

*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: July 11, 2014)
) Case No.: PSH-14-0067
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Issued : September 26, 2014

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (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.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization. As a holder of access authorization, the individual is subject to periodic reinvestigations to determine his continued eligibility to maintain access authorization. During the most recent reinvestigation of the individual, information was received with respect to: inaccurate information on the Questionnaire for National Security Positions signed and certified by the individual on January 30, 2013 (QNSP); misuse by the individual of medications prescribed for himself and his spouse; and

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

several financial matters (including non-filing and non-payment of income taxes, mortgage foreclosures, a vehicle repossession and collection accounts). *See* Exhibit 1; Exhibit 3. Upon receipt of this information, the Local Security Office (LSO) conducted a personnel security interview with the individual on October 31, 2013 (PSI) and the individual was evaluated by a DOE consulting psychiatrist on January 23, 2014. *See* Exhibit 6; Exhibit 4.

On May 30, 2014, the LSO advised the individual in a letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (f), (k), and (l) (hereinafter referred to as Criterion F, Criterion K and Criterion L, respectively).² *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented the testimony of three witnesses, including that of himself. The LSO introduced seven numbered exhibits into the record; the individual tendered one lettered exhibit (Exhibit A). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.³

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

² See Section III below.

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.doe.gov/search.htm.

An individual must come forward with evidence to convince the DOE that granting or restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s 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 am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited three criteria as the basis for suspending the individual’s security clearance: Criterion F, Criterion K and Criterion L. Criterion F refers to information that a person has “deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statements, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization or [Part 710 administrative review] proceedings...” 10 C.F.R. § 710.8(f). 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. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. See Guideline E of the *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). With respect to Criterion F, the LSO alleges omissions on the individual’s QNSP with respect to an employment reprimand, misuse of medications prescribed for himself and his spouse, and the existence of 11 collection accounts. Ex. 1 at 3 – 4.

Criterion K concerns information that a person has “[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine...” 10 C.F.R. § 710.8(k). Use of an illegal drug or misuse of a

prescription drug raises concerns about an individual's reliability and trustworthiness, as well as a person's ability or willingness to comply with laws, rules and regulations. *See* Adjudicative Guidelines at Guideline H. With respect to Criterion K, the LSO relies upon the individual's statements during the PSI and the psychiatric evaluation that (1) from 2008 to May 2013, he misused two controlled substances, Oxycodone and Opana, by taking larger quantities of such drugs than had been prescribed for him; (2) from 2008 to 2010, he illegally used a controlled substance, Oxycodone, by taking one to two 15 milligram tablets of his wife's prescription Oxycodone every other month; and (3) in 2008, he illegally used a controlled substance, Lortab, by taking his wife's prescribed Lortab on one occasion. Ex. 1 at 4.

Criterion L concerns information that an individual has engaged in conduct "which tends to show that the individual is not honest, reliable, or trustworthy...." 10 C.F.R. § 710.8(1). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an "individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at Guideline E. With respect to Criterion L, the LSO alleges that: (1) the individual failed to file his federal and state income taxes for 2012; (2) he failed to refile his federal income tax return for 2010 or repay an erroneously claimed tax refund, as requested by the Internal Revenue Service following a tax audit; (3) he has delinquent debt associated with a home foreclosure, a vehicle repossession and 12 collection accounts; and (4) he engaged in criminal conduct by using his spouse's prescription medications between 2008 and 2010. Ex. 1 at 5 – 6.

In light of the information available to the LSO, the LSO properly invoked Criterion F, Criterion K and Criterion L.

IV. Findings of Fact

Although the individual expressed some concern that he was misrepresented in some of the DOE exhibits, the factual occurrences were largely undisputed. *See* Tr. at 7. In those areas of disputed facts, I have carefully considered the arguments presented by both the individual and the LSO in reaching the findings of fact set forth below.

Prescription Drug Use/Misuse. The individual first had knee surgery in approximately 2003; due to complications and additional injuries, he subsequently had multiple surgeries on both knees, for a total of 11 surgeries over an approximately five-year period. Ex. 4 at 3. Following his initial knee surgery, he was prescribed opioids for pain. Tr. at 99. He developed tolerance for the medication and continued to experience pain. Ex. 4 at 6; Tr. at 50. The dosages prescribed for the individual were within commonly prescribed amounts for a patient in such circumstances. Ex. 4 at 6.

Between 2008 and May 2013, the individual frequently took larger quantities of the opioids than prescribed and would finish his prescription prior to the date on which it could be refilled. *Id.* at 3; Tr. at 34. At times, the individual experienced withdrawal symptoms while waiting to re-fill his prescription. Ex. 4 at 3. He discussed his usage

patterns with his physician, who did not counsel him to change his practice. *Ibid.*; Tr. at 36, 38 – 39, 46 – 47.

Approximately once every other month during the period between 2008 and 2010, the individual received one or two 15 milligram tablets of Oxycodone (which was one of the opioids for which he then had a prescription) from his spouse, who also had a prescription for Oxycodone. Ex. 6 at 55 – 57. Once in 2008, the individual received Lortab (which is a controlled substance for which the individual had previously had a prescription for the management of knee pain) from his spouse, who had a prescription for Lortab. *Id.* at 52, 58, 75. He and his spouse separated in 2010 and he has received no drugs or prescription medications from her since their separation. *Id.* at 56.

The individual last used prescription opioids in May 2013. Tr. at 50 – 51. Subsequently, he has used over-the-counter treatments for management of his knee pain and has declined prescription pain medication when it was offered following a severe injury resulting from a pit bull bite. *Id.* at 48, 51. His intent is to not use prescription pain medication in the future. *Id.* at 51, 81. The DOE consulting psychiatrist evaluated the individual in January 2014 and diagnosed the individual with Opioid Dependence in Early Full Remission, “nearing the point of Sustained Full Remission.”⁴ Ex. 4 at 7. The psychiatrist opined that, although the individual had not undergone any formal treatment, the individual had evidenced adequate reformation of his opioid dependence and did not have an illness or mental condition which causes or may cause a significant defect in his judgment or reliability. *Id.* at 7 – 8.

At the time that the individual received prescription medication from his wife, he was unaware that it was illegal to do so. Tr. at 32 – 33. At the time of the hearing, he was unaware that taking his own prescription medication in quantities greater than prescribed was illegal. *Id.* at 36, 40. The individual completed and certified his QNSP in January 2013, on which he stated that he had not been involved with a drug or controlled substance while possessing a security clearance and that he had not intentionally engaged in the misuse of prescription drugs, regardless of whether prescribed for himself or someone else. Ex. 5 at 29.

Financial and Income Tax Matters. The individual and his spouse separated in 2010 and are contesting, between themselves, responsibility for numerous financial accounts. Ex. 6 at 130 – 135, 139; Tr. at 56 – 57, 68 – 71. The individual did not learn of several liabilities incurred by his wife until after they separated. *Id.* at 68. The individual stated that his wife has claimed exclusive rights to the marital home and that he vacated the property in 2010. *Id.* at 62 – 65. That property is subject to both first and second mortgages (aggregate outstanding principal amount of \$272,347), is in foreclosure and presently vacant. Ex. 7 at 5; Tr. at 62 – 66. The individual was at least 60 days in arrears

⁴ The DOE consulting psychiatrist stated that the individual would be deemed to have achieved “sustained full remission” when he had been without use or symptoms for one year. Ex. 4 at 7. At the time of the hearing, the individual had been abstinent from opioids for 15 months; however, there has been no psychiatric evaluation of the individual subsequent to his completing one year of abstinence. Tr. at 50 – 51.

on his mortgage payments when he vacated the home and he has made no payments on his mortgages subsequent to vacating the property. *Id.* at 64.

In December 2012, the individual realized that he could not afford one of his vehicles and surrendered it to his lender. Ex. 6 at 121 – 123. At the time, the outstanding balance on his car loan was \$17,874; his lender subsequently sold the vehicle for an amount in excess of the balance due on the loan and paid the surplus to the individual. Ex. 7 at 7; Tr. at 66 – 67. The individual had a history of late payments on a second vehicle and, in November 2013, surrendered it to his lender; the amount due on that car loan and the status of any liquidation of that vehicle are unknown. *Id.* at 74 – 78.

The individual has 12 outstanding collection accounts, aggregating \$8,153. Ex. 1 at 5 – 6; Ex. 7. He has made no attempt to contact the creditors or resolve the outstanding balances, and has no intent to do so until after he and his spouse resolve their financial differences. Tr. at 73 – 74, 68 – 69. Eleven of these collection accounts were omitted from his QNSP which he signed and certified in January 2013. *See* Ex. 5. In completing his QNSP, he was assisted and advised by a security specialist in the employment of his employer. Ex. 6 at 134, 139 – 140; Tr. at 41 – 45.

The individual's federal income tax return for 2010 was audited by the Internal Revenue Service, which subsequently directed him to return an approximately \$16,000 tax refund that had been paid to him and to refile his 2010 income tax return. Tr. at 58, 60. While the individual believes his 2010 federal income tax return has been refiled, no documentation was presented to confirm such filing; no repayment of the excessive federal tax refund has been made. *Id.* at 58, 60 – 62. The individual has not filed his federal or state income tax returns for 2012 or 2013, or requested extension of the filing deadlines, which have now passed.

Employment Reprimand. The individual received written counseling from his supervisor on April 13, 2011. Ex. 6 at 30 – 31, 38. This counseling related to attendance and an “attendance tracking” procedure implemented pursuant to such counseling has been completed. *Id.* at 38; Tr. at 18, 31 – 32. On the individual's January 2013 QNSP, the individual certified that, in the last seven years, he had not received a written warning, been officially reprimanded, suspended or disciplined for misconduct in the workplace, such as a violation of security policy. Ex. 5 at 12.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁵ and the Adjudicative

⁵ Those factors include the following: 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 at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the

Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

In mitigation of the security concerns relating to the alleged omissions in his QNSP, the individual testified that (1) with respect to the written counseling that he received from his supervisor, the individual did not interpret the counseling as a reprimand or the question on the QNSP as covering the counseling (Tr. at 31 – 32); (2) with respect to misuse of prescription medication, he did not understand at the time he was misusing the opioids that it was illegal as he had (or had had) prescriptions for the same drugs (*Id.* at 32 – 33, 36); and (3) with respect to the collection accounts, the contractor security specialist who assisted employees in completing their security forms advised him that, since he had listed so many financial delinquencies, he should omit the balance and he could discuss them if he was interviewed (*Id.* at 41 – 45). The individual stated consistently in both the PSI and his testimony that the person assisting in completing his QNSP added a note about additional accounts; however, that note does not appear in the certified copy of the QNSP. Ex. 6 at 134, 139 – 140; Tr. at 44 – 45.

The individual argues that his misuse of prescription opioids, which he did not realize was illegal at that time, resulted from his addiction to medication that had been prescribed to assist in the management of pain associated with chronic knee problems and 11 associated surgeries. Ex. 4 at 3. Further, he had tried to discuss the addiction with his physician without success and his physician was aware of the individual's pattern of taking the opioids. *Id.*; Tr. at 36, 38 – 39, 46 – 47. Since his physician discontinued all prescribed opioids 15 months prior to the hearing, the individual has used none. *Id.* at 50 – 51. He now manages his pain through increased endurance and use of over-the-counter medications. Having previously been addicted to prescription medications, he is intent on not using prescribed opioids in the future. *Id.* at 51, 81.

He believes that his spouse, from whom he has been separated for nearly four years, incurred many of the debts listed in his credit reports without his knowledge. In light of the legal posture between them, he is unable and unwilling to resolve these matters until they have legally divided their assets and liabilities as part of a finalized divorce decree. *Id.* at 56 – 57; 68 – 73. He is confident that he has the means to satisfy whatever liabilities are assigned to him as part of the divorce process. *Id.* at 70.

B. Administrative Judge Evaluation of Evidence

conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

Omissions from QNSP. To constitute a security concern under Criterion F, the individual must have “*deliberately* misrepresented, falsified or omitted *significant* information” from his QNSP. 10 C.F.R. § 710.8(f) (emphasis added); PSH-14-0015 at 5. The specific concern raised in the Notification Letter is that the individual answered “no” to a question about his present employment that asked: “have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy.” Ex. 5 at 12. The individual acknowledges receiving written counseling from his supervisor in April 2011 relating to an attendance matter and has candidly discussed the details of that counseling both during the PSI and the hearing. The individual credibly testified that he did not knowingly omit the counseling from his QNSP response, but that he did not believe it was a reprimand or was covered by the scope of the question asked on the QNSP. Tr. at 31 – 32. In light of the individual’s understanding of the question when he was completing the QNSP, arising potentially from differences in the terminology used by his employer and that used on the QNSP, the individual’s omission of the written counseling from his QNSP lacked *deliberativeness* to mislead the government. I find that the individual has mitigated the Criterion F security concerns with respect to the omission of his written counseling from this QNSP.

With respect to the individual’s use of his spouse’s prescription medications, the individual credibly testified that, at the time he took his spouse’s medications, he did not realize that it was illegal to do so. *Id.* at 32. He further testified that, by the time that he certified his QNSP in January 2013, he understood that taking someone else’s prescription medication was illegal and he can only explain his failure to disclose it as an oversight on his part. *Id.* at 38 –39. While the individual was undeniably careless in completing his QNSP with respect to his misuse of another person’s prescription drugs, carelessness is insufficient to constitute a Criterion F security concern in the absence of a *deliberate* attempt to mislead the government about relevant, *significant* information. The individual’s characterization of the omission as an “oversight” is reinforced by his candor during the PSI and the hearing in discussing his opioid use and addiction. The individual’s omission of his use of his spouse’s prescription medication lacked the *deliberativeness* required to constitute a security concern under Criterion F and, therefore, I find that the individual has mitigated the Criterion F security concerns with respect to such omission from this QNSP.

During the individual’s testimony, he seemed genuinely mystified that taking his own prescribed medications in different quantities than prescribed was inappropriate or illegal. *Id.* at 36. He repeated during his testimony that he discussed such practice with his physician who never advised that he should discontinue the practice. Ex. 4 at 3; Tr. at 36, 38 – 39, 46 – 47. While such confusion may raise concerns about an individual’s reliability and trustworthiness under Criterion L, those are not enumerated factors under Criterion F. In addition to the individual’s confusion, I again note his candor in disclosing information about his opioid use and addiction once he became aware that it was relevant to the reinvestigation; such candor is inconsistent with having *deliberately* attempted to deceive the government during the reinvestigation process. *Cf.* Adjudicative Guidelines at Guideline E ¶ 17(a). I find that the individual has mitigated the Criterion F security concerns with respect to the omission of his misuse of opioids prescribed for him.

The individual acknowledges that he failed to disclose 11 collection accounts, which aggregated \$4,275. He stated that the contractor security specialist who assisted him and other contractor personnel in completing their security questionnaires advised him that, in light of his other disclosed financial delinquencies, he could explain the remaining accounts if he was called for an interview. Tr. at 41 – 43. He also recalled that the advisor included a note on the QNSP to that effect, although such annotation does not appear in the final certified version. *Id.* at 44 – 45. His testimony on this point was credible and consistent with his responses during the PSI ten months earlier. *See* Ex. 6 at 134, 139 – 140. His testimony is also consistent with his having disclosed his larger financial delinquencies in the QNSP. He disclosed his 2010 federal tax delinquency of \$16,254; a \$16,000 credit card debt that had been delinquent and paid following a notice of intent to garnish; a delinquent credit card in the amount of \$3,878; foreclosure proceedings on his first mortgage in the amount of \$280,000; and voluntary surrender of a vehicle that had an outstanding balance of \$17,621. Ex. 5 at 33 – 34, 36 – 38. In light of the disclosure made on the QNSP, it is unlikely that he was trying to deceive the government about the state of his finances by omitting collection debt aggregating \$4,275. While the omissions were deliberate, they were made in reliance upon guidance from his employer's personnel security specialist who assists and advises employees in completing their security questionnaires. Under the Adjudicative Guidelines, security concerns arising from such omissions are subject to mitigation where omissions result from following the improper advice of authorized personnel advising an individual about the security clearance process. Adjudicative Guidelines at Guideline E ¶ 17(b). I find the individual has sufficiently mitigated the Criterion F security concerns arising from his omission of collection accounts from his QNSP.

Prescription Drug Use/Misuse. The individual disclosed during the re-investigation process that between 2008 and May 2013 he misused Oxycodone and Opana, two medications for which he had a prescription, by taking the drugs in different quantities than prescribed. Ex. 6 at 52 – 55. He stated that Oxycodone is a fast acting, short term pain medication that he would take in larger quantities than prescribed early in his prescription cycle and, if he was running out of Oxycodone as he neared the date on which he could re-fill the prescription, he would increase his use of Opana, a slower acting, longer term pain medication. *Id.* at 27 – 29, 60, 79. He also disclosed that once in 2008 he used his spouse's prescription Lortab (a drug that had been previously prescribed for him), and that from 2008 to 2010 he took one to two of his spouse's prescription 15 milligram Oxycodone tablets about every other month (a drug for which he also had a prescription at that time).⁶ *Id.* at 52, 55 – 58, 75, 77 – 78.

⁶ The Notification Letter also states that the individual “admitted he knew [taking his spouse's prescription drugs] was illegal.” Ex. 1 at 4, 6. The strongest support for this admission is in the DOE psychiatrist's written evaluation; however, the section of the psychiatrist's evaluation cited by the LSO is the psychiatrist's summary of the written materials submitted to him by the LSO, not the psychiatrist's interview with the individual. *See* Ex. 4 at 3. The other source cited by the LSO to support this admission is the PSI where the individual was asked directly if he was aware of the illegality of taking his spouse's prescription medication and responded “Um, I guess.” Ex. 6 at 78. In light of the lack of specificity of the individual's response, I cannot reach the conclusion that the individual acknowledged that he was aware of the illegality of his actions contemporaneously with those actions. Further, he credibly testified that his comment during the PSI was intended to acknowledge that *at the time of the PSI* he was aware of the illegality of such behavior. Tr. at 54.

Such misuse of prescription drugs explicitly raises a security concern under Criterion K. 10 C.F.R. § 710.8 (k). The individual began using these drugs when they were prescribed for pain in the course of his having 11 surgical procedures on his knees over a five-year period of time. Ex. 4 at 3. He received these medications through only one physician, to whom he disclosed his usage patterns. Ex. 6 at 77; Ex. 4 at 3; Tr. at 36, 38 – 39, 46 – 47. The DOE psychiatrist opined in his evaluation that “These medications were prescribed for a legitimate medical purpose but [the individual] developed a physical dependence. This is not an unusual occurrence.” Ex. 4 at 6. The DOE psychiatrist further noted that the individual “was not using these in an abusive manner for a ‘high’ but rather for purposes of pain control and developed a rapid tolerance towards these.” *Id.* at 7.

The individual discontinued use of opioids in May 2013 and has subsequently declined similar medication when offered prescriptions (e.g., following a severe dog bite). He is now managing pain through increased tolerance of such pain or over-the-counter medications. Tr. at 48, 50 – 51. The DOE psychiatrist diagnosed the individual with Opioid Dependence in Early Full Remission, nearing the point of Sustained Full Remission, with adequate evidence of reformation and made no recommendations for further treatment or abstinence to evidence rehabilitation or reformation. Ex. 4 at 7 – 8. Under these circumstances, the individual has adequately mitigated the security concerns arising from his misuse of prescription drugs. *See* Adjudicative Guidelines at Guideline H ¶ 26(c) (security concern arising from abuse of prescription drugs can be mitigation if such abuse occurred after a severe or prolonged illness during which the drugs were prescribed and the abuse has since ended).

The LSO also cited the individual’s use of his wife’s prescription drugs between 2008 and 2010 as criminal conduct disqualifying under Criterion L. *See* Ex. 1 at 6. The LSO cited no other criminal conduct by the individual. As previously noted, the individual has acknowledged such conduct and candidly discussed his behavior both during the PSI and the hearing. He credibly testified that at the time he used his wife’s prescription drugs, he was unaware that it was illegal. Tr. at 34 – 35. At the time, he was addicted to pain medication following his prolonged treatment for knee pain and numerous associated surgeries. Ex. 4 at 3. The DOE consulting psychiatrist has concluded that the individual evidenced adequate reformation of his opioid dependence. *Id.* at 7. In light of these factors, the individual has sufficiently mitigated the Criterion L security concerns arising from his illegal use of his wife’s prescription medications. *See* Adjudicative Guidelines at Guideline J at ¶ 32(a) (security concern arising from drug involvement can be mitigated where such behavior happened so long ago or under such circumstances that it is unlikely to recur).

Financial Matters. The individual acknowledges that his finances are in disarray and attributes this disarray to liabilities incurred by his spouse from whom he has been separated for four years and is seeking a divorce. He has expressed that he is either unable or unwilling to resolve these outstanding financial matters until completion of the legal proceedings between him and his spouse, at which time he believes these matters will be legally allocated between him and his spouse. Tr. at 56 – 57; 68 – 73.

Notwithstanding the individual's view that these matters cannot be resolved prior to the legal dissolution of his marriage, I cannot agree. There is no moratorium on financial responsibility when a couple decides to divorce. Even during the pendency of a divorce, creditors have the right to expect that debtors will continue to honor their obligations and the DOE has the right to expect that holders of access authorization will exercise appropriate trustworthiness, judgment and reliability in discharging their financial obligations so as not to create security vulnerabilities.

The individual's argument ignores his personal role and responsibility for these financial matters. He has not filed federal or state incomes taxes for 2012 or 2013,⁷ or requested extensions with respect to such years. *Id.* at 55 – 57, 59. He received an excessive federal tax refund for 2010 (approximately \$16,000) and has not complied with requests from the Internal Revenue Service to repay the tax refund. *Id.* at 58, 60 – 62. While his situation may be complicated by the pending dissolution of his marriage, these are clear violations of tax laws, for which the individual offered no credible explanation. Failure to comply with laws creates security concerns as it raises concerns about selective compliance with security regulations. *See* Adjudicative Guidelines at Guideline J ¶ 30.

With respect to his former home which is in foreclosure, he argued that his wife through her lawyer had claim exclusive rights to the house and had failed to maintain the mortgage subsequently. *Tr.* at 62 – 63. No evidence was submitted with respect any novation of the mortgages which would relieve the individual of financial responsibility thereon and the individual acknowledged that both he and his wife were still legally liable for the mortgages. *Id.* at 64. Further, the mortgages were 60 days delinquent at the time the individual vacated the home, his wife having previously vacated. *Id.* at 64 – 65.

The individual acknowledges making no attempt to contact or resolve financial matters subsequent their being raised by the LSO and offered no explanation other than waiting for legal resolution of his marriage dispute. *Id.* at 74. Such explanation does not address the financial delinquencies that he acknowledges existed prior to his separation from his wife and does not mitigate the Criterion L security concerns arising from his delinquent and collection debt. It also does not address the failure to pay certain collection accounts, such the veterinarian bill for pet care incurred prior to his separation from his wife. *Id.* at 71 – 72. Additionally, the individual has “turned in” to lenders two different vehicles within an 11-month period after deciding that those purchases had been imprudent and, at least in one case, that the loan payments no longer were within his financial means. *Id.* at 66 – 67, 74 – 78. While such acts may have avoided a technical “repossession,” surrendering collateral does not constitute fulfillment of one's financial obligations under a loan agreement.

The individual's inability or unwillingness to pay his debts in a timely manner demonstrates financial irresponsibility, which is a disqualifying security concern under Criterion L. *See* Adjudicative Guidelines, Guideline F ¶ 19(a). On the evidence presented,

⁷ The Notification Letter referenced the individual's non-filing of income tax returns for 2012 ; however, during testimony the individual acknowledged his failure to file, or request extensions, with respect to his 2013 income tax returns. *Tr.* at 56 – 57, 59.

the individual has demonstrated a clear, consistent and sustained pattern of financial irresponsibility. The evidence does not support that the individual has reformed his pattern of financial irresponsibility. *Cf.* Adjudicative Guidelines, Guideline F ¶ 20(a) (mitigation possible if the behavior happened so long ago, was so infrequent or occurred under such circumstances that it is unlikely to recur).

In prior cases involving financial irresponsibility, Administrative Judges 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-13-0046 (2013); *Personnel Security Hearing*, Case No. PSH-12-0103 (2012); *Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). As of the date of the hearing, any period of reformation has yet to commence as the individual’s pattern of financial irresponsibility continues unabated.

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion L arising from his tax and financial matters.

V. Conclusion

In the above analysis, I have found that the individual has sufficiently mitigated the security concerns arising under Criterion F, Criterion K and certain of the matters alleged with respect to Criterion L. Notwithstanding the foregoing, other derogatory information in the possession of the DOE raises additional security concerns under Criterion L and, after considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate all these security concerns. Accordingly, I have determined that the individual’s access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: September 26, 2014