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

**In the Matter of: Personnel Security Hearing )**

**Filing Date: November 13, 2014 )**

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**Case No.: PSH-14-0099**

**Issued: January 29, 2015**

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**Administrative Judge Decision**  
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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s request for a security clearance should be granted.<sup>2</sup>

**I. BACKGROUND**

During an initial background investigation of the Individual, a Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on August 7, 2014. Because the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled

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<sup>1</sup> 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 also be referred to in this Decision as a security clearance.

<sup>2</sup> 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>.

to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on November 13, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-14-0099 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9. The Individual submitted one exhibit, marked as Exhibit A.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to paragraph (l)<sup>3</sup> of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

To justify its reliance on Criterion L, the LSO alleges that the Individual has 12 outstanding collection accounts totaling \$3,815, had two properties foreclosed upon, had a negative cash flow, and had not contacted any of her creditors regarding her 12 delinquent accounts.

The Individual's pattern of financial difficulty, as alleged, adequately justify the LSO's invocation of Criterion L, and raise significant security concerns. The Revised Adjudicative Guidelines state in pertinent part:

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 . . . . Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; [and] (c) a history of not meeting financial obligations; . . .

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶¶ 18, 19. The Revised Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of human nature, administrative judges apply the guidelines in conjunction with the information

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<sup>3</sup> Criterion L refers to information indicating that the Individual has "engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

available in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

### **III. REGULATORY STANDARDS**

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### **IV. FINDINGS OF FACT**

On May 3, 2014, the LSO obtained a credit report for the Individual which showed that the Individual had 12 outstanding collection accounts totaling \$3,815. Exhibit 5 at 1-12. The credit report also showed that the Individual had two properties foreclosed upon, in 2011 and 2013. Exhibit 5 at 4, 11. All but one of her collection accounts were medical debt. Tr. at 16. The remaining collection account (for \$1,516) resulted from a stolen credit card. Tr. at 25-26.

Accordingly, the LSO conducted a PSI of the Individual on August 7, 2014. During this PSI, the Individual admitted that she had not contacted any of her collection account creditors in order to resolve her outstanding debts, because she did not have any money to pay them with. Exhibit 7 at 61. She further admitted that her monthly expenses exceeded her monthly income by \$428. Exhibit 7 at 34-44.

### **V. ANALYSIS**

The Individual's financial problems resulted from circumstances beyond her control. During her hearing testimony, the Individual explained that her financial problems resulted from the loss of her high-paying construction job (and resulting ten months of unemployment), unexpected medical expenses, medical expenses resulting from care of her child with special needs, and a theft of her credit card. Tr. at 10-16. All but one of her collection accounts were medical debt. Tr. at 16. The remaining collection account (for \$1,516) resulted from a stolen credit card. Tr. at 25-26. The Individual corroborated this testimony by submitting a copy of the police report that she filed after discovering the theft. Exhibit A at 15-16.

The Individual testified that she worked a construction job until October 2009, where she was paid \$25 an hour. Due to the severe downturn in the construction industry, she lost that job. She was unemployed for 10 months, between October 2009 and August 2010. Tr. at 10-11. During this 10-month time period, she received only \$300 a week in unemployment benefits. Tr. at 10. In August 2010, she began working for her present employer, at \$13 an hour. Tr. at 10-11. With this reduced income, she was unable to make payments on her mortgages for her residence (which she purchased in 2006), and a rental property. These properties were foreclosed upon in 2011 (the rental property) and 2013 (her residence).<sup>4</sup> Tr. at 13. The Individual testified that, as a result of her marriage (in 2013) and her husband's improved earnings, she is now in a position to address her outstanding debts. Tr. at 17, 30. The Individual testified that she and her husband now make \$3,800 a month after taxes. Tr. at 17, 27. Her current monthly expenses are \$2,213. Tr. at 27-30, 48. The Individual has testified or submitted documentation showing that that she has paid five of the 12 outstanding collection accounts. Tr. at 18, 21, 30; Exhibit A at 6-14. The Individual testified that she is now making regular payments on three more of the 12 outstanding collection accounts. Tr. at 19-27; Exhibit A at 2. She testified that she has made arrangements to pay for the remaining collection accounts. Tr. at 24. A credit report run by the LSO on December 12, 2014, indicates that the four other unresolved collection accounts have outstanding balances totaling \$690. Exhibit 9 at 1-2. The Individual testified that she expects to receive a tax refund of \$5,000 which she plans to use to resolve these debts. Tr. at 43.

The Adjudicative Guidelines set forth a number of conditions that could mitigate security concerns arising from an individual's financial difficulties. Adjudicative Guideline F at ¶ 20. Three of those five circumstances apply to the present case.

Paragraph 20(b) provides that mitigation can result if an individual can show that "the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Adjudicative Guideline F at ¶ 20(b). As discussed above, it is clear that the origins of the Individual's financial difficulties were beyond her control.

Paragraph 20(c) provides that mitigation can result if . . . there are clear indications that the problem is being resolved or is under control." Adjudicative Guideline F at ¶ 20(c). The record shows that the Individual is taking steps to resolve her financial issues by achieving a positive monthly cash flow and that she is taking positive steps to resolve her outstanding credit accounts.

Paragraph 20(e) provides that mitigation can result if an individual can show that he or she "has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute . . ." Adjudicative Guideline F at ¶ 20(e). In the present case, one of the outstanding collection accounts resulted from a stolen credit card, for which the Individual has provided corroboration in the form of a police report showing that she had reported the theft.

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<sup>4</sup> The Individual, like many others during the real estate crisis, found herself owing more for her properties than they were worth. Tr. at 32-35; Exhibit 9 at 3.

For these reasons, I find that the Individual has provided sufficient mitigation to resolve the security concerns raised by these outstanding collection accounts.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has demonstrated that granting her request for a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should be granted a security clearance at this time. The Local Security Office may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

Date: January 29, 2015