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

In the Matter of Personnel Security Hearing)

Filing Date: November 3, 2016)

Case No.: PSH-16-0084

Issued: January 13, 2017

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX XXXXXXXX XXXXXXXX (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 discussed below, after carefully considering the record before me in light of the relevant regulations and 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), I have determined that the individual’s access authorization should be restored.

I. Background

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. A hospitalization in 2012 left him with a significant number of debts that remained unpaid as recently as July 2016. Although he had committed to contacting and paying his creditors during an interview in April 2013, he admitted during another interview conducted in July 2016 that he had not done so, despite having sufficient resources to pay at least some of the debts.

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.

On October 3, 2016, the local security office (LSO) sent a letter (Notification Letter) to the individual advising him that it had reliable information concerning his inability or unwillingness to satisfy debts that created a substantial doubt regarding his eligibility to hold a security clearance. In the 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(l) (hereinafter referred to as Criterion L).²

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of one witness, his wife, and he testified on his own behalf. There were no witnesses for the LSO, but it submitted eight numbered exhibits into the record. The individual submitted one exhibit, which I labeled as Exhibit A. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or letter designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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).

The individual must come forward at the hearing with evidence to convince the DOE that granting or continuing 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). The individual is afforded a full opportunity to present evidence supporting his 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion L concerns information that indicates 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, . . . a pattern of financial irresponsibility . . .” 10 C.F.R. § 710.8(l).

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 Criterion L as the basis for administrative review of the individual's eligibility for security clearance. 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 may raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Adjudicative Guidelines at Guideline F, ¶ 18.

The LSO's security concerns under Criterion L arose when it obtained information that the individual had outstanding debts dating back to 2012. The LSO also learned that, during an Office of Personnel Management interview conducted in April 2013, he had provided assurance that he would contact his creditors to arrange to pay those debts. As of July 2016, when he participated in a DOE Personnel Security Interview (PSI), however, he had neither contacted the creditors nor paid any of the debts. Moreover, the LSO asserts that at the PSI, the individual estimated that he had \$1000 a month available to repay those debts but had failed to do so. Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion L. The individual incurred debts for medical services during a long hospitalization and recovery period in 2012 and, as of the date of the Notification Letter, had not repaid his creditors. His failure to satisfy his old debts after committing to do so and while apparently having funds available to at least reduce the size of his debt demonstrates that he has been financially irresponsible. This behavior clearly raises questions about his self-control, lack of judgment, and possibly his willingness to follow rules and regulations, which in turn could affect his ability to protect classified information.

IV. Findings of Fact

The individual started working at the DOE facility in April 2012. Ex. 8 at 29. Earlier that year, he was hospitalized for 42 days. After he left the hospital, he received a bill for about \$800,000. Although unemployed at the time of his hospitalization, he was covered by health insurance provided by his union. When he was interviewed in April 2013, he believed that he was personally responsible for his 20% copayment, or \$160,000. He later learned that his insurance would pay 100% of all costs above \$15,000, which greatly reduced his liability. Tr. at 9-12. Two months later, however, he was laid off, and remained in that status for all but four of the

next 18 months. His wife was laid off as well, in August 2013, and has not returned to the work force due to disability. *Id.* at 14, 17-18; Ex. A. The individual acknowledges that, at the April 2013 interview, he committed to contacting the medical service providers to whom he owed money and paying those bills. He explained at the hearing, however, that once he and his wife were both laid off, he felt it was pointless to contact his creditors as he then had no way to offer even partial payments to them. In addition, his wife had applied for Social Security Disability (SSD) benefits, retroactive to 2013, and they intended to pay the medical bills when she received a lump-sum payment for the retroactive period. Tr. at 29-30, 33, 36. Although they were repeatedly assured that that payment was soon to arrive, it has never arrived. *Id.* at 13, 18, 20.

Despite the long periods of unemployment, the individual and his wife have kept abreast of their living expenses, falling behind only in their inability to pay the outstanding medical bills that arose during his hospitalization, along with some accumulated credit card debt. *Id.* at 13. Starting in January 2015, the individual returned to work from his layoff and has been employed steadily since that time. Ex. A. At his July 2016 PSI, the interviewer questioned the individual about his income and expenses and calculated that he had roughly \$1000 per month of income available to pay off his medical debts but had not yet taken any steps to do so. Ex. 8 at 34. The individual stated that his wife handled their finances, that he was unsure of his estimates of their expenses, and that he did not believe they in fact had \$1000 per month of disposable income. *Id.* at 30, 32-34. In October 2016, when requesting this hearing, the individual submitted an income-and-expenses statement that he compiled with his wife that indicated that their available surplus was in fact \$287 per month, not \$1000. Ex. 2; Tr. at 15, 20, 24.

About two weeks before the PSI, the individual and his wife learned that her disability claim had been denied. At that time, they decided that, despite reassurances from their lawyer, they could no longer rely on the eventual receipt of a lump sum disability payment to resolve the outstanding medical and credit card debts. They filed an application to refinance their home. Tr. at 18-20; Ex. 8 at 44 (application pending). The application was approved, and the individual used a portion of the proceeds to repay all the outstanding medical and credit card debts. The LSO has stipulated that the copies of the payment checks that the individual provided in Exhibit 2 constitute satisfactory evidence of the payment of those debts. Tr. at 6, 8. An additional benefit of the refinancing is that the individual's monthly mortgage payment was reduced by roughly \$100 per month. *Id.* at 13-14, 21-22. The individual's wife testified that, since the refinancing, their available surplus monthly income has increased from the \$287 calculated in their income-and expenses statement, because their mortgage payment is now lower and because they no longer need to make monthly payments on their credit card balances. *Id.* at 21.

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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's DOE security clearance should be restored.

I 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 an initial observation, I note that the record contains no evidence of the individual living extravagantly at any time, either during periods of unemployment or now, when his work and income are steady. His debts arose from a hospitalization followed by protracted periods of unemployment, during which he and his wife managed to meet their monthly expenses, with some accumulation of credit card debt, but were unable to attend to the medical debts.

I find that the individual's financial difficulties occurred under circumstances that are unlikely to recur and do not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Adjudicative Guidelines at Guideline F, ¶ 20(a). Their underlying causes were the individual's hospitalization and layoffs, both situations that lay beyond his control. *Id.* at ¶ 20(b). The individual testified that they have always made ends meet when at least one of them has had work. Tr. at 36. The record supports that assertion. He and his wife live frugally, have no outstanding debts other than their mortgage, and have locked away their credit cards, to be used only in an emergency. *Id.* at 25-27. When faced with the reality that a favorable ruling on the wife's disability claim is not imminent and may never occur, they employed sound judgment when they resolved their financial issues by refinancing. The individual also testified that the likelihood of future layoffs at his work location is relatively low due to the long-range nature of its funding. *Id.* at 22. These are clear indications that the individual's financial difficulties are being resolved and are under control. *Id.* at ¶ 20(c). Finally, the individual has engaged in good-faith efforts to repay overdue creditors, and has done so. *Id.* at ¶ 20(d). I find that he has taken responsibility for his past debts and taken steps to prevent accumulation of debt in the future.

I also find that the individual has addressed LSO's remaining concerns about his inability or unwillingness to pay debts. In response to its contention that he failed to contact creditors and arrange to pay them as he had stated in his April 2013 interview, he explained at the hearing that both he and wife were laid off soon after that interview, had no money to pay creditors, and believed the debts would be resolved as soon as they received a lump sum disability payment, which they were assured would come soon. Under these circumstances, the individual's inaction, while not demonstrating the best judgment, is understandable. More important, once he realized that the anticipated lump sum distribution was not forthcoming, he and his wife took steps to pay the outstanding debts, by refinancing. Similarly, the individual testified at the hearing concerning his failure to pay creditors despite a steady income flow starting in January 2015 and an available monthly surplus of \$1000 per month. First, he described how they recalculated their available surplus more accurately to be \$287 per month prior to refinancing. Moreover, as stated above, they had been assured that a lump sum payment would arrive "soon"; when it finally became clear it was not likely to materialize in the near future, they took charge of the matter themselves and refinanced their home, which enabled them to resolve all outstanding debts. Again, I find that his initial action is understandable under these circumstances, and is overshadowed by the proactive steps he took to meet his financial obligations. I therefore find that the individual's behavior, and the record's reflection of the individual's whole person, adequately resolve this concern under Criterion L.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the individual has presented sufficient information to fully resolve those concerns. Therefore, I conclude that restoring the individual's DOE 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). Accordingly, I find that the DOE should restore the individual's DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: January 13, 2017