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United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing)

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Filing Date: August 1, 2014)

Case No.: PSH-14-0076

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Issued: November 14, 2014

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization 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.”¹ For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. During a routine re-investigation of the individual, the local security office (LSO) obtained information that raised security concerns. To address those concerns, the LSO summoned the individual for interviews with a personnel security specialist in February and March 2014. After these Personnel Security Interviews (PSIs) failed to resolve the concerns, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. It informed the individual of this

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 14 exhibits into the record of this proceeding. The individual introduced 11 exhibits, and testified on his own behalf.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the LSO concluded in the Notification Letter that derogatory information exists that creates a substantial doubt as to the individual's eligibility to hold a security clearance. That information pertains to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (l) refers to information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct includes, but is not limited to, a pattern of financial irresponsibility. The concerns cited in the Letter involve the individual's finances. Specifically, the Letter alleges that he:

- Owes \$1,990 for a civil judgment that was imposed against him in 2007;
- Has four collection accounts totaling \$20,707 in unpaid debt;
- Has continued to incur debts that he is unwilling to resolve, despite his acknowledgment of the DOE's security concerns regarding financial responsibility;
- Stated during his 2014 PSIs that he would never pay one of his debts, even if it meant losing his security clearance; and
- Failed to contact his creditors to resolve any disputes or to make any arrangements to pay his debts, despite having promised to do so.

These circumstances adequately justify the DOE's invocation of criterion (l), and raise significant security concerns. 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline F.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after

consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

At the hearing, the individual attempted to establish that he has successfully addressed the financial issues cited in the Notification Letter. However, for the reasons that follow, I find that the individual has not mitigated the DOE’s security concerns under criterion (I).

The record in this matter indicates that the individual’s difficulties have been caused, in large part, by an ongoing pattern of financial irresponsibility. Those financial difficulties date back to at least 2004, when the individual’s 11 collection accounts were the subject of a March 2004 PSI. DOE Exhibit (DOE Ex.) 12 at 35. During his February 2014 PSI, the individual admitted that he had not been financially responsible, but he claimed that he was “getting there.” DOE Ex. 11 at 91. At the hearing, the individual testified that he and his wife were “both very poor on managing money.” Hearing transcript (Tr.) at 36.

The individual’s financially irresponsible behavior included a failure to file his state and federal income tax returns for 2010, 2011 and 2012 until the fall of 2013. DOE Exs. 3 at 1, 4 at 2, and 11 at 47-53. He attempted to explain these late filings by stating that he owed money for these years because he claimed an excessive number of dependents and did not have the money to pay his taxes. DOE Ex. 11 at 50, 53. The individual filed these returns in October 2013, has satisfied his state tax indebtedness, and entered into a payment plan with the Internal Revenue Service. DOE Ex. 2, DOE Ex. 12 at 51.

Perhaps most disturbing, however, is the manner in which the individual has handled his more recent financial delinquencies. Chief among these overdue debts is a collection account for \$19,513, which remained unpaid as of the date of the hearing. At the hearing, the individual

testified that this debt was incurred when he purchased a used half-ton truck for \$15,000 in 2005. After making payments on the truck for a period of time, the individual's wife lost her job, the individual let his insurance on the truck lapse, and he stopped driving the vehicle. The individual continued that after he and his wife "came into some money," his wife, who handled their finances, told him that they made a payment of \$8,300 on the truck. Tr. at 23. Approximately six months later, the individual told his wife to call their creditor to ascertain the amount that they still owed on the truck. At the time of the payment, according to the individual, they had owed approximately \$11,000 on the vehicle. When the creditor told the individual's wife that they still owed \$11,000, the individual "lost it. . . . I was very upset." *Id.* He told them to "repo" the truck, because he was not going to pay the \$11,000 that his creditor said that he still owed, plus the \$8,300 that he allegedly had already paid on the debt. The individual did not make any more payments, and the truck was repossessed. He said that he would get calls from the creditor, and when he would ask what had happened to his alleged payment, he was told that it went to pay for insurance for the vehicle for the period of time that the individual's insurance had lapsed. The individual replied by asking whether the creditor was "insuring a Ferrari for \$8,000 for those few months" when the individual didn't have insurance. Tr. at 24. When the creditor insisted that the individual owed \$11,000 on the truck, the individual allegedly replied that "you guys can repo it, you sell it, I pay the difference." *Id.* The creditor then accused the individual of crashing the truck into a telephone pole and then abandoning it. The individual denied this.

The individual further testified that the creditor called him another time. He told the creditor that if the truck had been wrecked, perhaps it had been stolen from the individual and wrecked by whomever had stolen it. The individual had assumed that when the vehicle disappeared from his residence, that it had been re-possessed. The creditor then allegedly told the individual that the creditor had, in fact, re-possessed the truck after all. Tr. at 25. At this point, the individual testified, he "was done with them," and "didn't deal with them no more." *Id.* The \$11,000 that he originally owed turned into over \$19,000 because of accrued interest, and the individual had "no idea" as to the status of that debt as of the date of the hearing. *Id.*

This explanation does not adequately address the DOE's security concerns about the individual's finances. As an initial matter, it is completely unsupported by any independent evidence. Furthermore, even if the individual testified truthfully about this debt, his actions in this matter were not responsible. *See Adjudicative Guideline F*, ¶ 20(b) (that the individual reacted responsibly under conditions that were largely beyond his control is a mitigating factor). Upon learning that his creditor was still claiming that he owed \$11,000 for the truck, there is nothing in the record that indicates that the individual attempted to confirm that the payment of \$8,300 had actually been made or received. Moreover, there is no evidence in the record of any significant or sustained effort on behalf of the individual to dispute the debt or otherwise resolve this issue during the four years since his wife allegedly made the \$8,300 payment. In fact, the individual stated during his March 2014 PSI that he had ignored the problem, hoping that it would go away, and he admitted that this was not being financially responsible. DOE Ex. 10 at 116. Although the individual was able to demonstrate that he had successfully addressed the other debts set forth in the Notification Letter, they account for only a small portion of his total indebtedness, and they do not compensate for his history of financial irresponsibility. Significant security concerns remain under Criterion L.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criterion (I) regarding his finances. Consequently, he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: November 14, 2014