

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 13 exhibits (Exs. 1-13) into the record of this proceeding. The individual introduced eight exhibits (Exs. A-H) and presented the testimony of three witnesses at the hearing, including his own testimony. *See* Transcript of Hearing, Case No. PSH-16-0004 [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 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 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 subsections (l)³ and (f)⁴ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

³ Derogatory information includes when an individual “[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

Ex. 1. In its Notification Letter, the LSO cites the following: 1) in his QNSP, the individual failed to list a judgment that was filed against him in December 2012, which he acknowledged at the PSI should have been listed; 2) in his QNSP, he failed to list 27 collection accounts, 26 of which he acknowledged at his PSI should have been listed; 3) in his QNSP, he certified that in the last seven years he was not over 120 days delinquent on any debt, when in fact he was; 4) he has 12 collection accounts totaling \$1,354; 5) during an interview with the Office of Personnel Management (OPM) investigator, he indicated that he would follow up with two different creditors and pay them off, if necessary, yet did not follow up on those accounts by the time of his PSI, which occurred a few months later; and 6) during his PSIs in March 2012 and May 2005, he was made aware of DOE's concerns regarding his financial irresponsibility, but currently still has delinquent debts. *Id.*

The above information adequately justifies the DOE's invocation of criteria (l) and (f), 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 deliberate 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

The individual presented the testimony of three witnesses, including his own testimony. My findings from the testimony and the exhibits are explained below.

A. Individual's delinquent accounts

The individual has struggled with paying his medical bills for a long time and does not know when he started facing these issues. Tr. at 44. He implied that he ignored his bills in the past and did not try to resolve them; however, he indicated that now, he would like to resolve his debts. Tr. at 44. This is not the first time that the individual became aware of the DOE's concerns regarding his financial delinquencies. In May 2005, at his PSI, he was made aware of the DOE's concerns regarding his financial delinquencies and the interviewer informed him that the DOE wants to know that he is resolving his debts. Ex. 13 at 66. About seven years later, in March 2012, he had another PSI regarding his financial delinquencies, where he was again informed about the DOE's concerns pertaining to his finances. Ex. 11 at 49.

act contrary to the best interests of the national security. Such conduct or circumstances, include, but are not limited to . . . a pattern of financial responsibility." 10 C.F.R. § 710.8(l).

⁴ Derogatory information exists when an individual "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions." 10 C.F.R. § 710.8(f).

According to the Summary of Security Concerns, the individual has 12 collection accounts, totaling \$1,354. Ex. 1. Nine of those collection accounts are being processed by the same collection agency and his collection accounts concern medical bills, except one for \$446 that arose from an unpaid phone bill. Ex. 1. The individual does not dispute the existence of those delinquent accounts, but he claims to have taken actions to resolve those accounts. Ex. 2.

In April 2015, the individual met with an OPM investigator and indicated that he would verify if he really owed the debts in collection listed on his credit report, and if he did, he would pay them off. Ex. 8 at 4-7. He has paid off two collection accounts for medical services for \$13 and \$72. Ex. 7; Ex. 1 (paragraph II.A.11 & II.A.12); Tr. at 27. He is on a payment arrangement with one collection agency with which he has nine outstanding collection accounts. Ex. 2; Ex. 1 (paragraph II.A.1-9); Tr. at 27. He contacted that creditor in October or November of 2015, despite informing the OPM investigator in April 2015 that he would contact them and make arrangements to pay off his debts within six months. Tr. at 36. When asked why he waited so long to contact the creditor despite his representations to the OPM investigator, he stated that he always has a lot going on in his life and so he does not “always have the opportunity to address all these medical bills and everything, just have to do things as they come along.” Tr. at 37. Further, he stated that he waited to contact them until he knew he could afford to enter into a payment plan. Tr. at 43. The individual’s records indicate that he owes approximately \$4,000 to that creditor, a significantly higher amount than what is listed in the Summary of Security Concerns. Exs. C-E. It appears that he owes \$50 a month to that creditor pursuant to their payment arrangement. Exs. C-D. He stated that he may be disputing some of the debt that he owes because they may be associated with his ex-wife’s medical bills, but he is unsure of whether or not that is true; however, he has not made any steps towards disputing the amount in collection and instead has entered into a payment arrangement with the agency as stated above. Tr. at 32-33. Regardless, he does not know if the collection accounts arose from medical bills for his children, ex-wife, or himself. Tr. at 33-34.

He also indicated that he completed a payment arrangement with a creditor that is not listed in the Summary of Security Concerns, whereby \$53.38 would be deducted from his account through recurring payments until the \$400 balance is paid in full; this information was corroborated by a letter sent from the creditor in August 2015. Ex. 7; Tr. at 29. The individual testified that he paid off that account in December 2015, and he submitted documentation indicating that the creditor has been paid off. Tr. at 29; Exs. F-H. However, the individual has not yet taken steps to resolve the collection account for \$446 that originated from an unpaid phone bill and did not seem to know how it originated when asked about it at the hearing. Tr. at 28, 44. He has not yet contacted the creditor associated with that debt, saying that he is trying to get control over his other debts that he is currently paying off. Tr. at 31.

The individual submitted a budget indicating that his monthly expenses amount to \$3,190. Ex. A. He testified that his monthly income is approximately \$3,216. Tr. at 48. However, his expenses did not include his monthly payments to his creditor, which are at least \$50 a month, bringing his expenses up to at least \$3,240 a month. Tr. at 50. Hence, he has a monthly deficit based on his expenses and income.

B. Individual's failure to list past debts and collection actions

The QNSP that the individual submitted in December 2014 asked the individual if he had a judgment entered against him in the past seven years, to which he responded, "no." Ex. 9 at 27. When asked if, in the past seven years, he had bills or debts turned over to a collection agency or has been over 120 days delinquent on any debt not previously entered, he answered "no" to both. Ex. 9 at 27. However, within the past seven years of submitting his QNSP, he had a judgment entered against him, 26 collection accounts, and an account that was over 120 days past due. Exs. 4-6.

The individual submitted a response to the summary of security concerns in December 2015. Ex. 2. He stated that he misunderstood the questions in the QNSP and that he failed to list the past judgment because it was no longer on his credit report and he therefore believed that it did not need to be reported. Ex. 2. He acknowledged that he knew that the DOE could access his credit report to verify his accounts and that he never intended to deceive anyone. Ex. 2. During his PSI in August 2015, the individual stated that he did not disclose the judgment in the QNSP because he did not realize that there was one against him. Ex. 10 at 9-10. However, when the interviewer at the PSI asked him specifically about the judgment from a case that was filed against him in January 2013, he recalled that case, but did not "recognize it as a judgment." Ex. 10 at 11-12. After the interviewer asked him about his judgments, but before asking about the collection or delinquent accounts that the individual failed to disclose in his QNSP, the interviewer asked him, "[h]ave you failed to report any other information that may be a security concern?" to which the individual responded, "[n]o." Ex. 10 at 10. At his PSI, he also could not explain why he did not state that he had collection accounts within the last seven years, acknowledging that he should have disclosed them. Ex. 10 at 13. He further stated that he failed to disclose his collection accounts because he did not have adequate information or did not "understand the wording" in the QNSP. Ex. 10 at 15, 27.

At the hearing, the individual testified that he did not list the judgment because he did not understand the definition of a judgment. Tr. at 19. He also testified that the judgment was not listed on his credit report, and that he was relying on his credit report when completing his QNSP. Tr. 20. However, he never provided a copy of the credit report that he purportedly relied on when completing his QNSP to corroborate his testimony. When asked why he answered "no" to the question about whether he had accounts turned over to a collection action in the last seven years, he responded, "[r]ight there I would think that I should not have grouped that question in with these other ones and I'm not real sure, of course, it is not up to me why they are not individual questions but that definitely I would say, yes, I have had, I mean, it's obvious I've had debts turned over to collection agenc[ies] in that time period." Tr. at 20-21. He stated, "[t]here is no way of hiding it so I don't know why I did not include that in the statement there." Tr. at 21. He was confused at how the questions were posed on the QNSP. Tr. at 21. Moreover, even though he stated that it was "obvious" to him that he had debts turned over to collection agencies, he was allegedly confused because he was relying on his credit report that did not list any collection accounts from the last seven years. Tr. at 22. Likewise, it was "obvious" to him that he had a debt that was over 120 days delinquent in that time period, but again did not list it on his QNSP due to it not being listed in his

credit report. Tr. at 22. The individual explained that he did not intend to mislead the DOE and that he does not know why he did not answer the questions on the QNSP correctly, or spend more time reviewing them before answering them. Tr. at 22. He did acknowledge that he read the questions “because they are in plain English,” yet reiterated a few times that he did not know why he answered “no” to the questions for which he should have answered “yes.” Tr. at 23.

C. Individual’s colleagues’ testimonies

The individual’s colleagues have both known him since before they worked for the same employer. One knew him since high school and the other knew him since the 1980s. Tr. at 10, 14. One of them testified that he does not know the individual to spend money beyond his means or to not follow the security regulations and rules, and the other witness testified that the individual is financially responsible and that he has never observed the individual be dishonest. Tr. at 11, 15-16.

V. ANALYSIS

As stated above, 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. *See* 10 C.F.R. § 710.7(c). It is in consideration of the regulations and the Adjudicative Guidelines referenced below, that I have concluded that the individual has not sufficiently resolved the concerns raised by the LSO.

A. Delinquent debts – Criterion (I)

After due deliberation and consideration of the witness testimony and the exhibits, I conclude that the individual has not resolved the concerns regarding his financial delinquencies and pattern of unwillingness or inability to satisfy his debts. First, while the individual claims to not have had the opportunity to pay all of his bills, he did not provide any evidence or testimony of “conditions that resulted in the financial problem were largely beyond [his] control,” and that he “acted responsibly under the circumstances.” Adjudicative Guideline F, ¶ 20(b) (examples of such conditions include loss of employment, business downturn, unexpected medical emergency or a death, divorce, separation).

Moreover, 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 paying off two of his collection accounts and entering into a payment plan with a collection agency that processes nine of his collection accounts, he still does not have a plan for resolving a collection account from his phone bill. He also stated that he may dispute some of the accounts in collection as arising out of his ex-wife’s bills; however he did not present a reasonable basis for that dispute, just a speculation, and has not submitted any documented proof to substantiate his speculation or actions that he took to resolve it. *Id.* at ¶ 20(e). Additionally, the individual’s failure to pay his bills is not infrequent and the DOE has presented its concerns regarding his financial delinquencies to him as early as 2005 and in 2012;

yet the individual continued to have accounts turned over to collection and has a monthly deficit, suggesting that his behavior is likely to recur. *Id.* at ¶ 20(a). 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.

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 financial delinquencies and pattern of inability to satisfy his debts have been resolved. *See* 10 C.F.R. § 710.7(c).

B. Deliberate misrepresentations, falsifications or omissions – Criterion (f)

After considering all of the evidence before me, I have also decided that the individual has not resolved the concerns associated with his misrepresentations in his QNSP.

The individual claims that he did not disclose 26 collection accounts, a 120-day delinquent account and a judgment from 2012 because his credit report did not list them. He did not provide a copy of the credit report, which he allegedly relied on, into the record. Even if I were to accept his representations as true – that he did not deliberately intend to misrepresent the DOE – his failure to disclose anything and respond “no” to all the questions regarding past judgments, collection and delinquent accounts, indicates very poor judgment on his part, at the very least.

Moreover, his reasons for not disclosing that information are not very convincing. He states that he relied on a credit report that did not list any of the 26 collection accounts, the judgment, or the account that he was more than 120 days late on paying. It strains credulity that the credit report he relied on would not have listed any of those accounts. Furthermore, he acknowledged that it was “obvious” to him that he had accounts in collection and had been more than 120 days delinquent on a debt, yet it still did not occur to him to disclose it in the QNSP. While he claims to have been confused by the questions in the QNSP, they very clearly asked him about past and current collection accounts, delinquent accounts and judgment. That he wrote “no” as a response to all of those questions pertaining to his financial delinquencies, given his history of debt and the many delinquent accounts that he has had, is not minor and his actions do, therefore, cast doubt on his reliability, trustworthiness and good judgment. Adjudicative Guideline E, ¶ 17(c). His responses are also relevant to the DOE’s determination regarding his eligibility for an access authorization, and therefore have significant consequences to our security procedures. 10 C.F.R. § 710.9 (f). In all, the individual has not met his burden to produce evidence sufficient to convince me 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). For these reasons, I conclude that the individual’s access authorization should not be restored.

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 criteria (l) and (f). 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 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: April 14, 2016