

LSO conducted a personnel security interview (PSI) with the individual in April 2016. *See* Exhibit 10.

The PSI did not resolve the security concerns arising from the individual's financial matters and, on September 27, 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 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 four witnesses, including himself. The LSO introduced 12 numbered exhibits³ into the record; the individual tendered nine lettered exhibits (Exhibits A – I). 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.⁴

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 consistent with the national interest.” 10 C.F.R. § 710.27(d).

² See Section III below.

³ The LSO's Exhibits Index lists 13 exhibits; however, the LSO elected not to submit the Office of Personnel Management security investigation of the individual, which had been listed as Exhibit 13 on the DOE Exhibit Index. Transcript at 6-7.

⁴ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

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 outstanding two judgments, two charge-off accounts and four collection accounts aggregating \$18,683; and (2) had demonstrated financial irresponsibility by (a) failing to follow through on his assurances in a 2011 PSI that he would commence payment on four outstanding accounts and (b) acknowledging in a 2010 PSI that the primary reason that he had filed a bankruptcy petition in 2006 was to avoid financial responsibility on an automobile loan which he had co-signed for a relative. Ex. 1 at 1-2.

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 financial matters 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.

2006 Bankruptcy. The individual co-signed a loan to assist his father in the purchase of a used automobile. Ex. 12 at 76. The vehicle experienced serious mechanical problems (some of which the individual assisted in having repaired) and his father fell behind in the loan payments. *Id.* at 77. Eventually, his father refinanced the vehicle to incorporate missed payments and fees for double the amount of the original loan and at an interest rate of approximately 29% per annum. *Id.* at 77. When the vehicle experienced additional serious mechanical issues and the individual's father was laid-off from his job, his father defaulted on the loan and the individual did not have the financial resources to meet his obligations as a co-signer. Tr. at 32-33. On the advice of legal counsel, the individual filed for Chapter 7 bankruptcy protection and his obligations as co-signer of his father's automobile loan were discharged pursuant to his bankruptcy petition. Ex. 12 at 74, 79-80; Tr. at 32-33.

2009 Judgment. The individual financed the purchase of a used vehicle, which developed significant transmission problems prior to his having completed the loan payments. Tr. at 61. He tendered the vehicle to his lender and, in 2009, the lender was awarded a judgment against the individual for approximately \$6,100 for its unrecovered amounts on the loan. The individual testified that he commenced monthly payments on this judgment in November 2016 and submitted receipts evidencing three subsequent payments of \$100 each. Ex. G at 1; Tr. at 47.

2010 Judgment. The individual vacated an apartment with approximately six months remaining on the lease in 2009. Tr. at 60-61. The landlord received a judgment against the individual in the amount of \$3,125, representing the full amount of the remaining lease term. *Id.* at 45. The individual made a limited number of monthly payments to the landlord towards this judgement; however, as a result of a change in management of the apartment complex, the resident agent declined to accept additional payments and the individual allowed the obligation to lapse. *Id.* at 61. Following suspension of the individual's access authorization, the individual obtained *pro bono* legal representation to locate the original counsel to the landlord. *See* Ex. F. Although the landlord's counsel negotiated payment options with the individual, those payments have not commenced. The individual credibly testified that he has negotiated the option of satisfying the judgment in full for a cash payment of 60% of the original judgment or making monthly cash payments. Tr. at 46. Further, the individual credibly testified as to his intent to use his 2016 Federal tax refund to satisfy this debt; however, he is still waiting to receive his tax refund. While waiting to receive his tax refund, the landlord's counsel deferred acceptance of monthly payments

pending court ratification of the payment plan and the individual has filed a motion in local court to facilitate such monthly payments. Ex. G at 4-6.

Pay Day Loans. The LSO noted two delinquent accounts which the individual stated originated as “pay day” loans. The individual credibly testified that one (listed as a collection account) had been fully satisfied significantly prior to the hearing; it appears on the individual’s most recent credit report as “paid and closed.” Ex. B at 4; Tr. at 43. The individual testified that the other “pay day” loan (listed by the LSO as a charge-off account) had been settled for a discounted amount shortly prior to the hearing. *Id.* at 40-41, 65. The individual’s documentation with respect to this account corroborates the individual’s testimony with respect to the amount of his payment, but does not evidence that the creditor accepted the payment as full satisfaction of the debt. Ex. G at 2.

The individual credibly testified that he no longer uses “pay day” loans and these two were incurred many years ago (six or seven years ago) before he was employed within the DOE complex or within the very early period of such employment. Tr. at 43-44.

2010 Automobile Charge-Off. The individual financed the purchase of a used vehicle, which developed significant engine problems prior to his having completed the loan payments. He tendered the vehicle to his lender in 2010 and he owes the lender approximately \$7,500 for its unrecovered amounts on the loan. *Id.* at 38-39, 59. This account no longer appears on the individual’s credit report, but he acknowledges his liability for the account. *Id.* at 40, 63. Prior to the hearing, the individual negotiated to settle the account at a discounted amount. Ex. A; Tr. at 38-39. Further, the individual credibly testified as to his intent to use his 2016 Federal tax refund to satisfy this debt. *Id.* at 64. His professionally prepared tax return shows an expected refund in excess of the amount needed to pay the discounted settlement on this account (as well as the discounted amount negotiated to satisfy the 2010 judgment related to his early termination of an apartment lease); however, the individual is still waiting to receive his tax refund and the settlement offer on the automobile charge-off has expired and will need to be renegotiated. Ex. A; Ex. H.

Medical Collection Accounts. The LSO noted two medical collection accounts, both of which the individual acknowledges. He believes that one represents emergency room charges for one of his children and, despite numerous efforts to contact the creditor, the creditor has not responded to him. Tr. at 42. The second account resulted from a charge when the individual missed an appointment for a medical test. *Id.* at 41. Prior to the hearing, he had negotiated a payment schedule to satisfy this account within six months. *Id.* His post-hearing submission reflects that he has accelerated his payments on this account and the account is nearly 50% paid. Ex. G at 1.

Utility Account. The LSO alleged that the individual had a collection account with a cable provider in the amount of \$340. Ex. 1 at 1. The individual credibly testified this account was paid several years ago and he continued to utilize this cable provider until he recently opted to change providers. Tr. at 42, 62-63. No such delinquent account appears on the individual’s recent credit reports. *See* Ex. 8; Ex. B.

Credit Counseling; Budget. The individual and his wife completed a money management and credit workshop in November 2016 and, since then, have met at least monthly with a credit counselor. Ex. D. At the hearing, the individual's testimony reflected an understanding of his finances and an appropriate strategy to resolve his outstanding financial problems. Tr. at 52. With the assistance of his credit counselor, the individual has prepared a budget that reflects all of the payment arrangements that he has made with his creditors (discussed above). Ex. E. He has been living on that budget for several months. The budget shows that he and his family will have a monthly surplus, even with the payment plans to his creditors. The budget also contemplates his income only. His wife had lost her job shortly after the individual's 2011 PSI and, as a result of their having two children within a one-year period of time, she was unable to return to work due to the expense of childcare for two young children. Tr. at 36-37. His wife is now able to resume employment and plans to do so. Her future income is not reflected in their current budget. *Id.* at 52-53.

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)⁵ 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.

A. Mitigating Evidence

In mitigation of the Criterion L security concerns relating to his finances, the individual's primary arguments are that: he is incurring no new debt; he either has entered into or is in the process of entering into payment arrangements with respect to all of his delinquent accounts; and his present income is sufficient to allow him to meet his present financial obligations and fulfill the payment arrangements that he has entered into with his creditors. To the extent that he has not previously satisfied his delinquent financial obligations as he had committed to do during his 2011 PSI, it is due to the unexpected loss of his wife's employment (and income) and the subsequent birth of two children within a one-year period, which necessitated his wife staying at home to care for their two youngest children.

⁵ 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.

Tr. at 36-37. Additionally, the individual asserts that he and his wife have completed a money management and credit workshop and, subsequently, have been meeting at least monthly with a credit counselor and, therefore, will be better positioned to manage their finances in the future. Ex. D.

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 his liability for the delinquent debts described in the Notification Letter, although he presented credible evidence that two of those accounts were resolved prior to the issuance of the Notification Letter. Ex. 8; Ex. B; Tr. at 42-43, 62-63. These debts were primarily incurred prior to, or near the beginning of, the individual's employment within the DOE complex in 2010; his only more recent debts are two medical collection accounts which relate to services received approximately five years ago. The individual's credit reports support his testimony at the hearing that he has not used credit cards or "pay day" loans since 2010 (or earlier). *Id.* at 43-44.

The Notification Letter cites eight delinquent financial accounts: two had been fully satisfied prior to the issuance of the Notification Letter; one may have been fully satisfied prior to the hearing (although the documentation is inconclusive);⁶ two were subject to negotiated monthly payment plans that had commenced; two were subject to negotiated payment arrangements without any payments having yet been made; and, on the final account, the individual's efforts to contact the creditor had been unsuccessful. The individual's diligence in negotiating and commencing payment plans on two accounts (including an unpaid judgment) is commendable. The budget presented by the individual at the hearing appears realistic for his family of seven and reflects his ability to fulfill these monthly payment plans. *See* Ex. E.

Notwithstanding the individual's efforts to resolve these financial matters, he continues to have three unresolved financial matters. The first is a charge-off account on which the creditor has agreed to a discounted payment. The individual testified as to his intent to pay this amount with his 2016 Federal tax refund and he submitted into the record his professionally prepared tax return to evidence his ability to make such payment. *See* Ex. I. However, the creditor's offer expired prior to the individual receiving his tax refund and, therefore, new negotiations will need to occur. *See* Ex. A. There is no certainty that the creditor will extend sufficiently favorable terms to the individual that will allow him to immediately satisfy this account.

⁶ The individual testified that the lender of a "pay day" loan had accepted a partial payment as full satisfaction of the outstanding debt. Tr. at 40-41, 65. The receipt submitted subsequent to the hearing corroborates the individual's testimony with respect to the amount paid, but does not reflect the lender's acceptance of that amount as fully satisfying the debt. Ex. G at 2. To the extent that the individual is in error that this debt has been satisfied, the amount outstanding would be relatively modest (approximately \$300) and payment of such amount is contemplated in the individual's budget.

The second unresolved matter is a judgment to a prior landlord for the remainder of a lease term after the individual had vacated a rental unit. The individual's initial efforts to pay this judgment failed when a new management agent at the rental complex was not familiar with the case and declined to accept payment. Tr. at 61. Subsequent to the individual's access authorization being suspended, he sought *pro bono* legal services to resolve this matter. Ex. F. He testified that the lawyer who had previously represented the landlord had agreed to accept a 60% immediate payment in full satisfaction of the judgment or a monthly payment plan. Tr. at 46. The individual's 2016 Federal tax refund would be sufficient to make the 60% payment (as well as the discounted amount on the charge-off account discussed above); however, the individual has not yet received his tax refund. *See* Ex. I. His budget also reflects the monthly payments agreed upon by the landlord's counsel; however, when the individual attempted to commence such monthly payments, the landlord's original lawyer indicated that the payment plan should be approved by the court. Ex. E; Ex. G at 4-6. To the individual's credit, he filed a motion in local court seeking such approval and, as of the closing of the record in this case, had received a hearing date. Although the individual has made laudable efforts to resolve this account, it remains unresolved. Until the final terms are approved by the local court, it is unclear if the individual will succeed in resolving this judgment.

The final unresolved account is a medical collection account for emergency room services for one of his children. The creditor has not responded to the individual's request for information. Tr. at 42. Although the account is for an amount (\$380) that the individual should be able to easily resolve on his current budget, it remains outstanding and unresolved.

While these three accounts remain unresolved, the individual continues to be vulnerable to pressure, coercion, exploitation, or duress. *See* 10 C.F.R. § 710.8(l).

In addition to alleging security concerns arising from the individual's outstanding delinquent debt, the Notification Letter also raised security concerns arising from the individual's alleged financial irresponsibility. The LSO cited two bases for this allegation. Ex. 1 at 2. First, the LSO stated that the individual acknowledged during his 2016 PSI that he failed to commence paying on four delinquent financial accounts, notwithstanding his commitment to do so during his 2011 PSI. One of those accounts cited was a delinquent utility account which the individual succeeded in resolving prior to the 2016 PSI. Tr. at 42, 62-63. With respect to the remaining accounts, the individual states that he was unable to fulfill his commitment as a result of his wife losing her job, subsequent to the 2011 PSI, and their having two children within a one-year period, which precluded his wife from returning to work due to the expense of child care. *Id.* at 36-37. These subsequent events were events outside of the control of the individual and, notwithstanding his inability to repay pre-existing debt, he managed the financial affairs of his seven member family in such a manner that no significant financial delinquencies exist with respect to the last five years. *Cf.* Adjudicative Guidelines at Guideline F ¶ 20(b) (mitigation possible where circumstances were largely beyond the individual's control (e.g., loss of employment) and the individual acted responsibly under the circumstances).

Secondly, the LSO stated that the individual acknowledged in his 2010 PSI that he had filed for bankruptcy protection in 2006 to “avoid repayment on a vehicle that he had co-signed on behalf of [his father.]” Ex. 1 at 2. During the 2010 PSI, the individual explained that the bankruptcy petition was filed on the advice of legal counsel after his father’s used automobile loan was restructured at approximately double the original principal amount and at an interest rate of approximately 29% per annum. Ex. 12 at 74-80. Prior to filing for bankruptcy protection, the individual assisted his father in obtaining major repairs on the vehicle. *Id.* at 77. Bankruptcy laws exist in order to allow individuals to legally discharge debts that they cannot satisfy; under the circumstances described, I find that the bankruptcy petition that the individual filed over 10 years ago does not reflect financial irresponsibility. *Cf.* Adjudicative Guidelines at Guideline F ¶ 20(a).

Additionally, with respect to the individual’s currently delinquent accounts, I note that the two medical collection accounts are for services received approximately five years ago (or longer) and that all of the other cited accounts relate to even earlier periods of time. The individual’s intent to repay this older debt has been frustrated, as discussed above, by his wife’s loss of income and the birth of their two youngest children. Tr. at 36-37. Notwithstanding these factors, the individual has provided for a family of seven without recourse to credit cards or other temporary credit over the prior five years. He and his wife have attended a money management and credit workshop and are working with a credit counselor. Ex. D. Of the eight accounts cited in the Notification Letter, five have either been paid or are in the process of being paid and the individual has articulated a reasonable plan with respect to satisfying the remaining three accounts. For these reasons, I conclude that the individual is not currently financially irresponsible and has not been for at least five years and, therefore, the individual has resolved the security concerns with respect to financial irresponsibility.

However, as discussed above, the individual continues to be vulnerable to pressure, coercion, exploitation, or duress as a result of his three unresolved delinquent financial accounts and, therefore, I find that the individual has not resolved the security concerns associated with Criterion L arising from those accounts.

V. Conclusion

In the above analysis, I have found that the individual has sufficiently mitigated certain of the matters alleged with respect to Criterion L. Notwithstanding such mitigation, other derogatory information in the possession of the DOE raises different serious security concerns under Criterion L and, 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 these security concerns. 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: March 16, 2017