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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: June 9, 2016 )  
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Case No.: PSH-16-0050

Issued: August 31, 2016

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXX XX XXXX (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.”<sup>1</sup> 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.<sup>2</sup>

**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 conducted a Personnel Security Interview (PSI) of the Individual in March 2016. Because the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her 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. The Director of OHA appointed me as the Administrative Judge in this matter on June 10, 2016.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual and two of her co-workers. *See* Transcript of Hearing, Case No. PSH-16-0050 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8. The Individual submitted ten exhibits, marked as Individual’s Exhibits 1 though 10.

<sup>1</sup> 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.

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

## 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 her eligibility for a security clearance. That information pertains to paragraphs (f) and (l)<sup>3</sup> 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 June 17, 2015, in which she failed to disclose several outstanding financial delinquencies, including a state tax lien, and five collection accounts. The LSO further alleges that, during her March 2016, PSI, she falsely denied having any bills or debt turned over to a collection agency during the past seven years. “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 three unpaid collection accounts totaling \$1,779, and one past due account totaling \$471. The LSO further noted that the Individual had previously (in PSI’s conducted in December 2005, and August 2002) been advised of the LSO’s concerns about her financial responsibility. 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

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<sup>3</sup> 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).

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; . . . (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), 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**

In PSIs conducted in December 2005, and August 2002, the Individual had been informed about the LSO's concerns about her financial responsibility. However, the security concerns discussed in both of those PSIs had been sufficiently resolved to allow her to maintain a DOE Security Clearance.

On June 17, 2015, pursuant to a routine background reinvestigation, the Individual submitted a Questionnaire for National Security Positions (QNSP)<sup>4</sup> to the LSO. In this QNSP, the Individual certified that, during the past seven years, she had not: “failed to file or pay Federal, state, or other taxes when required by law or ordinance,” had a lien placed against her for failing to pay taxes, or had “bills or debt turned over to a collection agency,” “had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed,” or “been over 120 days delinquent on any debt not previously entered.” Ex. 5 at 26-27. The Individual further certified that she was not currently over 120 days delinquent on any debt. Ex. 5 at 26-27.

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<sup>4</sup> The QNSP was submitted electronically as an Electronic Questionnaire for Investigations Processing.

On June 24, 2015, the LSO obtained a credit report for the Individual. That report indicated that: a state government had levied a tax lien against the Individual in the amount of \$1,144, and that the Individual had five outstanding collection accounts. Ex. 4 at 2-4

In March 2016, the LSO conducted a PSI of the Individual. During this PSI, the Individual was asked if she had any liens filed against her. She answered in the negative. Ex. 6 at 20. When the interviewer suggested that she had an outstanding state tax lien filed against her in 2011, she claimed that she had paid that lien off, and produced documentation that she had, in fact, resolved that debt on December 10, 2015. Ex. 6 at 21-22. The Individual further explained that she was unaware of the debt until DOE brought it to her attention. Ex. 6 at 23. The Individual subsequently stated that she had never failed to pay state or federal taxes or owed back taxes. Ex. 6 at 27. The Individual admitted that sometimes she pays her bills “a little late.” Ex. 6 at 29-30. She acknowledged that she was having a difficult time keeping current on her bills. Ex. 6 at 65. The Individual stated that she had been experiencing financial difficulties because her boyfriend had moved out of her home, three years earlier, and she had depended on him to pay some of her housing costs. Ex. 6 at 31-32. She said she works with her creditors to manage her shortfalls. Ex. 6 at 33-34. The interviewer asked the Individual if she had any collection accounts. The Individual responded in the negative. Ex. 6 at 34. After the interviewer shared a list of collections accounts set forth in the June 24, 2015, credit report, the Individual claimed that she denied having any collection accounts, because she did not understand the question. Ex. 6 at 67. She further stated that she was not aware of these collection accounts before the PSI. Ex. 6 at 71-72. The Individual admitted that her monthly expenses (which included repayment of debts) exceeded her monthly income. Ex. 6 at 89. The Individual claimed that once her mother receives an insurance settlement, she will be able to resolve her delinquent debts. Ex. 6 at 89, 92, 116. The Individual claimed that she would receive the money from her mother within two weeks. Ex. 6 at 117. The Individual claimed that her failure to disclose the collection accounts and tax lien was the fault of the person who assisted her in completing the QNSP. Ex. 6 at 99-105. When she was asked why she signed the QNSP if it wasn’t completed correctly, she claimed that she was not very intelligent or good at reading. Ex. 6 at 99-105.

## **V. ANALYSIS**

At the hearing, the Individual attempted to resolve or mitigate the security concerns about her 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 her June 17, 2015, QNSP, which would have revealed that she was incurring financial difficulties. When she was questioned about these multiple omissions during the March 2016 PSI, she provided inadequate and somewhat deceptive explanations of her omissions.

At the hearing, the Individual testified that she has completed three QNSPs during her employment at a DOE facility. Tr. at 33, 36. The Individual testified that an administrative assistant employed by her employer assisted her in completing her most recent QNSP by taking the Individual’s paperwork, including her prior QNSP’s and completing the Individual’s QNSP for her. Tr. at 36- 37. The Individual testified that the administrative assistant asked the Individual if there were any changes

since she submitted her last QNSP. Tr. at 38, 43-44. The Individual testified that she informed the administrative assistant of her divorce and of her sister's death. Tr. at 38, 43-44. The Individual testified that the administrative assistant never asked her about her finances and that she did not think to raise the issue with the administrative assistant. Tr. at 39. The Individual testified that she signed the QNSP at the end of her only meeting with the administrative assistant. Tr. at 39. When the Individual was asked, at the hearing, why she failed to report her tax lien and her collection accounts on her QNSP she stated: "She didn't ask me about it, and I didn't think of putting it down. I wasn't hiding anything. I just -- she just didn't ask the question. She just asked me was there any changes." Tr. at 40. The Individual testified that she did not read the QNSP before signing it. Tr. at 40, 44. The Individual blamed her mother's poor health and the death of her sister for her failure to read her QNSP before signing it. Tr. at 41. Her sister died in March 2015. Tr. at 42.

The fact that the Individual had someone prepare their QNSP on their behalf does not resolve the security concerns arising from omissions or inaccuracies contained in the QNSP that she certified and submitted. A security clearance holder or applicant is not relieved of their obligation to provide full and accurate information in their submissions to an LSO by having another party prepare those submissions for them. It was the Individual's responsibility to ensure that the QNSP she submitted on June 17, 2015, was complete and accurate. Any inaccuracies or omissions in the QNSP she submitted reflect poorly upon her judgement, reliability, and trustworthiness.

The Individual further testified that when she was asked about her finances during the March 2016 PSI, she was unaware that she "had bills and collections." Tr. at 45. She testified that she was not aware of the tax lien leveled against her property at the time of the PSI. Tr. at 46-49. The Individual further testified that on June 17, 2015, the day she submitted her last QNSP, she "always paid her payments." Tr. at 53-54. She further testified that, on June 17, 2015, she was not aware that any of her debts had been turned over to collection agencies. Tr. at 54, 58, 62. The Individual testified that her debtors had never contacted her about these unpaid debts. Tr. at 55, 57-58, 62. She speculated that "Me and my ex-husband still share the same mailbox. So maybe he could have got it by accidentally and didn't give it to me." Tr. at 58. The Individual testified that, during the previous seven years, she had not had any account charged off because she failed to pay as agreed. Tr. at 58. The Individual testified that she did not disclose anything on her June 17, 2015, QNSP, because, in her mind, she did not have anything to disclose. Tr. at 59-60. She testified that as of June 17, 2015, she had no debts that were 120 days delinquent. Tr. at 60. The Individual admitted that a year or two prior to June 17, 2015, she had obtained a consolidation loan from a local bank. Tr. at 64. She testified that she attempted to use part of the consolidation loan to resolve a "late" debt to another bank (the regional bank), however, the regional bank refused to take her check. Tr. at 66. The Individual further admitted that she was delinquent in paying her car loan. Tr. at 67, 87.

I find that much of the Individual's testimony concerning her failure to report her financial difficulties on her QNSP is obviously inaccurate, and therefore reflects poorly upon her judgement, reliability, and trustworthiness. While I believe that the Individual was legitimately bewildered and confused by some of the circumstances she found herself in, I find that the record shows that the Individual had to have been aware of at least some of her financial concerns, and that those concerns would have been of interest to the LSO. While the record shows that the Individual may well have been unaware of her medical debts, as well as the tax lien, and may have been unaware that her debts had been placed in collection, she had to have been aware, on June 17, 2015, that she had not been making timely payments to the regional bank, which accounted for a significant percentage of her outstanding debt,

and that the LSO would be concerned about these debts (she had been questioned about financial concerns during two previous PSIs, in 2002 and 2005). Nevertheless, she omitted this information from her June 17, 2015, QNSP, and continued to be less than fully forthcoming during her March 2016 PSI.

Accordingly, I find that the Individual has not resolved the security concerns raised under Criterion F by her intentional failure to fully disclose her financial problems on her June 17, 2015, QNSP, and during her March 2016 PSI.

## **B. Criterion L**

At the hearing, the Individual showed that she has fully addressed her financial issues by resolving each of the debts which had been placed in collection, and has taken action to ensure that her monthly income now exceeds her expected monthly expenses by a significant margin.

The Individual testified that when she became aware of her outstanding debts, she contacted her creditors. Tr. at 55. One of those creditors told her that she had a zero balance. Tr. at 56. The Individual testified that three of her outstanding debts were medical bills that ended up being paid by her insurance carrier. Tr. at 55. This assertion is corroborated by letter from her health care provider, which she has submitted into evidence. Individual's Exhibit 5. The Individual testified that she has paid off, or settled, the rest of her debts. Tr. at 68. The Individual has also submitted Individual's Exhibits 5, 6, 7, 8, 9 and 10, which document that the Individual has resolved each of the debts that had become collection accounts, and has resolved the debt upon which the tax lien was based.

The Individual testified that her take-home pay is \$495 per week.<sup>5</sup> Tr. at 69. The Individual estimated that her monthly expected expenses as \$1,416.<sup>6</sup> Tr. at 83. The Individual testified that she has now paid all of her outstanding debts. Tr. at 75. This testimony is corroborated by Individual's Exhibits 5, 6, 7, 8, 9 and 10. She testified that she is not behind on any of her payments, and has not been for four or five months. Tr. at 85-86.

Accordingly, I find that the Individual has resolved the security concerns, raised under Criterion L by her outstanding debts.

## **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 sufficiently mitigated all of the Criterion L security concerns. However, she has not sufficiently mitigated all of the Criterion F security concerns. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance

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<sup>5</sup> Multiplying this figure by 4.3 indicates that her take home pay is now \$2129 per month.

<sup>6</sup> Earlier during her testimony, she provided an itemized list of her monthly expenses showing that they totaled \$1,518. Tr. at 69-70.

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: August 31, 2016