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October 13, 2004

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 19, 2004

Case Number: TSO-0108

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter the individual) to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that the individual has not met his burden to bring forward sufficient evidence to show that his access authorization should be restored.

I. History

This administrative review proceeding began with the issuance of a Notification Letter, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a detailed statement of the derogatory information.

The area of concern cited in the Notification Letter involves information that the individual has demonstrated a pattern of unreliability and financial irresponsibility. This behavior is

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.

subject to the provisions of 10 C.F.R. § 710.8(1) (hereinafter Criterion L).²

The Notification Letter identified the following matters as concerns:

(i) The individual indicated in a December 12, 2003 Personnel Security Interview (PSI) that he filed for Chapter 7 bankruptcy on two occasions, first in the early 1980s and then again in May 2003;

(ii) The individual indicated that the unsecured credit debt that was written off in the second bankruptcy involved 25 credit cards and totaled approximately \$185,900;

(iii) The individual had a judgment entered against him for unpaid hospital/medical bills;

(iv) The individual indicated in the PSI that he had little control over his expenses and no system for keeping track of his bills and debts.

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that Letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

²/ Derogatory information covered by Criterion L includes information that an individual has "[e]ngaged 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 reasons 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. . . a pattern of financial irresponsibility"

II. The Individual's Testimony and Additional Documentation

The individual's position in this proceeding is that his financial position has improved since the bankruptcy, and that the security concern has therefore been resolved.

At the hearing, the individual submitted some additional documentation to support this position. The information submitted includes the following: (i) a statement showing payments of cable service bills; (ii) a statement showing payments of cell phone charges; and (iii) statements indicating payment of several utility bills. Prior to the hearing the individual submitted a recent credit report showing that his payments on his truck loan and his mortgage payments were up to date.

At the hearing the individual testified about his past and present financial picture. He stated that for a number of years his wife paid the family bills. He said he assumed all bills were taken care of. He indicated that she usually paid "minimum" amounts owed on credit card debts, while continuing to charge their living expenses. For this reason, they fell further and further behind on their debt. This was the reason for the 2003 bankruptcy. He testified that he was unaware of their growing debt until he applied for a loan to purchase a truck. Transcript of Hearing (Tr.) at 9,10,24,25,26.

With respect to the 2001 judgment for an unpaid medical bill, the individual explained that he thought a greater portion of the bill should have been covered by his health insurance program than was actually paid. When he refused to pay the balance, a judgment was entered against him that required him to pay \$100 per month towards the debt. The individual indicated that most of the medical debt was repaid, but that a small amount was included in the bankruptcy. Tr. at 26-27.

The individual stated that he has restructured his financial arrangement. First, he states that except for gasoline, his family no longer makes purchases by credit card. He further indicated that his wife no longer pays bills, except for her own personal expenses, and that he is now paying most bills, including mortgage, cell phone, truck loan, motor vehicle insurance and the gasoline bills that have been charged on his gasoline card. He stated that his daughters are responsible for paying utility bills. Tr. at 17, 31, 36. He stated that he has taken physical control of the bills and has a system for filing them so that they are paid on time. He says that he is also

trying to keep track of them using a computer program. Tr. at 31, 32, 39.

III. Standard of Review

The Hearing Officer's role in these Part 710 proceedings is to provide the individual involved with an opportunity to furnish information to mitigate security concerns, to evaluate the information presented by the DOE Office and the individual, and to render an opinion based on that evidence.

The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. See 10 C.F.R. § 710.7(a).

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not like a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we use a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of an access authorization. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations 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)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

IV. Analysis

As stated above, the financial issues cited in the Notification Letter that give rise to a security concern under Criterion L are as follows: the individual indicated in a December 12, 2003 Personnel Security Interview that he was involved in two bankruptcies, once in the early 1980s and again in May 2003; that the 2003 bankruptcy involved debts of approximately \$185,900; that he had a judgment issued against him in 2001 for unpaid medical bills; and that he had little control over his expenses and no system for keeping track of his bills and debts. I must consider whether there is evidence that mitigates these concerns. See 10 C.F.R. § 710.7(c).

The individual does not make the claim that his failure to pay his bills was due to financial hardship. Rather, his approach in this case was to show that he has reformed his spending and bill-paying habits, and to establish that he is now on a more stable financial track.

Based on the individual's testimony and documentary evidence, I believe that the individual has made some efforts to reduce his debts and to curb his spending. He has taken control of paying some family bills. He has attempted to institute a system for keeping track of the bills to be paid by using a computer program. He has eliminated some non-essential expenses from his budget, such as those for restaurant meals. This is in the individual's favor.

Nevertheless, after evaluating the record as a whole, I find that the Criterion L concerns have not been resolved. This individual has a history of significant financial problems dating from the bankruptcy in the early 1980s, and then again in 2003. There is further the 2001 judgment for unpaid medical bills. To resolve the security concerns arising from this behavior, the individual should demonstrate a stable financial pattern that covers a significant period of time. Personnel Security Hearing (Case No. TSO-0026), 28 DOE ¶ 82,925 (2003). The individual has not demonstrated that he has achieved that stable financial pattern, since, as of the time of the hearing, it had not even been one year since the 2003 bankruptcy was closed.

Further, the individual still does not have all of his expenses and finances under control. Some expenses, such as those for utilities, are left for his daughters to pay, and the individual admits that they have missed payments within the past year. Tr. at 30.

There also remains a concern involving the individual's control and understanding of his current finances. I note that the individual has not attempted to obtain financial counseling. Tr. at 42. Further, he is unable to explain in any detail the types of purchases that formed the \$185,900 credit card debt. Tr. at 43. The fact that he cannot explain or describe the nature of his past overspending gives rise to a concern regarding his ability to control his expenses in the future.

Moreover, the individual submitted a budget showing approximately \$850 per month left over after having met his monthly expenses. However, he could not account for what happens to that amount. Tr. at 37. These facts suggest to me that the individual's finances at this point are still not under reasonable control, and that he still does not have a solid understanding of his monthly income and expenses.

V. Conclusion

As indicated by the foregoing, I find that individual has not resolved the Criterion L security concerns set forth in the Notification Letter. Accordingly, it is my determination that the individual should not be granted access authorization.

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

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: October 13, 2004