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September 11, 2009

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 29, 2009
Case Number: TSO-0743

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored.

I. Background

The individual has been employed by a Department of Energy (DOE) contractor since 2000. The contractor requested that DOE grant the individual an access authorization ("security clearance" or "clearance").¹ A routine background investigation uncovered financial delinquencies and DOE conducted a personnel security interview (PSI) with the individual in November 2001 to resolve these issues. The individual agreed to furnish information regarding the delinquencies to DOE within two weeks of the PSI, and DOE granted the clearance. The individual did not produce the requested information. During a routine re-investigation in 2008, the local security office (LSO) determined that the individual had not addressed his financial problems and that the amount of his delinquencies had increased. The LSO conducted a PSI with the individual in December 2008, but that interview did not resolve the security concerns and DOE suspended his clearance.

In February 2009, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (February 25, 2009). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (l) (Criterion L).

¹ Access authorization (or "security clearance") 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).

DOE invokes Criterion L when information in the possession of DOE indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy or which furnish reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. 10 C.F.R. § 710.8 (l). The Notification Letter alleges that the individual has established a pattern of deliberate financial irresponsibility, including the inability to satisfy debts. This is based on the individual's admission that he owed \$36,000 to the IRS in 2001, and that he continued to accrue additional debt between 2001 and 2008, without making any payments on his outstanding debt.

In a letter to DOE Personnel Security on April 9, 2009, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the individual, who was not represented by counsel, testified on his own behalf and called his manager as a witness. DOE counsel called the individual as a witness. The transcript taken at the hearing shall be hereinafter cited as "Tr." DOE submitted documents during this proceeding which constitute exhibits to the hearing transcript and shall be cited as "Ex." The individual did not submit any exhibits.

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all 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." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of 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).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. 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): 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 of the individual at the time of the conduct; the voluntariness of the 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 continuance or recurrence; and other relevant and material factors. After due deliberation, I cannot find that the individual's

access authorization should be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

In 2001, the individual's employer requested that DOE grant a clearance to the individual. In November 2001, after a background investigation disclosed some potentially derogatory information, DOE conducted a PSI with the individual. During the PSI, the individual confirmed that he owed \$36,000 on IRS tax liens for 1996-1999, and that he owed over \$3,000 to other creditors. Ex. 4 (2001 PSI) at 45-46, 48, 52-53. The individual indicated that his wife became sick, missed many days of work and they began to miss payments on their debt. 2001 PSI at 56. He also began to incur many expenses related to her illness. His work was seasonal before he worked for the contractor, and his income irregular. He and his wife also sponsored children's athletic teams in their rural community, so he did not have much money left over after he paid for these items. Ex. 3 (2008 PSI) at 79.

In addition, the individual's financial situation deteriorated because he frequently gave money to his adult children and his grandchildren. 2001 PSI at 67. For instance, he co-signed for a car for one daughter, and also gave her a credit card. 2001 PSI at 44, 55. His wife died in 2000, and he did not know what payments she had made and where all the family financial information was located. 2001 PSI at 13, 43. After his wife died, a daughter and her children moved in with him, and he paid all of their expenses because his daughter was often unemployed. *Id.* at 67. Nonetheless, at the end of the PSI, the individual promised to begin to pay off his debts beginning the following week, and to provide the LSO with additional documentation in the next two weeks, including a financial statement, proof that he filed his tax returns, and a payment plan for his delinquent taxes. PSI 2001 at 57-62.

The individual did not provide the promised financial documentation and the LSO issued a non-compliance letter in January 2002. Ex. 5 at 2. He then provided some additional information in February 2002. The LSO considered the tax liens issue resolved because the individual indicated that he did not own anything and was not subject to liens. Ex. 5 at 2. The additional information he provided showed that he continued to struggle financially. Nonetheless, the LSO recommended granting his clearance and then obtaining an updated credit report in 18 months to determine if the individual was acting in a financially responsible manner. The LSO did not obtain the updated credit report. *Id.*

During a routine re-investigation in 2008, the DOE learned that the individual still had delinquent accounts and scheduled a PSI for the individual in December 2008. Ex. 3 (2008 PSI) at 12. During the 2008 PSI, the individual said that his daughter had tried to help him with his IRS tax liens, and that he started to make \$100 payments, but the payments were returned and he then forgot about paying the taxes. 2008 PSI at 16. He stated that someone told him if the IRS garnished his check, he would lose his job, and because he wanted to keep his job, he did not request wage garnishment. *Id.* at 19. He was not sure, but believed that he had not filed his taxes for 2006, 2007, or 2008. *Id.* at 21.

According to the individual, he did not earn enough money to pay his bills. *Id.* at 39. He could not buy a vehicle because of his bad credit, and instead has to rent a vehicle weekly at a cost of approximately \$500 each month. *Id.* at 41. His oldest daughter, who has two children and lives with him, is sick and does not work. *Id.* at 42. He admitted that he had not paid on any credit card accounts in six or seven years. *Id.* at 45. Despite his current situation, the individual stated that he considered himself financially responsible because he is supporting his daughter and her children. *Id.* at 51-52. He admitted that he did not understand a lot of the tax issues, and that kept him from trying to resolve his financial problems. *Id.* at 59-60. He filed state taxes up to 2005, but “kept putting off” the other years. *Id.* at 67-68. The individual currently owes \$44,000 in IRS tax liens, and he could not explain why he has not contacted his creditors to work out a payment plan. *Id.* at 72; Ex. 5 at 2.

B. DOE’s Security Concerns

The DOE invoked Criterion L because of concerns about the individual’s alleged financial irresponsibility. This is a valid security concern because the failure or inability to satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Assistant to the President for National Security Affairs (December 29, 2005) (Guidelines) Guideline F, ¶ 18. Also, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* Thus, the security concern under Criterion L is valid.

C. Hearing Testimony

At the hearing, the individual testified that he had intended to take care of his financial obligations since the 2001 PSI, but that his family responsibilities came first. Tr. at 21. His oldest daughter, who lived with him, was in the hospital. *Id.* He admitted that he had financial delinquencies prior to the death of his wife in 2000, and that a lot of his financial problems stemmed from his sponsorship of neighborhood youth athletic teams. *Id.* at 23-24. The individual testified that he would like to get help with his financial troubles. His daughter told him about organizations that can help, but despite the information she provided, he has not contacted any groups for assistance. *Id.* at 28. He filed 2006 and 2007 taxes and one of his daughters was supposed to file his 2008 taxes, but she has not yet found the time to do so. *Id.* at 27, 32-33. He is not sure which years of his state taxes were filed. *Id.* at 34-35, 41. He has not made any payments on any of his debt since the December 2008 PSI, seven months prior to the hearing. *Id.* at 35-36. He continues to give money to his five adult children when they need help. *Id.* at 39-40.

The individual’s manager testified at the hearing that he has known the individual for three years, but that they do not socialize. Tr. at 11. The manager did not know the security concerns surrounding this case. *Id.* at 12. He considered the individual to be a good and reliable employee. *Id.* at 19. He knew that the individual was financially responsible for his

grandchildren but he was not aware of the individual's financial situation. *Id.* at 14-17. However, he indicated that he would help the individual find assistance to resolve his debts. *Id.* at 18-19.

D. Mitigation of Criterion L Security Concern

After a careful review of the record, I find that the individual has not provided any mitigation of the Criterion L concern regarding his financial conduct. In 2001, he was confronted with his financial obligations and then promised to provide information showing that he was addressing the obligations and that he had a plan to retire his debt. However, he did not produce the required information, and actually stated that he forgot about some of the debt.

He told the LSO that he would seek financial counseling, but never did so. Guideline F, ¶ 20(c). In fact, he then continued to accumulate debt.² He has good intentions, but cannot follow through on them, and is relying on his daughter to help him. Unfortunately, his daughter exacerbated the problem because she appears to be too busy to make her father's finances a priority. These financial problems continue to recur, and cast doubt on the individual's reliability and good judgment.

Our cases have held that an individual must demonstrate a sustained new pattern of financial responsibility for a period of time that is sufficient to demonstrate that the recurrence of the past pattern is unlikely. *Personnel Security Review*, OHA Case No. TSO-0732 (July 20, 2009). I observed the individual at the hearing, and he appeared to be an honest man who would like to pay his debts but is overwhelmed by the planning and paperwork necessary to do so. He also expressed a sincere and admirable concern for the welfare of his children and grandchildren, who he described as "struggling" financially. However, in his efforts to help his family, he has neglected his own serious financial problems and placed his job in jeopardy. Unfortunately, this confirms the Criterion L security concern of poor judgment. During the hearing, he again vowed to seek assistance with his finances from an outside source. His manager, who was present during the entire hearing, offered to assist the individual in securing assistance from a financial counselor or professional. DOE has twice given the individual an opportunity to present evidence of a concrete plan to resolve his debts. He could not provide one receipt of a payment since his 2001 PSI or any copies of communications with his creditors. There is no evidence that he has initiated a good-faith effort to resolve his debts. See Guideline F, ¶ 20 (d). Therefore, I find that he has not mitigated the security concerns of Criterion L.

III. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (l). After a review of the record, I further find that the individual has not presented adequate mitigating factors to address the Criterion L security concerns. Thus, in view of the criterion and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be

² Although the death of a spouse can sometimes mitigate a Criterion L financial issue, in this case the individual's tax problems began prior to 2000, when his wife was still alive. See Tr. at 23 (individual testified that he sought help with tax delinquencies while wife was alive); Guideline F, ¶ 20(b).

consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: September 11, 2009