

Administrative Judge in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge. The DOE introduced 96 exhibits (Exs. 1-96) into the record of this proceeding. The individual introduced seven exhibits³ (Exs. A-G) and presented the testimony of two witnesses at the hearing, including his own. The DOE presented the testimony of one witness. *See* Transcript of Hearing, Case No. PSH-15-0028 [hereinafter cited as “Tr.”].

II. 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 and unfavorable, that has a bearing on the question of whether restoring the individual’s 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). 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).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cites information pertaining to subsection (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Ex. 1. In its Notification Letter, the LSO cites the following: 1) the individual has \$39,885.00 of delinquent debt from federal and state tax liens and five delinquent accounts; 2) in April 2014, he had \$56,515 of delinquent debt; 3) he has a pattern of obtaining small loans from high rate overnight lenders; 4) in June 2013, he had \$8,926 of delinquent debt; 5) in January 2010, he had \$8,830 of delinquent debt; and 6) over the past several years, he had delinquent debts in 2007, 2002, 2001 and dating back to the late 1980s, and consequently, had PSIs in those years to address security concerns with his outstanding financial obligations. Ex. 1. The Notification Letter also cites the individual’s failure to

³ The individual’s Exhibits A through C were submitted before the hearing and Exhibits D through G were provided through a post-hearing submission.

list his finances in his security questionnaire in 2001 and his evasiveness and reluctance in supplying documentation concerning his debt during his most recent PSI on December 4, 2014. *Id.*

The above information adequately justifies the DOE's invocation of criterion (l), and raises significant security concerns. The 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*]. Moreover, the failure to provide truthful and candid answers during a security clearance process also raises questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.*, Guideline E.

IV. FINDINGS OF FACT

At the hearing, the DOE presented the testimony of one witness, a personnel security specialist. The individual presented the testimony of two witnesses, including himself. My findings from their testimonies and the exhibits are explained below.

A. The Personnel Security Specialist's Testimony

The personnel security specialist who interviewed the individual on December 4, 2014, and two times prior to that – April 16, 2014 and June 12, 2013 – testified. Tr. at 14. He stated that he interviewed the individual on December 4, 2014, because of his history of not meeting financial obligations and of accumulating debt by taking out quick loans with high lender rates, and his failure to supply all the documentation requested by DOE to make a determination on his access authorization. Tr. at 16. At the PSI on December 4, 2014, the personnel security specialist requested the individual to provide documentation of his current federal and state tax balance and participation in a payment program. Tr. at 17. While the individual provided the personnel security specialist with some of the requested documents on December 8, 2014, including a bill for his outstanding federal tax lien, his other requests for documents were still outstanding as of the date of the hearing, including documentation of the individual's payment plan with the IRS. Tr. at 18, 55. Nonetheless, the personnel security specialist testified that the individual has generally been forthcoming and honest with him, and that he believes the individual is reliable and trustworthy, noting that after the PSI on June 12, 2013, the individual provided him with the requested documents. Tr. at 47, 61-62. It was only after the interview on April 16, 2014, that he did not provide all the requested information. Tr. at 46-47. When asked whether the individual has ever tried to hide anything from him, the personnel security specialist responded, "I don't think so." Tr. at 52.

B. The Individual's Testimony

The individual has a suspended security clearance. He testified that many years ago, he entered into a limited liability business with a partner and that business maintained operations from 1992 to around 1996. Tr. at 136. In 1996, he discovered that his partner was removing money from their business account. *Id.* The individual continued working with his partner for an additional two to three months and then ended the partnership because he learned that his partner continued to take money from the business. *Id.* He expected his partner to subsequently return their business license,

but about two and a half years later, he discovered that his partner instead continued to use their license and misused their business ID. Tr. at 76. The individual testified that he owed taxes to the IRS as a result of his partner's actions. Tr. at 76, 137. He had also taken out at least two separate loans to finance his business. Tr. at 76. However, it is unclear how much of his debt – whether to the IRS or creditors – is attributed to his partner's actions with their business.

The individual has five children for whom he provides financial support. Tr. at 74. His oldest child is 30 years old, his second and third children are in their late 20s, and his youngest two children recently graduated from high school. *Id.* The individual helped pay for his eldest three children's college expenses jointly with their mothers. Tr. at 75. He later realized that he needed to prepare better for his younger two children, and accordingly, their education is financed by a college trust fund created by their mothers and with scholarships. Tr. at 141.

The individual testified that he fell behind on paying his bills in 2012 when he learned that he owed federal taxes from a few years back. He accrued about \$31,000 in federal tax debt because he withdrew hardship money from his 401(k) account in 2009 and 2010 to help pay for his children's college expenses. Tr. at 77. He testified that he provided documentation to his tax provider in 2009 indicating that he took out a loan for \$15,000 for one child's college expenses, and in 2010, after he took out another loan for a similar amount to pay for another child's college expenses. Tr. at 77, 130. The individual's tax preparer incorrectly reported these loans to the Internal Revenue Service ("IRS"), which the individual did not learn about until two years later, in 2012. Tr. at 77-78. When he discovered the error, he paid the tax preparer to amend the filings. Tr. at 78. However, he received a notice that the amended documents were not accepted. *Id.* After he could not resolve this with the tax preparer, the individual tried to secure assistance with his taxes and he contacted the IRS. Tr. at 78. He testified that he has been negotiating with the IRS since February or March 2012, regarding his balance and that they reached an agreement in March or April 2015, whereby the IRS deducts \$75 a month from his checking account. Tr. at 79, 81. After the hearing, the individual submitted a document from an Operations Manager for collections at the IRS, dated April 20, 2015, indicating that they will deduct monthly payments automatically from his checking account and that his total balance as of May 27, 2015, was \$30,427.93. Ex. G. However, that submission does not indicate the agreed upon amount to be deducted from the individual's account. *Id.* The individual testified that he did not report to the personnel security specialist that he entered into this arrangement with the IRS because he believed that he needed to provide more specific information than what he possessed at the time concerning the payment plan. Tr. at 80.

As to his state taxes, the individual testified that he paid them off in full and after the hearing, he submitted an exhibit, which is a document from the state entitled "Tax Lien Satisfaction," indicating that his state tax lien for \$2,616.12 was satisfied on April 3, 2015. Tr. at 82; Ex. D. He did not provide this document to the personnel security specialist because he believed that after receiving a letter regarding his hearing process in January 2015, he needed to provide his financial documents through the hearing process and no longer to the personnel security specialist. Tr. at 82.

The individual disputed his cable bill for \$1,700, but did not provide any documentary evidence supporting his claim. Tr. at 83. He stated that the bill was originally for approximately \$375 and that after he discovered in his credit report that he actually owed \$1700, he tried to dispute the amount, but eventually decided to pay it in full through a payment plan. Tr. at 84. He testified that he pays \$109 biweekly and that he is current on those payments. *Id.* He explained that he did not

provide documentation of his agreement to the personnel security specialist because the creditor did not provide him with documentation on the payment plan. *Id.* According to the credit report, the balance on that account is \$1,000. Ex. 96.

The individual also has another account in collection for \$3,830 for not paying rent on his property. *Id.* He testified that he was renting property in the same area for 13 or 14 years and that when discovered the problems with his taxes in 2012, he fell behind on his rent payments. Tr. at 85. He also believed that he would have obtained some credit towards his rent as referral fees. *Id.* The property owner's wife decided the amount that the individual owed, and while he did not know how she computed that amount, he did not dispute it. Tr. at 85-86. He is currently paying off the debt through an eleven-month payment plan that commenced in May 2015. Tr. at 86. Finally, with regards to his hardship withdrawals from his 401(k) account, the individual testified that his first loan from his 401(k) account is due to be paid off in October 2015 and that his second loan is still being paid off. Tr. at 105.

The DOE provided a copy of the individual's latest credit report, dated June 23, 2015, which also indicates that he has three collection accounts, one of which was the account concerning his rental property that was not included in the Summary of Security Concerns because it became delinquent on November 21, 2014. Ex. 1; Ex. 96. The credit report submitted by the DOE as Exhibit 96 includes the following recently opened accounts that are not delinquent: 1) an account opened on May 23, 2014, with a balance of \$17,266 after it was refinanced from an account⁴ that originally had a balance of approximately \$8,000; 2) an account opened on October 17, 2014, with a balance of \$1,890; 3) an account opened on January 30, 2015, with a balance of \$1,298; 4) an account opened on January 21, 2015, with a balance of \$1,535; 5) an account opened on November 7, 2014, with a balance of \$482; and 5) an account opened on February 13, 2015, with a balance of \$3,949. Ex. 96; Tr. at 24-25. He testified that he opened some of these accounts because he faced hardships from his federal tax debt and his business, and he needed the additional money until he could rectify his financial situation. Tr. at 90. Moreover, he testified that he took out a loan on January 21, 2015, to help his daughter pay for the catering at her wedding. Tr. at 90. When asked at the hearing whether his decision to take out that loan was responsible in light of his debts and delinquent accounts, he replied that he did it "for the happiness of my daughter." Tr. at 125.

As also indicated in the Summary of Security Concerns, the individual has a charged-off account with a balance of \$2,238 for his vehicle. Ex. 96. He testified that he spoke with a representative about that account a few days before the hearing to resolve it and was informed that he could pay \$1,560. Tr. at 92. He did not enter into an agreement because they did not assure him that the creditor would close the account if he paid \$1,560. *Id.*

The individual submitted a budget and an explanation of his budget, indicating that his total monthly expenses, which includes his payments to creditors and the IRS, are \$2,618.52, and his monthly gross income is \$4,872. Exs. A, B. His monthly net income is \$1808.88, resulting in a balance of -\$809.84⁵ per month. Ex. B. He states that after three months, he will have a positive balance

⁴ The individual testified that he refinanced this account after the state withdrew money from his pay checks to pay for his outstanding taxes, explaining that he refinanced "for, trying to catch it up so that I can continue to maintain the payment," referring to his account. Tr. at 86; 137.

⁵ While it is unclear to me how the individual's net income is \$1,808.88 when his gross income is \$4,872, he stated in his

because he will no longer have to pay child support, which is \$642.40 a month, and because two other accounts with monthly payments of \$95 and \$606.48 will be closed. Ex. B. The individual testified that he has part-time employment to pay off his loans, yet he does not have receipts for those jobs as he gets paid in cash. Tr. at 93-94. He anticipates paying off two of his loans this year. Tr. at 94.

The individual believes that he lives within his means and he testified that he has made sacrifices for his five children so that they would not “have to worry.” Tr. at 100. He has also started receiving financial guidance from a debt solutions company after his PSI on December 4, 2014. Exs. B, E; Tr. at 103. That company has developed a personalized financial action plan for the individual and provides other options and solutions to assist him in dealing with his finances. Ex. E. He currently does not have a credit card and testified that he believes that he does not spend frivolously. Tr. at 101-102.

C. The Individual’s Colleague’s Testimony

The individual’s colleague, who he has worked with since August or September 2014, testified that the individual has a “tremendous work ethic,” that he is very thorough and is always signing up for overtime hours. Tr. at 67-68. He also testified that the individual has always been very honest with him and that based on his performance at work, he believes that the individual is reliable and trustworthy. Tr. at 69.

V. ANALYSIS

A. Delinquent Debts

After considering all of the evidence before me, I have decided that the individual has not convinced me that he has mitigated the concerns associated with his financial indebtedness. While I understand that he encountered financial difficulties after he discovered that his taxes were not properly filed in 2012 and because of the actions of his former business partner, I cannot conclude that he acted responsibly under the circumstances so as to sufficiently mitigate the DOE’s concerns. *See* Adjudicative Guideline F, ¶ 20(b) (“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”). The problems that he faced from his business partner surfaced in 1996, and accordingly, he had 20 years to mitigate any financial damage that purportedly resulted from his actions. Moreover, in that 20-year time period, the individual accumulated more debt by obtaining quick loans with high rates. Furthermore, while he testified that he tried to enter into a payment plan with the IRS for three years, it was still his responsibility to ensure that his taxes were paid; instead, he maintained a high balance with the IRS for three years after discovering that debt.

As stated above, the burden is on the individual to provide sufficient evidence to mitigate the concerns of the LSO. While I commend the individual for participating in a payment program to assist him with his finances, he has not yet indicated that the problem is being resolved. *Id.* at ¶ 20(c). He only recently sought the assistance of a debt solutions company after many years of having delinquent debt and knowing that his debts were a concern to the DOE. Moreover, he submitted a

explanation of his budget that the “function net” income for the month is \$1,808.88.

budget that currently has a monthly balance of -\$809.84. While he expects to have a positive balance in three months, I cannot rely on a supposition into the future, particularly because the individual has had delinquent accounts for multiple years, dating back to the 1980s, and had many PSIs to address the DOE's concerns with his finances. *See* 10 C.F.R. § 710.7(c) (requiring the Administrative Judge to consider the extent and frequency of an individual's conduct and likelihood of recurrence of that conduct in deciding whether to restore an individual's access authorization).

Furthermore, the individual recently took out several new loans, including a loan on January 21, 2015, to pay for the catering at his daughter's wedding. That decision, as well as his decision to withdraw hardship money from his 401(k) to pay for his children's educational expenses renders it difficult for me to conclude that his financial problems were largely beyond his control. *Id.* at ¶ 20(b). He also has not disputed the legitimacy of certain past-due debt. For example, while he testified that he was unsure how the property owner's wife computed his debt and believed that he should have received referral fees as credit, he never challenged them and instead, resigned to enter into a payment plan. *Id.* at ¶ 20(e). As the individual has the burden to demonstrate that he has mitigated the concerns with regard to his outstanding debt, I cannot find that he has presented sufficient evidence to have successfully done so at this juncture.

Lastly, in prior cases involving financial considerations, Administrative Judges have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *See, e.g., Personnel Security Hearing, Case No. PSH-14-0048 (2014); Personnel Security Hearing, Case No. TSO-1078 (2011); Personnel Security Hearing, Case No. TSO-0878 (2010).* For the reasons stated above, it is simply too soon to find that he has established a sustained pattern of financial responsibility. I, therefore, cannot conclude that the concerns raised by his outstanding financial obligations and delinquent accounts have been resolved. *See* 10 C.F.R. § 710.7(c).

B. Honesty, Reliability and Trustworthiness

In its Summary of Security Concerns, the DOE contends that Mr. Hill was "possibly being evasive and reluctant about showing documentation" concerning payments towards his federal tax lien and other bills. Ex. 1. However, at the hearing, the individual adequately explained why he did not provide those documents to the personnel security specialist after the PSI on December 4, 2014. He believed that once he received the letter concerning this administrative hearing process in January 2015, that documents requested by the personnel security specialist would have to be submitting through the hearing process. He also did not believe that his documents concerning his payment plan with the IRS was specific enough for the personnel security specialist. I observed his testimony when explaining his reasons for failing to submit certain documents related to his federal and state taxes and delinquent accounts, and I found his testimony to be very credible. The personnel security specialist, who has interviewed the individual three times, also testified that he believed that the individual did not deliberately hide anything from him and that he has been trustworthy and honest with him. Therefore, I find that the individual did not deliberately omit or conceal relevant facts during his personnel security process and that he did not deliberately provide false or misleading information concerning relevant facts to anyone during this process. *See* Adjudicative Guideline F, ¶ 16(a), (b). With regard to his failure to list his finances in a 2001 security questionnaire, I conclude

that it happened so long ago that it does not cast doubt on his reliability or trustworthiness. *Id.* at ¶ 17(c).

Hence, I find that the individual has not intended to misrepresent any information regarding his debts during the personnel security clearance process, and therefore, he has sufficiently mitigated the concerns associated with his failure to provide documentation to the personnel security specialist and to list his finances in a 2001 security questionnaire.

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 (1). 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 all of the security concerns at issue. 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 individual's access authorization should not 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.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: July 30, 2015