

As a result of this information, the LSO conducted personnel security interviews (PSI) with the individual in both July 2015 and November 2015. *See* Exhibits 11 and 12.

The PSIs did not resolve the security concerns arising from the individual's financial matters and, on February 11, 2016, 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 two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criterion F and Criterion L, respectively).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 two witnesses, including that of himself. The LSO introduced 14 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).

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha/office-hearings-and-appeals. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha/security-cases.

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 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 two criteria as the bases for suspending the individual’s security clearance: Criterion F and Criterion L. Criterion F refers to information that a person has “deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statements, 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 [Part 710 administrative review] proceedings....” 10 C.F.R. § 710.8(f). 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. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. *See* Guideline E 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 F, the LSO alleges (1) omissions by the individual on the QNSP of adverse financial information that was required to be disclosed and (2) failure by the individual to disclose that his wages had been garnished for delinquent state taxes during a security interview with the U.S. Office of Personnel Management (OPM). Ex. 1 at 3-4.

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). As noted in the preceding paragraph, conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions

about an “individual’s reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at Guidelines E and F. With respect to Criterion L, the LSO alleges, *inter alia*, that the individual: (1) has six collection accounts, two charge-off accounts, and two delinquent accounts, aggregating \$9,650; (2) acknowledged being five months delinquent on his mortgage; (3) admitted his wages had been garnished by state tax authorities and has had other tax delinquencies; and (4) had twice filed for bankruptcy protection. Ex. 1 at 4-6.

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

IV. Findings of Fact and 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 determined that the individual’s access authorization should not be restored at this time. 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.

As a preliminary matter, I note that the individual’s 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 my evaluation and in reaching the findings of fact set forth below.

A. Administrative Judge Evaluation of the Evidence and Findings of Fact: Criterion F Security Concerns

Security concerns arise under Criterion F when an individual deliberately omits significant information from a QNSP or during an interview which is part of the access authorization eligibility process. *See* 10 C.F.R. § 710.8(f). With respect to the individual, the LSO alleges five occurrences⁵ under Criterion F, one relating to the individual’s failure to disclose the

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.

⁵ The Notification Letter contains six basis statements with respect to Criterion F; however, two of them relate to the individual’s failure to disclose his filing of a petition for Chapter 13 bankruptcy in October 2008. *See* Ex. 1 at 3.

state tax garnishment of his wages during the security interview with an OPM investigator and the remaining relating to the individual's failure to disclose required adverse financial information on his QNSP. Ex. 1 at 3-4. Failure to fulfill legal and financial obligations raises legitimate questions about a person's willingness and ability to comply with rules and procedures and raises questions about a person's reliability, trustworthiness and ability to protect classified information. As such, this information is significant in granting or continuing an individual's access authorization.

Garnishment and State Tax Matters. The individual certified on his QNSP in November 2014 that in the prior seven years he had not failed to file or pay his federal or state taxes as required by law. At the time of this certification, he had filed his required state tax returns without fully paying his state tax obligations for 2010, 2011 and 2012; however, he had negotiated a payment plan with his state tax authorities to pay those taxes and his payments were current under that payment plan. Tr. at 26-28, 30. He testified at the hearing that he had believed that, since he was current on his tax payment plan, he was current on his state taxes and had paid his required taxes. *Id.* at 30-33. While I find that his conclusion with respect to the disclosure required on his QNSP is incorrect, I found his testimony credible as to his understanding of the question and, for this reason, I find that his omission was not deliberate.

Subsequent to his certification of the QNSP, the individual became delinquent on his state tax payment plan and his wages were garnished in March 2015. Ex. 6 at 3-4. The individual did not report this garnishment to the OPM investigator during a security interview that was conducted three months later. The individual agrees that he did not discuss this information with the investigator; however, he testified that he was not asked any questions during the interview that related to the garnishment. Tr. at 19-21. Although the LSO refers to the OPM investigation during the PSI and in the Notification Letter, no report of investigation was submitted into the record of the case. The LSO did, however, submit into the record an incident report describing the garnishment of the individual's wages which states that the individual self-reported the garnishment. *See* Ex. 6 at 2. In light of the individual self-reporting the garnishment approximately two months prior to his interview with the OPM investigator, the individual did not attempt to withhold this information from the DOE and, therefore, I conclude that his failure to discuss it during the security interview with OPM was not a deliberate attempt to mislead the DOE on this matter.

Based on the foregoing, I find that the individual has sufficiently resolved the Criterion F security concerns with respect to his state tax matters.

Charge-Off Accounts. The LSO alleges that the individual improperly omitted two charge-off accounts in his response to a question on the QNSP which specifically asked whether he had had any accounts that had been charged off within the prior seven years. Ex. 1 at 4. The individual acknowledges the two debts referenced in the Notification Letter; however, he testified that they had been discharged in Chapter 7 bankruptcy proceedings in 2005. Tr. at 37-38, 40-45. The credit report relied upon by the LSO to evidence these accounts states that each of those debts were "bankruptcy dismissed." Ex. 4 at 3. A discharge of a debt in bankruptcy liquidates the debt and, therefore, the individual's liability for these

debts was extinguished in 2005.⁶ Since these debts were discharged in bankruptcy nine years prior to the individual's certification of his QNSP, they were not required to be disclosed by the question cited by the LSO and, therefore, no Criterion F security concern arises from such omission.

Chapter 13 Bankruptcy Petition. The LSO alleges that the individual improperly omitted a Chapter 13 bankruptcy filing in his response to a question on the QNSP which specifically asked whether he had filed a petition under any chapter of the bankruptcy code in the prior seven years. The individual acknowledges that he had filed a petition under Chapter 13 in 2008, approximately six years prior to his certification of his QNSP. Tr. at 22-23. The individual testified that the Chapter 13 bankruptcy petition was prompted by increases in his home mortgage payments (caused by escalation of interest rates); however, when the bankruptcy court calculated the payment plan for restructuring his debt, he realized that he could not afford the required payments and discontinued the bankruptcy petition. *Id.* He testified that he believed that, since he had voluntarily discontinued the bankruptcy proceeding, the bankruptcy petition did not need to be disclosed on the QNSP. *Id.* at 23, 25-26. While I find that the individual's conclusion with respect to the disclosure required on his QNSP is incorrect, I found his testimony credible as to his understanding of the question. The individual's Chapter 13 bankruptcy petition had also been discussed during a PSI conducted in 2010. Ex. 1 at 3; Ex. 13 at 6-9, 71; Tr. at 24-25. Since this was information had been previously discussed with the LSO, it reinforces the individual's contention that he was not trying to deliberately withhold adverse financial information from the DOE. For these reasons, I conclude that the individual did not deliberately omit his Chapter 13 bankruptcy petition when he certified his QNSP and, therefore, that the individual has sufficiently resolved Criterion F security concerns arising from such omission.

Collection Accounts. On the QNSP, the individual disclosed one account in response to a question as to whether he had had any bills or debts turned over to a collection agency within the prior seven years and certified that he had no other such accounts. Ex. 9 at 38-40, 42. The LSO alleges that the individual improperly omitted five other collection accounts from his QNSP. Ex. 1 at 5-6. At the time that he completed his QNSP, the individual testified that: he did not have all of his financial information available to him; his employer had changed its procedure for employees who were completing their security questionnaires and required that the questionnaires be completed using computers in a common area; employees were given a minimal amount of time to complete the questionnaires; and employees were no longer given the questionnaires to complete in a way that allowed them to research their answers to the questions. Tr. at 33-34, 39-40. Additionally, the individual had moved and he didn't have access to all of his records. *Id.* at 25, 40. Notwithstanding the foregoing, the individual testified that when he completed the QNSP with respect to the existence of collection accounts, he was aware that he had collection accounts responsive to the question which he did not list (because he lacked

⁶ At the hearing, DOE counsel concurred that no current liability exists with respect to the two accounts discharged as a result of the individual's 2005 bankruptcy proceedings and that this discharge occurred more than seven years prior to the individual's certification of his QNSP. *Id.* at 58-60.

access to the relevant information with respect to the names of creditors and the amounts) and he independently decided to limit his QNSP response to the one account that he could remember; it was his intention to discuss the other collection accounts when he had his security interview. *Id.* at 34, 36. While I am sympathetic to the context in which the individual completed his QNSP and his expressed intent to subsequently supplement his QNSP response, at the hearing he acknowledged that he was aware of additional information that was required to be disclosed on the QNSP and, notwithstanding, made the decision to certify the QNSP containing inaccurate information. As noted above, adverse financial information about an individual can be significant information with respect to a person's eligibility to hold access authorization and, here, the individual knowingly omitted information from a QNSP that he certified as true, complete and correct. Ex. 9 at 42. *See* 10 C.F.R. § 710.8(f).

Based on the foregoing, I find that the individual has not resolved the Criterion F security concerns arising from the omission of collection accounts from his QNSP.

**B. Administrative Judge Evaluation of Evidence and Findings of Fact:
Criterion L Security Concerns**

The individual has had financial problems for many years. As discussed above, he filed for bankruptcy protection under Chapter 7 in 2005 and under Chapter 13 in 2008. In addition to the two PSIs which were conducted with the individual in 2015 on his finances, the LSO conducted PSIs with the individual in 2006 and 2010 which focused on financial matters. *See* Exhibits 13 and 14. In the Notification Letter, the LSO alleged that the individual had ten outstanding delinquent accounts and had demonstrated financial irresponsibility in other matters. Ex. 1 at 4-5.

Outstanding Delinquent Financial Accounts. The Notification Letter alleges that the individual has outstanding six collection accounts (aggregating \$1,767), two charge-off accounts (aggregating \$7,124), and two accounts delinquent for 30 days (aggregating \$759).

The two charge-off accounts aggregate \$7,124 and represent the greatest portion of alleged outstanding delinquent debt. These accounts were discharged as a result of the individual's Chapter 7 bankruptcy proceedings in 2005 and, therefore, are not outstanding. Ex. 4 at 3; Tr. at 55-56, 58. The individual has no legal liability with respect to these accounts and any Criterion L security concerns based upon these accounts being outstanding is resolved.⁷

⁷ As a separate basis for the Criterion L security concerns, the LSO alleged that the individual was financially irresponsible because he failed to contact one of these lenders and pay the debt after promising to do so during a PSI in 2010. Ex. 1 at 5. However, during the PSIs, the individual had explained to the personnel security specialist that the debt had been discharged through bankruptcy and the personnel security specialist would not acknowledge the sufficiency of a bankruptcy court decree. Ex. 11; Ex. 13; Tr. at 82. No Criterion L security concern arises from those circumstances. At the hearing, DOE counsel concurred that no current liability exists with respect to the two accounts discharged as a result of the individual's 2005 bankruptcy proceedings. *Id.* at 58-60.

The individual testified that the two 30-day delinquent accounts are presently current. According to the individual, the delinquencies resulted when he was unable to work due to an automobile accident and that he had credit disability insurance that covered payments on those accounts during his disability. *Id.* at 56-57. I left the record open for eight days following the hearing so that the individual could submit corroborating documentation with respect to this credit disability insurance and/or the current status of these accounts; no information was submitted. *Id.* at 57, 61, 93-96. Based upon the record, the individual has not resolved the Criterion L security concerns arising from these delinquencies.

With respect to the collection accounts, the individual testified that these accounts continued to be outstanding. *Id.* at 46, 50. Although he questioned the validity of two of these accounts, he presented no evidence of any efforts to resolve any disputes with those two creditors. *Id.* at 53-55. The individual disclosed only one collection account on his QNSP and, on his QNSP, he represented that that account would be paid in full by the following month; however, as of the hearing 18 months later, the account continued to be unresolved. Ex. 9 at 39; Tr. at 46, 50. While the individual testified that family health and emergencies resulted in his financial problems, he presented no evidence to substantiate that these delinquencies were *caused* by those circumstances or that he had acted financially responsibly under the circumstances. *Id.* at 47-50, 52. *Cf.* Adjudicative Guidelines at Guideline F, ¶ 20(b). Based on the foregoing, the individual has not resolved the Criterion L security concerns arising from his collection accounts.

Mortgage Delinquency. During the PSI, the individual stated that the mortgage on his home was five months delinquent. At the hearing, the individual testified that he and his mortgage lender had entered into a court supervised agreement, pursuant to which he was making “catch-up” payments through the end of 2016, that he was current on those payments, and that his arrears would be resolved by the end of 2016. Tr. at 62-63, 65. I left the record open for eight days following the hearing so that the individual could submit corroborating documentation with respect to the agreement with his mortgage lender and the current status of the account; no information was submitted. *Id.* at 67-68, 93-96.

Tax Debt. The individual’s wages were garnished by state tax authorities after he defaulted on a payment plan respecting his 2010, 2011 and 2012 state taxes.⁸ As a result of the garnishment, those taxes have now been satisfied. *Id.* at 69-70. The individual testified that those state tax delinquencies resulted from his wife’s gambling income that had not been declared. *Id.* at 26-28. Such gambling income was also not declared in their federal income taxes and, as of the hearing, the individual appears not to have filed amended federal tax returns for the relevant years and was anticipating entering into a tax payment plan with the federal tax authorities. *Id.* at 28-30, 89-92. Here, the individual has not only outstanding federal tax debt, but has not commenced payment on such debt. *Id.* The individual acknowledged during his testimony that he was aware that his wife had had gambling income that was not being declared at the time the income tax returns were initially filed and that he was aware of the requirement to declare that income. *Id.* at 27, 91-92. Filing of

⁸ In addition to the tax issues with respect to unreported gambling income for 2010-2012, the individual previously had delinquent federal and state tax debt for 2008, aggregating nearly \$9,000. Tr. at 78.

tax returns under these circumstances constitutes a knowing violation of the tax laws and creates further concerns with respect to the individual's honesty, reliability, and trustworthiness. *See* 10 C.F.R. § 710.8(l).

Current Financial Situation. The individual disputed the LSO's contention that he is not currently living within his means. Tr. at 78. I left the record open for eight days following the hearing so that the individual could submit a current financial plan or budget detailing his current income and expenses; no information was submitted. *Id.* at 74-78, 93-96.

Financial Irresponsibility. The individual filed bankruptcy petitions in 2005 and 2008; however, he continues to have outstanding delinquent debt, including at least six collection accounts. While the individual cited medical emergencies and health issues for himself and family members, as well as other family circumstances, these do not explain the individual's long history of financial delinquencies, nor were these situations correlated to the individual's current financial defaults. The individual's testimony also displayed a lack of understanding of his financial matters and his explanations for specific financial problems shifted during his testimony. *See Id.* 66, 71, 80-82. The foregoing evidences a clear pattern of financial irresponsibility by the individual.

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

The individual resolved delinquent tax debt to his state government for 2008, 2010, 2011, and 2012 and to the federal government in 2008; however, he continues to have unquantified federal tax debt for at least 2010, 2011, and 2012. The tax debt for the three more recent years resulted from failure to declare his wife's gambling income, which the individual was aware was not being declared when the tax returns were filed. This evidences not only financial irresponsibility but knowing disregard of tax laws and regulations. The disregard of laws, rules and regulations raises grave concerns with respect to a person's ability and willingness to comply with security rules and regulations and to protect classified information. *See* Adjudicative Guidelines at Guideline E, ¶ 15. This is recent conduct, for which no mitigation has been offered.

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

V. Conclusion

In the above analysis, I have found that the individual has sufficiently resolved certain of the matters alleged with respect to Criterion F and Criterion L. Notwithstanding the foregoing, other derogatory information in the possession of the DOE raises serious security concerns under Criterion F and 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 all of the security concerns associated with Criterion F and Criterion L. Accordingly, I have determined that the individual's access authorization should not be restored at this time. 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: June 30, 2016