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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 8, 2014) Case No.: PSH-14-0077
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Issued: October 27, 2014

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 Department of Energy (DOE), at this time, should not restore the Individual’s access authorization.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility and held a security clearance since 2009. Exhibit (Ex.) 8 at 13, 30. Pursuant to a reinvestigation, the local security office (LSO) discovered that the Individual had failed to file federal or state income tax returns for the year 2012 despite having certified in a July 2013 Questionnaire for National Security Positions (July 2013 QNSP) that he had filed all federal and state tax returns for the past seven years. Ex. 9 at 60. Further investigation, including credit reports obtained on July 2013, and April 2014,

¹ An 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 be referred to in this Decision as an access authorization or a security clearance.

revealed that the Individual had a number of past due and charged off credit accounts. The LSO subsequently conducted two personnel security interviews with the Individual in December 2013, and April 2014 (December 2013 PSI and April 2014 PSI, respectively).

Because neither the December 2013 PSI, or the April 2014 PSI, resolved the concerns raised by the Individual's failure to file his 2012 tax returns or his history of past due and charged off credit accounts, the LSO, in June 2013, issued the Individual a notification letter (Notification Letter). Ex. 1. The Notification Letter stated that the Individual's security clearance was suspended. Ex. 1. Additionally, the Notification Letter outlined the specific derogatory information, described in 10 C.F.R. § 710.8 (f) and (l) (Criteria F and L, respectively), which created doubt regarding the Individual's continued eligibility to hold a security clearance.² The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to present evidence to resolve these doubts. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director assigned me as the Administrative Judge in this matter. The DOE introduced ten exhibits (Exs. 1-10) into the record of this proceeding. The Individual introduced one exhibit (Ex. A) and testified at the hearing.

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

A. Factual Findings

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). At the hearing, the Individual did not dispute any of the facts outlined in the Notification Letter. I set forth my factual findings below.

As part of periodic reinvestigation, the Individual, in July 2013, completed the July 2013 QNSP where he certified that in the past seven years he had not failed to file or pay Federal, State, or other taxes when required by law or ordinance. Ex. 8 at 26 (QNSP page 31).

² Criterion F refers to information that indicates that an Individual "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, 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. . . ." Criterion L refers to information indicating that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. . ." 10 C.F.R. § 710.8(l).

In July 2013, the LSO obtained a credit report (July 2013 Credit Report) on the Individual. The July 2013 Credit Report revealed that the Individual had two past due accounts totaling \$4,061 and two accounts in collection totaling \$2,299. Ex. 5 at 3-4.

The LSO conducted a personnel security interview with the Individual in December 2013 (December 2013 PSI). Ex. 10. When asked about his finances, the Individual presented to the interviewer a written agreement (Commitment Statement) he concluded with a credit union. Ex. 6; Ex. 10 at 42. The Commitment Statement provided that the Individual would: (1) deposit \$50 a pay period into a savings account; (2) contact his creditors in order of priority to consider making arrangements to resolve the accounts; (3) track his expenses for 30 days; and (4) have a budget review meeting with a credit union official to recalculate his options for making payments and furthering his savings plan. Ex. 6 at 1.

The LSO subsequently obtained a credit report on the Individual in April 2014 (April 2014 Credit Report). The April 2014 Credit Report indicated that the Individual had five delinquent debts totaling \$8,287 which included debts for credit cards, cable and internet services, and a debt to a university.³ Ex. 4 at 1-2. Additionally, the April 2014 Credit Report showed that creditors charged off two credit card accounts totaling \$3,861. Ex. 4 at 2.

The LSO also conducted a personnel security interview with the Individual in April 2014. Ex. 9. During this interview the Individual admitted that he had a personal vehicle repossessed because he was a few months past due on his installment payments and he felt financially overwhelmed. Ex. 9 at 31-33. The Individual also admitted, with regard to the Commitment Statement, that he had not deposited any money in his credit union savings account, had not tracked his expenses for 30 days, nor had made any payment arrangements with his creditors. Additionally, the Individual stated that had not met with the credit union since he signed the Commitment Statement. Ex. 9 at 20-23. When asked about his tax returns for the year 2012, the Individual stated that he had not filed his returns for that year. The Individual admitted that his answer in the July 2013 QNSP, where he certified that he had filed tax returns for the prior seven years, was incorrect and that he should have responded “No” to the question. Ex. 9 at 60.

B. Security Concerns

1. Criterion F Derogatory Information

In its Notification Letter, the LSO invoked Criteria F and L derogatory information to support its decision not to grant the Individual a security clearance. With regard to Criterion F, the LSO referenced the Individual’s admitted falsification in the July 2013 QNSP regarding his filing tax returns for the prior seven years. Conditions that can raise a security concern include the deliberate omission, concealment, or falsification of relevant facts from any questionnaire

³ Specifically, the Individual was past due (debt total in parentheses) on the following accounts: (1) a credit card (\$1,402); university tuition (\$405); cable and internet service account (\$163); payday loan account (\$5,944); balance owed on his repossessed vehicle (\$373). Two of the Individual’s credit cards were charged off (\$1,395 and \$2,466) by his creditors. Transcript of Hearing (Tr.) at 22-27.

completed during the personnel security process. *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*). Given the Individual's admissions in the April 2014 PSI regarding his failure to file his 2012 tax returns and the misleading answer he gave when asked in the July 2013 QNSP regarding whether he had filed tax returns for the prior seven years, the LSO had sufficient grounds to invoke Criterion F.

2. Criterion L Derogatory Information

The Notification Letter also cited derogatory information under Criterion L as grounds to support its decision to suspend the Individual's security clearance. Specifically, the LSO cited the Individual's history of delinquent and charged off accounts as revealed in the December 2013 and April 2014 Credit Reports and the Individual's admission in the April 2014 PSI regarding his financial difficulties. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See Adjudicative Guidelines*, Guideline L. Given the information presented in the December 2013 and April 2014 Credit Reports relating to the Individual's delinquent credit accounts and the Individual's admission in the April 2014 PSI, the LSO had sufficient grounds to invoke Criterion L.

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 and unfavorable, that has a bearing on the question of whether granting the Individual 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). In considering these factors, the Administrative Judge also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

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). 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

A. Criterion F

The Individual testified that his incorrect answer in the July 2013 QNSP resulted from advice he received from his tax preparer. Tr. at 9. The tax preparer informed the Individual that the Individual could file his return within three years and the return would still be considered as timely filed. Tr. at 8-9, 12-13. Because he intended to file his 2012 tax returns the following year, he believed that he accurately answered the question in the July 2013 QNSP. Tr. at 9. The Individual testified that he had no intention of hiding anything from the government and that he now realizes that he received bad advice regarding the need to file his tax return. Tr. at 9. The Individual submitted his filed 2012 state and federal tax forms into the record. Ex. 7. These returns were signed in April 2014 and filed after the April 2014 PSI. Ex. 7 at 2.

At the hearing, the DOE Counsel stated that tax preparers in a certain location of the state where the Individual lived “have never been concerned with people filing their taxes annually but have always been concerned about people filing within three years of – because they lose their refund if they don't file it within three years.” Tr. at 10. Further, DOE Counsel noted that “they're [the tax preparers] a little bit shocked about the DOE emphasis on annually filing your taxes because it's against federal law not to file your income taxes on an annual basis.” Tr. at 10.

After listening to the Individual’s testimony and finding it credible and considering the information provided to me by the DOE Counsel, I find that the Individual has submitted sufficient evidence to resolve the Criterion F security concern. In the present case, I find that the Individual, upon advice of his tax preparer, believed that he had three years to file his 2012 tax returns and intended to do so in the following year. Consequently, there was no deliberate falsification by the Individual when he answered “No” to the question in the July 2013 QNSP asking if he had failed to file a tax return in the prior seven years. His testimony is supported by the information provided by the DOE Counsel regarding the practices of tax preparers in the Individual’s community. Further, when informed of his error in the April 2014 PSI, the Individual immediately filed his 2012 federal and state tax returns. I also find that there is no evidence before me that the Individual has made other falsifications. In light of my findings, I conclude that the Individual has resolved the Criterion F security concerns raised by his misleading answer in the July 2013 QNSP.

B. Criterion L

The Criterion L concerns center around the Individual’s history of past due credit accounts. At the hearing the Individual testified he has paid off the debt owed for cable and internet (totaling \$163) and for his repossessed vehicle (\$373). Tr. at 14. The Individual has small payments, \$25 to \$50, with regard to one of the past due credit card accounts (account debt originally totaling \$1,402) but

has not made any payments towards his past due payday loan account (debt totaling \$5,944). Tr. at 14. With regard to the two charged off accounts, he has paid \$150 towards one of the two accounts (original charged off debt \$2,466). Tr. at 14. He has not been able to contact anyone who can help him with regard to his tuition debt to a university (debt totaling \$405). Tr. at 14.

The Individual explained at the hearing that he exercised bad judgment in getting into debt. Tr. at 15. The Individual has two children whom he supports. The Individual used his credit cards when his financial situation deteriorated three or four years ago. Tr. at 15, 22. His financial situation worsened when he purchased a relatively expensive automobile Tr. at 22. At that time, the Individual's pay check would only cover the rent and "basic" bills and as a result he began to use his credit cards more frequently. Tr. at 15.

In an attempt to resolve his financial difficulties, the Individual, in September 2013, made initial steps to improve his financial situation. Tr. at 20-21. In May 2014, the Individual initiated drastic changes in his lifestyle. He then moved from his apartment and into an inexpensive rental room. Tr. at 16, 18. His current expenses are manageable and he now has minimal monthly bills. Tr. at 16. The Individual does not have cable television or cell phone bills. Tr. at 17. He recently purchased a fuel efficient automobile for less than \$2000. Tr. at 16. He now has money left over at the end of the month to start paying his past debts. Tr. at 16. To support his claim, the Individual has submitted into the record his monthly budget that leaves him approximately \$500 a month to make payments on his past debt. Ex. A.

With regard to his failure to honor the provisions in the Commitment Statement, the Individual testified that after he concluded the agreement with the credit union he lost his means of transportation when his vehicle was repossessed. The distance between his residence and the credit union was sufficiently far such that it was difficult for him to meet credit union staff. Consequently, he decided to try to repair and budget his finances himself. Tr. at 28. He contacted the credit union to explain his problem and that he would not be able to carry out the agreement. Tr. at 29.

Despite the commendable efforts the Individual has made to resolve his financial situation, I cannot find, at this time, that he has fully resolved all of the concerns raised by his past financial problems. I find that the Individual has met one of the mitigating factors in the Adjudicative Guidelines for concerns arising from financial concerns: the individual "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." *Adjudicative Guidelines*, Guideline F, ¶ 20(f). However, the Individual has not contacted several of his debtors to try to get resolution of these debts. Nor has the Individual received any financial counselling which might reduce the security concern raised by his past financial history. Further, I find that any mitigation is outweighed by the relatively recentness of his efforts, beginning four months ago as of the date of the hearing, to come to grasp with his financial problems.⁴ 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, e.g., Personnel Security Hearing*, Case No. PSH-14-0071 (2014). The Individual, as of the date of the hearing, has not

⁴ While the Individual testified he started making changes at the end of 2013, most of his more specific efforts to address his problem, such as moving to a less expensive residence, began in May 2014. Tr. at 20.

demonstrated a sufficiently sustained pattern of financial responsibility by which I can find that the concerns raised by the Individual's prior three or four years of making questionable financial decisions. I therefore cannot find that the Individual has sufficiently mitigated the security concerns associated with Criterion L.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has mitigated the DOE's security concerns under Criterion F. However, I also find that the Individual has failed to resolve the security concerns raised pursuant to Criterion L. Therefore, the Individual 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, at this time, should not restore the Individual's access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: October 27, 2014