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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 21, 2002

Case Number: TSO-0002

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. 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 the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

In August 2002, the Manager of a Department of Energy (DOE) Operations Office issued a Notification Letter to the individual, stating that the DOE was in possession of derogatory information that created a substantial doubt concerning his continued eligibility for access authorization. In the Notification Letter the Operations Office also informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in the Notification Letter. The individual requested a hearing in this matter and the Operations Office forwarded this request to the Office of Hearings and Appeals. I was appointed to serve as the Hearing Officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (hearing).

In the Notification Letter, the Operations Office indicates that the individual omitted significant information from a Questionnaire for National Security Position (QNSP). 1/ The Notification Letter

1/ The record indicates the individual has completed three QNSPs. The first is dated March 1, 1993 (hereinafter 1993 QNSP). The second is dated September 11, 1997 (hereinafter 1997 QNSP). And the third is dated February 16, 2000 (hereinafter 2000 QNSP).

states that such omissions constitute a security concern under 10 C.F.R. Section 710.8(f)(hereinafter Criterion F). The Notification Letter also indicates that information in the possession of the DOE indicates that the individual engaged in unusual behavior that shows the individual is not reliable or trustworthy. The behavior mentioned in the Notification Letter includes a history of financial problems, a job termination for reported irregularities in time sheets and a failure to provide accurate information to a DOE consulting psychiatrist (psychiatrist). According to the Notification Letter such conduct constitutes a security concern under 10 C.F.R. Section 710.8(l)(hereinafter Criterion L).

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, once a security concern has been raised, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The 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 individual must 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."

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department 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), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly

consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995).

B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the Hearing Officer to issue a Decision as to whether granting an 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(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and 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). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. THE HEARING

At the hearing there were two witnesses. ^{2/} The DOE Counsel presented the testimony of a DOE security specialist and the individual testified on his own behalf.

The following is a summary of the testimony presented at the hearing.

A. The DOE Security Specialist

The security specialist testified that there had been significant omissions from all three of the individual's QNSPs. Specifically, he indicated that "[the individual] had not listed a termination from employment. He had not listed several bankruptcies. He had not listed some financial delinquencies." Transcript of Personnel Security Hearing (Tr.) at 9. In addition, the security specialist testified that the individual had failed to report in his QNSPs that he was arrested for driving under the influence (DUI) and charged with a passing a bad check. Tr. at 10.

The security specialist was also questioned regarding the individual's credit report. DOE Exhibit 13. He testified that the credit report indicates that the individual had filed Chapter 13 bankruptcy on two occasions and Chapter 7 bankruptcy on one occasion. Tr. at 25. He also testified that the credit report indicated a number of credit card debts that were written off as a loss and unpaid bills. Tr. at 26. The security specialist stated that the individual reported only one Chapter 13 bankruptcy and none of the unpaid bills on his 1997 or 2000 QNSPs. Tr. at 25 and 28.

^{2/} During my telephone conversations with the individual, I suggested that he should call witnesses in person or by telephone to corroborate his statements. See also December 11, 2002, letter from Thomas L. Wieker to the individual and the DOE counsel.

The security specialist testified that the individual's failure to report items correctly on his QNSP indicated that this document could not be relied upon and "his truthfulness, his honesty was brought into question." Tr. at 11.

B. The Individual

The DOE counsel questioned the individual about the Criterion F concern. The DOE Counsel asked the individual why, given his arrest for a DUI in 1989, he had responded in the negative to the question on his 1993 QNSP "have you ever been charged with or convicted of any offenses related to alcohol or drugs?" Tr. at 50. His first answer was that he was thinking that he only had to report an offense when the fine was greater than a hundred dollars. When it was pointed out that the question said nothing about a \$100, he answered "Okay, it was just an honest mistake, is all it was, to be totally honest with you." Tr. at 51. He was then asked why he did not answer that question accurately when he completed his 1997 and 2000 QNSPs. He indicated that since he had told a DOE security specialist about his DUI arrest during a 1993 interview, he believed he did not have to disclose that arrest on future QNSPs. Tr. at 52.

The DOE counsel asked the individual about warrants that were issued "in 1999 for destruction of property, assault and battery, harassing phone calls." Tr. at 54. The individual testified that he was going through a divorce and he went to his home to get some necessary tools. His mother-in-law saw him and called the police. He testified that he was not arrested and when he got to court the charges were dismissed. Tr. at 56. He was asked why he had not disclosed the incident on his 2000 QNSP. He answered that "There was not a record. ... I had never been arrested or charged or anything. I'm not trying to hide anything. I went to court from exaggeration from my ex-wife that drew me there." Tr. at 56. He further testified that he had verbally informed his supervisor about the incident and about the numerous problems he was having with his wife prior to his divorce. Tr. at 57 and 60. He further testified that:

. . . in my heart and in my mind there were no issues there, but I did have to go to a court hearing and when I went to the hearing, it was proved that there was no issue there. I guess that left me believing that I didn't have to report it, but I know now I should and from this point on, I will. You know, it is not like I'm a compulsive liar, or anything like that, but it sure does look like it, but I'm not.

Tr. at 61.

The individual was then questioned about his failure to report his IRS liens. He was asked why he failed to respond truthfully to a question as to whether he had been subject to a tax lien. Question 27, 1993 QNSP. He stated that in 1991 he made an agreement to pay the IRS \$125 per month to pay overdue income taxes. Tr. at 65. He testified that he made the \$125 payments and the IRS kept several income tax refunds due him during the early 1990s and that in 1996 he had paid all overdue income taxes. Tr. at 67. He testified that at the time he filed the 1993 QNSP, his IRS payment plan "was never defined to me as a lien. It was a payment plan. I [had never received] anything from the Internal Revenue service telling me that was a lien, or anything. It was an agreed

payment plan.” Tr. at 70. He testified that he purchased a truck soon after he completed his 1993 QNSP. After that purchase he received a notice from the IRS indicating that liens had been filed on his truck. Tr. at 69. The DOE counsel then asked why he did not report the IRS liens on this truck on his 1997 or 2000 QNSP. The individual testified that the tax liens were included in his Chapter 13 bankruptcy filing and he did report that Chapter 13 filing on his 1997 and 2000 QNSPs. Tr. at 71. The individual suggested that since all of the tax liens were listed in his Chapter 13 bankruptcy proceeding, the report of the Chapter 13 bankruptcy on his 1997 and 2000 QNSP, should be considered a disclosure of the tax liens. Tr. at 71.

The DOE Counsel questioned the individual about an incident in which he left his employment. The DOE counsel asked why he had failed to respond truthfully to a QNSP question regarding whether he had ever left a job under unfavorable circumstances. Question 22, 1993 QNSP. The individual testified that he was not fired but there was a “big issue about time sheets” that he did not want to deal with and therefore he decided to resign. Tr. at 76. He admitted that he did not disclose this resignation on his QNSP. Tr. at 77.

Finally, the DOE counsel questioned the individual regarding the written tests that were given to him by the psychiatrist. The psychiatrist’s report indicates the individual answered all of the questions on one of the tests in the negative and that such answers indicated the individual had not read the questions. The individual testified that he answered the questions honestly. He indicated that he was unfamiliar with the test questions, and he answered the questions to the best of his ability.

The individual testified on his own behalf. He indicated that he currently has no outstanding debts. In support of his assertion he submitted the first page of a November 6, 2001 Transunion credit report. ^{3/} Tr. at 89. As additional support, during the Hearing the individual submitted a copy of a January 5, 2003, Equifax credit report. ^{4/} In his testimony the individual indicated that there were several small items listed on the Equifax credit report that he was not aware of, but he asserted that generally the credit report showed he had no outstanding obligations.

He also testified about the first, fourth, and fifth pages of individual’s exhibit #2, which are Certificates of Release of Federal Tax Liens. Referring to those documents he testified that “In the IRS books and also in the clerk of court books where the liens were actually filed [the liens have been released].” Tr. at 94.

Finally, he testified in some detail about his three bankruptcies. He testified that both his first chapter 13 bankruptcy filing and his chapter 7 bankruptcy filing were never actively pursued and

^{3/} That page is page 7 of the individual’s December 13, 2002 document submission. That submission consists of 13 pages and is included in the record of this proceeding as Individual’s Exhibit #1.

^{4/} That credit report is page 5 through 20 of the 20 pages of documents the individual submitted during the Hearing. That submission is included in the record of this proceeding as Individual’s Exhibit #2.

dismissed soon after they were filed. He stated that they were little more than procedural steps leading to the second chapter 13 bankruptcy filing. He testified that his second chapter 13 bankruptcy closed on January 10, 2001. Tr. at 103. He also testified that since his overdue child support is not eligible to be resolved through a bankruptcy proceeding, he has worked out an agreement with his ex-wife on his past due child support. Under that agreement he pays her a “couple of hundred extra dollars.” Tr. at 105.

IV. ANALYSIS AND FINDINGS

I have thoroughly considered the record of this proceeding, including the four letters submitted by the individual from former supervisors and the individual’s testimony at the hearing. As noted earlier in this Decision, the derogatory information in this case arises from the individual’s failure to accurately complete three QNSPs as well as his behavior that has caused him a number of financial and legal problems. From a security standpoint, deceptive acts and false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when an access authorization holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g.*, Personnel Security Hearing (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995), (affirmed by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000).

Notwithstanding the Criterion F and Criterion L security concerns, the individual is entitled to attempt to resolve the concerns by explaining the circumstances surrounding the event or by showing that he is rehabilitated or reformed. I will now consider whether the individual’s explanations have mitigated the concerns.

A. Financial Irresponsibility

With regard to his financial irresponsibility, the individual has demonstrated that he has paid his past due federal tax bills and that the liens filed by the IRS have been satisfied. The record also confirms that two of the bankruptcy applications were dismissed in their very early stage and the third was completed and discharged on January 10, 2001.

In spite of these somewhat positive facts, I am not persuaded that the individual has resolved all the security concerns regarding his financial irresponsibility. The individual presented a current credit report in an attempt to document his contention that his current financial situation has significantly improved and presents no cause for concern. After reviewing the credit report, I found it difficult to understand. I told the individual that he should go through the report in detail to explain the significance of the debts listed and he agreed to do so. Tr. at 88. While he testified about how the credit report supported his testimony regarding his tax liens and his bankruptcy filings, he never provided any analysis of the details of the numerous debts listed on his credit report. I recognize that many of the debts that are marked as uncollectible or past due were covered by the bankruptcy proceeding. However, I am nevertheless unable to determine if all of the uncollected or past due

debts were covered by the bankruptcy. Thus, I cannot find that the credit report supports the individual's position that he has no current outstanding debts. Further, the record clearly indicates that he still owes \$10,000 for unpaid child support. Accordingly, I find the concern regarding financial irresponsibility has not been resolved.

B. Falsifications and Omissions

I will first consider whether the individual's failure to reveal two of the bankruptcy filings presents a security concern. As stated above, the two early filings were procedural and were subsumed into the third filing which was revealed on the 1997 and 2000 QNSPs. While it would have been better had the individual fully disclosed all of these filings, I do not believe, given the disclosure of the third filing, that the omission represents a separate security concern.

Similarly, I believe that the individual has reasonably explained why he did not reveal on the 1993 QNSP that his property was subject to an IRS tax lien. I believe that at that time he did not recognize a repayment plan as a tax lien. Accordingly these two aspects of the falsification concern have been resolved.

However, there were a significant number of items including numerous overdue bills, unpaid income taxes, overdue child support payments, tax liens (1997 and 2000 QNSP) and two arrests that the individual should have disclosed on his QNSPs. The individual's pattern of failure to disclose unflattering information is clear. The only unflattering information that the individual actually reported on any of the three QNSPs he filed was the one Chapter 13 bankruptcy that he disclosed on his 1997 and 2000 QNSPs. The individual provided a number of reasons for his failure to disclose potential derogatory information: he did not understand a question; he thought that disclosing the information during a personnel security interview was sufficient; and he believed that items included in his disclosed bankruptcy did not need to be further reported.

Overall, I find that the individual has a long-standing pattern of failing to provide complete and accurate information. I believe the reasons he now gives for not providing that information are self-serving attempts to excuse his behavior and do not represent the true reasons he failed to provide accurate information. I believe the individual simply tends to conceal unflattering information. Therefore, the individual's explanations for repeated failures to provide accurate information do not provide any mitigation of the DOE security concern. I also note that his omissions were recent. Thus, the individual has not yet established a pattern of candor with the DOE. His assurances that he will be truthful in the future are not sufficient to resolve the security concern related to repeated omissions and falsifications. Accordingly, I find that the individual has failed to resolve the Criterion F security concern.

As an additional matter, although not necessary to my findings in this case, I believe that the individual's testimony at the hearing was less than candid. For instance, when discussing his IRS tax liens, he was able to describe in detail information demonstrating that he had satisfied those liens. However, when he discussed his payments of past due child support to his ex-wife, he refused to

provide any specific details about the amount he was paying. This suggests to me that he is selective in his willingness to be forthcoming on details. In another instance, when asked about why he answered all the questions in one section of the psychiatric test in the negative, he avoided the question by stating, "I don't know the term of negative, as far as a test like that goes, the actual term of negative." Tr. at 78. This leads me to believe that he continues his pattern of evasiveness in providing information, which causes me to have continuing reservations about his honesty.

V. CONCLUSION

As indicated above, I have concluded that the individual has not resolved the DOE security concerns under 10 C.F.R. § 710.8(f) and (l). In view of the record before me, I am not persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker
Hearing Officer
Office of Hearings and Appeals

Date: February 20, 2003