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July 20, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Filing Date: March 8, 2011

Case Number: TSO-1018

This Decision considers the eligibility of xxxxxxxx (the individual) to hold an access authorization¹ under the regulations at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As I explain below, the Department of Energy (DOE) should not restore the individual's access authorization.

I. Background

In 1972, the individual immigrated to the U.S. and became a citizen between 1979 and 1981. Tr. at 238-39, 300; Ex. 34 at 18-20. In 1979, he married, and he and his wife have two children. Tr. at 247; Ex. 23 at 5. The older child, born in 1981, has the same name as the individual. Ex. 23 at 5. In 1987, he moved to his current geographic area. Tr. at 248.

In 1975, the individual received an access authorization from another agency. *Id.* at 240. In 1991, he began working for the DOE, and a DOE access authorization was requested for him. *Id.* at 22. The DOE granted the individual an access authorization in 1995 after spending four years resolving derogatory information in his background. *Id.* at 22, 109-11. In January 2009, a routine background investigation showed that the individual was past-due on his mortgage and that he was involved in his second foreclosure in eight years. Ex. 8. In a follow-up personnel security interview (PSI) in April 2009, he was questioned about his finances, his foreign contacts, and his honesty. *See* Ex. 23.

In February 2010, the local security office (LSO) issued the individual a Notification Letter advising him that it possessed reliable information that created a substantial doubt about his eligibility to hold an access authorization. Ex. 1. In a 13-page attachment, the LSO explained

¹ 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.

that the derogatory information falls within the potentially disqualifying criteria in the security regulations at 10 C.F.R. § 710.8 (l) (Criterion L)² and (f) (Criterion F).³

After the individual received the Notification Letter, he invoked his right to an administrative review hearing under the Part 710 regulations. On March 9, 2011, the Director of the Office of Hearings and Appeals (OHA) appointed me Hearing Officer, and I conducted the hearing. The individual testified on his own behalf, and the LSO's security analyst testified for the DOE. Each side offered several exhibits.

II. The Notification Letter and the Security Concerns

The LSO supported its Criterion L security concern with the following allegations of financial irresponsibility:

- In January 1987, the individual filed a Chapter 7 bankruptcy, which was discharged in August 1987;
- In October 1989, the individual filed a Chapter 13 bankruptcy, which was dismissed in August 1990, after the individual paid a trustee through wage garnishment;
- By October 1991, the individual had four accounts in collection and two credit accounts charged-off as bad debts;
- By April 1994, the individual still had unpaid accounts in collection and an additional account that had been charged-off. He had also purchased two cars and was late on the payments;
- In December 1994, the individual filed a Chapter 7 bankruptcy, which was discharged in May 1995. (In a 1995 PSI, he stated that he had to file for bankruptcy again because he still had collection accounts that had been included in his previous bankruptcies.);
- In April 1995, a travel service filed suit against him for \$3,914;
- In December 1996, a firm filed suit against him for \$1,750;
- In April 1997, a foreclosure suit was filed against his property, on which he had secured a \$197,000 mortgage in May 1994;

² Criterion L includes “unusual conduct” and “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.” *Id.* at § 710.8(l).

³ Criterion F relates to information that a person has “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire. . . .” *Id.* at § 710.8(f).

- In August 1997, the individual filed a Chapter 13 bankruptcy. By April 1998, the bankruptcy showed that his \$197,000 mortgage was past-due, two accounts were charged off, and one car was repossessed;
- In 2000, he financed a mortgage for \$384,500;
- By February 2001, the individual had four past-due accounts, three in collection, and two that had been charged-off;
- In August 2001, the individual filed a Chapter 7 bankruptcy, which was converted to a Chapter 13 bankruptcy, with total liabilities of more than \$652,000. He failed to respond to a court order requiring him to submit a bankruptcy plan, and his bankruptcy was dismissed. In September 2003, he re-filed his Chapter 13 bankruptcy, and the bankruptcy plan required him to pay \$420 per month for 60 months. In February 2004, the bankruptcy was dismissed after the trustee objected to the bankruptcy plan because the individual over-withheld more than \$2,570 of income every month;
- In February 2005, the individual refinanced his \$384,000 mortgage for \$500,000;
- In July 2005, a credit report showed 36 inquiries. Since the 2003 bankruptcy filing, he opened four new credit cards, purchased a new car with a \$23,000 down payment and a \$16,000 loan, and purchased a \$13,000 car for his daughter;
- By August 2005, the individual owed more than \$53,000 in state taxes for 1997, 2000, 2001, and 2002. He also owed more than \$4,600 in federal taxes for 1997. (When asked why he did not pay his tax bills with the \$2,700 in disposable income that he had every month, he stated that he disagreed with the tax audit.) For 2002, 2003, and 2004, the individual's federal tax returns showed a pattern of high itemized deductions and large refunds. For example, in 2002, he claimed a business loss of more than \$112,000, itemized deductions of more than \$106,000 (including more than \$67,000 in medical expenses), and a refund of nearly \$26,000. The individual claimed that his insurance required him to pay 20% of his medical expenses. By this explanation, from 2002-2004, his medical expenses would have totaled more than \$779,000;
- In March 2006, the individual refinanced his \$500,000 mortgage for \$623,000. In December 2006, he refinanced it for \$684,000;
- In March 2007, the individual financed a \$33,000 car;
- Between the 2004 dismissal of his Chapter 13 bankruptcy and February 2008, the individual had opened at least 11 new accounts;
- In January 2009, a credit report showed 40 inquiries;
- In February 2009, his \$684,000 mortgage was in foreclosure. Soon thereafter, he modified the loan agreement to increase the balance to \$722,000;

- At a PSI in April 2009, the individual could not state what he had done with the \$452,000 from refinancing and disposable income from the period 2001 to 2005. Yet, during this period, he had filed two bankruptcies; and
- After the April 2009 PSI, the individual provided copies of his tax returns for 2006, 2007, and 2008. The tax returns showed a pattern of high itemized deductions and large refunds. For example, his 2006 federal return included itemized deductions of more than \$147,000 (including almost \$80,000 in medical expenses) and a refund of nearly \$10,000. By his claim that he had to pay 20% of his medical expenses, from 2006-2008, his medical expenses would have totaled more than \$1,100,000.

Ex. 1.

I find that the above information constitutes derogatory information that raises questions under Criterion L. 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 obey rules and regulations. These can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Guideline F, STEPHEN J. HADLEY, THE WHITE HOUSE, ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION (2005) 9.

The LSO supported its Criterion L security concern with the following allegations of personal conduct:

- Between 1986 and 1988, the individual let a foreign national, whom he did not know, use his name and social security number. At a 1992 PSI, he stated that his father had asked him to help the foreign national;
- In May 1991, the individual was arrested for having written seven bad checks. The individual pled guilty to one charge (and the prosecutor declined to pursue the rest);
- In 2001 or 2002, the individual had contact with a foreign national, whom he did not know, and who shared his last name. The individual met the foreign national at work, without authorization, and allowed him to receive mail at his address;
- During 2001, the individual showed poor judgment by starting a computer business around the time that he had filed for bankruptcy; and
- After 2005, the individual showed poor judgment by allowing the car dealership to pressure him into buying an expensive vehicle when he was already suffering financial hardship.

Ex. 1.

I find that the above information constitutes derogatory information that raises questions under Criterion L. Conduct involving questionable judgment can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Guideline E, ADJUDICATIVE GUIDELINES at 7.

The LSO supported its Criterion F security concern with the following allegations of falsification:

- On a 1991 Questionnaire for National Security Positions (QNSP), the individual failed to accurately report his residences. He confirmed to an Office of Personnel Management (OPM) investigator that they were correct. But his fingerprint card and court records showed an address that he had omitted. During the 1992 PSI, he claimed to live at the omitted address with a friend. Further inquiry, however, showed that he did not live at the omitted address, either;
- On his 1991 QNSP, the individual denied having been arrested for, charged with, or convicted of any offense not otherwise listed. During the 1992 PSI, he admitted to having been arrested for writing one bad check. He claimed that he paid the debt and that the charge was dropped. Then he admitted that he had been charged with seven counts of writing bad checks. Further, he pled guilty to the seventh charge and was fined;
- On his 1991 QNSP, the individual denied that in the last five years, he had filed for bankruptcy, been declared bankrupt, or had a debt-related judgment against him. In the previous five years, the individual had filed for bankruptcy twice. Further, a surveyor and a transportation company had judgments against him;
- On his 1991 QNSP, the individual denied that in the last five years, he had been 180 days delinquent on any financial obligation. During his follow-up OPM interview (also in 1991), he claimed that he had no problem meeting his financial obligations and that he had no accounts in collection. In fact, he had at least four accounts in collection;
- The individual provided conflicting reasons for filing bankruptcy in 1987. At his 1991 OPM interview, he stated that in 1985, he had taken a new job with a lower salary. He also stated that in 1986, he incurred \$45,000 in medical bills because his insurance paid only 55% of the costs of an operation. His 1987 bankruptcy documentation, however, listed little more than \$1,000 in medical costs but more than \$37,000 for credit cards, repossessed vehicles, and other goods. At his 1992 PSI, he claimed that his insurance paid 65-75% of the costs and that he paid \$29,000 out of pocket. He also claimed that a person with the same first, middle, and last name used his identity to run-up his debt;
- At the 1992 PSI, the individual provided misleading reasons for filing his bankruptcy in 1989. He stated that he filed for bankruptcy in 1989 because some of the creditors included in the 1987 bankruptcy had continued to seek payment from him. The list of creditors in the 1989 bankruptcy documentation included none of the creditors listed in 1987. Moreover, the 1989 bankruptcy documentation included three listings that the individual had not reported to the DOE;

- At the 1992 PSI, the individual denied that he had judgments against him. When he was confronted with three judgments, he continued to deny that he had judgments against him. Further, the individual described his financial condition as “sound” and “fantastic”;
- At the 1994 OPM interview, the individual stated that he was not arrested in 1991 for writing bad checks. In fact, in 1991 the individual had been arrested for writing bad checks;
- At the individual’s 1994 OPM interview, he discussed his 1987 and 1989 bankruptcies and stated that he was not delinquent on any other financial responsibilities. He filed another bankruptcy less than five months later, in December 1994;
- At the 1995 PSI, the individual stated that he filed the 1994 bankruptcy because a credit report showed collections that had been included in previous bankruptcies. The 1994 bankruptcy documentation, however, revealed that 15 of the 19 debts were incurred after the 1989 bankruptcy;
- On his 1999 QNSP, the individual stated that when he signed the form, he was not 90 or more days delinquent on any debt. A 1999 credit report indicated that when the individual signed the QNSP, his mortgage was more than 90 days past due in an amount of more than \$15,000;
- On his 1999 QNSP (signed in March), the individual stated that in the past seven years, he had not been a party to any civil action. He was the defendant in one lawsuit in October 1992 and the defendant in three lawsuits between 1995 and 1997;
- At his 1999 OPM interview, the individual stated that he filed for bankruptcy in 1998 (and foreclosure in 1999) because he could not afford \$70,000 in home repairs. Within a year of his foreclosure, he purchased another property for \$384,500;
- At his 1999 OPM interview, the individual stated that besides his 1998 bankruptcy, he had filed no other bankruptcies in the last 10 years. From 1989 to 1999, he filed for bankruptcy at least four other times;
- At his 1999 OPM interview, the individual stated that in the mid-1990’s, he wrote one bad check. In fact, he had written at least six other bad checks;
- On his 2004 QNSP, the individual indicated that in the last seven years, he had filed only one bankruptcy. Within the last seven years, he had filed three bankruptcies and had been named in another;
- On his 2004 QNSP, the individual denied that in the last seven years, he had his wages garnished, a tax lien, unpaid judgments against him, or been a party in a public record civil action. His wages were garnished in August 2003, he had tax liens in June 2003 and

February 2004, he had unpaid judgments against him, and in 1997 he had been a defendant in a civil suit;

- At his 2004 OPM interview, the individual stated that in 2001 or 2002, another individual used his name and social security number, which resulted in credit card and telephone bills;
- At his 2004 OPM interview, the individual falsely stated that his 2003 bankruptcy included only his 1997 tax debt, that no trustee had been appointed, and that he did not have an attorney;
- At his 2004 OPM interview, the individual falsely stated that (i) since his 2003 bankruptcy, he paid off all of his creditors and has had no delinquent accounts; (ii) he has only one tax lien and no other unpaid taxes; (iii) no obligations more than 90 days past-due; and (iv) in the past 10 years, he had not been a party to any civil lawsuit or 180 days past-due on any debt;
- At the 2005 PSI, the individual denied that he had ever included state taxes in a bankruptcy. He also said that the state no longer had liens against him. When pressed, he acknowledged that the state had liens of over \$50,000 and that he had an attorney looking into the issue;
- At the 2005 PSI, the individual falsely denied that in the last 10 to 12 years, debt collectors had attempted to contact him. He also falsely denied that since the 2003 bankruptcy was dismissed in 2004, he had incurred any debt;
- At the 2005 PSI, the individual stated that during his bankruptcies, his wife had not been working. His 2001 bankruptcy documentation shows that his wife had been working;
- At the 2005 PSI, the individual stated that he had not included his wife's income in the 2003 Chapter 13 bankruptcy because he was not required to do so. The bankruptcy documentation states that he was;
- During the 2009 PSI, the individual denied having had any contact with a foreign national. Then he stated that prior to 1992, he had contact with one foreign national, but stated that he did not allow the person to use his social security number and that he was not the victim of identity theft. When confronted, he stated that he had helped two foreign nationals, gave them both money, and had allowed at least one of them to use his identity;
- During the 2009 PSI, the individual denied having applied for any loans, including credit cards and car loans, and stated that he was current on his mortgage. Then he stated that he was working with a lender on a modification; in fact, he began doing so after the PSI;
- During the 2009 PSI, the individual stated that he had disclosed working part-time at a university. He had not disclosed this employment on his 2004 QNSP;

- During the 2009 PSI, the individual provided reasons for his business debt that conflicted with the reasons that he provided at the 2005 PSI; and
- During the 2009 PSI, the individual denied his overall pattern of buying homes and cars and running up balances on credit cards and then filing bankruptcy and going into foreclosure. He also denied any fraudulent or incorrect tax returns.

Ex. 1.

I find that the above information constitutes derogatory information that raises questions under Criterion F. Conduct involving dishonesty can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Guideline E, ADJUDICATIVE GUIDELINES at 7.

III. Regulatory Standard

An administrative review 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 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 standard implies a presumption against granting or restoring an access authorization. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

A. The Individual's Burden

The individual must present evidence to convince the DOE that granting an 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 Part 710 regulations permit the individual wide latitude to present evidence to mitigate the security concerns. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h).

B. The Basis for the Hearing Officer's Decision

The Hearing Officer must issue a Decision that reflects his or her comprehensive, common-sense judgment, after considering all relevant evidence, favorable and unfavorable, whether the granting or continuing of an individual's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. *Id.* at § 710.7(a). The Hearing Officer must resolve doubt in favor of the national security. *Id.*

To reach a common-sense judgment, the Hearing Officer must consider the factors listed in 10 C.F.R. § 710.7(c)⁴ (the “whole person concept”) and the Adjudicative Guidelines. The Adjudicative Guidelines contain “conditions” or circumstances that may mitigate the allegations supporting each type of security concern.

IV. Findings of Fact and Analysis

A. Criterion F

To resolve the Criterion F security concern, the individual denied that he has made false statements. Tr. at 11, 15-17, 291.

1. The Liens

The Summary of Security Concerns includes the allegation that at the 2005 PSI, the individual falsely denied that the state had tax liens against him. (The state had three liens against him totaling more than \$50,000, which were satisfied in March 2006. Ex. 16.) At the hearing, the individual claimed that the security analyst did not know when he actually paid the liens, thereby excusing his failure to reveal this information to the DOE. Tr. at 167-70.

I find that the individual’s contention lacks merit. The individual testified that he became aware of the liens in 2004 and that he paid the liens in 2006, when he refinanced a home, and the lender paid the state directly. *Id.* at 277-78. Therefore, at the 2005 PSI, the individual knew of the liens and knew that he had not yet satisfied them. I conclude that the individual intentionally provided false statements regarding his tax liens.

2. The Individual’s Failure to List Bankruptcies on His 2004 QNSP

The Summary of Security Concerns includes the allegation that on the individual’s 2004 QNSP, he stated that in the last seven years, he had had only one bankruptcy, while in fact, he had filed three bankruptcies (1997, 2001, and 2003). At the hearing, the individual testified that he thought that he had to disclose only his most recent bankruptcy (2003) because he had previously disclosed the others (1997 and 2001). *Id.* at 286-88, 304-06.

The individual pointed to no place in the record where he had previously disclosed his 1997 and 2001 bankruptcies.⁵ Moreover, I cannot find that the individual thought that he had disclosed his

⁴ These factors include witness demeanor and credibility; the authenticity and accuracy of the documentary evidence; the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledge and participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavior changes; the motivation of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. 10 C.F.R. § 710.7(c).

⁵ Nor could he likely do so. Within the seven-year period at issue (1997-2004), the record includes no PSIs and only one QNSP (1999). Even if he did list his 1997 bankruptcy on his 1999 QNSP, he could not have also listed his 2001 bankruptcy.

bankruptcies previously because his credibility suffers from the number of conflicting statements detailed in the next sections. Therefore, I find that he intentionally falsified his 2004 QNSP.

3. The Remaining Allegations Under Criterion F

The individual attributes the remaining conflicting statements to misunderstandings. *Id.* at 143, 285, 291. He argued that English is not his first language, so he had trouble understanding the security interviewers, and they had trouble understanding him. *Id.* at 290-91. He also attributes his conflicting statements to the allegedly intimidating demeanor of the security analyst, which caused him to become confused. *Id.* at 270-71, 291, 378-79. For example, he said, she repeatedly asked whether he had filed a foreclosure on his house. *Id.* at 270-71, 291 (referencing the exchange at Ex. 15 at 71-72). He testified that he had not because a lender files a foreclosure (not an owner). But “she was all pushing, asking me. I was saying, no no. And she got mad.” *Id.* at 291.

The individual has not convinced me that he did not deliberately lie to the DOE. First, the individual does speak English with a thick accent and an unconventional syntax, which require close listening. But many of the alleged falsifications stem from written sources, such as the QNSPs, and the individual has not argued that he also suffers from limited reading and writing skills.

Second, the transcripts of the 2005 and 2009 PSIs suggest no pattern of brusque exchanges between the individual and the security analyst that may have repeatedly chilled his responses. And the individual’s alleged falsifications stretch back to the 1992 and 1995 PSIs, where the individual was interviewed by a different security analyst. Further, at the end of each PSI, the individual agreed that he had the opportunity to say what he wanted to say or that he had been fairly treated. *See, e.g.*, Ex. 34 at 152 (1992 PSI); Ex. 29 at 75 (1995 PSI); Ex. 18 at 112 (2005 PSI); Ex. 15 at 162-63 (2009 PSI).

Third, the example that the individual provided shows that the individual understood the question and that he provided misleading information. He stated, “There are no foreclosure on the house. No.” Ex. 15 at 71. If his statement had stemmed from confusion caused by who had actually filed the foreclosure, he could have acknowledged that when he was confronted with the foreclosure documents. Instead, he continued to deny that foreclosure proceedings had begun, and clearly they had. *Id.* at 71-72; Ex. 13 at 24 (showing that the individual had been provided notice of the foreclosure proceedings in December 2008).

Fourth, if the individual had made only one or two conflicting statements, they might possibly have stemmed from misunderstandings. Instead, the individual has repeatedly deflected responsibility, obfuscated, and shifted explanations. And he has done so with regard to many different subjects, over a lengthy period of time, and with brazen detail. To take several examples not elsewhere discussed in the analysis, at the 1992 PSI the individual appears to have concocted a story about a fictitious residence. Ex. 34 at 32-33. Before confronted with the truth that the address was merely a mail box, he had fabricated the gratuitous details of who else had lived there, a description of the house, and how the lot had been re-developed. *Id.* at 32-33, 55-58. At the PSI in 2005, the individual stated that he did not lose money on his business. Ex. 18

at 50-51. At the PSI in 2009, he claimed to have lost more than \$100,000. Ex. 15 at 132-33. Also at the PSI in 2009, the individual claimed that he was current on all of his credit cards. *Id.* at 77. Then he admitted that he was behind on more than one. *Id.* at 78. At the hearing, the individual testified that a certain lawsuit was not related to travel. Tr. at 342-43. When pressed with the circumstantial details of what was going on in his life at the time, he admitted that he had in fact been sued over collection of a travel-related debt. *Id.* at 344.

The weight of the evidence shows that the individual deliberately provided false information about all of the matters that are the subject of the Criterion F allegations. Further, the pattern of the individual's falsifications – from the early 1990's to the present – shows that he has not improved his character for truthfulness. He has presented no evidence of honesty, time in honesty, and changed character.

B. Criterion L – Financial Irresponsibility

To determine whether the individual has mitigated the LSO's allegations of financial irresponsibility, I will consider the relevant factors from 10 C.F.R. § 710.7(c) and the relevant mitigating conditions from Guideline F of the Adjudicative Guidelines – Financial Considerations.⁶

1. The Bankruptcies

The individual testified that he has filed four bankruptcies (1987, 1992, 1999, 2005). Tr. at 275. The DOE argues that he has filed six (1987, 1989, 1994, 1997, 2001, and 2003). Ex. 32. The record supports the DOE's position. The individual filed his first bankruptcy in 1987 (Chapter 7; \$46,000 in liabilities)⁷, which was discharged in August 1987. Tr. at 35, 246. He filed his

⁶ Guideline F contains the following relevant mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; [or]
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]

ADJUDICATIVE GUIDELINES at 10.

⁷ Chapter 7 is “[t]he chapter of the Bankruptcy Code allowing a trustee to collect and liquidate a debtor's property, either voluntarily or by court order, to satisfy creditors. . . . An individual debtor who undergoes this type of liquidation . . . usually gets a fresh financial start by receiving a discharge of all debts.” BRYAN A. GARNER, ED., BLACK'S LAW DICTIONARY 94 (2001).

second bankruptcy in 1989⁸ (Chapter 13)⁹, which was dismissed because the individual's wages were garnished. *Id.* at 36-37, 250. The individual filed his third bankruptcy in 1994 (Chapter 7; \$309,000 in liabilities), which was discharged in May 1995. *Id.* at 37. The individual filed his fourth bankruptcy in August 1997 (Chapter 13), which was amended in July 1999 and dismissed in August 1999. *Id.* at 37-38. The individual filed his fifth bankruptcy in August 2001 (Chapter 7; \$652,000 in liabilities), which was dismissed in June 2002. *Id.* at 38. (The 2001 bankruptcy included the first house, which was sold. *Id.* at 59.) The individual filed his sixth bankruptcy in September 2003 (Chapter 13; \$422,000 in liabilities), which was dismissed in February 2004. *Id.* at 38.

A security concern arises not from the bankruptcy filing per se, but rather from the circumstances surrounding the bankruptcy. *Personnel Security Hearing, Case No. VSO-0509 (2002)*.¹⁰ Therefore, I must consider whether legitimate financial hardship necessitated the bankruptcy or whether the bankruptcy resulted from irresponsible behavior. *Id.*

The individual testified that his first bankruptcy was due to the pay cut that he took as he transitioned from the private to the public sector. *Tr.* at 246-47. He testified that his 1994 bankruptcy was due to heavy expenses and litigation caused by construction defects and medical expenses. *Id.* at 255-61. (He testified that an attorney advised him to file both bankruptcies. *Id.* at 248, 260.) The individual has not provided sufficient information for me to understand the circumstances leading to at least four of his bankruptcies. Therefore, I cannot find that he has mitigated the security concerns associated with his multiple bankruptcy filings.

2. The Houses, the Foreclosures, and the Refinancing

The individual argues that since he has moved to his current geographic area in 1987, he has only bought two houses. *Id.* at 16. The DOE alleges that he bought four and signed contracts for at least two more. *Id.* at 191-93; *see* Ex. 32. The evidence supports the DOE's position. In 1987, the individual bought a house with a mortgage that the seller financed (occupied 1987-1990). *Tr.* at 200, 249; Ex. 32. In 1990, the individual signed a purchase agreement for a second house (occupied 1990-1991). *Tr.* at 191-92, 198; Ex. 32. (He also signed contracts to purchase one or more houses in a particular subdivision but never occupied these houses. *Tr.* at 198-202; Ex. 32.) In June 1992, the individual purchased a third house for \$180,000 (occupied 1992-2000). *Tr.* at 58-59, 191-92, 255-56; Ex. 32. In May 1994, he refinanced it for \$197,000. *Tr.* at 59. In 1997, foreclosure proceedings began on his third house. *Id.* at 275-76, 346-47; Ex. 1; Ex. 32. In

⁸ The individual testified that he did not file a bankruptcy in 1989. *Tr.* at 274. Then he testified that he could not recall. *Id.* at 275, 301, 357-59. Then he testified that he did file in 1989 because his mortgagor caused him problems. *Id.* at 301. I find that he did file a Bankruptcy Petition in 1989. *See* Ex. 32 (showing a bankruptcy filing case number). At the PSI in 2005, the individual did not object to the listing of his 1989 bankruptcy. Ex. 18 at 14.

⁹ Chapter 13 is "[t]he chapter of the Bankruptcy Code allowing a person's future earnings to be collected by a trustee and paid to unsecured creditors. . . . A plan filed under Chapter 13 is sometimes called a *wage-earner's plan* . . . or an *income-based plan*. A Chapter 13 debtor does not receive a discharge of debts; rather, Chapter 13 allows the debtor to propose a plan of rehabilitation to extend or reduce the balance of any obligations." BRYAN A. GARNER, ED., BLACK'S LAW DICTIONARY 94 (2001) (emphasis in original).

¹⁰ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

April 2000, the individual bought a fourth house for \$384,000 (occupied until present). Tr. at 54, 263; Ex. 15 at 80-81; Ex. 32. In February 2005, he refinanced the fourth house for \$500,000. Ex. 15 at 82. In March 2006, he refinanced the fourth house for \$623,000. Ex. 15 at 62, 82. In December 2006, the individual refinanced the fourth house for \$684,000. Tr. at 55-56; Ex. 15 at 68. (His monthly payment was now \$4,800 a month; by 2009, it re-set to \$5,600. Tr. at 268, 270.) In February 2009, foreclosure proceedings began on his fourth house. Ex. 13 at 24; Ex. 32. In April 2009, his loan was modified to bring the balance to more than \$725,000 and reduce his monthly payment, which is now \$3,800. See Tr. at 56, 268, 372; Ex. 13; Ex. 32; Ex. G at 3.

I find that the individual has not mitigated the allegations stemming from his multiple home purchases, foreclosures, and refinancing. He has paid his mortgage on time since he modified his mortgage in April 2009. But this period of time – approximately two years – fails to mitigate the pattern of foreclosures and refinancing that stretches back to 1994.

Further, the individual presented no clear picture of what he did with the proceeds from the refinancing. He did not provide an explanation for how he spent the \$17,000 from his the refinancing of his third house in 1994. He testified that when he refinanced his fourth house in 2005, for \$500,000, he combined two mortgages but received no cash. Tr. at 265-66. The individual did not clarify which mortgages he combined, nor did he provide documentation to corroborate the combination. He testified that when he refinanced his fourth house in 2006, for \$623,000, he used the proceeds on home improvements. *Id.* at 370-71. Yet, he provided no documentation to corroborate the expenditures. (When the individual refinanced his fourth house again in 2006, he used the proceeds to pay three tax liens and bank fees. *Id.* at 265-67, 269, 370-71. The tax liens were paid in March 2006 when the individual refinanced. *Id.* at 43-45, 47-48, 55, 267-69; Ex. 15 at 56-57, 62, 82; Ex. 16.)

3. The Car Purchases

In 2007, the individual bought a car for \$25,000. Tr. at 71-72. In 2010 or 2011, the individual bought a car for \$38,000. *Id.* at 69, 294. The individual testified that in 2007, he bought a new car because his old car had high mileage. *Id.* at 294. He testified that he bought the next car because the first car had a manufacturing defect with its brakes. *Id.* at 294-95.

I find that the individual has not mitigated these allegations. Certainly he does need transportation. Purchasing high-priced vehicles during a time of financial distress, however, suggests financial irresponsibility. And his stated reason for buying the new car – due to the manufacturing defect – contravenes common sense. If the car had a defect, the manufacturer may have repaired it cost-free. Even if it would not, he would have likely been able to repair the problem for less than the price of another car.

4. Continued Financial Difficulties

The individual argued that has mitigated the remaining allegations of financial irresponsibility because he is no longer financially over-extended. See *id.* at 180-81. For example, he argued, he has not over-extended his debt limit. *Id.* at 184. He has several credit cards, but they have low

credit limits. *Id.* at 293. Furthermore, his spending is not frivolous. *Id.* at 187. And he lives within a budget. Ex. E.

I find that the individual has not mitigated the allegations. He has significant personal debt, he has recently been late on his credit card payments, and he has claimed a large number of unverified tax deductions – all of which suggest financial strain.

a. *Significant Personal Debt*

After 2005, the individual opened at least nine credit cards and a \$4,000 line of credit. Tr. at 172-174; Ex. G at 1, 11. Two of the seven cards that show credit limits have limits of approximately \$1000, and the other five have limits closer to \$500. Ex. G at 1. He re-paid the line of credit, but he carries balances on eight of the cards.¹¹ *Id.* at 1, 11. The individual's high number of credit accounts and his balances suggest financial strain.

b. *Late Payments on Credit Cards*

The individual's late payments also suggest financial strain. From December 2009 through April 2010 and in August 2010, he was late on his payments for a credit card. *Id.* at 14. In September 2009 and March 2010, the individual was late on a second credit card. *Id.* at 13. In 2008, the individual had been late a third and a fourth card. *Id.* at 9, 11.

c. *Unverified Tax Deductions*

The individual claimed high medical and dental expenses on recent federal tax returns, which suggests financial strain. The individual claimed the following medical and dental expenses (rounded to nearest \$1,000):

- \$88,000 (2010) (Ex. A)
- \$140,000 (2008) (Ex. 12)
- \$64,000 (2007) (Ex. 11)
- \$80,000 (2006) (Ex. 10)
- \$66,000 (2004) (Ex. 20)
- \$61,000 (2003) (Ex. 21)
- \$68,000 (2002) (Ex. 22)

The individual testified that those deductions represent expenses related to two strokes, two heart operations, three operations for a pinched nerve, diabetes, eye appointments, monthly blood tests, 18 medications a day, and numerous doctor visits. Tr. at 293, 381, 383. At the 2009 PSI, the individual stated that his expenses were so high because insurance paid only 80% of his expenses (and he paid 20%). Ex. 15 at 129-131. At the hearing, the individual testified alternately that insurance paid 30% and 75%. Tr. at 312, 385. He also testified that he paid for

¹¹ At the 1992 PSI, the individual indicated that he ran up balances on many credit cards. Ex. 34 at 91, 93. This suggests that the individual has habitually carried balances on numerous credit cards.

his share of the expenses out-of-pocket. *Id.* at 75-76, 292, 309-11. The individual also noted that he has never been charged with tax fraud, that he has never been audited by the IRS, that the IRS has never determined that he improperly claimed deductions, and that the security specialist lacks specialized tax training. *Id.* at 164-65, 220, 222, 225, 292.

I need not determine whether the individual violated the tax code. The deductions raise doubts because they triggered a years-long pattern of enormous refunds during a time of chronic financial distress.¹² The individual has the burden to remove those doubts and has not done so. First, the individual has had insurance coverage, which includes catastrophic protection that may have drastically reduced his expenses. *Id.* at 76, 79; *see* Ex. 33 at 21. If he did have the medical bills that he claimed, either his insurance paid his expenses or by not submitting them to his insurance, he grossly mismanaged his finances for years.

Second, the individual submitted no documentation to verify that he paid the expenses that he claimed. Post-hearing, the individual submitted a prescription drug benefit statement for 2010. It shows that his co-pays totaled \$1,715, which may be reasonable for a person of his age who has had medical problems. Then he submitted 25 pages of receipts for drugs and copies of checks paid for medical procedures, which total the \$88,000 deduction that he claimed on his 2010 tax return.

I cannot find that this documentation tends to show that he paid, at most, more than \$1,715. The receipts for the drugs do not clearly correspond to the charges on the benefit statement. And the copies of the checks do not show that he actually paid anything. Even if he did pay those amounts, the checks do not show, for example, the total expense and the portions assigned to the insurance company and the individual.

Even if the documentation does represent the individual's out-of-pocket medical expenses for 2010, he submitted no documentation to verify his out-of-pocket expenses for the other years in which he claimed them.

Third, the individual appears to have lacked the resources to have covered the expenses that he claimed. For example, in 2008, the individual claimed \$140,000 of expenses, and he testified that he did not draw on credit to cover it. Tr. at 385; Ex. 12. That year, his take-home pay totaled approximately \$164,000, and he testified that he could draw on \$1,000-\$20,000 in savings. Tr. at 387-88; 390-92. That is simply not enough to have covered the medical expenses and his approximate mortgage expenses of \$60,000 (\$5,000 a month x 12), not to mention the rest of his living expenses.

¹² The individual has a history of questionable tax practices. On his 2010 tax return, he claimed a tax deduction for a car purchased in 2009, but he had not purchased a car in 2009. Tr. at 80-81, 423-24. In 2010, he also claimed a tax deduction for personal property tax, but his state has no personal property tax. *Id.* at 83-84, 307. He conceded the improper deduction but argued that he had only claimed it once. *Id.* at 309, 415. When confronted with having claimed the deduction in other years, he blamed the improper deduction on his tax software. *Id.* at 309, 415-17. Also on his 2010 tax return, he deducted a fee for a tax preparer, but in fact he had prepared it himself. *Id.* at 82. Lastly, his state tax liens stemmed from the state disallowing deductions that he had claimed. Ex. 18 at 60; Ex. 15 at 60-62.

5. The Individual's Budget

To help mitigate the allegations, the individual presented a budget. Ex. E. Gathering a financial statement represents a positive step. I find, however, that it shows little improvement in financial responsibility. The individual prepared it just for the hearing, and he does not use it to plan and govern his spending. *Id.* at 366. (Rather, he estimates how much money each month will “cost” him, and he tries to spend less than he makes. *Id.* at 365-67.) Indeed, it lacks a level of detail that reflects the thoughtful and self-analyzing choices that a person of his history would have to make to become financially responsible, and the individual's testimony included no such introspection.

Given the individual's extreme history of financial difficulties over two decades, he would need to demonstrate a greater period of financial stability before I could make a predictive assessment that he will remain financially stable.

C. **Criterion L – Personal Conduct**

To determine whether the individual has mitigated the LSO's allegations of personal conduct, I will consider the relevant factors from 10 C.F.R. § 710.7(c) and the relevant mitigating conditions from Guideline E of the Adjudicative Guidelines – Personal Conduct.¹³

1. Mitigated Allegations

a. *The Bad Checks*

The Summary of Security Concerns includes the allegation that the individual wrote seven bad checks. I find that he has mitigated this allegation. The conduct in question occurred more than 20 years ago, and the individual has not repeated it. Tr. at 231.

b. *The Pressured Car Sale*

The Summary of Security Concerns includes the allegation that after 2005, the individual showed poor judgment by allowing a car dealer to pressure him into buying an expensive car when he already faced financial hardship. I find that the individual has mitigated this allegation. Purchasing the car may have shown financial irresponsibility considering his precarious financial situation, but he was not pressured into doing so. The individual testified candidly that he was

¹³ Guideline E contains the following relevant mitigating conditions:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; [or]
- (f) the information was unsubstantiated. . . .

not pressured into buying the car. *Id.* at 393-94. More than that, over-spending is consistent with his character, so it is not unreasonable for me to find that he opted to buy the car despite his weak financial condition.

c. *The Ill-Timed Business*

The Summary of Security Concerns includes the allegation that the individual showed poor judgment by starting a computer business in 2001, around the time that he had filed two bankruptcies.

I find that the individual has mitigated this allegation. He testified that since the business failed, he has realized that he made a poor choice by trying to start a business in the midst of financial difficulties and that he is a poor businessman. *Id.* at 399, 402-03. Moreover, he refrained from renewing his business ventures during subsequent financial difficulties.

2. Un-Mitigated Allegations

The Summary of Security Concerns includes the allegations that (i) between 1986 and 1988, the individual allowed a foreign national to use his name and social security number; and (ii) in 2001 or 2002, the individual met the foreign national at work, without authorization, and allowed him to receive mail at his address.

The individual convinced me that he probably did not have the alleged contact with the foreign national. His many conflicting statements suggest that at the 1992 PSI, he invented the story to blame his financial irresponsibility on someone else and continued to re-invent the story as the need arose. The individual stated that he was speaking of one foreign national but has also said that he's speaking of two. *Id.* at 279, 403-04; Ex. 15 at 22-23, 32. He stated that a culprit of the same name used his social security number to cause him financial problems. Ex. 34 at 35, 37-38. He has also said that the culprit did not use his social security number. Tr. at 316. He said that the culprit was not related and wanted to partner in a computer business. *Id.* at 326, 330-31, 405; Ex. 34 at 35. (He added the details that the culprit was 60-70 years old, a friend of his father, and living in a nearby state. Tr. at 279-80, 283-84.) He has also emphatically claimed that the culprit was related – that he was his son. *Id.* at 320-22. He added the details that his son used his social security number to make bill payments because he thought it was a joke and that he got other kids at school to do the same. *Id.* at 325. When asked how his son could have done this as a small child, abruptly the individual did not know whether his son was the culprit. *Id.* at 328-29. Probably realizing the absurdity of the story about his son, the individual forcefully shifted blame back to the original culprit that he appears to have fabricated. *Id.* at 330-32. But by now, at the hearing, he had testified that the original culprit was not a foreign national, but a U.S. citizen. *Id.* at 304, 405. Then the individual added the details that the culprit immigrated to the U.S. in 1957 and that from the first time the individual had met the culprit, he knew that he was a U.S. citizen. *Id.* at 406-410. Then came the clinching moment when the DOE counsel confronted the individual with his testimony from the 1992 PSI, where he stated that the culprit was a foreign national.¹⁴ *Id.* at 412-13.

¹⁴ In the individual's post-hearing submission, he blamed his conflicting statements on the length of the hearing, which he said ran from 8:30am to 8:18pm. (In fact, it ran from 9:08am to 7:00pm. Tr. at 1, 433.) He stated that he is diabetic and must eat on time. Therefore, he said, "I do not know what answer I am providing." Then he

Despite the fact that the individual probably did not have the alleged contact with a foreign national, I find that the individual has not mitigated the allegations. Criterion L necessarily concerns honesty. The individual cannot mitigate statements of doubtful honesty by offering yet more statements of doubtful honesty.

C. Additional Mitigating Information

The individual sought to mitigate the allegations by testifying to his community involvement. He said that he volunteers with his police department, his homeowners' association, his kids' school, professional organizations, and his church. *Id.* at 295-300. He also presented brief letters of support from several co-workers. Ex. F.

I find that this information does not mitigate the allegations. His community involvement, while positive, does not outweigh the concerns raised by the large number of allegations. His co-workers did not testify under oath, and their brief statements – which do not reference any specific allegations – suggest that they are not aware of the issues in this proceeding.

V. Conclusion

Because the individual has not resolved the Criterion L and Criterion F security concerns, I find that he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the DOE should not restore his 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.

David M. Petrush
Hearing Officer
Office of Hearings and Appeals

Date: July 20, 2011

provided yet more conflicting details about his interaction with the culprit, such as that he met him in 1991 (not in the 1980s) and that he sought to partner in a mortgage business (not a computer business).

I find no merit to these contentions. During the pre-hearing telephone conference, I stated that we would take a lunch break and other breaks, as needed. During the hearing I repeated my flexible policy on pausing the hearing to address the needs of the participants. In fact, we did pause the hearing for lunch, but the individual chose not to eat. He brought no lunch and declined directions to the nearby food court. As the afternoon wore on, I offered one of the energy bars that I had brought as a snack. An office employee offered to fetch him a soft drink from a nearby convenience store, which the individual accepted. Most important, at the hearing, the individual exhibited no signs of fatigue or incoherence.