184, 254; Exhibit 15 at 63. All five of the single family homes owned by the Individual and his spouse were eventually foreclosed upon, as well as three of his four time-shares. Exhibit 13 at 43-48, 384; Exhibit 15 at 21, 28.

The Individual's financial issues first came to the LSO's attention in 2008, when the LSO received derogatory information indicating that the Individual had been delinquent in paying his Federal taxes. The LSO conducted a Personnel Security Interview (PSI) of the Individual on December 17, 2008. During this PSI, the Individual stated that he and his spouse had entered into an agreement with the Internal Revenue Service (IRS) to pay $1000 a month in order to address delinquent Federal taxes for the tax years of 2005 and 2007. Exhibit 17 at 7. The Individual reported that they owed approximately $5,500 for tax year 2005, and approximately $22,000 for tax year 2007. *Id.* The Individual also admitted that he and his spouse were past due on their local property tax payments for their rental properties as well. Exhibit 17 at 10-12. The Individual blamed these delinquencies on an accountant that they had recently fired.[5] Exhibit 17 at 12, 23-25. The Individual stated that his spouse had contacted the lenders for the rental properties and had made arrangements to get caught up on the delinquent property taxes. Exhibit 17 at 12. He admitted being behind on mortgage payments for the properties and stated that they were attempting to modify their loans in order to lower their interest rates. Exhibit 17 at 13. The Individual stated that he had obtained a loan modification on his mortgage for his residence. Exhibit 17 at 15-16.

Five years later, during a February 27, 2013, PSI, the Individual admitted that Federal tax liens had attached to his real properties as a result of his Federal tax delinquencies for tax years 2006, 2007, and possibly 2008. Exhibit 16 at 23. The Individual explained that when they received the tax bills for those years, they were unable to pay them. Exhibit 16 at 23. The Individual

[3] When the Notification Letter was issued, the Individual and his spouse owed the three HELOC creditors $59,395, $31,425, and $47,906, respectively.

[4] According to the Individual, his spouse's income "basically went from making, you know, $200,000.00 a year to nothing." Exhibit 16 at 33.

[5] During a subsequent PSI, on November 4, 2013, the Individual did not recall this assertion and claimed that his mortgage company was responsible for making the payments on these properties. Exhibit 13 at 247. Later during the November 4, 2013, PSI, the Individual asserted that a real estate agent had been making these payments on his behalf. Exhibit 13 at 250-251.

explained that he had recently obtained the services of a Certified Public Accountant (CPA) who had refiled their tax returns for tax years 2006, 2007, 2008, and 2009. Exhibit 16 at 24. According to the Individual, his total past due Federal tax bill was almost $54,000 before the CPA refiled their tax returns. However, as a result of his refiling, he was instead expecting a refund of $15,000 from the IRS. Exhibit 16 at 24-27. The Individual admitted that the IRS was continuing to audit them and would not disburse the refund, or remove the tax liens, until the audit was complete. Exhibit 16 at 26, 78-79. The Individual reported that he and his spouse had "made some tough decisions" and had decided to "walk away" from his investment properties, and that all four of his single family investment properties had been foreclosed upon. Exhibit 16 at 33, 49-52. The Individual stated that he had considered bankruptcy, but "it hasn't gotten to that point yet" and he was concerned that he would lose his 401K investments. Exhibit 16 at 35, 85. The Individual explained that he hoped to begin addressing his debts by trying to settle with his creditors. Exhibit 16 at 36. He reported that the adjustable interest rate on his primary residence had significantly increased, doubling his monthly mortgage payments. Exhibit 16 at 39. The primary lender on the Individual's residence (Bank A) granted a loan modification for two years, but would not agree to a further loan modification.[6] Exhibit 16 at 39-40. The Individual also reported that he was "working out a payment schedule" for a past-due credit card account in collection status. Exhibit 16 at 58, 61. The Individual reported that his [$50,000] truck had been repossessed, but he was able to reclaim his truck by paying off the entire outstanding loan. Exhibit 16 at 64-65.

A month later, during a March 28, 2013, PSI, the Individual reported that his wages had been garnished by a creditor who obtained a judgment of over $13,000 against his spouse.[7] Exhibit 15 at 11. When the Individual was asked about the status of the $15,000 refund from the IRS he discussed in his previous PSI, the Individual claimed: "I don't owe the IRS anything" and claimed that he was expecting another $9,000 in refunds from his 2012 taxes. Exhibit 15 at 17-19. However, he was unsure whether the IRS would disburse this $9,000 refund or set it off against unpaid Federal tax claims, since the IRS was auditing his tax returns from 2006 and 2007. Exhibit 15 at 19-20, 66. The Individual explained that he was unable to sell any of his four rental homes because their values had declined below the amount owed for them, so it made financial sense to let them be foreclosed upon. Exhibit 15 at 21-23. As a result, they "walked away" from the properties in 2009. Exhibit 15 at 26. They purchased these properties with the expectation that their prices would keep going up and that they could easily refinance when the interest rates reset upwards. Exhibit 15 at 30. The Individual acknowledged that he had several accounts in collection status. Exhibit 15 at 32. The Individual explained that his strategy for dealing with his past due debts was to wait for his creditors to contact him and then work out payment plans with them. Exhibit 15 at 32, 49. He said he would not take the initiative to contact his creditors in order to set up payment plans, because "we are not essentially looking for trouble if you will." Exhibit 15 at 32. The Individual stated that they were not making mortgage

[6] The Individual further claimed that he and his spouse had signed a contract with Bank A "to short sale the property." Exhibit 16 at 40. He claimed however, that, despite having received an acceptable short sale offer on the home, Bank A foreclosed on the property. Exhibit 16 at 40-42. The Individual and his spouse engaged the services of "a legal advisor," who was not an attorney but rather a paralegal, and filed a lawsuit against Bank A, which had not been resolved at the time of this PSI. Exhibit 16 at 42-43.

[7] The Individual reported that his "legal advisor" in this matter was a "paralegal" who he has paid between $2,500 and $3,000. Exhibit 15 at 12, 110.

payments on their primary residence because they "don't know what the status" of the property since the property is now the subject of litigation with Bank A. Exhibit 15 at 42-43, 77. The Individual claimed that Bank A wrongfully foreclosed upon the property and "withdrew the foreclosure" when he filed suit. Exhibit 15 at 47. He also reported that his spouse was making payments on his past due credit card bill, and working on an agreement to resolve that debt. Exhibit 15 at 48. The Individual reported that his net monthly income was $3,000, while his spouse's monthly income varied between $0 and $4,000. Exhibit 15 at 54-55. The Individual estimated their monthly expenses to be "a little over $5,000." Exhibit 15 at 56. The Individual stated that they were generally breaking even. Exhibit 15 at 56-57. The Individual admitted, however, that they had been "dipping into our IRA . . . to stay afloat" and had withdrawn $16,000 from their IRAs to meet their monthly expenses in the previous year. He acknowledged that their IRAs would eventually run out. Exhibit 15 at 51, 56-57. The Individual stated that his spouse had started a new personal care products business, which they expected to bring in more revenue over time. Exhibit 15 at 60. The Individual contended that they did not owe any outstanding debt to the lenders of the three HELOCs they obtained for their rental properties.[8] Exhibit 15 at 64-65. The Individual contended that his family was living within their means, he has "learned to budget," and that he is "financially responsible." Exhibit 15 at 99-100, 111.

Two and a half months later, during a June 12, 2013, PSI, the Individual stated that the IRS audit, triggered by his refiling of several years' tax returns, had not been resolved and attributed his inability to resolve this matter to the unresponsiveness of the IRS. Exhibit 14 at 15-16. The Individual initially claimed, during this PSI, that, as a result of his re-filings of several tax returns, his debt of over $50,000 to the IRS has been eliminated, and the IRS now owes him $15,000. Exhibit 14 at 21. However, he admitted that the IRS has not yet accepted these figures, and had in fact informed him that they are withholding the $15,000 refund and applying it to reduce the amount of back taxes owed by the Individual and his spouse and that he might owe the IRS from $15,000 to $25,000. Exhibit 14 at 21, 23-24, 35. The Individual estimated that his spouse's personal care products business makes $2000 a month. Exhibit 14 at 41. The Individual completed a Personal Financial Statement during this PSI, in which he reported that his family's monthly income was $5,500, while their monthly expenses were $5,715. Exhibit 14 at 45. He claimed that he had obtained his credit report and was contacting his creditors. Exhibit 14 at 86, 88. The Individual reported that his family still lived in his primary residence. Exhibit 14 at 62. He claimed that he no longer owed any lenders for past due debts on his investment properties. Exhibit 14 at 81. The Individual denied living beyond his means. Exhibit 14 at 95. The Individual reported that he had entered into an agreement to settle the debt of two of his time-shares, and had begun making payments in accordance with this agreement.[9] Exhibit 14 at 111-112. The Individual also reported that he had entered into a payment plan agreement in order to address his past due credit card of $11,277.[10] Exhibit 14 at 114-115. The Individual

[8] He would eventually admit, in subsequent PSIs, that he was still liable for these debts.

[9] Under the terms of this agreement, the creditor agreed to accept $1,800.00 as settlement of this $41,178 past due debt. Exhibit 14 at 112-113.

[10] The Individual agreed to pay $100.00 for the first six months, and then $300 per month for 18 months. Exhibit 14 at 114-115.

admitted that these two agreements would raise his monthly expenses from $5,715 to $6,415. Exhibit 14 at 115-116. He will draw upon his savings to make up for the $915 dollars a month difference between his monthly expenses and his monthly income. Exhibit 14 at 117-118. The Individual expressed the hope that his spouse's new business would improve to the point where their income would exceed their expenditures. Exhibit 14 at 118.

Five months later, during a November 4, 2013, PSI, the Individual stated that he was unsure if he owned his residence or not, since that issue was currently in litigation.[11] Exhibit 13 at 19. The Individual explained that he started missing payments on his residence in 2010, and had made his last payment in July or August of 2010. Exhibit 13 at 35, 52. He claimed that he had stopped making payments on his residence because he did not know what the outcome of the litigation would be. Exhibit 13 at 100, 141. The Individual reported that his annual income was $104,000, and that his spouse's annual income was $16,000 to $24,000. Exhibit 13 at 24. The Individual stated that his net income is approximately $5,000 per month.[12] Exhibit 13 at 112. He stated that his spouse's net income is approximately $1,500 per month.[13] Exhibit 13 at 113. Contrary to his assertions in previous PSIs, the Individual admitted that the HELOC loans he defaulted on are recourse loans for which he remains liable. Exhibit 13 at 190. The Individual then claimed that he had previously disclosed this fact to DOE. Exhibit 13 at 190. He indicated that he was trying to negotiate a settlement with each of the HELOC lenders, however, these lenders were seeking full payment of his HELOC debts rather than settling for a lower amount. Exhibit 13 at 191, 200, 255. The Individual stated that he expected to settle these debts at 10 cents on the dollar. Exhibit 13 at 255-256. The Individual reported that he had settled his debt with one of the four time-shares and that he did not owe anything for any of the other three time-shares after they were foreclosed upon, because they were purchased with non-recourse loans. Exhibit 13 at 239, 245. The Individual reported that he had not received refunds from the IRS for tax years 2006, 2007, 2008, and 2008, because he refiled his returns for those tax years after the statute of limitations had tolled. Exhibit 13 at 292-294. He then claimed that the IRS rejected his tax year 2007 return. Exhibit 13 at 294. When the interviewer asked the Individual if he was getting a $15,000 refund as he asserted in an earlier, March 28, 2013, PSI, the Individual stated that his refiling had not been "accepted" by the IRS. Exhibit 13 at 295-298. The Individual reported that he currently owed the IRS over $34,000 for back taxes. Exhibit 13 at 299, 310. The Individual did not know if he was current on tax years 2011 and 2012. Exhibit 13 at 299. The Individual claimed that he would have a refund coming to him in April 2014 that would reduce his debt to the IRS to less than $25,000. Exhibit 13 at 301. The Individual reported that a lawyer had advised him to file for Bankruptcy, but his spouse and he believe that these debts are their

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[11] The Individual claimed that after he began missing payments on his residence, Bank A, the lender for the first and second mortgages on his residence, contacted him, offered him an opportunity to short sell his property, and gave him 120 days to complete a short sale. The Individual claimed that even though he had obtained a bona fide offer on the property, Bank A foreclosed upon the property after 117 days. The Individual filed a pro se lawsuit against Bank A in August of 2012. Exhibit 13 at 139. The Individual claimed that after he filed the lawsuit against Bank A, it rescinded the foreclosure. Exhibit 13 at 100, 125. The Individual and his family have continued to live in this residence, even after they stopped making payments. Exhibit 13 at 100.

[12] After the interviewer suggested that his current income was not sufficient to meet his monthly expenses, he subsequently stated that his monthly net income was $6,000. Exhibit 13 at 419.

[13] He subsequently estimated that his spouse's minimum monthly income was $1,250 ($15,000 annually). Exhibit 13 at 419-420.

"responsibility." Exhibit 13 at 346-347. The Individual admitted purchasing a "high end" truck for $50,000. Exhibit 13 at 366-367. The Individual had earlier indicted that they had replaced two expensive German cars with a used minivan. The Individual claimed that once his spouse's business became established she might make $60,000 to $96,000 a year. Exhibit 13 at 390. The Individual attributed his financial problems to the decline in the housing market. Exhibit 13 at 392. The Individual initially stated that he was paying at least $700 per month to his creditors, however, this figure increased to $1,500 per month when the Individual was asked to describe how he was using his surplus income. Exhibit 13 at 405, 422. The Individual initially stated that he was paying $2,350 per month for his three children's daycare, a few moments later he claimed that he paid $2,650 per month.[14] Exhibit 13 at 408-409, 421, 431. They spend $140 per month on cell phones, and $180 per month on a cable TV, internet, and landline phone package. Exhibit 13 at 413. The Individual stated that he owes Bank C $13,500 in credit card debt. Exhibit 13 at 422- 423. Earlier during the PSI, he had claimed that he was current on all his credit cards. Exhibit 13 at 114. He currently puts $240 per pay period into his 401K account. Exhibit 13 at 426. He took his family to a vacation at Disneyland last August. Exhibit 13 at 433. The Individual admitted that "there is some leeway in the expenses that we have." Exhibit 13 at 454. The Individual admitted that he owes over $172,000 to his creditors. Exhibit 13 at 459.

IV. DEROGATORY INFORMATION AND SECURITY CONCERNS

The record shows that the Individual has a longstanding pattern of financial irresponsibility. When the Notification Letter was issued, the Individual: (1) owed the IRS approximately $34,000.00 in back taxes for tax years 2007, 2008, 2009, and 2010, (2) had not established a payment plan or made monthly payments to resolve his Federal tax debt, (3) owed $3,025.83 in delinquent property taxes for tax years 2008, 2009, 2010, 2011 and 2012, (4) had not established a payment plan or made payments on these tax debts, (5) had not made a monthly mortgage payment for his current residence since August 2010, (6) had defaulted on the mortgage for his current residence, resulting in its foreclosure, (7) had defaulted on at least 10 other mortgages on seven investment properties, each of which has been foreclosed, and (8) had a credit card account with a balance of $10,322.00, in charge-off status.

The Individual's pattern of financial irresponsibility raises significant security concerns under Criterion L. The Revised Adjudicative Guidelines state in pertinent part:

> 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 . . . . Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not

[14] Interestingly, the Individual provided the lower figure when the interviewer was suggesting that he was not making enough income to meet his current bills. The Individual provided the higher figure when the interviewer was asking the Individual how he was using his surplus income.

> meeting financial obligations; . . . [and] (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis. . . .

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶¶ 18, 19. In addition, the inconsistencies in the information provided by the Individual in his PSIs, and at the hearing, raise questions about the Individual's judgment and reliability. The Adjudicative Guidelines state in pertinent part: "Conduct involving questionable judgment . . . can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at ¶ 15.

V. ANALYSIS

At the hearing, the Individual argued that his financial problems resulted from a number of circumstances that were out of his control, while conceding that at times he had made some mistakes. He further contended that he expects to restore his family's financial stability, by the end of 2015. However, the record of this proceeding indicates that while the Individual's financial circumstances have been negatively affected by the real estate market, the Individual's current financial circumstances are largely the result of his and his spouse's own poor choices. Moreover, the Individual has not shown that his assertion that he will be out of debt by the end of 2015 is credible.

The Individual's hearing testimony serves to underscore these conclusions. At the hearing, he acknowledged that he has not entered into a settlement agreement or a payment plan with the IRS, allegedly since the IRS had not yet determined the amount that he owed them. Tr. at 11-15. The Individual testified that he currently owes the IRS from $12,000 to $23,000, and that he is working with the IRS to eventually enter into an agreement for repayment. Tr. at 11, 14, 17. The Individual asserted that he fell behind in his Federal tax payments because he could not "have foreseen the tax burden" that accompanied his spouse's significantly increased income. Tr. at 18. He testified that they knew that they would owe money at the end of the year, because taxes were not being deducted from her checks, but they were surprised by the amount that they owed, and did not have enough money to pay the amount due. Tr. at 18- 21.

The Individual testified that the debt identified in the Notification Letter as "$3,025.83 in delinquent property taxes for tax years 2008, 2009, 2010, 2011 and 2012," is actually a debt for business taxes mistakenly assessed against his spouse's defunct business after it's dissolution. Summary of Security Concerns ¶ A.2; Tr. at 24-25. The Individual asserted that his spouse needs only to dispute this debt and when she does so, "it will remove it, because the business was not open during the years that are listed here." Tr. at 25. The Individual had previously submitted the official documents recording these unpaid debts as Exhibit K. Exhibit K specifically states that these debts have been assessed against the Individual and his spouse[15] for unpaid property taxes. When I asked the Individual about this discrepancy at the hearing, he was

[15] The debts documented in Exhibit K are clearly accessed against the Individual and his spouse, rather than against any business organization.

unable to offer any explanation. Tr. at 26-28. The Individual denied owing any property taxes for any of the properties he had surrendered, and claimed that Exhibit D, which is a printout of an online search for outstanding property taxes on his residence, shows that he does not owe any property taxes. Tr. at 28-29, 49. However, Exhibit D applies only to his residence, and would not reflect any outstanding property taxes for any of the Individual's eight investment properties.

The Individual testified that the lawsuit that he and his spouse had filed against Bank A had been dismissed. Tr. at 30-31. He further testified that he was waiting to see if Bank A would agree to let him pursue a modification of his mortgage or a short sale of his residence. Tr. at 30-31, 34-35. The Individual testified that his inability to make his mortgage payments "wasn't part of my financial irresponsibility. It was part of the mortgage crash." Tr. at 32. The Individual also attributed his inability to make his mortgage payments on his residence to Bank A's refusal to modify his mortgage a second time, and Bank A's alleged refusal to honor an agreement to allow them to pursue a short-sale of the residence. Tr. at 33. The Individual testified that he had been advised by a lawyer to file for bankruptcy, but instead chose to file a lawsuit against Bank A without legal representation.[16] Tr. at 38.

The Individual testified that he had once owned four rental properties and that he used the HELOCs to take cash out of the rental properties, which they put "aside and used as reserves."[17] Tr. at 41-42. He testified that he is not liable for the four unpaid first mortgages on his rental properties, because they are located in a non-recourse state, but he remains liable for the HELOCs he defaulted upon. Tr. at 35, 41-42. The Individual testified that he has settled with the lender of one of his three HELOCs for ten percent of the debt owed and that he concluded his payments to that lender in the previous week.[18] Tr. at 42, 46, 48-49. He still owes over $65,000 to the other two HELOC lenders. Tr. at 47. He plans to settle with the other two lenders for ten percent of the debt he owes them. Tr. at 48. He testified that he currently has $180,000 in his 401K account, and plans to borrow from this account to pay any "settlement offer that I can afford." Tr. at 48.

The Individual testified that he reached a settlement of his past due credit card debt, in June 2013. Tr. at 50. Pursuant to this settlement agreement, he has been paying $300 a month and will continue to do so until June 2015.[19] Tr. at 50. The Individual has reached a settlement with one of his time-share creditors as well.[20] Tr. at 52. The Individual's truck is paid off. Tr. at 58. The Individual testified that he could afford to pay about $2,500 per month for rent now. Tr. at

[16] When the Individual was asked why he did not follow the advice of the lawyer, he replied: "The advice that the lawyer gave me at that time was basically -- I felt was unethical, at least from my point of view, to file for bankruptcy just so that I could stay in my home as long as I wanted." Tr. at 38.

[17] He never explained why these "reserves" were not used to meet some of his past due debts.

[18] A copy of this settlement agreement appears in the record as Exhibit O.

[19] A copy of this settlement agreement appears in the record as Exhibit G.

[20] A copy of this settlement agreement appears in the record as Exhibit E.

39. He testified that his net monthly income is approximately $5,500, while his spouse's net monthly income is approximately $500. Tr. at 40.

Subsequent to the hearing, the Individual submitted a family budget.[21] The estimates of monthly costs used in this family budget were often inconsistent with the information set forth in the family financial records submitted by the Individual. *See* Exhibits G and 7. For example, the family financial records showed monthly expenditures on dance lessons and on pool cleaning (in excess of $100 per month for each). The family budget does not account for these expenditures. *Compare* Exhibits G and 7 with Exhibit Q.

The record shows that the Individual has essentially been living above his means since at least 2009. Even though his family had lost his spouse's income, and had substantial past due debts, it continued to live an upper-middle class life style which included living rent-free in an upscale home, owning a $50,000 truck, a monthly pool cleaning service, dance lessons for their children, spending $2,654 per month on Montessori school for their three children, and taking annual vacations to Disneyland.

The Individual has been failing to meet his financial obligations since early 2006, when he was first unable to pay his Federal taxes as required, although his spouse's income did not begin to decline until 2008. The Individual, however, blames the deflation of the real estate bubble for his financial difficulties. While the decline of the real estate market, and the loss of his spouse's income, were definitely contributing factors to his financial difficulties, so was his repeated failure to exercise sound judgment in conducting his financial affairs, starting with his repeated failure to ensure that he has sufficient funds available to meet his tax obligations, continuing with his decision to encumber himself with extensive debt, the dilatory manner in which he addressed, or not addressed, his debts, and further continuing with his decision to continue living a life style beyond his means.

Moreover, the Individual has not submitted a sufficiently realistic and detailed financial plan to show me that he can live within his means going forward and address his outstanding debt. Even if the Individual had presented such a plan, nothing in his recent past shows that he would have the willingness or ability to successfully implement it.

Finally, I note, that as the facts recounted above show, the Individual has, since the beginning of this process and continuing through the hearing, been a particularly unreliable historian. Throughout this proceeding, he has repeatedly contradicted himself and provided difficult to believe explanations. Simply put, if I am unable to trust the allegedly mitigating information an Individual has provided to me, I am unable to resolve the derogatory information concerning him.

For the reasons discussed above, I find that the security concerns under Criterion L raised by the Individual's financial conduct remain unresolved.

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[21] A copy of this budget appears in the record as Exhibit Q.

VI. CONCLUSION

After carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criterion L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: May 22, 2014