

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing)
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Filing Date: March 18, 2013)
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Case No.: PSH-14-0098

Issued: February 26, 2015

Decision and Order

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 2013 routine re-investigation of his ex-wife, the local security office (LSO) obtained information about the individual’s finances that raised security concerns. The LSO conducted an investigation into his finances, and as a part of that investigation, it summoned the individual for an interview with a personnel security specialist. After this Personnel Security Interview (PSI) failed to adequately address these concerns, the LSO determined

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>.

that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this 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 nine exhibits into the record of this proceeding. The individual introduced three exhibits and testified at the hearing, as did his girlfriend.

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

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (1) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (1) defines as derogatory 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 or circumstances include, but are not limited to, a pattern of financial irresponsibility. As support for its invocation of this criterion, the Letter alleges that the individual has \$5,538 in delinquent debt, including:

- 8 collection accounts totaling \$1,525;
- One charged-off account for \$993; and
- \$3,000 in unpaid federal taxes and \$20 in unpaid state taxes.

The Letter also cites statements made by the individual during his May 2014 PSI indicating that he did not file federal or state income taxes during the years 2009 through 2013.

The individual generally does not dispute these allegations, and they adequately justify the DOE's invocation of criterion (1). They also raise significant security concerns. Failure to file tax returns or 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. Also, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *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

A. Mitigating Evidence

At the hearing, the individual attempted to demonstrate, through his testimony and that of his girlfriend, that his financial difficulties were due largely to his ex-wife’s behavior, that his tax returns will soon be filed and his delinquent debts paid, and that he is a reliable person who exercises good judgment and can be trusted to adequately safeguard classified information.

The individual testified that it was his ex-wife’s responsibility to work with their CPA to file the tax returns during their marriage, and that he operated on the assumption that she had done so for the years in question. He stated that, in addition to their employment with the DOE contractor, he and his wife had a home-based business that occupied most of his time, and that he wasn’t engaged with what was going on with his taxes. Hearing transcript (Tr.) at 10. He said that he didn’t find out that she and the CPA had not filed the tax returns until her five year re-investigation occurred in 2013, and he does not know why they weren’t filed. Tr. at 13-14. They got divorced in 2014. Tr. at 14.

The divorce decree, dated June 19, 2014, provides that the individual and his wife are to file the returns as “married filing jointly,” that the unfiled returns are to be filed by a second CPA, and that the individual and his wife are to provide the second CPA with all of the documents necessary to file the returns. Individual’s Exhibit (Ind. Ex.) A. On January 6, 2015, the second CPA sent an e-mail to the individual in which he stated that he could no longer act on the individual’s and on his ex-wife’s behalf because he had taken a position with an employer that did not permit him to perform outside work. Ind. Ex. B.

The individual testified that the second CPA could not file the returns because he did not receive certain information from the ex-wife before he quit working for them, and that therefore the federal and state returns for the years 2009-2013 had not yet been filed. Tr. at 17. According to the individual, he attempted to do the returns in 2013 when he discovered that they had not been filed, but was unable to do so because of his ex-wife’s lack of cooperation. Tr. at 31. The individual further indicated that he did not know what his federal tax liability was, and that the \$3,000 dollar figure set forth in the Notification Letter was an estimated debt provided by the Internal Revenue Service (IRS) in a letter to the couple received in 2011. Tr. at 19, 44-45. Nevertheless, the individual testified that he intends to resolve his tax issues. Tr. at 22. He explained that his ex-wife has provided some information, and that she was due to provide more on the day after the hearing. *Id.* He also indicated that he had taken steps to obtain permission from the court that granted his divorce to file the returns himself. Tr. at 23. He testified that he intends to have his taxes filed by the end of the month. Tr. at 32.

The individual then discussed his delinquent debts. Unlike his tax situation, he testified that he was aware of these debts, and that he had enough money to pay them all off until approximately two weeks ago. At that time, he explained, their two cars, a used BMW and a used Infiniti, were going to be repossessed because his ex-wife had failed to make the payments on her car for three months. Because the two loans were linked, the individual said that he had to get another loan to pay off the debt on both cars in order to “save” his vehicle. He currently owes \$7,442 on the Infiniti and approximately \$17,000 on the BMW. Tr. at 32-33.

Three of the collection accounts mentioned in the Notification Letter are for unpaid speeding tickets that the individual received while driving on an Indian reservation. The individual testified that he did not pay the tickets because he was erroneously told by a tribal court judge that he did not have to pay the tickets and that they would not go on his credit report. Tr. at 33-34. He has not paid these debts because he “was going to pay everything in full all at once,” but “that money that I was going to use had to go to get my cars back . . .” Tr. at 35. Three other collection accounts were for medical expenses that his ex-wife incurred and that she was supposed to pay. *Id.* The two remaining collection accounts, for unpaid phone bills and insurance, were also debts that his ex-wife was supposed to pay in part or in full. *Id.* The individual testified that he had “no idea” what the charged off account for \$993 was for. Tr. at 37.

Finally, he claimed that he would be able to pay all of his delinquent debts when he moved in with his girlfriend in “about a month-and-a-half to two months.” Tr. at 36. He would be able to do so because of the girlfriend’s assistance in paying day-to-day living costs, and because the individual’s father, who used to work for a collection company, would be negotiating on the individual’s behalf with his creditors to resolve the individual’s indebtedness. *Id.*

The individual’s girlfriend also testified. She confirmed that the two of them were planning on moving in together, and she described their relationship as being “very stable.” Tr. at 49, 51. The girlfriend further stated that she believed that the two of them could pay off the individual’s debts without becoming financially crippled, and that the individual was a reliable and trustworthy person who exhibited good judgment. Tr. at 52, 54.

B. Administrative Judge’s Determination

As indicated in the testimony described above, the individual’s primary explanation for his financial predicament is his ex-wife’s failure to satisfy her obligations, and their subsequent separation and divorce. Although the individual did submit evidence that he and his ex-wife are divorced, there is no supporting evidence in the record for the individual’s assertions that his ex-wife was largely or entirely to blame for their failure to file the tax returns in question or for the delinquent debts set forth in the Notification Letter. However, even if the individual’s statements in this regard were true, I would continue to have serious questions about his judgment and reliability. Although the individual testified that he was not aware that the tax returns for 2009-2013 had not been filed until his ex-wife’s routine re-investigation in 2013, the record indicates that he was aware in 2011 of the \$3,000 estimated debt owed to the IRS for back taxes. Tr. at 45. There is no evidence in the record indicating that he inquired of his ex-wife as to the reason for the debt in 2011, or that he took any actions or made any inquiries whatsoever as to the status of the debt between 2011 and 2013. If, in fact, the individual was ignorant of his tax situation until 2013, as he claims, that ignorance appears to have been willful. Regardless of how the marital duties were apportioned between the individual and his ex-wife, it was the responsibility of both of them to ensure that their returns were filed promptly and accurately. The individual’s complete and total abdication of this responsibility was a demonstration of poor judgment.

The individual has also failed to act responsibly with respect to some of his delinquent debts. Even if his unsupported testimony that he was told by a tribal court judge that he did not have to pay his speeding tickets and they would not go on his credit report was accurate, he became aware of these delinquent debts no later than May 2014. DOE Ex. 9 at 20. Nevertheless, he has apparently made no effort to pay these debts or to contact his creditor about these debts. He did testify that all of these debts would have been repaid had he not had to refinance his and his ex-wife’s two vehicles just before the hearing to keep them from being repossessed. However, this does not explain his failure to address these debts in the months leading up to that refinancing.

There is also an unacceptable amount of uncertainty regarding the individual's plan to satisfy his debts. That plan is contingent upon the individual moving in with his girlfriend at some point in the future. Although both testified that they plan to do so, and the girlfriend testified that their relationship is sound, that could change either before they begin cohabitating or at any time thereafter. The individual's current budget shows a positive cash flow of \$20 per month, without making payments on any of his delinquent debt. Ind. Ex. C. Given the current state of the individual's finances, I do not believe that he could satisfy his debts and meet all of his other financial commitments without substantial assistance from his girlfriend. That assistance will likely never occur should their relationship change. Significant security concerns remain regarding the individual's failure to file income tax returns and regarding his finances.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criterion (I). Consequently, he has failed to convince me 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: February 26, 2015