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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)

Filing Date: September 29, 2015)

Case No.: PSH-15-0075

Issued: December 9, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s security clearance should not be restored.²

I. BACKGROUND

During a background investigation of the Individual, a Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO obtained a credit report and conducted a Personnel Security Interview (PSI) of the Individual on May 21, 2015. Because the credit report and the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to the OHA.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

The Director of OHA appointed me as the Administrative Judge in this matter on September 29, 2015.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-15-0075 (hereinafter cited as “Tr.”). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10. The Individual submitted one exhibit, marked as Exhibit A.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraphs (f) and (l)³ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criteria F and L).

The LSO alleges, under Criterion F, that the Individual submitted a Questionnaire for National Security Positions (QNSP), signed and dated on October 2, 2014, in which he stated that he did not have any outstanding financial delinquencies, when in fact he was, at that time, behind in tax payments to the federal and state governments, had two outstanding tax liens against him, was subject to a wage garnishment, and was over 120 days delinquent on a debt. The LSO further noted that the Individual had previously been warned about the importance of avoiding omissions in his submissions to the LSO. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶15.

The LSO alleges, under Criterion L, that the Individual has not filed his 2014 federal and state taxes, is delinquent in paying his state taxes for tax years 2008 and 2009, and has incurred two tax liens as a result. The LSO also alleges that the Individual has not made a payment on his residential mortgage since December 2011, is \$36,597 past due on that mortgage, and his debtor has begun

³ Criterion F refers to information indicating that the Individual: “Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31.” 10 C.F.R. § 710.8(f).

Criterion L refers to information indicating that the Individual has “engaged 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, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, 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).

foreclosure proceedings against him. The LSO noted that the Individual had previously (in PSI's conducted on January 13, 2011, and February 8, 2010) provided it with assurances that he would resolve his delinquent state taxes for 2008 and 2009.⁴

The Individual's pattern of financial irresponsibility, as alleged, adequately justifies the LSO's invocation of Criterion L, and raises significant security concerns. The Adjudicative Guidelines state in pertinent part:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (d) deceptive or illegal financial practices such as . . . income tax evasion, . . . ; (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis: . . . and (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Adjudicative Guidelines at ¶¶ 18, 19. The Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of human nature, Administrative Judges apply the guidelines in conjunction with the information available in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c),

⁴ The Notification Letter further alleges: “In a PSI conducted on May 21, 2015, he admitted that he has not told anyone about his current financial situation, to include his girlfriend who is residing with him.” Ex. 1 at ¶ II.C. I find that the Individual's decision to avoid sharing his financial situation with his girlfriend does not raise any security concerns.

710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On December 13, 2010, the LSO propounded a Letter of Interrogatory (LOI) to the Individual, in order to obtain information concerning his financial problems. Ex. 5 at 1. The LSO asked the Individual: “Have you had any other serious financial difficulties within the last 10 years (i.e. bankruptcies, legal judgments rendered against you, liens, wage garnishments, etc.)?” Ex. 5 at 3. The Individual responded by stating: “I had a one-time garnishment last week which was corrected based on the arrangement to pay my taxes.” Ex. 5 at 3.

On October 2, 2014, the Individual signed, dated, and submitted a QNSP to the LSO. The QNSP asked him a number of questions involving his finances, including: “In the past seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?,” “In the past seven (7) years, you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?,” “In the past seven (7) years, [have] you defaulted on any type of loan?,” “In the past seven (7) years, [have] you had your wages, benefits, or assets garnished or attached for any reason?,” and “[Are you] currently over 120 days delinquent on any debt?” Ex. 7 at 27-28. The Individual answered “no” to each of these questions. Ex. 7 at 27-28.

On October 8, 2014, the LSO obtained a credit report for the Individual which showed that the Individual’s residential mortgage was \$36,597 past due and in foreclosure status. Ex. 6 at 2. The credit report further indicated that the Individual’s last payment on this account had occurred in December 2011. Ex. 6 at 2.

On May 21, 2015, the LSO conducted a PSI of the Individual. During this PSI, the Individual admitted that he had failed to pay his taxes when he was required to do so, and that he had omitted that information from the October 2, 2014, QNSP. Ex. 8 at 62-63. The Individual stated that he was too proud to admit his financial problems and that he believed he would have them resolved before his investigation was completed. Ex. 8 at 63. The Individual further admitted that he had liens placed against him. Ex. 8 at 64-65. The Individual originally denied that he had ever had his wages garnished, but then when he was shown a copy of his answers to the December 2010 LOI, he admitted that his wages had been garnished. Ex.8 at 64. The Individual admitted that he had omitted information from the October 2, 2014, QNSP that his residential mortgage was \$36,597 past due and in foreclosure status. Ex. 8 at 65. He blamed this omission, in part, on the person who helped him complete his QNSP. Ex. 8 at 65-66. The Individual stated that he had reported that past-due debt in a previous submission to the LSO. Ex. 8 at 66. When the Individual was asked why he answered “no” when he was asked if he had any debts over 120 days delinquent, he stated that he “totally misread the question.” Ex. 8 at 67. He denied that he had falsified, omitted, or misrepresented any information he had provided to the DOE. Ex. 8 at 68. Finally, the Individual stated that “I only have myself to blame.” Ex. 8 at 69.

V. ANALYSIS

At the hearing, the Individual attempted to resolve or mitigate the security concerns about his financial responsibility, judgment, reliability, and trustworthiness raised by the information set forth in the summary of security concerns.

A. Criterion F

The record shows that the Individual omitted reporting any information on his October 2, 2014, QNSP, that would have revealed that he was incurring financial difficulties. When he was questioned about these multiple omissions, he provided inadequate and somewhat deceptive explanations of his omissions. At the hearing, the Individual provided the following explanation for his omissions:

Well, at the time I was working on all of it, and I wasn't deliberately trying to hide anything. I was working on it, and I should have listed it. I was hoping to have gotten it all taken care of by the time the investigation would have been complete.

Tr. at 11. The Adjudicative Guidelines specifically provide that the deliberate omission, concealment, or falsification of relevant facts from a personnel security questionnaire can raise a security concern that may be disqualifying. Adjudicative Guideline E at ¶ 16(a). Nevertheless, the Adjudicative Guidelines also set forth six conditions which may mitigate security concerns arising from the deliberate omission, concealment, or falsification of relevant facts from a personnel security questionnaire, none of which are present in the instant case. *See* Adjudicative Guideline E at ¶ 17. The Individual did not make any prompt attempts to correct his omissions, the omissions did not result from improper or inadequate advice of authorized personnel or legal counsel advising or instructing the Individual specifically concerning the security clearance process, the omissions were not minor, or in the distant past, and the Individual has not shown that such behavior is unlikely to recur. *See* Guideline E at ¶ 17.

Accordingly, I find that the Individual has not resolved the security concerns, raised under Criterion F by his repeated and intentional failure to fully disclose his financial problems on his October 2, 2014, PSI.

B. Criterion L

At the hearing, the Individual addressed his mortgage default by testifying that he has “been actually doing a lot of research on it and tried to do a mortgage modification.” Tr. at 19. He testified that he has been trying to get a mortgage modification for five years, but has run into difficulties including some unscrupulous organizations that were trying to take advantage of him, and that he has been struggling to get help with the modification process from a reputable source. Tr. at 19-24. The Individual testified that he has caught up on all of his debts, except for his taxes and mortgage. Tr. at 27. However, the Individual admitted that he does not have a budget, and did not appear to have a firm grasp on his monthly expenses. Tr. at 30. The Individual could not recall the amount he owed for his outstanding tax lien. Tr. at 35. He did testify that he has not entered into a repayment plan for his outstanding tax lien. Tr. at 35. Moreover, despite the fact

that the Individual has not made any payments on his current home since December 2011, he is only putting \$20 to \$40 a month into his savings account. Tr. at 30-31. The Individual admitted that he has not yet filed tax returns for tax years 2013 and 2014. Tr. at 35. The Individual explained his failure to address these issues was partially due to his emotional state after the death of his mother in 2009. Tr. at 39.

The record shows that the Individual has: a history of financial difficulties dating back to at least 2010; failed to pay his taxes in a timely manner; failed to file his federal and state tax returns for tax year 2014;⁵ and had his present home foreclosed upon. With the exception of Exhibit A, which shows that one of the two tax liens against the Individual has been lifted, the Individual has not submitted any information showing that these issues have been resolved. Moreover, the Individual's testimony at the hearing shows that he has little insight into his financial problems, and that he is uninformed about his specific financial circumstances, including his monthly cash-flow. Most importantly, the Individual has not prepared a budget and has no workable plan to correct his financial problems or to address his past due financial obligations.

Accordingly, I find that the Individual has not resolved the security concerns, raised under Criterion L by his outstanding debts, failure to file his tax returns for tax year 2014, and dereliction of tax responsibilities.⁶

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria F and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the Criteria F and L security concerns. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: December 9, 2015

⁵ Tr. at 33, 35.

⁶ The Adjudicative Guidelines set forth a number of conditions that could mitigate security concerns arising from an individual's financial difficulties. *See* Adjudicative Guideline F at ¶ 20. However, none of these conditions are present in the instant case.