

***The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.**

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

In the Matter of: Personnel Security Hearing)
Filing Date: June 23, 2014) Case No. PSH-14-0065
_____)

Issued: September 18, 2014

Administrative Judge Decision

Diane DeMoura, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (“the Individual”) to hold an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons detailed below, after carefully considering the record before me in light of the applicable regulations and the Adjudicative Guidelines, I find that the Individual’s suspended DOE access authorization should not be restored at this time.

I. BACKGROUND

The Individual is a DOE contractor employee who has held a DOE access authorization since 2008. DOE Exhibit (“Ex.”) 9. During a routine reinvestigation of the Individual’s security clearance, conducted by the Office of Personnel Management (OPM), questions arose regarding the Individual’s finances, as well as the accuracy of certain responses that he provided on a June 2013 Questionnaire for National Security Positions (QNSP). See DOE Exs. 16 (June 2013 QNSP), 20 (OPM Report). As a result, the Local Security Office (LSO) requested that the Individual participate in a March 2014 Personnel Security Interview (PSI) in order to discuss those matters. DOE Ex. 17. In May 2014, the LSO informed the Individual that there existed

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

derogatory information that raised security concerns under 10 C.F.R. § 710.8(l) (Criterion L).² *See* DOE Ex. 1 (Notification Letter, May 16, 2014).

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, offered his own testimony as well as the testimony of two coworkers. In addition, the Individual submitted seventeen exhibits into the record (Indiv. Exs. A-Q). The DOE counsel presented no witnesses, and tendered twenty exhibits (DOE Exs. 1-20). *See* Transcript of Hearing, Case No. PSH-14-0065 (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).

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

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).

(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 derogatory information which raised doubts regarding his continued eligibility to hold a DOE access authorization. According to the Notification Letter, this information raises security concerns under Criterion L of the Part 710 regulations. DOE Ex. 1. As a basis for its Criterion L concerns, the LSO cited information which called into question the Individual’s honesty, reliability, and trustworthiness, as well as his willingness and ability to satisfy his financial obligations. *Id.*

In support of its concerns regarding the Individual’s honesty, trustworthiness or reliability, the LSO referred to certain responses that the Individual provided on the June 2013 QNSP. Specifically, the LSO cited: (1) the Individual’s response that, in the last seven years, he had not had any bills or debts turned over to a collection agency, despite having had eleven accounts turned over to a collection agency within the past seven years; (2) the Individual’s response that, in the past seven years, he had not had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed, despite having had two charged off accounts in the past seven years; (3) the Individual’s response that, in the past seven years, he had not been ordered, advised, or asked to seek counseling or treatment as a result of his use of alcohol, despite having been advised by his employer to seek counseling or treatment as a result of his alcohol use following his September 2008 criminal charge for Public Intoxication; and (4) the Individual’s response that he had never been charged with an offense involving alcohol or drugs, despite his September 2008 criminal charge for Public Intoxication. *Id.* According to the Adjudicative Guidelines, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s ability to protect classified information.” *Id.*, Guideline E, ¶ 15. Among the conditions regarding an individual’s conduct that may raise security concerns are “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” and “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative[.]” *Id.*, Guideline E, ¶¶ 16 (a), (b). In this case, given the Individual’s inaccurate responses on the June 2013 QNSP, the LSO properly invoked Criterion L with respect to the Individual’s candor.

With respect to its concerns regarding the Individual’s financial responsibility, the LSO cited the following: (1) the Individual’s unpaid collection accounts, totaling approximately \$3,900; (2) the Individual’s charged off account, totaling approximately \$480; (3) the Individual’s failure to file his federal³ personal income tax returns for tax years 2010, 2011, and 2012; (4) the Individual’s statement during the March 2014 PSI that he does not believe he is financially responsible, and attributing his debts to laziness; and (5) the Individual’s failure to resolve old debts and his accrual of new debts, despite having been previously made aware of the DOE’s concern regarding his finances. *Id.* It is well-settled that the failure or inability to live within one’s

³ The state in which the Individual resides does not require the filing of annual personal income tax returns.

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. Among the behaviors which may give rise to security concerns related to an individual’s financial irresponsibility are a “failure to file annual Federal, state, or local income tax returns . . . ,” a “history of not meeting financial obligations,” and an “inability or unwillingness to satisfy debts.” *Id.* at ¶ 19(a), (c), (g). Given the cited information which indicated that the Individual had multiple outstanding debts and did not file required federal income tax returns for tax years 2010 through 2012, I find that the LSO had ample grounds to invoke Criterion L with respect to the Individual’s purported pattern of financial irresponsibility.

IV. FINDINGS OF FACT AND 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 cannot conclude 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).

The facts in this case are essentially undisputed. The Individual acknowledged that he had the debts cited in the Notification Letter, and that he failed to file his federal personal income tax returns for tax years 2010, 2011, and 2012. *Tr.* at 37, 46. The Individual attributed his outstanding debts and tax issues to actions taken by his wife, from whom he is currently separated. *Tr.* at 47. According to the Individual, he was deployed while on active duty in the military for much of his marriage and, consequently, his wife typically handled the household finances on her own. *Tr.* at 47-52. The Individual explained that, during two prior separations, his wife continued to pay his bills and file his taxes. He incorrectly assumed that she had continued to do so during their current separation. *Id.*

The Individual has since learned the extent of his unpaid accounts, as well as the status of his tax returns, and has been actively engaged in trying to resolve those matters. With respect to the delinquent accounts, the Individual established at the hearing that he has paid in full all but one of the debts. *Tr.* at 37-45; *Indiv. Exs. F-O.* He has made arrangements with the remaining creditor in order to repay the outstanding debt in biweekly installments, and expects that the debt will be repaid in full in one to two years. *Tr.* at 39. The Individual has also worked with a tax preparer and has filed his outstanding tax returns. *Tr.* at 52-53; *Indiv. Exs. B-E, P.* Based on his filings, he learned that he currently owes unpaid taxes, but he is not yet certain of the total amount. *Tr.* at 53-56. According to the Individual’s tax preparer, the Individual’s outstanding balance is approximately \$23,000, not including “additions or computations of penalties for late filing, late paying, and interest, which could range from \$5,000 to \$10,000.” *Indiv. Ex. P.* However, the Individual’s tax preparer intends to request that the penalties be waived or abated, and he expects that the request will be granted. *Id.* The Individual’s tax preparer intends to work with the Individual to reach a settlement which may reduce the total amount that the Individual owes, and will help him negotiate a payment agreement to resolve his outstanding tax debt. *Id.*

The Individual understands the importance of resolving his financial difficulties. He stated that he intends to be more proactive and organized in this regard in the future. To that end, he has enrolled in a financial counseling program offered by his employer, intends to complete the eight complimentary one-hour sessions available to him, and will pay for additional sessions if necessary. Tr. at 59-61, 80-81; Indiv. Ex. A.

With respect to the concerns cited in the Notification Letter regarding his honesty, reliability, and trustworthiness, the Individual acknowledged that his June 2013 QNSP contained incorrect responses. Tr. at 63-65. However, he maintained that he did not intentionally falsify, omit, or misrepresent information on the form. He believed when he completed the QNSP that he had answered the questions truthfully. As to the inaccurate responses regarding his finances, the Individual explained that, when he completed the form in June 2013, he was not aware that he had the various listed debts. Tr. at 65. He stated that he did not become aware of the extent of his financial issues until he obtained a copy of his credit report in advance of the March 2014 PSI. *Id.* The Individual further explained that he did not list his 2008 alcohol-related counseling because he believed he had gone “voluntarily,” and thus did not have to list it on the QNSP. Tr. at 69. Finally, the Individual attributed his failure to list his 2008 Public Intoxication charge on the QNSP to his misunderstanding of what type of information the question required. Tr. at 70-71. Specifically, because the charge was resolved through a “deferred adjudication” and did not remain on his criminal record, he did not believe he was required to list it. *Id.* The Individual acknowledged that, in retrospect, he erred in not listing the information as required. Tr. at 68. The Individual’s coworkers, who are also his longtime friends, testified that, despite his past mistake, the Individual is honest, reliable, and trustworthy. Tr. at 14, 26-27.

As noted above, with respect to an individual’s honesty and candor, the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” and “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative” raises security concerns. *Id.*, Guideline E, ¶¶ 16 (a), (b). In this case, upon consideration of the hearing testimony and the entire record of this proceeding, including the Individual’s candor and demeanor at the hearing, I find it unlikely that the Individual deliberately attempted to conceal or withhold information. Specifically, the Individual has been generally candid and forthright in providing information to the DOE. *See, e.g.*, DOE Exs. 12-15, 17-19. I find that the Individual’s omissions regarding his alcohol-related counseling and alcohol-related criminal charge are attributable to genuine confusion on his part regarding the nature of the information required on the QNSP. I further conclude that the Individual’s remaining omissions regarding his delinquent accounts were very likely a product of his prior lax or haphazard approach toward managing his personal finances, rather than due to any intent to deceive or conceal information. Given that the Individual is now aware of the required information, I find that it highly unlikely that he will make similar errors in the future. Therefore, I conclude that the behavior at issue with respect to the Individual’s candor “happened under such unique circumstances that it is unlikely to recur,” and it does not, in and of itself, “cast doubt on [the Individual’s] reliability, trustworthiness, or good judgment.” *See* Adjudicative Guidelines, Guideline E, ¶ 17.

Nonetheless, the Criterion L concerns regarding the Individual's financial irresponsibility remain. 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," or that "the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment . . . [or an] unexpected medical emergency . . .) and the individual acted responsibly under the circumstances[.]" Adjudicative Guidelines, Guideline F, ¶ 20.

In this case, I must first note that, as the Individual's estranged wife did not testify at the hearing, several of the Individual's assertions or explanations attributing his financial difficulties largely to actions that she took, or failed to take, remain uncorroborated in the record. Nonetheless, even accepting the Individual's assertions as true, upon consideration of the record in this case, I cannot conclude that the Individual has resolved the Criterion L concerns regarding his pattern of financial irresponsibility. As of the hearing, the Individual had become much more proactive in addressing his financial issues. *See, e.g.*, Tr. at 79-80. He successfully resolved the various debts cited in the Notification Letter by repaying most of the debts and entering into a repayment arrangement for the remaining debt. He has also attempted to resolve his tax situation by seeking the assistance of a professional and filing his delinquent tax returns. Finally, he has begun to educate himself on the best methods for managing his finances through resources that his employer has made available to him. All of these are positive factors. However, the Individual is in the very early stages of resolving his financial difficulties. He repaid his outstanding debts by taking out a personal loan (with a monthly payment that he indicates is currently manageable). Tr. at 95. He also still has a sizeable outstanding tax debt whose status is uncertain. Finally, while the Individual appears able to satisfy his current monthly financial obligations, he has little margin for error and no money in savings at this time. Tr. at 94; Indiv. Ex Q. Consequently, should he be faced with an unexpected or emergency expense, the 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. PSH-14-0001 (2014); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *see also* Adjudicative Guidelines, Guideline F, ¶ 20. In this case, it is simply too soon since the Individual began addressing his financial issues to conclude 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. Consequently, 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 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 resolve all of 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: September 18, 2014