

**\*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 24, 2014 )	Case No. PSH-14-0071
	)	
	)	

---

Issued: October 10, 2014

**Administrative Judge Decision**

William M. Schwartz, 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.”<sup>1</sup> 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 DOE should not restore the individual’s access authorization at this time.

**I. BACKGROUND**

The individual is a DOE contractor employee who holds a DOE access authorization, now in suspension. In April 2014, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the individual in order to discuss certain information it had gathered concerning her financial status. In June 2014, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created substantial doubt regarding her 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 two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and

---

<sup>1</sup> 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.

(l) (Criteria F and L, respectively).<sup>2</sup> See Ex. 1 (Summary of Security Concerns). The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the security concerns. *Id.*

The individual requested a hearing on this matter. Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE counsel tendered 15 numbered exhibits into the record in advance of the hearing, and the individual produced three exhibits at the hearing and one following the hearing, which I have labeled as Exhibits A through D. At the hearing, the individual represented herself, and offered her own testimony as well as the testimony of two witnesses. The DOE Counsel presented no witnesses at the hearing.

## 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

---

<sup>2</sup> Criterion F concerns arise from derogatory information that the individual "[d]eliberately misrepresented, falsified, or omitted significant information from . . . a personnel security interview, [or] 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." 10 C.F.R. § 710.8(f). Criterion L concerns conduct tending to show that the individual was "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

### **III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS**

As stated above, the LSO issued a Notification Letter informing the individual that the DOE possessed derogatory information that raises doubts under Criteria F and L regarding her eligibility to hold a DOE access authorization. Ex. 1. The LSO supported its Criterion F concern by alleging that the individual failed to list all of her accounts in collection on the Questionnaire for National Security Positions (QNSP) that she completed on October 8, 2013. She admitted at her April 2014 PSI that she had omitted roughly 18 accounts from the QNSP. During the same PSI, the individual stated that she was making payment on all her accounts, but later, after being confronted with contradicting information, recanted, and stated that she had made payment arrangements on only two of her overdue accounts. I find that the above information constitutes derogatory information that raises questions about the individual’s conduct under Criterion 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. Adjudicative Guidelines, Guideline E at ¶ 17.

As the basis of its Criterion L concern, the LSO cited the individual’s history of financial irresponsibility. Ex. 1. In its Notification Letter, the LSO listed the individual’s collection accounts, an outstanding judgment, charged-off accounts, and her admission at her April 2014 PSI that she owed federal and state taxes for the tax year 2011 as evidence of her current delinquent debts. The LSO also stated that her recent bankruptcy and her failure to make arrangements to pay off debts as she had committed to during a 2008 PSI demonstrated her unwillingness or inability to satisfy her legal debts. Finally, the LSO documented additional concerns about her financial status by referring to her admissions during the 2014 PSI that she had not paid her collection amounts for several years and that she had been overspending. Ex. 1. It is well-settled that the failure or inability to live within one’s means, satisfy debts, and meet financial obligations “may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations,” which, in turn, may call into question an individual’s reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F at ¶ 18. Among the behaviors that may give rise to security concerns related to an individual’s financial irresponsibility are “inability or unwillingness to satisfy debts” and “a history of not meeting financial obligations.” *Id.* at ¶ 19(a), (c). In light of the information cited, I find that the LSO properly invoked Criterion L.

### **IV. FINDINGS OF FACT**

The individual had three children with her first husband. Since their divorce many years ago, she has raised the children on her own. Transcript of Hearing (Tr.) at 9-10, 23. Her former husband has contributed very little in child support over the years; he is currently owes \$93,305.15 in

unpaid child support. Ex. C. Her second husband, whom she married about 12 years ago and from whom she is now separated, has four children from a prior marriage. Tr. at 38. He contributes little to the household finances, including the expenses of his own children, but rather spends most of his income on his personal needs and desires. Tr. at 10-11, 16, 25. The individual has taken on a second job to help make ends meet. *Id.* at 25.

As long ago as 2004, the LSO put the individual on notice that it was concerned about her financial position. In July 2004, the LSO conducted a PSI with the individual in which her outstanding debts were discussed. Ex. 14. At that time, the individual acknowledged her debts, explained that she had difficulty keeping up with them while she was divorced, and stated that after remarrying in 2002, she now paid her bills on time. *Id.* at 17-20, 23. She committed to contacting her creditors and paying the debts she owed. *Id.* at 26-28. A 2008 background investigation revealed that most of her 2004 debts remained unpaid, and in 2009 she again committed to paying each of her debts. Ex. 6; Tr. at 42. At her April 2014 PSI, she could not explain why she had gained no ground with respect to her debts after 2004. Ex. 13 at 65-66. She admitted that she may have gone “overboard” buying for her children to make “up the difference for them not having support from their father.” Ex. 13 at 66. As of April, she was still supporting the three youngest children of the combined family. *Id.* at 68.

After the April 2014 PSI, the individual pursued bankruptcy. Tr. at 68. She moved, with the children, out of the residence she shared with her husband, and now lives with her mother nearby. *Id.* at 27. She continues to help her children with their expenses; in particular, she makes car loan payments for their cars as well as her own. *Id.* at 46. She also continues to pay her share of the mortgage on the residence she formerly shared with her husband, though in July she reduced her monthly contribution from \$1600 to \$600. *Id.* at 68, 71. She has stopped using all credit cards and, other than her car and house payments, makes all purchases in cash. *Id.* at 49. She has met with a financial counselor through her Employment Assistance Program, and intends to continue seeing him twice a month. *Id.* at 44-46. The individual now looks carefully at every discretionary expense, such as eating out, to consider whether it fits within her budget. *Id.* at 50. The individual’s bankruptcy petition was discharged on September 2, 2014. Ex. D.

## **V. 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 an access authorization to the individual “will not endanger the common defense and security, and is clearly consistent with national interest.” 10 C.F.R. § 710.7(a).

### **A. The Individual’s Mitigating Evidence**

#### **1. Criterion F: Deliberate Misrepresentation**

As set forth above, Criterion F concerns arise from information that an individual has “deliberately misrepresented, falsified, or omitted significant information” on forms completed

or in statements made relevant to a determination regarding his or her eligibility for access authorization. 10 C.F.R. § 710.8(f).

The individual in this case made two misrepresentations: not listing on her 2013 QNSP a substantial number of collection accounts, and stating during her 2014 PSI that she was making or arranging payment to all of her creditors. At the hearing, she offered the following explanation for not listing her collection accounts. She stated that at the time she was completing the QNSP, she was unable to obtain and view her credit report at work. Although she could obtain and view her credit report at home, she had no printer at home and therefore no means to make a copy of the information required on the QNSP. Her father had recently died, and she was depressed and lethargic. She listed the one collection account that she could recall, a cell phone bill, but the effort to report the rest of the accounts overwhelmed her. She also stated that she knew the investigators would obtain her credit report and give her a copy, and she decided that she would wait until then to correct the financial section of her QNSP. She recalled having a deadline by which to complete the QNSP, but rushed to turn it in early so that she could return to the demands of her job. Finally, she stated that she never intended to deceive the LSO with her responses. Tr. at 53-55, 60. She conceded at the hearing that, in hindsight, she could have completed the QNSP correctly by viewing her credit report at home and filling out the appropriate section of the QNSP by hand. *Id.* at 54.

As for her statement at the 2014 PSI that she was “making payments on everything,” she admitted at the hearing that she had spoken too broadly: she meant to say that she was making payments on everything that she could. She testified that she was not trying to deceive the LSO into believing that she was paying all of her creditors. She pointed out that later in the interview, when the interviewer reviewed each of her debts, she was more accurate in reporting her status with respect to each creditor. It was then that she stated that she did not have plans with all of her creditors, but had started reaching out to some of them, and intended to pay them all in time. *Id.* at 56-58.

## 2. Criterion L: Financial Irresponsibility

As the interviewer stated at the 2004 PSI, a person experiencing financial difficulties presents security concerns because he or she may be vulnerable to blackmail or coercion, if attempting to conceal those difficulties from others, and might be willing to accept money to resolve outstanding debts. Ex. 14 at 31.

At the hearing, the individual acknowledged the current delinquent debts and charged-off accounts that the LSO listed in its Notification Letter. Tr. at 33, 62. She stated that she decided to pursue bankruptcy when she came to the conclusion that it was the only practical option for eliminating her long-standing debts. *Id.* at 68. She understood that the bankruptcy would relieve her of the obligation to pay those her delinquent debts, and that the creditors of the charge-off accounts, not part of the bankruptcy, had already concluded that she would not repay those debts. *Id.* at 32, 35. Nevertheless, she stated that she could make good faith payments to those debtors, when she had money available, even though she has no obligation to do so. *Id.* at 33.

The individual also addressed two specific outstanding debts at the hearing. The Notification Letter listed an outstanding judgment against her obtained by her credit union. Ex. 1. At the hearing, the individual explained that both she and her bankruptcy lawyer attempted to confirm this debt, but the credit union was unable to acknowledge its existence. In an abundance of caution, this debt was included in her bankruptcy petition, but it appears that it may not be a legitimate debt at all. Tr. at 62-63. She also addressed the amount she currently owes on her state and federal taxes for 2011. She stated that she received a refund of about \$1200 with respect to her 2013 taxes, and that amount was applied against her tax debt. As a result, she now owes roughly \$1800, and her intent is to set up a payment plan with the Internal Revenue Service. *Id.* at 61-62.

Responding to the LSO's concerns that her pattern of financial irresponsibility reflected an unwillingness or inability to satisfy legal debts, the individual explained at the hearing that she resisted filing for bankruptcy because she did not believe it was a proper approach to debts; she believed she should pay her bills. *Id.* at 67. For this reason, more than ten years passed between the time the LSO first expressed its concerns over the individual's financial difficulties and the time that she ultimately filed for bankruptcy. The individual stated that, during that extended period, she intended to pay her debts but unfortunately was unable to do so. *Id.* at 30.

Finally, the individual addressed the LSO's concern in its Notification Letter that the individual had admitted during her 2014 PSI that she had been overspending. She clarified that she was asked whether anybody would say she was living beyond her means, and she responded that her mother, a very frugal person, would say so. *Id.* at 64, 66; Ex. 13 at 82. She stated that after the PSI, she asked her mother that question, and her mother replied, "I don't think you overspend." Tr. at 65. She did acknowledge, however, that when the interviewer asked her whether she considered herself financially responsible, she replied, "No," explaining that her credit report illustrated that she was responsible with respect to her day-to-day bills but not to those accumulated in the past. *Id.* at 66-67; Ex. 13 at 82.

## **B. Administrative Judge's Evaluation of Evidence**

The individual has clearly faced trying circumstances in recent years. Her divorce from her first husband left her as the sole supporter of her household, including three children, and child support, though ordered, has not been forthcoming. Her second husband contributed less to household expenses over time. Her limited resources forced her to choose between paying off old debts and keeping up with current expenses, such as housing and food for her children and herself, and she chose the latter. Tr. at 36. She has stretched her income for many years to support many people, including children of her second husband. As devoted and honorable as her efforts have been, I must nevertheless conclude that the individual has not mitigated the LSO's security concerns regarding her financial decisions and her dealings with the LSO.

I find that the individual has not mitigated the Criterion F concerns expressed by the LSO in its Notification Letter. She was clearly under significant pressure to complete her QNSP while responding to her usual work demands as well as coping with the loss of her father. She maintains that these strains led her to omit a significant number of amounts in collection from her QNSP. She convinced herself that no harm was done, as the LSO would acquire her credit

report at a later stage of their investigation and would see the full extent of her financial problems. Although the individual expressed that she had no intent to deceive the LSO into believing her finances were in order, and I find her testimony to be very credible, I cannot find that she did not deliberately omit significant information from a personnel security questionnaire. Adjudicative Guidelines, Guideline E at ¶16(a). As for her overstatement at the start of her 2014 PSI that she was taking care of all her outstanding debts, she corrected herself later in the PSI after the interviewer brought to her attention that the credit reports did not reflect such arrangements. As above, while I accept the individual's assertion that she did not intend to deceive the LSO, I cannot find that she has mitigated the LSO's concern about her lack of straightforwardness in regard to these facts. *Cf.* Adjudicative Guidelines, Guideline E at ¶ 17(a) (mitigation possible when efforts to correct omission occur before being confronted with facts).

I also find that the individual has not sufficiently mitigated the LSO's Criterion L security concerns regarding her financial irresponsibility. I find this conclusion unfortunate and somewhat ironic because, when viewed in a non-security context, the basis for the individual's financial decisions lies in her sense of responsibility toward all those who surround her. She has chosen to pay the mortgage and household expenses, even without appropriate contributions from each of her husbands, in order to shelter her children and those of her husband. She has admitted that at times she has indulged her children, to make up for her first husband's lack of support. She makes car loan payments so that her children may drive cars. She has continued to pay her share of the monthly mortgage payment on a house in which only her now-separated husband lives, even though the house is owned solely by the husband. Tr. at 68. She has even acknowledged her responsibility to repay her creditors, even though her recent bankruptcy frees her of that obligation.

Among the factors that may serve to mitigate security concerns raised by an individual's failure to satisfy debts and meet financial obligations is 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." Adjudicative Guidelines, Guideline F at ¶ 20(a). Although the individual accrued most of the debts listed in the Notification Letter in the past, and appears to be meeting her current expenses, these debts remained unresolved until just recently, with the discharge of her bankruptcy petition. In addition, while her recent move into her mother's house would appear to relieve her of housing costs, as of the hearing, she was still contributing to her husband's mortgage payment. I cannot find at this time that the circumstances under which she incurred her debts are unlikely to recur, though her recent separation, bankruptcy, and financial counseling all impress upon me that her financial situation is likely to improve in the future.

Nor can I find other conditions that might mitigate the LSO's concern with respect to the individual's financial irresponsibility. Although her financial hardship arose as the result of a divorce and the lack of financial contributions from two husbands, *id.* at ¶ 20(b), and the record reflects that she has met on one occasion with a financial counselor, *id.* at ¶ 20(c), it is too early in the counseling process for me to conclude that that the problem is being resolved or under control. Adjudicative Guidelines, Guideline F at ¶ 20(c).

Although the individual started to make an effort to resolve her financial problems by filing for bankruptcy and obtaining financial counseling, in prior cases involving financial irresponsibility, Administrative Judges and Hearing Officers 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-14-0050 (2014); *Personnel Security Hearing*, Case No. PSH-13-0098 (2013); *Personnel Security Hearing*, Case No. PSH-12-0134 (2013).<sup>3/</sup> At this point, the individual has not demonstrated a sustained pattern of financial responsibility for a significant period of time relative to her period of financial irresponsibility. I therefore cannot find that the individual has sufficiently mitigated the security concerns associated with Criterion L.

## V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the individual’s eligibility for a security clearance under Criteria F and L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the individual has not presented sufficient information to fully resolve the security concerns raised under Criteria F and L. Therefore, I cannot conclude that restoring a security clearance to the individual “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 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.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: October 10, 2014

---

<sup>3/</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).