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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: October 14, 2014)
) Case No.: PSH-14-0094
)
_____)

Issued : December 31, 2014

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization. In April 2014, his employer received a Notice of Levy from the Internal Revenue Service (IRS) garnishing the individual’s wages for unpaid federal taxes for the years 2009, 2010 and 2011. *See* Exhibit 14. The individual promptly met with the IRS and negotiated a payment plan, pursuant to which a negotiated payment amount is deducted from his wages and remitted to the IRS by his employer. *Id.* The individual’s employer reported this information to the Local Security Office (LSO) 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.

as a result, the LSO commenced a review of the individual's security file. *Id.* This review revealed a history of concerns about the individual's finances and the accuracy of his financial reporting on Questionnaires for National Security Positions (QNSPs), dating to the individual's initial application for access authorization in 2005. The individual had been required to complete letters of interrogatories (LOIs) on financial and disclosure matters in October 2005, February 2011 and July 2012. *See* Exhibits 19, 16 and 15, respectively. As a result of this information, the LSO conducted a personnel security interview (PSI) with the individual on July 11, 2014. *See* Exhibit 25.

On October 10, 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 two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (f) and (l) (hereinafter referred to as Criterion F 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, represented by counsel, presented the testimony of two witnesses, including that of himself. The LSO introduced 26 numbered exhibits into the record; the individual tendered eight lettered exhibits (Exhibits A – H). 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 or her 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.

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 two criteria as the bases for suspending the individual’s security clearance, Criterion F 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 with respect to federal tax delinquencies from QNSPs completed by the individual in 2010, 2011 and 2012. Ex. 1 at 1.

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(l). As noted in the preceding paragraph, 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 Guidelines E and F. With respect to

Criterion L, the LSO alleges, *inter alia*, that the individual: (1) has two collection and four charge-off accounts, aggregating \$3,446; (2) has delinquent federal income tax debt for 2009, 2010, 2011 and 2013, aggregating \$14,319; (3) demonstrated financial irresponsibility by accruing the aforementioned debt notwithstanding having signed LOIs in 2005 and 2011 in which he acknowledged DOE's concerns regarding financial responsibility; and (4) omitted required financial disclosure of eight delinquent accounts from his 2005 QNSP and ten delinquent accounts from his 2010 QNSP. Ex. 1 at 2 – 5.

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

IV. Findings of Fact

Although the individual disagreed with the LSO's characterization of the omissions from his QNSPs as deliberate, he testified that the factual matters set forth in the Notification Letter were correct. Tr. at 43, 72. At times, the individual provided inconsistent testimony regarding the accuracy of the information set forth in the Notification Letter and, in those instances, I have carefully considered the totality of the individual's testimony as well as the arguments presented by both the individual and the LSO in reaching the findings of fact set forth below.

The individual has a history of being financially over-extended, which predates his employment with a DOE contractor and originated, at least partially, during a period when he and his wife operated their own business which generated minimal profits. Ex. 19 at 1, 3; Tr. at 16.

The individual completed a QNSP on July 11, 2005, as part of his initial application for access authorization. On his 2005 QNSP, the individual certified that during the prior seven years he had been over 180 days delinquent on one debt but that he was not then 90 days delinquent on any debt. Ex. 24 at 9. At the time the individual completed his 2005 QNSP, he had an additional seven accounts which were either delinquent for at least 120 days or were in collection or charge-off status.⁴ Ex. 20 at 3 – 6. Subsequently, the individual was required to complete an LOI with respect to his finances. In the LOI, he acknowledged financial difficulties and attributed deficiencies in his financial disclosure to failing to “read [his] credit report closely enough.” Ex. 19 at 2 – 3.

When the individual completed his federal tax return for 2009, he owed additional taxes which he was unable to pay. Ex. 14 at 2. Although he had requested a tax payment agreement with the IRS, he had received no response to his request when he completed a

⁴ The LSO alleges that there were eight financial accounts improperly omitted from the individual's 2005 QNSP; however, the account number for one of those accounts appears to match the account the individual disclosed on his 2005 QNSP as being over 180 days delinquent. Ex. 1 at 4 (Item II.D.12); Ex. 20 at 4; Ex. 24 at 9.

QNSP on October 13, 2010.⁵ Ex. 16 at 3. On his 2010 QNSP, which was completed as part of a periodic security re-investigation, the individual certified that in the prior seven years he had not failed to pay federal, state, or other taxes, when required to be filed, and was not then delinquent on any federal debt. Ex. 23 at 40 – 41. The individual also certified on his 2010 QNSP that, within the prior seven years, he had had no bill or debts turned over to a collection agency and had had no account or credit card suspended, charged off or cancelled for failing to pay as agreed and, at the time of the 2010 QNSP, he had no debt that was over 90 days delinquent. *Id.* At the time the individual completed his 2010 QNSP, he had ten financial accounts listed in collection status. Ex. 18 at 4 – 9.

As part of the individual's security re-investigation in 2010, he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), who advised the individual of his financial reporting obligations. The individual acknowledged to the OPM investigator that within the prior seven years he had been contacted by several collection companies and had paid a few of the debts, but not all of them. Ex. 26 at 50 – 52. The individual subsequently self-reported to his employer that he had had seven collection accounts that he had paid off and another four collection accounts that he had made arrangements to settle by the end of January 2011. Ex. 17 at 3. Those four accounts remained unsatisfied when the individual completed an LOI on February 10, 2011. Ex. 16 at 2; Tr. at 83.

When the individual completed his federal tax return for 2010, he owed additional taxes which he was unable to pay. At that time, he still owed federal income taxes for 2009. Ex. 14 at 2. Subsequent to filing his 2009 incomes, the individual negotiated “at least two” tax payment agreements with the IRS, all of which went into default shortly after making such agreements.⁶ Tr. at 28, 51 – 52, 75 – 76, 94 – 95. On April 19, 2011, the individual completed a QNSP (Part 2) on which he certified that within the last seven years he had not been over 180 days delinquent on any debt and was not then over 90 days delinquent on any debt. Ex. 22 at 9. During the prior seven years, the individual's 2009 federal taxes had been delinquent for at least 180 days and, at that time, were delinquent for at least 90 days.⁷

⁵ On an LOI dated February 10, 2011, the individual stated “I still owe taxes from last year [2009]. Requested installment plan. Have yet to hear back from IRS about request. Have not filed taxes this year [2010] yet.” Ex. 16 at 3.

⁶ The individual testified that he had had negotiated “at least two” (Tr. at 95) tax payment plans with the IRS; however, could not remember that dates such agreements were reached, the number of payments made or the tax years covered by such agreements. The individual defaulted on all of those agreements reached prior the IRS garnishment of his wages. *Id.* at 28, 51 – 52, 75 – 76, 94 – 95.

⁷ The individual's 2009 taxes were due (at the latest) on April 15, 2010, which was the filing deadline for individual federal income tax returns; he reported on an LOI dated February 10, 2011, that he had yet to negotiate a payment plan with the IRS. Ex. 16 at 3. With respect to the individual's 2010 federal income taxes, they were likely not due until April 15, 2011, and, therefore, were not over 90 days delinquent at the time of his 2011 QNSP and were not required to be disclosed when the individual completed his 2011 QNSP. The individual presented no evidence of any payments actually being made on his 2009 income taxes.

When the individual completed his federal tax return for 2011, he owed additional taxes which he was unable to pay. At that time, he still owed federal income taxes for 2009 and 2010. Ex. 14 at 2. On April 18, 2012, the individual completed a QNSP (Part 2) on which he certified that within the last seven years he had not been over 180 delinquent on any debt and was not then over 90 days delinquent on any debt. Ex. 21 at 9. The individual's income taxes for 2009 and 2010 were unpaid and delinquent for at least 180 days at that time.

When the individual completed his federal tax return for 2013, he owed additional taxes (\$3,168.12) which he was unable to pay.⁸ At that time, he still owed federal income taxes for 2009 (\$4,532.18), 2010 (\$3,502.05) and 2011 (\$3,116.31). Ex. 14 at 2, 7. In April 2014, the individual's employer advised him that it had received a garnishment notice from the IRS with respect to the individual's unpaid federal income taxes. Tr. at 27. The individual immediately met with the IRS and negotiated a payment plan which required the individual's employer to automatically deduct \$150.00 per pay period from the individual's wages; the IRS then released the levy against his wages. Ex. 14 at 3, 5 – 7. The automatic deductions of \$150.00 per pay period began in May 2014; the individual is paid once every two weeks. Tr. at 57; Ex. 14 at 5. Based on his conversation with an IRS representative, the individual changed his federal tax withholdings so that additional taxes are withheld from his salary in order to ameliorate his recurring tax deficiencies. Tr. at 28 – 29.

Following the IRS Notice of Levy to the individual's employer, the LSO reviewed the individual's current credit report. At that time, the individual had two outstanding collection accounts aggregating \$1,185 and four outstanding charge-off accounts aggregating \$2,2691. Ex. 13. Subsequently, the individual satisfied all of those accounts, except for one charge-off account in the amount of \$560, which he planned to pay in three monthly installments following the date of the hearing. Tr. at 20 – 23; Ex. A; Ex. B; Ex. C; Ex. D; Ex. E. He satisfied the delinquencies on these account by borrowing from his 401(k) retirement account in July 2014. Tr. at 63, 74 – 75. During 2014, the individual also borrowed twice from a commercial lender to pay other debt. *Id.* at 79 – 81.

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)⁹ and the Adjudicative

⁸ This amount is calculated by deducting aggregate of amounts due for 2009, 2010 and 2011 income taxes as listed in the IRS Notice of Levy sent to the individual's employer from the total amount of taxes due from the individual as specified in the IRS Payroll Deduction Agreement with the individual's employer. Ex. 14 at 2, 7.

⁹ 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

Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. 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 Criterion F and Criterion L security concerns relating to the alleged omissions from his QNSP, the individual testified that none of his omissions was deliberate or intentional. Tr. at 15, 31. With respect to failing to disclose outstanding tax debt, he testified that he did not understand the questions contained in the 2012 and 2011 QNSPs, which asked for disclosure of "debt," to require the disclosure of any debt other than financial accounts. *Id.* at 29, 58. Further, at the time of the 2010 QNSP, he *may* have been paying the IRS on a tax payment plan and, as a result, he did not consider himself to be delinquent on taxes or federal debt at that time. *Id.* at 86.

With respect to his failure to disclose delinquent financial accounts, the individual makes two primary arguments: (1) his understanding was that any account that had been settled or was subject to a payment agreement did not need to be reported on the QNSPs and (2) DOE does not require individuals to review their credit reports in order to complete QNSPs and, since he did not review his credit report when he was completing his QNSPs, he was unaware that certain financial delinquencies existed. *Id.* at 18 – 19, 49, 85, 98, 104. He limited his reporting to the one credit card on which he remembered receiving a notice.

With respect to his outstanding income taxes for 2009, 2010, 2011 and 2013, the individual argues that he has acted responsibly by negotiating a tax payment plan with the IRS within a day of his employer advising him of the IRS levy against his wages and, further, he has now adjusted his tax withholdings to eliminate future federal income tax deficiencies at the time of filing his tax returns. *Id.* at 27 – 29.

With respect to the collection and charge-off accounts noted by the LSO on his 2014 credit report, he has satisfied all but one of those and has negotiated a payment plan that requires him to satisfy the final charge-off account within the next three months. *Id.* at 20 – 23; Ex. A; Ex. B; Ex. C; Ex. D; Ex. E. He also notes that he has taken credit counseling to improve his financial management going forward. Tr. at 25, 54 – 55.

For these reasons, the individual argues that he has mitigated the security concerns noted by the LSO under Criterion F and Criterion L.

B. Administrative Judge Evaluation of Evidence

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.

Criterion F Security Concerns. Security concerns arise under Criterion F when an individual deliberately omits significant information from a QNSP. *See* 10 C.F.R. § 710.8(f). With respect to the individual, the LSO alleges three occurrences under Criterion F, all of which relate to the individual failing to disclose delinquent taxes on his QNSPs in 2010, 2011 and 2012. Ex. 1 at 1. Failure to fulfill legal and financial obligations to the United States government raises legitimate questions about a person's willingness and ability to comply with rules and procedures and raises questions about a person's reliability, trustworthiness and ability to protect classified information. As such, this information is significant in granting or continuing an individual's access authorization. The issue, here, is whether or not the individual's omissions were deliberate.

The individual certified a QNSP on October 13, 2010, in which he stated that in the prior seven years he had not failed to pay federal, state, or other taxes, when required to be filed and was not then delinquent on any federal debt. Ex. 23 at 40 – 41. This is an incorrect statement, since the individual had been unable to pay approximately \$3800 in federal income taxes when his 2009 tax return was due earlier that same year. Ex. 14 at 2. He offered no viable explanation other than he *may* have been paying on a tax payment plan at the time he certified his 2010 QNSP or *may* have been *negotiating* such a plan and, therefore, did not consider the taxes delinquent. Tr. at 28, 51 – 52, 75 – 76, 94 –95. The individual's explanation is deficient for multiple reasons. First, this explanation ignores that the 2010 QNSP specifically asked if he had failed to pay any taxes "when required by law." Ex. 23 at 40. His answering "no" is clearly incorrect since his 2009 federal income taxes were required to be paid on or before April 15, 2010. Second, his explanation is speculative and devoid of support. He was unable to provide the dates of any tax payment agreements or the amounts paid thereunder. Tr. at 75 – 76, 94 – 95. Under the Part 710 regulations, an individual has the burden in an administrative review hearing of removing the doubt raised as to their eligibility for access authorization; unsupported speculation does not remove doubt. *See* 10 C.F.R. § 710.7(a). Finally, his speculation is not supported by the record of the case and, at a minimum, appears deceptive. Although he speculated that his omission may have been based on the existence of a tax payment agreement with the IRS at the time he certified his 2010 QNSP, this is contradicted by an LOI which the individual completed four months after his certification of his 2010 QNSP. In the LOI, the individual reported to the DOE that he still owed taxes for 2009 and was waiting for the IRS to respond to his request for a payment plan. Ex. 16 at 3.

In 2011 and 2012, the individual was required to complete a short form questionnaire (QNSP (Part 2)), which asked fewer questions and asked about delinquencies on "any debt" without specifying "tax debt." Ex. 21 at 3; Ex. 22 at 3. The individual testified that he interpreted the question to refer only to "financial accounts" and not to "tax debt." Tr. at 29, 58. This is not an accurate reading of the question. The credibility of the individual's testimony is undermined by the individual having completed an LOI in February 2011 in which the LSO's question about "financial responsibilities" clearly

stated that the term included federal and state taxes¹⁰ and the individual responded to such question with disclosures about delinquent taxes. Ex. 16 at 3. He completed this LOI only two months prior to certifying his 2011 QNSP.

The individual certified two QNSPs in 2011 and 2012, one on April 19, 2011, and the other on April 18, 2012, respectively. *See* Ex. 21, Ex. 22. Both certifications occurred within days of the annual deadline for filing (and paying) individual federal income taxes. It is incomprehensible that the individual would not have been cognitive of having just been unable to pay his income taxes for the second consecutive year when he certified his 2011 QNSP and having been unable to pay his income taxes for the third consecutive year when he certified his 2012 QNSP.

The individual's testimony before me was vague (as reflected by his offering speculation in place of facts, as discussed above) and inaccurate (as reflected by the inconsistencies between his testimony and the written record, as discussed both above and in my analysis of the Criterion L security concerns below).

Based on the foregoing, I find that the individual has failed to mitigate the security concerns arising under Criterion F with respect the omissions of tax matters from his 2010, 2011 and 2012 QNSPs.

Criterion L Security Concerns. Security concerns arise under Criterion L when a person's conduct suggests that he or she is not honest, reliable or trustworthy or may be subject to pressure or coercion. *See* 10 C.F.R. § 710.8(l). With respect to the individual, the Notification Letter alleges both a pattern of financial irresponsibility and a history of failing to disclose adverse financial information as required on personnel security questionnaires.

The individual has acknowledged a history of financial problems which predate his employment within the DOE complex and have continued during such employment. Tr. at 16. Although the individual has maintained some financial accounts on a current basis, his credit reports show a pattern of delinquent payments, collection accounts and charge-off accounts which clearly evidence a pattern of financial irresponsibility on the part of the individual. Ex. 18; Ex. 20. The Notification Letter alleges that two collection accounts and four charge-off accounts were outstanding at the time the Notification Letter was issued. Ex. 1 at 2. As of the date of the hearing, the individual testified that he has paid or settled all but one of those accounts and that he has made payment arrangements to satisfy the final charge-off account in three monthly installments beginning in December 2014. Tr. at 20 – 23; Ex. A; Ex. B; Ex. C; Ex. D; Ex. E. Therefore, the individual acknowledges that he continues to have charge-off debt outstanding as of the date of the hearing and, in light of such debt, I cannot conclude that the individual's pattern of financial irresponsibility with respect to his financial accounts has abated.

¹⁰ Question 6 on the 2011 LOI asks "Are you current on all other financial responsibilities to include Federal and Sate taxes?" Ex. 16 at 3.

The individual also acknowledges that he was unable to pay his federal income taxes for four of the prior five years (2009, 2010, 2011 and 2013), with deficiencies exceeding \$3,000 in each of those years. Tr. at 75. He acknowledges establishing and defaulting on “at least two” tax payment plans with the IRS, but is uncertain of the number of such agreements, the dates or timeframes of such agreements, or the amounts actually paid under such agreements. *Id.* at 28, 51 – 52, 75 – 76, 94 – 95. In April 2014, within a day of being notified by his employer that it had received notice from the IRS to garnish his wages, the individual met with the IRS and negotiated a payment agreement whereby his employer undertook to make deductions from the individual’s wages of \$150 per pay and remit such amounts to the IRS. The individual also increased his tax withholdings based upon an observation from the IRS agent during such meeting that the individual’s recurring tax deficiencies resulted from insufficient withholdings. *Id.* at 27 – 29. The individual characterizes his meeting with the IRS promptly after receiving notice of his wage garnishment and negotiating a tax payment plan as evidencing his exercise of responsibility on his tax matters. *Id.* at 56. I cannot agree. The individual had a four-year period in which he was delinquent on his federal income taxes and failed to remedy the situation. That he negotiated *and defaulted* “at least” twice on tax payment agreements with the IRS evidence a pattern of financial *and legal* irresponsibility. Negotiating a payment plan in order to stop the garnishment of his wages is clearly motivated by self-interest and a desire to avoid the financial harshness of wage garnishment; for the individual to characterize his negotiation of such payment plan as evidencing financial responsibility inappropriately distorts the facts. Further, accruing tax deficiencies in four out of five years without adjusting one’s tax withholdings, as the individual did, is *irresponsible*. Making such adjustment only *after* receiving notice of garnishment of one’s wages is not laudable. While the individual has, as of the date of the hearing, commenced payments under a tax payment plan and increased his tax withholdings, he was unable to pay his most recently due federal income taxes (2013) on time, as required by federal law, and has, therefore, not abated the pattern of financial irresponsibility associated with his nonpayment of taxes.

In mitigation of the security concerns arising from his financial irresponsibility, the individual argues that he has completed credit training. No documentation or credible testimony was introduced into the record to support his assertion. *Id.* at 25, 54 – 55.

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 is continuing.

In addition to security concerns arising from the individual's pattern of financial irresponsibility, the LSO raises security concerns with respect to the individual's honesty, reliability and trustworthiness based upon his alleged failure to disclose delinquent financial accounts on his QNSPs. Ex. 1 at 3 – 5. The individual failed to disclose seven delinquent or collection accounts¹¹ on his 2005 QNSP, which he completed as part of his initial applicant for access authorization, and ten collection accounts on his 2010 QNSP, which he completed as part of a periodic re-investigation of his eligibility for access authorization. *See* Ex. 18, Ex. 20, Ex. 23, Ex. 24. While the analysis of the individual's omissions raised with respect to Criterion F focused on the deliberativeness of those omissions, the analysis of omissions raised with respect to Criterion L is focused on issues of honesty, reliability and trustworthiness.

With respect to these omissions, the individual makes two primary arguments, both of which are deficient for a number of reasons, including that they are inconsistent with the individual's prior written submissions to the DOE. First, the individual argues that his understanding was that any account that had been settled or was subject to a payment agreement did not need to be reported on his QNSPs. Tr. at 18 – 19, 98. Such interpretation represents a misreading of the question asking for disclosure of financial matters that have been delinquent for 180 days or more in the prior seven years; it also ignores the distinction between those debts and those on which an individual is currently delinquent for 90 days or more. While such misinterpretation causes concerns about the individual's reliability, greater concerns arise from his testimony that suggested that his omissions were the result of such accounts being subject to payment agreements or previously settled. No documentation was presented to evidence any such settlements or the existence of such payment agreements at the time the 2005 and 2010 QNSPs were certified by the individual. Further, the testimony is deceptive as his explanation of his omissions is inconsistent with his 2005 QNSP, on which he disclosed one collection account and that account had been settled six month earlier. Ex. 24 at 9.

The individual's second argument is that DOE does not require individuals to review their credit reports in order to complete QNSPs and, since he did not review his credit report when he was completing his QNSPs, he was unaware that certain financial delinquencies existed. He limited his reporting to the one credit card on which he remembered receiving a notice. Tr. at 19, 49, 85, 104. This argument tries to suggest that the individual is not responsible for the omitted information as it was unknown to him. Yet, he testified in response to a question from his attorney that he was not disputing any of these accounts. *Id.* at 32. More importantly, these are debts that the individual incurred and subsequently defaulted on his obligations to satisfy. A holder of access authorization is expected to handle their financial affairs responsibly and, in order to do so, is necessarily obligated to be aware of the debts that they incur. For the individual to lack such awareness of his financial affairs is evidence of unreliability. Further, the individual acknowledges that he "realized there was other information out there," but chose to complete the QNSPs "going by what [he] had," without "pulling a credit report." *Id.* at

¹¹ The Notification Letter alleges eight omissions from the individual's 2005 QNSP; however, as previously noted under "Findings of Fact," one of those eight accounts was listed by the individual on his 2005 QNSP. *See* Ex. At 4; Ex. 20 at 4; Ex. 24 at 9.

101. To knowingly complete a QNSP under such circumstances reflects negatively on the individual's honesty, reliability and trustworthiness. Most incomprehensible, however, is the individual's assertion that such omissions resulted from his failure to review his credit report while completing his QNSPs in light of his previously reporting to the DOE that he had reviewed his credit report while completing his 2005 QNSP. Following the individual's completion of his 2005 QNSP, he was required to complete an LOI with respect to the omission of certain financial accounts. In that LOI, he explained that his omission of a certain charge-off account resulted when he "inadvertently missed [the] account when going through [his] credit report." Ex. 19 at 1. The individual's argument that he was unaware of other collection accounts is also inconsistent with the OPM interview that followed his certification of the 2010 QNSP in which he acknowledged to the OPM investigator that he had been contacted by several collection companies over the prior seven years. Ex. 26 at 50 – 52.

I generally question the credibility of the individual's testimony; however, I believe he was uncharacteristically candid when he testified in response to a question I asked about the omissions from his 2005 and 2010 QNSPs: "And I just – I was hoping maybe that it would – it would blow over and I could take care of this stuff and it would all be done. Obviously, I haven't been able to take care of it all up to this point..." Tr. at 91. This statement clearly reflects that the individual was aware of adverse information that he was not disclosing on his security questionnaires. Such conduct is inconsistent with the honesty, reliability and trustworthiness required for access authorization.

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 or his failure to disclose delinquent accounts from his 2005 and 2010 QNSPs.

V. 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 F and 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 not brought forth sufficient evidence to mitigate the security concerns associated with Criterion F and Criterion L. Accordingly, I have determined that the individual's access authorization should not be restored. 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: December 31, 2014