

In August 2014, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a 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 one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented his own testimony and that of eight witnesses. The LSO submitted 10 numbered exhibits into the record; the individual tendered five exhibits.

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).

The individual must come forward with evidence to convince the DOE that 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 or her 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.

² Criterion L relates to information that a person 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).

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 cites one criterion as the basis for suspending the individual's security clearance, Criterion L. To support its allegations, the LSO lists the individual's current delinquent debt, which was reflected in a Chapter 7 Bankruptcy that the individual filed on July 16, 2014. The LSO also cites that 1) during his PSI conducted in July 2014, the individual reported that he filed Chapter 13 Bankruptcy in October 2013 and that it was dismissed in April 2014 for failure to pay; 2) he reported that he filed Chapter 13 Bankruptcy in January 2012 and that it was dismissed in August 2013 for failure to pay; 3) he reported that he filed Chapter 7 Bankruptcy in June 2004 which discharged all of this debt, excluding his mortgage; and 4) he reported that despite having extra income since January 2014, due to his non-payment of mortgage, he has not made an attempt to pay delinquent debt. The individual's failure to live within his means, to satisfy his debts and to meet his financial obligations raises a security concern under Criterion L, because his actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information. See Guideline F 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). In addition, the LSO cites two occasions in which the individual failed to report a bankruptcy to DOE as required, a Chapter 13 Bankruptcy filed in October 2013 and a Chapter 7 Bankruptcy filed in June 2004. Failure to follow DOE rules and regulations can raise questions about the individual's honesty, reliability, and trustworthiness, qualities upon which the LSO must rely when determining eligibility for access authorization. Adjudicative Guidelines at Guideline E at ¶ 16.

IV. Findings of Fact

The individual has had financial problems for at least 10 years. During a July 2014 PSI, the individual acknowledged that, in June 2004, he filed a Chapter 7 Bankruptcy and was discharged of all debt (except for his mortgage) at that time. He further admitted that he filed a Chapter 13 Bankruptcy in January 2012 and in October 2013, both of which were dismissed for failure to pay. During his PSI, the individual acknowledged that he failed to report his June 2004 Chapter 7 Bankruptcy and his October 2013 Chapter 13 Bankruptcy, to DOE as required. He also acknowledged that he attempted to participate in a debt relief program in 2010, which he paid into for several months before he realized

it was a scam. On July 16, 2014, the individual filed for his fourth bankruptcy, a Chapter 7 Bankruptcy, which reflected delinquent debt related primarily to the individual's mortgage as well as medical debt of over \$3,000, legal services, student loans and credit cards. DOE Exh. 3.

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)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I 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. Financial Matters

At the hearing, the individual testified about the circumstances that led to his financial problems. According to the individual, he began experiencing financial issues about ten years into his marriage. He explained that a few years after getting married in 1985, he purchased a house and that he and his wife had a daughter. The individual stated that a few years after his daughter was born, his wife began to show signs of psychiatric issues and was subsequently hospitalized for a month. Transcript of Hearing (Tr.) at 74 and 75. Although employed at the time, the individual testified that his job was physically challenging and he sought employment at DOE. He stated that he became a trainee in 1997 in a position at DOE which significantly reduced his salary. Shortly after starting this position at DOE, the individual testified that his wife had a major surgery and suffered a pulmonary embolism. *Id.* at 78. As a result of his wife's medical condition, the individual began to incur medical expenses which combined with his household responsibilities contributed to him falling behind on bills. The individual stated that he had medical insurance at the time, but that his deductible was high which made it difficult to keep up with his wife's medical expenses. *Id.* In 2001, the individual entered an apprenticeship program at DOE to further his career. *Id.* However, shortly thereafter his wife became sick. The individual stated that his wife had to undergo numerous tests and they had to make numerous visits to specialty doctors to determine a diagnosis. *Id.* at 79. According to the individual, he again began to incur significant expenses as a result. In 2002, in addition to his wife's illness, the individual's teenage daughter was diagnosed with ovarian cancer. The individual's daughter required extensive treatment over the

³ 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 conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

course of two years which caused his medical expenses to increase. *Id.* at 80. The individual testified that in 2004 he filed for Chapter 7 Bankruptcy because of the overwhelming medical expenses and other expenses associated with his wife and daughter's illnesses. *Id.* at 83.

He stated that after filing for Chapter 7 Bankruptcy in 2004, his life began to get back on track until his wife developed additional health challenges and he developed his own health challenges in 2011. At this time, the individual explained that he tried to enter into a debt consolidation program to deal with his mounting finances, but that he lost \$2000 in what turned out to be a scam program. The stress of his financial situation as well as other irreconcilable differences between him and wife, led the individual to file for divorce. He testified that he then filed for a Chapter 13 Bankruptcy in 2012, but found it difficult to make payments since his wife was unable to work. According to the individual, his lawyer advised him to stop making payments on his bankruptcy while he sought to modify the agreement. The individual testified that he believed his October 2013 Chapter 13 Bankruptcy was only a modification of the 2012 Bankruptcy Petition when it was actually considered to be a second filing. In any event, the individual stated that once this modification was in place, he still found it difficult to make payments because he was now required to pay alimony to his wife in addition to paying all of their bills on his own. He again asserts that his lawyer advised him that, in light of his new situation, to stop making payments and file for Chapter 7 Bankruptcy, which he did in July 2014. *Id.* at 93 and 108; Individual's Exh. D. The individual testified that he believed he had no other alternative to deal with his financial situation. However, he now asserts that since his debt has been discharged, he is back in control of his finances. Individual's Exh. D. He submitted documentary evidence to demonstrate that he now has a budget which includes his rent, alimony payment and other household necessities. Individual's Exh. A. After paying all of his expenses, the individual's budget reflects that he has a positive monthly balance of more than \$645. *Id.* He testified his daughter is now twenty-one years old and is self-sufficient. Transcript at 98.

During the hearing, the individual also presented the testimony of eight witnesses, including his supervisor, six colleagues and his priest. The individual's supervisor and colleagues all testified that the individual is a reliable and trustworthy individual. While they were not all familiar with the circumstances surrounding the LSO's security concerns, they all testified that the individual exercises good judgment. *Id.* at 13, 18, 24, 27, 33, 40 and 47. The individual's priest has been friends with the individual for 15 years. *Id.* at 51. He testified that he has socialized with the individual and his wife on numerous occasions. *Id.* at 53. The priest, who is very knowledgeable of the individual's financial problems, described the individual as frugal and very responsible, and attributes the individual's financial problems to the extraordinary health issues of his wife and daughter. *Id.* at 55. He testified that it took a number of years before the individual's wife was properly diagnosed. *Id.* The priest further stated that individual's wife was frequently sick, unable to work and bedridden, and suffered serious headaches. *Id.* He also testified that he was aware of the wife's psychological issues, which he believes contributed to the breakdown of the marriage. *Id.* at 59. The priest further recalled that the couple spent a great deal of time visiting doctors to determine a diagnosis. *Id.* at 55. He testified that in the midst of his wife and daughter's illnesses, the individual

discovered that there was mold in his house. He insisted that the individual accept a \$7000 loan to address the mold issue, an extensive and costly process. *Id.* at 56. According to the priest, the individual consulted with him before filing for his most recent Chapter 7 Bankruptcy. *Id.* at 58. He advised him to talk to his lawyer, but believes he exercised good judgment in filing for bankruptcy because he had no other alternative at the time. *Id.* Although he did not request repayment, he noted that the individual paid him back for the loan within six months. *Id.* at 57. Finally, the priest testified that he does not believe that the individual will have financial problems in the future. He noted that the individual lives a simple lifestyle, is honest and trustworthy and is taking care of his responsibilities. *Id.* at 63 and 71.

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the individual's financial problems were beyond his control. According to the individual, his wife, who was not working during the course of their marriage, suffered from a number of serious medical conditions as well as psychiatric issues. In addition, the couple's teenage daughter was diagnosed with a life-threatening disease which required long-term treatment and care. The medical expenses associated with both the individual's wife and daughter's illnesses created a financial strain on the individual's household. The individual, who also became sick during the time period of his financial problems, testified that he believes his illness which he described as a condition related to his nervous system, was related to the overwhelming stress of his financial strains. The individual, who is now divorced and has a self-sufficient adult child, is no longer faced with the same financial pressures. In light of the circumstances surrounding the individual's financial problems, I find the LSO's security concerns about the individual's finances to be sufficiently mitigated under Guideline F at ¶ 20(a), which addresses behavior that occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness or good judgment. In addition, I find the security concerns to be sufficiently mitigated under Guideline F at ¶ 20(b) as well, *i.e.* the conditions that resulted in the financial problems were largely beyond the person's control, and the individual acted responsibly under the circumstances.

Second, I find, for purposes of Guideline F at ¶ 20(c), that there are clear indications that the individual's financial problems are resolved or under control. Initiating bankruptcy is in some cases a wise decision, and not one that necessarily demonstrates poor financial judgment. The individual's recent Chapter 7 Bankruptcy has relieved the individual of the crushing burden of debts primarily associated with medical and legal expenses incurred while he was married. This bankruptcy does not cast a shadow on his current financial conduct. His current budget which I find realistically reflects his income and expenses demonstrates that he is living within his means and can successfully maintain his household on his salary.⁴ His new financial status, when combined with his ability to

⁴ The record reflects that the individual co-signed for his daughter's student loans in the amount of \$8,063. Student Loans are generally not discharged by a Chapter 7 Bankruptcy, unless the bankruptcy court finds that paying of the loan will impose an undue hardship on the debtor. The individual testified that his daughter, who is now 21 years old and self-sufficient, is a full-time sophomore student in college. Transcript at 98. Therefore, this debt will be deferred for at least two years. As stated earlier, the individual's current budget reflects a positive cash flow after paying his expenses. In the event that the

meet his household expenses and his commitment to not create new debt, demonstrates that his financial problems have been resolved.

B. Failure to Follow DOE Rules and Regulations

During the course of the hearing, the individual addressed the LSO's concerns regarding his failure to follow DOE rules and regulations. He testified that he did not intentionally fail to report his October 2013 Chapter 13 Bankruptcy, but rather considered this a modification of his 2012 Chapter 13 Bankruptcy and not a new filing. He stated that he was not aware that he had to report his bankruptcy since he thought it was a modification. Transcript at 91 and 104. With respect to his 2004 Chapter 7 Bankruptcy, the individual stated that he believed that he had reported the bankruptcy, but could not recall the specific circumstances of to whom he reported this information. He reiterated that he did not intentionally fail to report this information. Tr. at 105. I find that the individual's testimony with regard to these two instances to be credible and does not demonstrate an intent to not disclose this critical information to DOE. Nor does it raise questions about the individual's honesty, reliability and trustworthiness. This finding also reflects my consideration of the testimony of the individual's priest, supervisor and colleagues who attested that the individual is reliable and trustworthy.

Based on the foregoing, I find that the individual has sufficiently mitigated the security concerns associated with Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. 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 brought forth sufficient evidence to sufficiently mitigate the security concerns associated with Criterion L. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may

individual becomes responsible for this debt in the future, he has demonstrated that he would be able to meet this financial obligation.

seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals

Date: February 02, 2015