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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: December 12, 2014 )  
 ) Case No.: PSH-14-0107  
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Issued: April 24, 2015

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. The individual has experienced financial difficulties since about 2008, which resulted in the Local Security Office (LSO) monitoring her credit reports and conducting three personnel security interviews with her.

In December 2014, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created a substantial doubt regarding her 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

<sup>1</sup> 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.

disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon her receipt of the Notification Letter, the individual exercised her 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 her own testimony and that of one witness, her mother. The LSO submitted 16 numbered exhibits into the record; the individual tendered 10 exhibits, which have been labelled A through J.

## **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 (9<sup>th</sup> 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 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

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<sup>2</sup> 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).

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 totals \$2,248. The LSO also notes the following concerns: (1) the individual's failure to resolve a number of debts, (2) wage garnishments in 2009 and 2014, (3) a repossessed vehicle in 2009, (4) a negative checking account balance, and (5) 401K account loans. According to the LSO, these items demonstrate a pattern of financial irresponsibility or inability to satisfy debts. The individual's failure to live within her means, to satisfy her debts and to meet her financial obligations raise a security concern under Criterion L, because her 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).

### **IV. Findings of Fact**

The individual has a history of financial problems including two wage garnishments and a vehicle repossession.<sup>3</sup> The LSO interviewed her on three separate occasions, October 2008, February 2010 and August 2014, regarding her finances. On July 3, 2014, the LSO received an Incident Report about a wage garnishment placed against the individual in the amount of \$1,069.85 in order to satisfy a debt that was incurred in September 2012. As a result of this information, the LSO obtained a credit report in July 2014, which identified a number of additional collection accounts as well as two delinquent accounts. DOE Exh. 3. This information prompted the LSO to conduct personnel security interview (PSI) with the individual on August 4, 2014. *Id.*

During the PSI, the individual stated that her recent financial problems began in March 2013, when she purchased a home and began accumulating more debt than she anticipated, including homeowner association fees. Prior to the home purchase, the individual had incurred medical debts when her daughter broke her arm. *Id.* She also admitted that a wage garnishment was placed against her in July 2014, and that prior to the wage garnishment, she had established a repayment plan with the company on two occasions, most recently in February 2014, but did not adhere to the repayment plan. The individual stated that she stopped paying on both occasions because she did not have the money and had other bills to pay. *Id.* The individual also admitted that as of the date of

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<sup>3</sup> The individual disputes the 2009 wage garnishment and provided documentary evidence that her wages were not actually garnished. Individual's Exh. F.

the PSI, her checking account had a negative balance, that she has accumulated more debt than she thought she would and that she does not have enough money to pay her bills. She admitted that she relies on loans from her 401 K account to keep her finances afloat as she is not able to meet her monthly obligations. Finally, during the PSI, the individual admitted that in 2005, she intentionally wrote a check for \$2,500 to purchase a vehicle and did so knowing that she did not have sufficient funds in the bank to cover the check. In addition to these admissions in her 2014 PSI, the individual admitted in a February 2010 PSI that her wages were garnished in 2009 by a company after a judgment was issued against her for an unpaid debt. She further admitted during this 2010 PSI that, in 2009, her vehicle was repossessed due to the fact that she was four months behind in her payments. DOE Exh. 1.

## 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)<sup>4</sup> 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.

### Financial Matters

At the hearing, the individual testified about the circumstances that led to her incurring debt. She stated that the 2009 repossession of her vehicle was mainly attributed to her not being able to budget her general finances, including her credit cards and monthly utilities, well at the time. Transcript of Hearing (Tr) at 27 and 28. She was 22 years old at the time. The individual acknowledged that in 2010, the LSO questioned her about her finances after she reported that her wages were being garnished for an unpaid debt. *Id.* at 30. She testified that she and her mother were sharing an apartment at the time and decided to move to a new home. According to the individual, the apartment management charged an extra month's rent because they did not provide management with a 30-day notice. The individual testified that she and her mother always paid their rent on time and that they were not evicted. She further testified that her wages were never actually garnished as the co-signer on the apartment lease, but that her mother's wages were garnished instead. *Id.* at 31-32.

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<sup>4</sup> 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.

As for her more recent financial situation, the individual acknowledged that there were unforeseen expenses that attributed to her financial shortfall and debt. She testified that she purchased a house in 2013, and that around the same time-period her daughter broke her arm. According to the individual, the medical expenses associated with her daughter, as well the expenses associated with a new home, contributed to her monthly shortfalls. Although she testified that she had medical insurance for her daughter at the time, she estimates that her out-of-pocket expenses were still approximately \$3,000. *Id.* at 33 and 34.

During the hearing, the individual was questioned about each of her eight outstanding collection accounts. With respect to the largest collection account listed, an amount of \$1,066 related to her July 2014 wage garnishment, the individual testified and submitted documentary evidence that this account has been paid in full. *Id.* at 35 and 37; Individual's Exhibit A. The individual stated that this account is associated with her daughter's medical expenses, which included fees for the surgery, paramedic fees, and emergency room fees. *Id.* at 36. She testified that she established a monthly payment plan with the collection company, but acknowledged that she fell behind in the payments when she moved into her new home. *Id.* at 37. The individual further testified that two other collection accounts listed have also been paid in full. With respect to three of the collection accounts, in the amounts of \$63, \$196 and \$342, the individual testified that they have not yet been paid in full because the collection companies have transferred the balances to new creditors and she has not yet received the statements from the new creditors. *Id.* at 39. She further testified that she now has the income to satisfy those debts. As for the last two collection accounts in the amounts of \$177 and \$207, the individual testified that these accounts are included in a credit consolidation program in which she pays \$15 a month for each of these accounts. *Id.* at 42; Individual's Exhibit C.

In addition to the collection accounts, the individual explained other instances that were cited by the LSO as establishing a pattern of financial irresponsibility. She acknowledges that she intentionally wrote a \$2,500 check to purchase a car, knowing that she did not have the funds to cover it. She testified that at the time she wrote the check, she knew she would have the money in her account the following month to pay the check because she would be receiving a tax refund. She testified that her bank paid the check, but that she had to pay the bank, which she ultimately did. *Id.* at 50-52. The individual offered no excuse for this behavior other than her immaturity at the time. *Id.* She was 22 years old at the time. She also readily acknowledged that she relied on loans from her 401 K account because she fell behind in her home payments. However, she testified that she has not taken money out of her 401 K account since April 2014. *Id.* at 55 and 56. She reiterated that she took these loans from her account to stay current on her home mortgage. The individual also explained that being overwhelmed with other bills led to her falling behind on her car note and the subsequent repossession of her vehicle. *Id.* at 58. She indicated that she was ultimately able to make the payments for her car and regain possession of her car.

The individual admitted, during the hearing, that she has accumulated more debt in the past than she thought she would and that she has not had enough money in the past to pay her bills. However, she asserted that since August 2014, she has taken concrete steps to

ensure that she “has more money coming in than going out.” The individual testified that she is current on all of her financial obligations. *Id.* at 67. She further testified that her home payment is automatically deducted from her check and that she deposits \$20 to \$75 a week into a savings account. *Id.* at 68. The individual submitted a budget to demonstrate that she is meeting all of her expenses and that she has a remaining positive cash flow at the end of the month. Individual’s Exhibit J. Although she recognizes that her past financial behavior shows a lack of judgment, the individual now believes that she is living within her means. She stated that she is building an emergency fund and that she is budgeting her money in a more responsible manner. *Id.* at 72. The individual further testified that she is more mature and responsible now and has learned from her past experiences. She also testified that as a part of her debt consolidation program she now receives credit counseling to help keep her on the right path. *Id.* at 75. Finally, the individual testified that she is not vulnerable to blackmail or coercion.

The individual’s mother testified on the individual’s behalf. She corroborated the individual’s testimony that the medical bills associated with her granddaughter injury caused a financial setback for the individual which resulted in the individual’s 2014 garnishment. *Id.* at 12. The individual’s mother testified that the individual is a responsible, honest and reliable person. *Id.* at 11-13.

In considering the evidence before me, I looked to the Adjudicative Guidelines. There are four Adjudicative Guidelines that pertain to this case. First, I find the LSO’s security concerns about the individual’s finances to be mitigated under Guideline F at ¶ 20(a), which addresses behavior that occurred so long ago or so infrequently or under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness or good judgment. Here, the individual testified that her outstanding collection accounts and her poor financial decisions, including her poor budgeting and negative balances, her reliance on loans from her 401 K account as well as her 2014 garnishment occurred during a time period after she purchased a new home and was caught “off guard” with unexpected medical bills associated with her daughter’s injury. The individual has demonstrated through her testimony and documentary evidence that she has learned from her past experience of poor budgeting. She testified that she is now saving for an emergency fund in anticipation of unexpected issues that may arise in the future. She has demonstrated that her poor financial decisions occurred under such circumstances that they are unlikely to recur in the future.

As for the 2009 repossession of her car (the same car she purchased in 2005), I believe the individual credibly testified that her poor budgeting led to her falling behind in her payments. Again, I find that the individual has learned from her past financial experiences, is now budgeting her money more responsibly and is unlikely to find herself in the same position in the future. I recognize that the LSO has questioned the individual about her finances on three separate occasions, October 2008, February 2010 and August 2014. However, I find that the individual has candidly explained the circumstances occurring during these time periods and demonstrated her willingness to resolve the issues. In 2008, the LSO resolved the security concerns and granted the individual a clearance. In 2010, the primary security concern related to the individual’s 2009 wage garnishment. The individual addressed this wage garnishment during the hearing,

explaining that she co-signed for an apartment she shared with her mother at the time. When they moved to a new home, they were charged an additional month's rent because they did not provide a 30-day notice to management. Both the individual and her mother testified that her wages were never garnished.

Second, I find that the conditions that resulted in the individual's financial problems were, to some degree, beyond her control. The unexpected medical bills associated with her daughter's injury contributed to the individual's unstable financial situation. *See* Individual's Exhibits A-J. In addition, there is no evidence in the record that the individual, a single mother and sole provider for her dependent daughter, lived a lifestyle beyond her means. Rather, the record suggests that the individual lives a conservative lifestyle, but has had difficulty in the past with managing her budget. She is now receiving credit counseling and is on the right track to becoming more responsible with her finances. Based on these findings, I find that the individual has mitigated her financial issues under Guideline F at ¶ 20(b), *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.

Third, 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 and that she has received counseling for her financial issues. The individual has demonstrated that all but three of her outstanding collection accounts have been either paid in full or being addressed in her debt consolidation program. The three, relatively *de minimus* accounts that have not yet been paid have been transferred to new creditors. As of the date of the hearing, the individual has attempted to contact the new creditors, but had not yet received statements from them. However, the individual has demonstrated that she will be able to resolve these smaller debts as soon as she receives the statements. In addition, as mentioned earlier, the individual is currently receiving credit counseling through her participation in a debt consolidation program. Fourth, I find that the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve her outstanding debts by paying in full a large portion of her outstanding debt and by enrolling in a debt consolidation program. Guideline F at ¶ 20(d). Finally, I find that the individual had a reasonable basis to dispute the legitimacy of the past-due debt, *i.e.* the 2009 garnishment and provided documented proof to substantiate the basis of the dispute. Guideline F at ¶ 20(e). In the end, based on my assessment of the individual's demeanor and credibility, I find that the individual is committed to maintaining a stable financial environment for both she and her daughter and that her past behavior with respect to her finances is unlikely to recur.

Based on the foregoing, I find that the individual has sufficiently mitigated the security concerns under 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 resolve 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 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: April 24, 2015