

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, the individual presented the testimony of one witness and testified on her own behalf. The DOE Counsel did not present any witnesses. The LSO submitted eight exhibits into the record; the individual tendered seventeen exhibits. 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).

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 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 fourteen⁴ delinquent debts with a total outstanding balance of \$25,143, (2) had her wages garnished in the amount of \$3,359 due to nonpayment on a personal credit card, and (3) has not made payments to the IRS and the State for tax years 2012 and 2013, owing a combined \$1,900 and \$1,200, respectively, for both tax years. In addition, regarding the individual's honesty, reliability and trustworthiness, the LSO alleges that the individual misrepresented and omitted information regarding her state tax obligations and past due collection accounts on an April 2014 Questionnaire for National Security Positions (QNSP).

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.* In addition, the individual's vulnerability to blackmail, exploitation, and duress calls into question the individual's judgment, reliability, trustworthiness and her ability to protect classified information. *See id.* at Guideline E.

IV. Findings of Fact

In November 2014, the LSO questioned the individual about her finances during a PSI. Ex. 7. At that time, the individual stated that she is responsible for managing the finances in her household. *Id.* She stated that her current debt primarily consists of her mortgage and car payments, but acknowledged that there were a number of delinquent debts listed on her credit report. *Id.* The individual further acknowledged that she has not made payments on these delinquencies. *Id.* During her 2014 PSI, the individual explained that

⁴ During the hearing, the individual asserted that two of the debts listed in the amounts of \$869 represent the same account.

she was a part-time employee due to being out on medical leave, and was still receiving a disability check. The LSO questioned the individual about each of her delinquent accounts and she admitted that she has not contacted nor has she considered contacting anyone as a result of her delinquent debts. *Id.* The individual further admitted that although she has filed her federal and state taxes annually as required, she is currently delinquent on back taxes for 2012 and 2013. She estimated that she owes the IRS \$1,900, and \$1,200 to the State for the 2012 and 2013 tax years. *Id.* A review of the individual's finances revealed that her and her husband's combined monthly income is \$4,800. The individual stated that she pays her mortgage, a car payment, car insurance, gas for her vehicles, food, utilities, phone service, cable TV and her son's school tuition. She has \$1,000 remaining each month after paying her expenses. *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.

During the hearing, the individual explained the circumstances that led to her delinquent debt. She testified that her husband has been out from work due to illness. The individual stated that her husband is legally blind and has had several surgeries on his eyes over the last several years, including cornea transplants. *Tr.* at 18. According to the individual, the decreased family income, the unforeseen medical expenses and her part-time work status have all contributed to her delinquencies. *Id.* The individual testified that her husband had his latest eye surgery performed about a year ago and is now doing much better. *Id.* at 19. He is currently working again and is able to move, and contribute his income to the family. *Id.* The individual reiterated that she has been on paid disability since January 2015 and is currently working part-time. She believes that she will be returning to work full time in August 2015. *Id.* at 20.

The individual, during the course of the hearing, was questioned about the status of her finances and each of her delinquent debts. She testified that the January 2012 wage garnishment in the amount of \$3,359 has been released and the credit card debt has been paid. *Id.* at 23. In addition, the individual presented documentation to show that the judgment issued against her has been satisfied.⁵ *Ex. R.* Regarding the payments the individual owed to the IRS and to the State for tax years 2012 and 2013, the individual testified and provided documentary evidence that these tax debts were satisfied with her 2014 tax refund. *Id.* at 38, *Exs. P and Q.*

⁵ The individual asserts that one of the debts listed in the Summary of Security Concerns, \$856, is related to this garnishment and has been paid. She stated that she intends to dispute this debt. *Tr.* at 24; *Ex. B.*

With respect to the thirteen delinquent debts in the LSO's Statement of Security Concerns, the individual testified at the hearing and submitted a list of exhibits explaining the status of the accounts. Exs. A-N. According to the individual, the largest delinquent debt listed in the amount of \$14,246 relates to her home mortgage. She testified that her home loan has been modified to include this past due amount in her monthly payment, which is \$987. Tr. at 24. The individual also addressed the twelve other delinquent debts listed in the Statement of Security Concerns, which range in amounts from \$45 to \$2,440. With respect to the majority of the debts listed, the individual stated that she has contacted the respective companies and set up monthly payment arrangements with most of the first payments beginning July 2015. *Id.* at 27-38. As of the date of the hearing, the individual has not provided documentation confirming these arrangements. The individual testified that she was unsuccessful in contacting one of the companies in which she owes \$869, but stated that she intends to set up a payment plan with this credit company as well. *Id.* at 30. She also submitted a budget reflecting her monthly expenses including her mortgage payment, car note, arranged credit card payments, utility bills, car insurance, gas, food and savings. The individual asserts that her monthly income, based on her current part-time status, is \$5,061 and her expenses are \$3,659, leaving her with \$1,402 at the end of the month.⁶

During the course of the hearing, the individual was also questioned about information related to her finances that she omitted on an April 2014 QNSP. Specifically, the individual signed and dated a 2014 QNSP certifying that in the last seven years she has not failed to file or pay federal, state or other taxes as required by law. However, during her November 2014 PSI, she admitted that she has not made payments to the IRS and state for tax years 2012 and 2013. In addition, during her 2014 PSI, she acknowledged that by failing to list all of her past due accounts she was not providing true information. The individual testified that she was unsure as to how to answer the questions on her QNSP. She stated that because she had not "failed to file" her taxes and had submitted a payment (although not in full), she answered "no" to the question related to her taxes on her QNSP. *Id.* at 43. The individual testified that she was not attempting to hide or misrepresent information. *Id.* at 44. Likewise, with respect to her acknowledgment that by failing to list all past due accounts she was not providing true information, the individual testified that she did not have an updated credit report because an OPM investigator advised her not to obtain one. She further testified that when she completed her QNSP she listed only the debts she had knowledge of at the time. *Id.* at 47 and 48. The individual again testified that she was not intentionally trying to misrepresent information to the DOE.

⁶ The individual offered the testimony of her supervisor who testified that he has known the individual for six years and that she is a very conscientious individual. Tr. at 12. He further testified that the individual is trustworthy and exercises good judgment. *Id.* The individual's supervisor testified that he has the impression that the individual also exercises sound financial judgment and does not live beyond her means. The individual also submitted a letter from her State Senator who has known the individual for many years as the individual worked for him while she was in school. In his reference letter, the Senator stated that the individual's character is above reproach and that she lives a life of good ethics and morals. *Indiv. Exh. O.*

In evaluating the individual's financial dilemma against the Adjudicative Guidelines, I find that her financial problems date back at least four 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's husband was sick, required several surgeries and was out of work. In addition, the individual was out on disability for health reasons for number of months and is working on a part-time status. Nevertheless, I cannot mitigate under Guideline F, ¶ 20 (b) because the individual did not convince me that she acted responsibly under the circumstances. A number of the individual's accounts predated her medical issues and are over four years past due. In addition, at the time of her 2014 PSI, the individual acknowledged that she had not yet made arrangements to pay her debts or contacted a number of the credit companies to even alert them that she was unable to make payments. Furthermore, despite her current financial plight, the individual has not sought any financial counseling. In the end, I am not convinced that the individual's financial problems are under control yet. I, therefore, cannot mitigate her financial problems under Guideline F, ¶ 20 (c). While the individual has made recent good efforts to set up payment arrangements with credit companies and to repay her creditors, she has not yet established a pattern of repayment as her first payments were not scheduled to be deducted from her account until July 2015. For many of her debts, she had not provided 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 is still in the process of disputing one of her debts and has been unable to reach a contact person for one of her creditors. In summary, the evidence before me is not sufficient to resolve the individual's financial problems, and their associated security concerns at this time.

With respect to the individual's misrepresentation on her 2014 QNSP, I find that the individual has provided sufficient evidence to resolve the Criterion L security concerns related to her reliability and trustworthiness. The individual testified that she misinterpreted the question on the QNSP regarding whether she failed to file or pay her taxes. In addition, the individual testified that she relied on the advice of an investigator and did not review her credit report prior to completing her 2014 QNSP, not listing all of her past due accounts. Guideline E at ¶ 17 (b)(c)(d). I found the individual's testimony regarding these circumstances of her incomplete responses to be credible and find that this behavior is unlikely to recur.

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 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 regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals

Date: August 12, 2015