

in the DOE security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting a hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, two witnesses testified. The individual presented his own testimony and that of one additional witness. The DOE did not present any witnesses. In addition to the testimonial evidence, the LSO submitted 12 exhibits into the record; the individual tendered seven 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.

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 restoring his 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 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 refers to information indicating that an individual 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. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . 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).

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, the derogatory information at issue in this proceeding involves Criterion L. To support its reliance on Criterion L, the LSO cites a credit report reflecting that the individual has nine outstanding collection accounts totaling \$82,995, is more than 60 days overdue on his mortgage, and is \$1,000 in arrears on the payment for his garbage services. It also claims that he has demonstrated a pattern of financial irresponsibility and points to the garnishment of his wages for non-payment of student loans, periodic liens being filed against his real estate for unpaid garbage services, and his negative monthly cash flow of \$700. As additional cause for concern under Criterion L, the LSO cites the individual's admission that he does not know the status of his debts because his wife handles the finances, and his admission that he knows that his financial situation is poor.

I find that the DOE properly invoked Criterion L in this case. A person's failure or inability to live within his or her 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* 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 been married for 20 years and has four children. Tr. at 21, 66. Between 2010 and 2014, the individual and his wife incurred significant medical bills related to the following: his wife's two knee replacements, one in 2010 and another in 2013; his wife's torn ligament in 2011; his wife's hysterectomy in 2014, his daughter's tonsillectomy in 2013, numerous physical therapy sessions for his wife between 2010 and 2013; and medication for his sons who suffer from ADHD and ADD. *Id.* at 18-20, 35. The couple's out-of-pocket expenses associated with these medical expenses, while significant for them, did not reach the I.R.S. threshold for deductibility on the couple's Federal taxes. *Id.* at 61-63. They currently have outstanding medical debts in the aggregate amount of \$6,023.00.³ Ex. G. The individual's wife's health has prevented her from working outside the home since 2013. *Id.* at 19.

³ This number is what appears in the couple's filing with the Bankruptcy Court. At the hearing, the individual's wife erroneously estimated that they owed \$30,000.00. Tr. at 35.

As of January 2015, the individual had nine collection accounts totaling \$82,995.00 (which includes the \$79,000.00 student loan debt and \$1,047.00 in medical expenses), as well as a mortgage account that was 60 days past due in the amount of \$1,719.00. Ex. 3.

On March 2, 2015, the individual submitted an Incident Report to the LSO showing that his wages had been garnished for defaulting on student loans. Ex. 11. The amount of the wage garnishment is \$79,000. Ex. 12 at 53. As of July 2015, the individual and his wife's combined student loan debt is \$174,853.00, significantly more than the LSO knew. Ex. G. The individual's parents had agreed to assist the individual in paying his student loan debt, but stopped doing so. Ex. 12 at 27, Tr. at 20.

The individual and his wife have a first mortgage on their home in the amount of \$154,182.00, and a second mortgage in the amount of \$50,876.⁴ Ex. G. In addition, the individual revealed for the first time that he has a credit card on which he owes \$6,000. He explained that the credit card did not appear on his Credit Report as an outstanding debt because he has been paying the minimum amount each month for eight years. *Id.* at 113-114. He testified that he used some of the money on vacations and fuel. *Id.*

The individual has a 401(k) account with a balance of \$154,548.00. Ex. G at Schedule B. He recently borrowed \$5,000 from that account to buy Christmas presents, make house payments, and pay for graduation expenses. *Id.* at 121.

Since 2010, liens have been placed on the individual's property for unpaid garbage services. Ex. 12 at 7. According to the individual, since 2010 he would pay the lien off, then fail to pay a garbage bill resulting in a new lien being placed on his property, pay the lien off again, and then fail to pay another bill causing a new lien to be placed on his property. *Id.* at 13. According to a March 2015 Personal Financial Statement, the individual's monthly expenses exceed his monthly net income by \$703.93. Ex. 9.

On April 8, 2015, the individual filed a Chapter 13 Bankruptcy Petition. Ex. 8. Under Federal law, the individual's student loans are not dischargeable in the Bankruptcy proceeding. *See* 11 U.S.C. § 523 (a) (8). Ex. B. As noted above, the aggregate amount of the individual's and his wife's student loans are \$174,853.00, far more than the \$79,000.00 for which his wages were being garnished prior to the filing of the Bankruptcy Petition. The individual will emerge from the protection of the Bankruptcy Court in five years, after which time he will become responsible for paying the student loans, plus interest. Ex. B. The individual stated that he continues to pay his first mortgage and his car loans because he did not include these payments in the bankruptcy filing. He is hoping that he will be able to modify the terms of his primary mortgage to lower his monthly payments.

⁴ The individual and his wife explained at the hearing that he and his wife purchased their home in 2002 for \$129,000.00, with \$10,000 down. Tr. at 85-89. In 2005, they took out a home equity loan in some unspecified amount, and used some of the money to purchase a car. *Id.* at 87. The balance on the first mortgage is currently \$154,182.00. The LSO was not aware of the \$50,876.00 second mortgage. The individual stated that they used the proceeds from the second mortgage for some home improvements. *Id.* at 90.

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)⁵ 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 individual argues that his financial problems were largely beyond his control. He ascribes most of his problems to medical expenses but, according to my calculation, his current medical expenses only represent 7% of his income. By his own admission, his medical and dental expenses never reached the threshold required to deduct those expenses from his federal income. This fact suggests to me that the expense he incurred were not extraordinary expenses.

Due to health problems, the individual's wife stopped working in 2013. The individual failed, however, to quantify how much money his wife made prior to her illness so it is difficult for me to determine the impact that reduction may have had on their expenses. It was his burden to provide relevant documentary evidence to convince me that this factor contributed to his financial plight. He failed to do so. His wife, a cosmetologist by training, testified that she periodically babysits and give haircuts to earn a little extra cash. Tr. at 128. However, neither the individual nor his wife has a plan for her to generate any income in the future to assist with the family's finances.

It is noteworthy from my perspective that the couple had at least \$6,000.00 in credit card debt beginning in 2007, well before his wife's medical issues became a problem. They also took out a home equity loan sometime in 2005 to purchase a car, and secured a second mortgage in the amount of approximately \$50,000.00 to do home renovations. They incurred these expenses while they had outstanding debt, including substantial student loan debt.

I cannot mitigate the security concerns associated with the individual's financial problems under Adjudicative Guideline F, ¶ 20 (b) because the individual did not convince me that he acted responsibly in accruing additional debt while he owed so much money in student loans.

The individual and his wife claim that they received credit counseling as a requirement of their bankruptcy filing. They both testified that they now have a written budget. Currently, they have no savings and do not anticipate having any in the future. It is clear that if an unexpected emergency arises, they will not have the resources to pay for that situation even while under the

⁵ 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.

protection of the bankruptcy court. It is my assessment after listening to the individual and his wife's testimony that they do not know which debts are being paid by the Bankruptcy Trustee, which debts will be extinguished, if any, after they emerge from bankruptcy, or how they will handle the student loan debt once they are no longer under the protection of the bankruptcy court. They "hope" the individual will get a promotion; they "hope" their children, now ages 19, 15, 13, and 10, will be financially less dependent on them in five years when they emerge from bankruptcy. Tr. at 66.

It is positive that they have applied to a new program in their State which helps debtors obtain modifications to their home mortgage. Ex. F. However, the documentation submitted by the individual shows that it may be six or seven more months before they will know if their mortgage modification application has been approved. It is also positive that the individual is now more involved in handling the family finances.

In the end, it is not clear to me that the individual's financial problems will be under control once they emerge from bankruptcy. For this reason, I cannot mitigate Criterion L under Adjudicative Guideline F, ¶ 20(c).

Finally, while the individual persuaded me that he has the best of intentions to address his financial issues, it is simply too early for me to find that he has demonstrated a sustained pattern of financial responsibility for a significant period of time to gauge the likelihood that his financial problems will not recur.

Based on all the foregoing considerations, I find that the individual has not mitigated the security concerns associated with Criterion L. *See, e.g., Personnel Security Hearing, Case No. PSH-14-0048 (2014); Personnel Security Hearing, Case No. TSO-0178 (2011).*

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 assessing the credibility of the witnesses and weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve 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 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.

Ann S. Augustyn
Administrative Judge
Office of Hearings and Appeals

Date: August 11, 2015