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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: March 27, 2015)	Case No.: PSH-15-0020
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Issued : June 17, 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 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 discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should not restore the individual’s access authorization.

I. Background

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. In September 2014, the individual reported to the Local Security Office (LSO) that her wages had been garnished to satisfy a default judgment entered by a court against her. During an ensuing personnel security interview (PSI) in December 2014 to discuss the wage garnishment, the LSO learned that the individual had a total of eight delinquent debts totaling \$42, 985.

In January 2015, 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

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.

LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon 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, only the individual testified. The LSO submitted seven exhibits into the record; the individual tendered seven exhibits.³ 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.⁴

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting 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 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion L relates to information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . .” 10 C.F.R. §710.8(l).

³ The individual tendered two of her seven exhibits after the hearing, Exhibits F and G.

⁴ OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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, there is only one criterion at issue in this proceeding, Criterion L. To support its charges, the LSO alleges that the individual (1) has seven delinquent debts with a total outstanding balance of \$22,609, (2) owes \$20,178 in past due mortgage payments on a home loan with an outstanding balance of \$123,036, (3) is currently the subject of foreclosure proceedings with regard to her home because she has not made any mortgage payments since February or March 2013, (4) had her wages garnished in the amount of \$1253.46 in October 2014 because she failed to satisfy a payday loan, and (5) routinely obtained cash loans for the last five years to pay off bills and loans because she does not have enough income to meet all of her financial obligations.

The individual's failure to live within her means, to satisfy her debts and meet her financial obligations raises 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). Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. Findings of Fact

In June 2011, the LSO questioned the individual about two collection accounts during a PSI. Ex. 7 at 9. At the time, she told the LSO that she would take care of the two accounts but did not. *Id.* She did set up a payment plan with regard to one of those accounts but never followed through on paying on it because she could not afford to do so. *Id.* at 11. During the December 2014 PSI, the individual admitted that she had taken little action to resolve those two delinquent accounts. *Id.* Those two accounts, one for \$2,249.00, and the other for \$760.00, are among the seven non-mortgage delinquent accounts that are at issue in this proceeding.

On September 30, 2014, the individual reported to the LSO that her wages had been garnished to satisfy a debt in the amount of \$1253.46. Ex. 5. During the 2014 PSI, the individual addressed her outstanding debt, explaining that beginning five years earlier she

started taking out loans to pay other loans and bills. Ex. 7 at 20. As of December 2014, the individual had no budget and not enough income to support her family of five, which includes her three grandchildren and her boyfriend.⁵ *Id.* at 39-40, Tr. at 22. She also admitted at the PSI that she was not living within her means. Ex. 7 at 44.

At the time of the 2014 PSI, the individual's monthly financial obligations, excluding her mortgage payments were the following:

Cellphone (hers and her boyfriend):	\$150
Cellphones (for each of her three grandchildren)	\$90 (3x\$30)
Gas for her car (\$70/week)	\$280
Gas for her boyfriend's car (\$30/week)	\$120
Electric Bill	\$100
Groceries (\$250/week)	\$1,000
Gas Bill	\$200
Wood for burning	\$300
Car Insurance	\$60
Trash and Water	\$100
Clothing, shoes, etc.	\$500
Entertainment	\$20

Id. at 45-49.

Her monthly bills as of December 2014 totaled \$2920, which did not include her monthly mortgage payment of \$1060. *Id.* at 32, 49. Her net take home pay per month is \$2800, \$1180 less than her financial obligations (\$3980 less \$2800).

The individual stopped making payments on her mortgage in February or March 2013, and is currently in arrears to the lender in the amount of \$20,178. Ex. 3; Ex. 7 at 29. The principal balance on her loan is \$123,036. *Id.* The lender has commenced foreclosure proceedings against the individual. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony 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) and the Adjudicative 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.

⁵ Her boyfriend has not worked in eight years because of an injury. *Id.* at 40.

The individual provided an email from the payroll department of her employer which indicates that she no longer has a garnishment on her wages. Ex. D.⁶ This document corroborates the individual's statement during the 2014 PSI, that she had paid off the garnishment. Ex. 7 at 34. Based on the above, I find that the individual has mitigated the security concern set forth in Section B.2. in the Statement of Security Concerns.

Regarding the \$2,249 collection item set forth in Section A.1.a. of the Statement of Security Concerns, the individual submitted a letter from the creditor showing that she is settling the debt for \$787.32, payable in bi-monthly installments of \$65.61 commencing on May 29, 2015 and ending on April 29, 2016. Ex. E.⁷ While it is positive that the individual has established a payment plan with the creditor, I am not persuaded that she will repay the debt as scheduled on the plan. I note that the individual failed in 2011 to follow through on a payment plan that she established with another creditor. For this reason, I cannot accept this documentation as evidence that the debt will be paid as scheduled. I find, therefore, that she has not mitigated the security concerns associated with this outstanding debt.

The individual provided two spreadsheets (Exs. A, F) which she appears to have created in an attempt to show that she will satisfy the debt in the amount of \$1941.00 (Section A.1.b. of the Statement of Security Concerns) by making two \$500 payments. There is no documentary evidence in the record confirming that the creditor has accepted this settlement. Accordingly, I cannot mitigate the security concerns associated with this debt.

The individual testified that she paid the \$139 debt reflected in Section A.1.c. of the Statement of Security Concerns, but there is no documentary evidence to support this assertion. *Id.* at 13. Without corroboration, I cannot find that she has resolved this debt.

The individual also testified that the debt listed in Section A.1.d. of the Statement of Security Concerns was charged off. *Id.* at 14. After the hearing the individual submitted a document (Ex. G) from a successor creditor which shows the professional debt collector is offering to settle the \$612 debt for \$459.01 and has offered a payment schedule to effectuate the settlement. There is no evidence in the record, however, that the individual has accepted the terms of the offer, or had made any effort to make the first scheduled payment. Accordingly, this debt remains unresolved, and the corresponding security concerns associated with it remain unmitigated.

Regarding one of the largest debts, in the amount of \$8977.00 (Section A.1.e. of the Statement of Security Concerns), the individual testified that she has not contacted the creditor yet. *Id.* at 15. Hence, this debt remains unresolved.

As for the motorcycle that was repossessed with an unpaid balance of \$7951, the individual claims that she turned the motorcycle in, and that there is some dispute surrounding this claim. *Id.* at 15. Even if the individual has a reasonable basis to dispute the legitimacy of this past-due debt, she must provide documented proof to substantiate the basis of the dispute or other efforts of her actions to resolve the matter. *See*

⁶ Exhibit D was incorrectly identified at the hearing as Exhibit C. *See* Tr. at 8.

⁷ Exhibit E was incorrectly identified at the hearing as Exhibit D. *See* Tr. at 12.

Adjudicative Guideline F at ¶ 20 (e). The self-generated spread-sheet (Ex. F) that the individual submitted after the hearing suggests that the individual will begin making \$150 monthly payments beginning on July 1, 2015, until she pays the debt in full. There is no documentary evidence from the creditor to confirm what the individual put on the spreadsheet. Moreover, given the individual's failure in 2011 to complete a payment plan with another creditor, I am not confident that the individual will fulfill the terms of whatever arrangement, if any, she has entered into with this creditor. Accordingly, this debt remains unmitigated.

The individual claims that she has entered into an agreement with Verizon to make five \$100 payments to satisfy her outstanding debt of \$760. She entered this information on what appears to be a spreadsheet she created. However, there is no evidence from Verizon to document this agreement. For that reason, I am unable to mitigate the debt in question.

As for the mortgage loan that is past due in the amount of \$20,178 (Section A.2. of the Statement of Security Concerns), and the resulting foreclosure proceedings, the individual testified that she is working with Legal Aid to address this matter. According to DOE Exhibit 6, the Legal Aid attorney sent the individual a letter in August 2014 reminding her that she needed to re-apply for a loan modification and/or make some other arrangement with the bank. The letter made it clear that it was the individual's responsibility, not that of the Legal Aid attorney, to work with the bank or seek assistance from a housing counselor to ensure that the loan modification application is completed. At the hearing, the individual did not provide any information about what, if anything, she has done on her own to complete the requisite paperwork to secure a loan modification. The evidence submitted by the individual, both testimonial and documentary, is not sufficient for me to mitigate the security concerns associated with her mortgage delinquencies and consequent house foreclosure.

Finally, regarding the budget submitted by the individual (Ex. B), I am not convinced that it is either complete or viable. Comparing Exhibit B to the information provided by the individual during the December 2014 PSI, there are considerable differences which she failed to explain at the hearing. For example, at the PSI she stated that she spends \$400 per month on gasoline for two cars, yet she lists only \$150 per month on her new budget. She lists groceries for a family of five as \$200 per month, yet she stated in the PSI that she spends \$1000 per month. Exhibit B shows her trash bill as \$25 per month. In the PSI, she stated that her water and trash bill is \$100 per month. Assuming the trash is only \$25 per month, she failed to list her water bill. She lists her everyday living expenses as \$300 per month yet she stated at the 2014 PSI that she spends \$500 per month on clothing, shoes and supplies, and another \$20 on entertainment. It appears that she reduced her cell phone bill from \$280 per month to \$100 per month, but there is no corroboration of this fact. She also omits the \$300 per month for wood. While this expense might only be a winter expense, it nonetheless should be at least pro-rated annually to provide an accurate picture of her expenses. Moreover, the budget does not reflect any housing expenses. Either she will succeed in modifying her loan, or need to move elsewhere if she loses her house to foreclosure. Also, the budget does not account for the outstanding debts she claims to be committed to paying.

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that her financial problems date back at least five years and are ongoing. Therefore Adjudicative Guideline F, ¶20 (a) is inapplicable. To a certain extent, the individual's financial problems were beyond her control. The individual began caring for her three teenage daughters when their mother was unable to do so. Her boyfriend hurt his back eight years ago, and has not worked since. Nevertheless, I cannot mitigate under Guideline F, ¶ 20 (b) because the individual did not convince me that she acted responsibly under the circumstances. For example, at the time of her 2014 PSI, each member of her household of five, including the 13-year old, had their own cell phones. The individual's monthly phone bills alone totaled \$280. The individual told the LSO in 2011 that she would get a second job to help with the then two outstanding debts that she had at the time, but she did not. Furthermore, the individual testified that despite her current financial plight, she has not yet sought any financial counseling. Tr. at 36. In the end, there is no clear indication that the individual's financial problems are under control. I, therefore, cannot mitigate her financial problems under Guideline F, ¶ 20 (c). While the individual may have made some efforts to repay her creditors, she has not made any effort to reach out to one of her largest creditors, the one holding a debt for \$8977. For many of her other debts, she failed to provide sufficient corroboration from the creditors to confirm her repayment plans with them. Hence, Guideline F, ¶ 20 (d) is inapplicable. Finally, as noted above, the individual has not provided evidence to dispute the legitimacy of the \$7951.00 debt relating to the repossessed motorcycle.

In summary, the evidence before me is not sufficient to resolve the individual financial problems, and their associated security concerns.

C. 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 not brought forth sufficient evidence to mitigate the security concerns associated with that criterion. I therefore cannot 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 DOE should not restore the individual's access authorization. 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: June 17, 2015