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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: December 16, 2015)
) Case No.: PSH-15-0101
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Issued: April 19, 2016

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold DOE access authorization and, as a holder of DOE access authorization, he is subject to periodic security reinvestigations. In conjunction with a security reinvestigation, the individual completed a Questionnaire for National Security Positions (QNSP) in September 2014, on which he disclosed both delinquent and collection debt. *See* Exhibit 10. On his QNSP, the individual stated that he was in the process of settling two collection accounts with money he had saved and, with respect to two medical bills that he discovered on a credit report he had obtained in order to complete his QNSP, that he had contacted the providers and planned to pay them. *Id.* at 36-38.

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.

As a participant in the Human Reliability Program (HRP), 10 C.F.R. Part 712, the individual is subject to annual security reviews by his employer and, during a recent review, his financial disclosures on his 2014 QNSP were noted for additional inquiry. *See* Exhibit 6. The Local Security Office (LSO) obtained a June 2015 credit report on the individual, which showed collection accounts that were not disclosed on the individual's 2014 QNSP and continued to show as outstanding the debts that the individual had stated on his 2014 QNSP would be resolved. *See* Exhibit 8. As a result of this information, the LSO conducted a personnel security interview (PSI) with the individual in July 2015. *See* Exhibit 11.

The PSI did not resolve the security concerns arising from the individual's financial matters and, on October 13, 2015, the LSO advised the individual in a letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the 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 *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the individual presented the testimony of one witness, himself. The LSO introduced 15 numbered exhibits into the record; the individual tendered one lettered exhibit (Exhibit A). 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).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her access authorization "will not endanger the common defense and security and will be clearly

² See Section III below.

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his or 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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 LSO cited one criterion as the basis for suspending the individual’s security clearance, Criterion L. Criterion L concerns information that an individual has engaged in conduct “which tends to show that the individual is not honest, reliable, or trustworthy....” 10 C.F.R. § 710.8(l). 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. *See* Guidelines E and 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). With respect to Criterion L, the LSO alleged, *inter alia*, that the individual: (1) had 12 collection accounts, aggregating \$4,869; (2) made prior representations during security investigations with respect to resolving outstanding collection accounts, but failed to do so; and (3) was made aware of DOE’s concerns regarding financial responsibility during PSIs conducted in 1991 and 1999, but had outstanding delinquent debt of \$4,869 as of the 2015 PSI.

In light of the information available to the LSO, the LSO properly invoked Criterion L.

IV. Findings of Fact

Although the individual (through his testimony and written submissions) challenged certain factual matters alleged in the Notification Letter, his testimony endorsed the accuracy of most of the facts set forth in the Notification Letter. In those instances where the individual contested matters set forth in the Notification Letter, I have carefully considered the totality of the individual’s testimony, the entirety of the written record, and the arguments presented by both the individual and the LSO in reaching the findings of fact set forth below.

The individual acknowledges that he has always had trouble with his finances. Tr. at 40. The LSO conducted PSIs with the individual in 1991 and 1999, both of which addressed the individual’s finances and discussed security concerns which arise when one fails to exercise financial responsibility. *See* Ex. 8 and Ex. 9.

In September 2014, the individual certified on his QNSP that, with respect to two credit cards that had been cancelled and were in collection, he had received settlement offers to settle such accounts and he was “in the process of settling this debt with money [he had] saved” and that he had “[m]ade arrangements to pay off the settlement amount[s].” Ex. 10 at 37, 38. No settlement payments were made and, as of the date of the hearing, both collection accounts remained outstanding. Ex. 15 at 3; Tr. at 24, 50-52.

In May 2015, the individual represented to an investigator from the U.S. Office of Personnel Management (OPM) that he had made arrangements to resolve eight medical collection accounts held by a debt factoring company. Ex. 14 at 61; Tr. at 60-66. At the hearing, the individual testified that he had twice made arrangements to settle those account with the factor, but had been unable to make the negotiated payments either time. *Id.* at 35. As of the date of the hearing, those eight medical collection accounts remained outstanding. Ex. 15; Tr. at 29-30, 35.

At the time of the 2015 PSI, the individual had two additional collection accounts. One for a medical procedure (2012) that he testified should have been covered by his health insurer and a second to a satellite dish company (2013) that he testified had been fully satisfied on a timely basis. *Id.* at 12-16, 29-30, 42-44. He acknowledges not resolving either of these disputed accounts; and, further, he introduced no documentation into the record to corroborate his testimony with respect to efforts to resolve these accounts. *Id.* at 44-45.

During the 2015 PSI, the individual stated that he had arrangements to pay his 12 collection accounts, which aggregated \$4,869, as the result of a financial institution having agreed to lend him \$5,000. Ex. 8 at 160-161. At the hearing, he testified that he had been able to only borrow approximately \$1300 from the financial institution and that those loan proceeds went to other expenses, but no proceeds were applied to his outstanding collection accounts. Tr. at 67-68.

Subsequent to the 2015 PSI, the individual has incurred debt for a second vehicle. As of the date of the hearing, the individual had two vehicles, both of which are encumbered by debt and are primarily driven by him. Ex. 15; Tr. at 56-57. As of the date of the hearing, he was two months delinquent on one car loan and one month delinquent on the other. *Id.* at 59. Additionally, he had borrowed money from another financial institution and, as of the hearing, had been unable to make the most recently due payment on that obligation. *Id.* at 56, 59.

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)⁴ and the Adjudicative Guidelines. After due deliberation, I have

⁴ 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.

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.

A. Mitigating Evidence

In mitigation of the Criterion L security concerns relating to his finances, the individual's primary arguments are that: (1) he is presently communicating, with the assistance of a law firm, with his creditors to resolve adverse items on his credit report;⁵ (2) past financial delinquencies resulted from inability to stay current on obligations as a result of medical and educational expenses incurred with respect to his children; (3) recent financial delinquencies resulted from his separation from his wife and from a two-month period where his income was reduced by 40% as a result of his hospitalization and subsequent period of rehabilitation; and (4) two of the 12 collection accounts noted by the LSO have been timely disputed, but that the documentation is unavailable as it is in the possession of his estranged wife.

For these reasons, the individual argues that he has sufficiently mitigated the security concerns noted by the LSO under Criterion L.

B. Administrative Judge Evaluation of Evidence

The individual does not contest that he has 12 accounts in collection, aggregating \$4869. Tr. at 10-41. The individual testified that he has retained the services of an internet-based law firm to resolve adverse information on his credit report. *Id.* at 18-23. In support of these efforts, he introduced into the record 21 letters sent to his creditors. *See* Ex. A. These letters are form letters that the individual selected from the firm's website and, for the most part, each is a demand that a creditor validate a debt listed on the individual's creditor report. *Id.*; Tr. at 46-47. However, these letters do little to clarify the financial concerns raised by the LSO, as they do not cite any basis as to the invalidity of the debts and, with two exceptions, the individual's testimony did not challenge the appropriateness of the collection matters cited by the LSO. Additionally, the letters submitted into the record include letters to creditors not cited in the Notification Letter and, in at least once instance, appear to reference debt that the individual testified he entered into subsequent to the 2015 PSI. Ex. A at 19. While I believe the individual submitted these letters into the record to demonstrate his earnestness in resolving his financial delinquencies, there is nothing in these submissions which mitigate the security concerns arising from the individual's collection accounts and, if anything, these letters create confusion as to which information, if any, in his credit report he actually believes is inaccurate.

With respect to the two collection accounts which the individual testified that he had timely disputed, he testified that all of the corroborating documentation disputing these accounts was in the possession of his estranged wife and he was unable to obtain it for the hearing. Tr. at 16-17, 29-30, 44-45.

⁵ The individual also argued during the hearing that he had been unable to satisfy two collection accounts which had been sold by the credit card issuer to a debt factor because he was unable to verify the current ownership of those accounts. This argument is not credible as (1) the individual did not raise the uncertainty of the ownership of the accounts when he represented on his 2014 QNSP that he planned to pay the factor the proposed settlement amounts and (2) the individual has not provided any evidence that he has had the financial resources to satisfy such accounts during relevant periods of time. Ex. 10 at 37, 38; Tr. at 24, 32, 50-52.

Collection accounts, such as these, raise legitimate concerns about an individual's financial responsibility and, therefore, raise appropriate security concerns under Criterion L. Under Part 710, the individual bears the burden to resolve security concerns and complications arising from the individual's estrangement from his wife do not diminish the individual's burden. Moreover, even if the individual had resolved concerns arising from these two accounts, it will be insufficient to resolve the Criterion L concerns raised by the remaining financial matters.

While the Adjudicative Guidelines recognize the possibility of mitigating financial concerns which result from circumstances beyond a person's control, the individual has not demonstrated circumstances that constitute mitigation. *See* Adjudicative Guidelines at Guideline F ¶ 20(b). College tuition and housing for his children, while undoubtedly burdensome, are not expenses beyond the individual's control. Medical expenses of his then-dependent children (absent some unusual or catastrophic situation which was not presented during this proceeding) that were not covered by health insurance do not constitute mitigation under the Adjudicative Guidelines.⁶ These are routine occurrences for a typical family. While the individual's separation from his wife and his own hospitalization and subsequent period of disability undoubtedly increased his financial difficulties, the financial accounts noted in the Notification Letter were already in collection at the time these circumstances arose. The circumstances noted by the individual were not conditions beyond his control which were the *cause* of his financial problems.

The individual testified that, although he would like to resolve these financial accounts, he is "unable" to do so. Tr. at 32. His financial resources are barely sufficient to meet his present expenses; he has no funds left to service his collection accounts. *Id.* at 38, 53-58. In addition to the collection debt cited in the Notification Letter, the individual has incurred additional debt subsequent to the 2015 PSI, including for a second vehicle for himself. *Id.* at 56. Both of his car loans were delinquent as of the date of the hearing; additionally, payment on a new personal loan was late. *Id.* at 59. The individual's financial condition as of the date of the hearing is worse than it was at the time of the 2015 PSI and his monthly cash flow is such that this is unlikely to improve.⁷

Equally troubling is that the individual made representations (on his QNSP and during the OPM investigation and the 2015 PSI) that he had made arrangements to resolve some or all of his financial accounts at a time when that was likely untrue. *See Id.* at 51. Even if he had made such arrangements, he was never able to bring those arrangements into fruition.

In prior cases involving financial irresponsibility, 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 Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security*

⁶ The individual also testified at the hearing that he had funded substance-related rehabilitation for one of his children; however, this was not presented as the precipitating event to the matters set forth in the Notification Letter. Tr. at 41.

⁷ The individual testified that he planned to start working a second job. Tr. at 58. No corroboration of this additional employment was presented at the hearing and no financial details were offered. Any future impact of such a second employment on the individual's finances is speculative and I have discounted it in my analysis.

Hearing, Case No. TSO-0746 (2009). Here, the individual has not begun rectifying his financial difficulties so any period of reformation has not begun to run. *See Personnel Security Hearing*, Case No. PSH-12-0075 (2012).

Based on the foregoing, I find that the individual has not resolved the security concerns associated with Criterion L arising from his collection accounts and his pattern of financial irresponsibility.

V. 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 resolve the security concerns associated with Criterion L. 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.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: April 19, 2016