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May 23, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 31, 2002

Case Number: TSO-0003

This Decision considers the eligibility of XXXXXX XXXXXX (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 explained below, it is my decision that the individual should not be granted an access authorization.

I. BACKGROUND

The individual is an employee of the Department of Energy (DOE), and her employers have requested access authorization for her on five separate occasions in the last eleven years. The Director of a DOE Office of Security issued a Notification Letter to the individual in July 2002. In this Notification Letter, the Office of Security finds that the available information has raised security concerns under Sections 710.8(l) (Criterion (l)) and 710.8(f) (Criterion (f)) of the regulations governing eligibility for access to classified material.

With respect to Criterion (l), the Notification Letter cites information concerning the individual which it believes tends to show that the individual "is not honest, reliable, or trustworthy, or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation, or duress which may cause her to act contrary to the best interests of the national security." The Notification Letter indicates three areas of concern under this criterion. First, the Office of Security cites a May 1995 Notice of Lien of Judgment for \$2,841 dollars recorded by American Express against the individual. The Notification Letter asserts that although the individual received money from the Government after submitting vouchers for official travel, she failed to pay American Express for the Government credit card debt. The Notification Letter also states that although the individual later claimed to have paid off the delinquency, she has presented no documentation to support her assertion.

Second, the Notification Letter refers to information indicating that the individual has exhibited a pattern of financial irresponsibility. Third, the Notification Letter refers to information indicating

a failure of the individual to cooperate with the DOE in processing her applications for a DOE access authorization.

With respect to Criterion (f), the Notification Letter states that information in the possession of the DOE indicates that the individual "deliberately misrepresented, falsified, or omitted significant information" in three Personnel Security Interviews when she made conflicting statements concerning whether she had paid her Government American Express delinquency.

The individual's request for a hearing was received by the DOE's Office of Hearings and Appeals (OHA) on October 31, 2002. In her pre-hearing filings, the individual did not admit or deny the factual bases for the concerns set forth in the Notification Letter. At the hearing, she presented explanations and information aimed at mitigating these concerns. The individual's supervisor also testified on her behalf. The DOE presented the testimony of the Director of the Office of Security's Personnel Security Division (the Personnel Security Director).

## 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, 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) and 710.27(b), (c) and (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. 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." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for 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). 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, we generally expect the individual in these cases 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); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

#### B. Basis for the Hearing Officer's Decision

In personnel security cases 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 or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I 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. ANALYSIS

#### A. Criterion (I) Concerns

##### 1. The Individual's Failures to Cooperate during DOE Security Investigations

As indicated above, the Notification Letter refers to information indicating a failure of the individual to cooperate with Personnel Security in processing requests for her to obtain a DOE access authorization. Specifically, the Notification Letter finds that on five separate occasions during the last eleven years, Personnel Security has terminated its processing of her application for access authorization because the individual failed to provide requested information or has not appeared for requested interviews. The Notification Letter describes the most recent application process as follows:

On May 10, 2000, [Personnel Security] received a new request for [the individual] to obtain a security clearance. On July 7, 2000, a letter of interrogatory, requesting

certain documentation, was sent to the subject. On July 21, 2000, and July 27, 2000, the subject was told to respond to the letter. Since all of the information requested of her was not forthcoming, a meeting was held with [the individual], representatives of [the individual's DOE office], and [the individual's union representatives]. It was agreed that a [union] representative would assist [the individual] in providing requested documentation. Not all of the documentation was provided as of the time of the final personnel security interview with [the individual] on July 13, 2001. For example, a document purporting to show a Government American Express account as having no further obligation to [the individual] merely shows no disbursement was made by the trustee in a Chapter 13 Bankruptcy case to American Express.

Notification Letter, Enclosure 1 at 3.

At the Hearing, the Personnel Security Director testified that the individual's inability or unwillingness to appear for interviews or supply information raised a significant concern regarding her reliability and trustworthiness.

[With regard to] people who maintain a clearance and have access to classified information, we have to have a reasonable feeling that they are going to act in an honest manner, that we can rely upon them, that they're going to be trustworthy enough to protect the classified information to which they have access. And if they're not going to be honest to us in the processing of the clearance, try to get the information -- because what we're trying to do is resolve the issues in their favor to give them a clearance -- then that raises a concern as to how are they going to act when they have access to classified information.

Hearing Transcript (hereafter "TR") at 81-82. After summarizing the individual's repeated failures to supply the Office of Personnel Security with information, the Personnel Security Director concluded:

So we have had a long history of very -- difficulty. And this raises a question about [the individual's] reliability in abiding by the rules and protecting classified information. If we have this much difficulty to get her to try to comply with some of the things that we need to try to get her a clearance . . . , then we have a concern that this may go back over [her reliability] -- if she gets access to classified information, her ability to protect classified information.

TR at 95.

At the hearing, the individual testified concerning specific issues involving her bankruptcy, her government American Express Account, her current credit report and her current financial situation. Other than to address specific issues, she did not provide any reasons for her previous financial problems or for her pattern of failing to provide information. However, in his testimony, the individual's supervisor offered an explanation for the individual's past failure to fully cooperate with

the Personnel Security Office's efforts to process her applications for a security clearance. The individual's supervisor stated that when he became the individual's supervisor approximately thirteen months prior to the hearing, he was briefed by his predecessors concerning the seriously troubled employee/management relationship that existed between the individual and other staff and his predecessors.

I think [the individual's lack of cooperation] ties directly to the management and the problems within the organization. There was no trust. There was not a good work environment. To the effect that when I checked in, [the individual] . . . had an office in a separate part of the building on a separate floor, not related to the rest of the organization because she didn't have a clearance and [had] been put in what I consider a substandard facility and was not even privy to normal discussions in mostly unclassified operations.

TR at 13. In discussing her former supervisors' repeated requests for a Q clearance for the individual, the individual's supervisor indicated that the requests were motivated in part by a hostile attitude toward the individual.

I will tell you that the former director told me that he was going to force the security clearance issue or make [the individual] leave. This was before I was an employee of the Department.

So it was an issue where, essentially, she's not transferring someplace else in the Department that doesn't [require] a clearance, she's going to get her clearance or she's out of here. And we're going to create a situation where if she fails to get her clearance, and we're going to make it a Q, then we're going to say she can't work here.

This is part of the management problems factor. There was not an attempt to try to find a solution to this problem. It was, in large part saying this has been going on too long, I'm fed up with it. And we're going to force the issue. And that's why we sit here today.

TR at 23-24.

The testimony of the individual's supervisor provides an explanation for the individual's demonstrated lack of cooperation with the Office of Personnel Security. Apparently, the individual believed that if she documented her financial difficulties to the Office of Personnel Security, her application for a security clearance would be denied and she would lose her job. However, this explanation does not justify her noncooperation, nor does it mitigate the DOE's concern in this area. An individual who is not willing to produce complete information in the context of an application for a security clearance clearly is not demonstrating the degree of reliability and trustworthiness required of an employee seeking a security clearance.

An individual can mitigate the Criterion (I) security concern raised by past noncooperation with DOE security. To do so, the individual must demonstrate that the past pattern of noncooperation has ended, and that a new pattern of openness has been established. I find that the individual has made considerable progress in this regard. At the Hearing, her supervisor stated that during the past thirteen months since he became the individual's supervisor, the communication issues that existed between the individual and her office have been resolved and she is now "a full-time member of the team." TR at 13. He stated that he has sent her on assignments that require trust and confidence in individual.

[The individual] does have my trust and confidence. In all my years of management, this is the first time that I've agreed to participate in an appeal. I have had numerous employees over 27 years that have had issues relative to clearances and other things and I have never said I am going to bat for you and try to work something out.

TR at 14. Throughout the current appeals process, the individual has made an effort to submit requested information in a timely fashion, and to resolve outstanding concerns regarding her financial situation. Accordingly, I find that the concerns raised by her history of noncooperation with the DOE are now resolved. I note, however, that cooperation in supplying information is an ongoing requirement. Just prior to my closing the record in this proceeding, the DOE counsel indicated additional information that the individual should provide regarding one of the accounts on her most recent credit report. I indicated that I would place any additional information received from the individual in the case file for review on appeal. If this additional information is not submitted by the individual into the post-hearing record in a timely manner, it would indicate a problem with the individual's recently established pattern of cooperation.

## 2. The Individual's 1996 Bankruptcy and Her Recent Financial History

The Notification Letter states that in the early and mid 1990's, the individual had multiple unpaid collection accounts. It also finds that in 1995, a Notice of Lien of Judgment was recorded in favor of American Express. Further, the Notification Letter finds that the individual failed to follow through on a Chapter 13 Bankruptcy filing in April 1994 and that case was dismissed for failure to pay required fees. The individual again filed for Chapter 13 Bankruptcy in August 1995, and this was converted to a Chapter 7 Bankruptcy case in June 1996.

At a June 1998 Personnel Security Interview (the 1998 PSI), the individual stated that her financial problems began around 1994 when her position with the military reserves ended and when the father of her younger child stopped making a voluntary contribution toward her household expenses. 1998 PSI at 62-70. She stated that she made the decision to convert from a Chapter 13 to a Chapter 7 Bankruptcy that included her house because the court imposed payment schedule for her mortgage payments was too burdensome. 1998 PSI at 74-75. She vacated the house in March of 1997. 1998 PSI at 83. She stated that she is now married and living in a house owned by her husband. 1998 PSI at 92.

There is a very serious security concern associated with an employee who has engaged in conduct showing a pattern of financial irresponsibility. See Personnel Security Hearing (Case No. VSO-0073), 25 DOE ¶ 82,794 (1996). I find that such a pattern exists in the present case, where it is undisputed that the individual accrued extensive debts that required a bankruptcy proceeding to resolve. The individual's record of financial judgments against her and unpaid debts convinces me that a security concern exists regarding her reliability and trustworthiness, and the possibility that she may be subject to coercion, pressure or bribery resulting from her debts. Accordingly, the individual must present mitigating evidence and testimony to sufficient to resolve these concerns.

After reviewing the record, I find that the individual has made progress in managing her finances since her 1996 bankruptcy. At the Hearing, she resolved the Office of Personnel Security's concern on the disposition of the 1994 judgment against her by American Express. As discussed below, the individual's current credit report indicates that she has no significant debt and her personal financial statement indicates that her monthly expenses and monthly income are roughly in balance. However, she has two unpaid accounts listed on her credit report and in the past two years she consistently has made late payments on her government credit card. Under these circumstances, I conclude that the individual has not yet mitigated all of the financial concerns identified in the Notification Letter.

a. The 1995 American Express Judgment

As noted above, the Notification Letter states that in 1995 the individual received a Notice of Lien of Judgment related to a delinquency on her American Express government credit card. <sup>1/</sup> At the Hearing, the individual testified that the American Express judgment was included in her Chapter 13 bankruptcy and was discharged without payment after that proceeding was converted to a Chapter 7 bankruptcy. TR at 142-144. There is documentation in the record that supports this explanation. DOE's Exhibit 4 in this proceeding includes two documents submitted by the individual relating to her bankruptcy. One, entitled "Final Report and Accounting" lists American Express as a creditor receiving nothing under a bankruptcy discharge that appears to have occurred on July 1, 1996. The second, entitled "Schedule F - Creditors Holding Unsecured Nonpriority Claims" also lists American Express. This and the fact that American Express does not appear on the individual's credit reports following her 1996 bankruptcy leads me to conclude that the American Express's judgment against the individual was discharged in her bankruptcy proceeding.

b. The Individual's Current Financial Situation

At the Hearing, the individual submitted a personal financial statement reflecting her monthly income and expenses. It indicates that her estimated monthly expenses exceed her monthly income by about \$200. Her only debts are an \$8,000 loan from the Thrift Savings Plan on which she is

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<sup>1/</sup> The Notification Letter also states that at various times the individual has offered conflicting explanations concerning how she handled this delinquency and how it was resolved. These statements will be discussed in the Criterion (f) analysis below.

making a monthly payment of \$110, and a \$104 debt on a VISA credit card. The Security Director made the following comments concerning her excess expenses.

She's coming up short every month so I don't know where she would obtain the money to cover the difference. But I would not think that she is in any deep financial morass based upon this. . . . We're coming up \$250 short every month, based on this, so there could be a problem that could cause late payments here and there, operating like this.

TR at 156-157. In the testimony that followed, it was apparent that the individual over-estimated her monthly car expenses by a couple hundred dollars (TR at 157-160). It therefore appears that her monthly income and expenses are closely matched. Her current bank savings are \$300. While the individual's tight budget and lack of savings continue to make her vulnerable to a future financial problem, it appears that the individual over all has been responsible in managing to avoid serious financial problems since her 1996 bankruptcy. 2/ However, as discussed below, there remain several indications that the individual still has difficulty managing her credit accounts. Given her financial history, such indications mean that I cannot find that she has mitigated the Criterion (I) security concern.

c. Unresolved Debts Listed on the Individual's Current Credit Report

At the Hearing, the DOE introduced a recent Equifax credit report for the individual. DOE Exhibit 16. Two items on the report raised concerns with the DOE. The first item is a Lowe's credit card account that is listed as having been opened in April 2000. It appears on the report with the captions "Transferred to Recovery" and "Charged Off Account". According to the Personnel Security Director, this account was reported as having a bad credit history in May 2002, and "then they charged it off and transferred it to their recovery department." TR at 86. Although the credit report indicates a zero dollar account balance, the Personnel Security Director indicated that this does not necessarily mean that the account has been paid off - "it's zero because they're not collecting on it." TR at 87. At the Hearing, the individual testified that the Lowe's card is her husband's card, and although she has authorization to use it, she did not do so. TR at 193-194. She introduced a copy of a form she submitted to Equifax requesting that the account be removed from her report because it is "not mine." Following the Hearing, she submitted a statement, apparently signed by her husband, which reads as follows:

The Lowe's account that appears on [the individual's] credit report from the Equifax is incorrect. [The individual] does not have a Lowe's account. I am the cardholder of the Lowe's account. I will notify Equifax, Inc., concerning this account.

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2/ However, the individual has not documented her husband's income, expenses and current debt. Accordingly, there could be serious financial problems involving the individual's household that do not appear on the individual's personal financial statement or on her credit report.

February 11, 2003 letter. In an April 29, 2003 telephone conversation with the DOE Counsel, he stated that the Office of Personnel Security has a concern with this letter because the letter was not notarized and there is no way to establish that it was actually signed by the individual's husband. In an e-mail of the same date, I explained the Office of Personnel Security's concern and invited the individual to submit a signed and notarized copy of this letter. I also encouraged her to submit a recent credit report indicating that this account was no longer listed as hers. As of May 15, 2003, I had not received either a notarized letter or a new credit report. I therefore conclude that at this time, the unpaid and overdue Lowe's account remains a significant financial concern on the individual's record.

The other item on the Equifax credit report of concern to the Office of Personnel Security is an account labeled "1STNATBK" (First National Bank) which is described as a "charged off" credit card account with a balance of \$704. At the Hearing, the individual testified that the First National Bank account was not hers, that she informed Equifax that the account is "not mine," and has asked them to correct it. TR at 145-146, Individual's Exhibit 2. Following the hearing, the individual authorized the Office of Personnel Security to investigate this account. On April 29, 2003, the Personnel Security Director submitted a Report from the Office of Personnel Management concerning this account (the OPM Report). The OPM Report identifies the provider of its information as the custodian of records for the First National Bank of Marin in Las Vegas Nevada. The name on the account is identified as the individual's maiden name. The account information includes the individual's social security number, but does not list a date of birth or a place of birth. The OPM Report states that the account is a "revolving credit card account" that was opened in August 1996 and was charged off in June 1998. In November 2002 it was placed for collection with Arrow Financial Services. OPM Report at 1.

In a May 2, 2003 letter, the individual stated that she had reviewed the report, and believed that the information in the report "still does not provide any proof that I am the credit card holder with First National Bank..." She asserted that the account information only shows that someone using only her maiden name and social security number opened this account. Individual's May 2, 2003 letter to Kent Woods, Hearing Officer. I agree with the individual that the OPM report indicates that only the individual's name and social security number appear on this account, raising the possibility that the account was fraudulently established without the individual's knowledge or consent. However, in this proceeding the burden of proof is clearly on the individual to show that her credit report has no current problem. The individual has not shown that the First National Bank credit card account is not hers, nor has she succeeded in having the account removed from her credit report.

Because of the unresolved debts which currently exist, I find that the individual has not yet mitigated the Criterion (I) financial concerns raised by the presence of these two unresolved debts on her credit report.

d. The Individual's Late Payments on Her Government Credit Card

Finally, DOE Security has raised as a subject of concern the individual's recent record of making late payments on her Bank of America government credit card account balances since she was issued

the card in February 2002. TR at 166. It submitted copies of five e-mails sent to the individual from the DOE's accounting center from June 28, 2002 through December 19, 2002. <sup>3/</sup> Two of these e-mails indicate account balances over 60 days past due and four of them indicate balances more than 30 days past due. DOE Exhibit 18. Account information submitted by the DOE indicates that a balance owed of \$515.60 on the individual's government credit card exceeded 90 days past due before a payment of that amount was recorded on January 10, 2003. *Id.* At the Hearing, the individual testified that she had been sent on at least three, lengthy business trips in 2002, and that trips of a month or more made it difficult for her to be reimbursed for expenses and to pay her government credit card in a timely manner. TR at 166-68 and 172. She stated that a trip that occurred in July and August, 2002 created a particularly difficult reimbursement issue because of a canceled airline ticket that was billed on her credit card.

I think I was charged for the ticket because it wasn't canceled. Then later on, I came back home and I think I had to redo a voucher to state what happened during that ticket.

. . . And like I said, the [Bank of America] card bills you before you get back, bills you before you get there. They bill you before you do your voucher before you get back. So this varies between numbers of things. This is not like I don't want to pay the bill off.

TR at 172-173. With respect to the July/August trip, the individual submitted receipts indicating that she paid \$800 on October 8, 2002, \$3,000 on October 23, 2002, \$2,000 on November 6, 2002, and \$3,000 on December 17, 2002, leaving an unpaid balance of \$515.60 until January 10, 2003. Individual's February 11, 2003 Post-Hearing submission. With respect to the \$515.60, the individual asserted that she attempted to pay this balance by money order in early December 2002, but that the Bank of America location where she deposited her money order did not correctly process it. She testified that when Bank of America informed her that it had not received this payment, she went back to the Bank of America location where she had deposited her money order payment, spoke to a bank representative, and showed her a receipt. The bank representative then identified that the error that had been made.

She said the teller gave me back the top portion instead of giving me the bottom portion back. So that means, -- it indicated that they did not have a record that I paid this money amount.

TR at 164. The individual's submitted receipts of her Bank of America payments do not include any documentation of this attempt to make a \$515.60 payment in early December 2002.

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<sup>3/</sup> The individual testified that she never saw any of the e-mails sent to her e-mail address at the DOE, and that she only saw a warning letter that was sent to her in December 2002. TR at 62.

Although I am inclined to accept the individual's explanation for the \$515.60 payment being made in January 2003 rather than December 2002, the fact remains that this payment was already more than sixty days past due in December, and the individual acknowledges that in 2002 she made many payments on her government credit card that were between 30 days and 90 days overdue. Allowing her account balance to become overdue to this extent is a serious concern to the DOE, and indicates that the individual's past pattern of financial irresponsibility is continuing. At the Hearing, DOE Security presented the testimony of the team leader for DOE travel who manages the DOE Bank America credit card account (the DOE credit card manager). He testified that any late payment on the government credit card is considered a delinquency by the DOE and raises a serious concern, although many DOE employees are not exercising sufficient vigilance in this area.

What I find is employees don't tend to recognize that delinquency means if it goes one day beyond the date listed on the bill, then it's considered delinquent. . . . It doesn't have to get to 60 days to be delinquent.

TR at 66. He testified that about thirty percent of the outstanding balance of individual billed accounts at the DOE is delinquent at any given time.

. . . I think the culture is, people aren't paying it when it's due, they're paying it two weeks late, three weeks late, maybe just before it's suspended. That'll probably be changed.

TR at 68. He noted that when people become delinquent, it is because they fail to fill out their vouchers on time. The DOE makes prompt payment on travel vouchers. He said that for the past five years the DOE has paid employees within 48 hours of the time that they file their vouchers. TR at 69. This testimony concerning DOE policy is supported by a February 12, 2003 memorandum to Heads of Departmental Elements from Kyle McSarrow entitled "Zero Tolerance for Travel Card Abuse." This memorandum states that an employee's ongoing responsibilities pertaining to DOE travel charge cards include filing travel vouchers within 5 workdays of completing travel, and paying travel charge card bills by the due date, regardless of whether the employee has filed a travel voucher or received reimbursement. I have placed a copy of this memorandum in the record of this proceeding.

The individual's extensive record of late payments over several months immediately preceding the Hearing indicates that she has not complied with her responsibility to the DOE for timely payment of her travel expenses, and has undermined her argument that she has mitigated the DOE's financial irresponsibility concerns under Criterion (I). Although at the time of the Hearing, the individual had a zero balance on her government credit card, this is insufficient evidence of mitigation. To mitigate the concern arising from a pattern of late payments, the individual clearly must establish a significant record of timely payment of her official travel expenses. Her record on this score was deficient as recently as January 2003, and I have received no information concerning her government travel card payments in the months following the Hearing. Consequently, she has failed to mitigate this concern.

Previous opinions issued by OHA Hearing Officers have held that once there is a pattern of financial irresponsibility, the individual must demonstrate a sustained, new pattern of financial responsibility sufficient to demonstrate that a recurrence of the past pattern is unlikely. See, e.g., Personnel Security Hearing (Case No. VSO-0108), 26 DOE ¶ 82,764 at 85,699 (1996). Although the individual appears to have remained free of significant debt since her 1996 bankruptcy, her financial statement indicates that she remains in a precarious financial condition with few savings to use in the event of emergency expenses. Moreover, the individual has not resolved the concerns raised by the two charged out accounts on her credit report, or by her pattern of late payments on her government travel credit card. Under these circumstances, I find that the individual has not mitigated the DOE's security concerns with respect to Criterion (l) arising from her history of financial irresponsibility.

#### B. Criterion (f) Concerns

As noted above, Criterion (f) concerns information that an individual has deliberately misrepresented, falsified, or omitted significant information from a security questionnaire, a qualifications statement, or from a personnel security interview (PSI). The misrepresentation (or omission) by an individual of relevant information in response to questions at a PSI raises serious doubts about whether that individual should be entrusted with the responsibility for safeguarding classified materials. In this regard, the Notification Letter alleges that in three PSIs, the individual provided conflicting statements concerning her Government American Express delinquency in the mid 1990's.

During a personnel security interview on June 26, 1998, [the individual] stated that she did not believe the Government American Express delinquency . . . had ever been satisfied. During an August 19, 1999 interview, she stated that she mailed checks "cut" by DOE's Travel Division (CR-53) to American Express. She also said she included the delinquency in a bankruptcy. During a July 13, 2001 interview, [she] again stated that she included this delinquency in a bankruptcy. Then, after conferring with a [union] representative, she said that she had paid off the delinquency, and that she did not owe American Express anything even though she included the account in the bankruptcy. When asked why it would then have been listed as delinquent, she responded that she did not know why.

Notification Letter, Enclosure 1 at 4.

I have reviewed the statements made by the individual at her PSIs, and considered her testimony concerning these statements at the Hearing. While I find her responses to questions concerning the American Express delinquency to be vague and somewhat contradictory, I do not believe that they constitute a *deliberate* attempt to misrepresent, falsify, or omit significant information. Rather, the individual clearly appears to admit the financial problems but to be honestly confused concerning both her responsibilities and her actions with respect to her American Express government travel card in the years 1994 through 1996.

As discussed above, at the Hearing the individual testified that the American Express delinquency judgment was included in her Chapter 13 bankruptcy and was discharged without payment after that proceeding was converted to a Chapter 7 bankruptcy. TR at 142-144. I accepted this explanation after finding that it was supported by documentation in the record of the proceeding. See DOE Exhibits 4 and 16. The Hearing also included a discussion of the statements that the individual had made at her 2001 PSI concerning this delinquency and how it arose. Under questioning from the DOE Counsel and myself, the individual expressed some confusion concerning the extent of the payments that she made on her American Express government credit card in the 1994-1996 period. While she initially asserted that she could not remember exactly what she did, she then answered in the affirmative when the DOE Counsel asked if she had paid the full amount of her DOE reimbursement to American Express. TR at 185. However, after examining her payment record to American Express (DOE Exhibit 9), she acknowledged that she did not pass through the full amount of the payment. TR at 186. While the individual's statements at her earlier PSIs appear to contradict themselves on whether she paid her American Express credit card bills in full, they reflect genuine confusion on the part of the individual rather than any deliberate effort to confuse or mislead the DOE. For example, in the 1998 PSI, she clearly acknowledged that she kept a portion of her travel reimbursement on the assumption that it belonged to her, and that some of her government credit card bills were unpaid. TR at 35-36.

Before we had all this payroll deductible, . . . we did not have all these new procedures. All I remember is, the [DOE reimbursement] check came to me and I assumed that the checks were mine. And then a couple of times I can recall, and I'm not sure of the dates . . . , the DOE probably sent me a check. And when I take those checks to Travel, they say sure. That's all I remember. I don't recall abusing the travel check, I didn't use it for my personal use. I used the card only for government-use travel only.

1998 PSI TR at 35. At the 1999 PSI, she stated again that she believed that the DOE was reimbursing American Express for her credit card expenses.

Like I said, back then, from what I understood, Travel would pay whatever you used on your American Express card. And like I said, the next thing I know, American Express was calling me, saying I owe them money. And I was saying, well, the Department of Energy paid the money.

1999 PSI TR at 42. At the 2001 PSI, the individual testified that she took her reimbursement from Travel and "paid on the card" and that she had "no idea" why the account was delinquent by more than \$2,000. 2001 PSI TR at 46. When asked to explain further, she conferred with a union representative and stated that she did not understand how this large delinquency was her responsibility:

When I received my voucher, I paid all the money from the voucher to the American Express. The personal items, I did not charge anything on it. I've asked American

Express for receipts. I did not receive them. So therefore, when they sent the paper work in I guess for judgment, then I had included it in under bankruptcy.

2001 TR at 48-49. Her statement that she paid “all” rather than some of the money from her travel vouchers to American Express clearly contradicts both her earlier statements and her acknowledgment at the Hearing that she made partial payments. However, I believe that her use of “all” in this sentence is an example of her confusion and irresponsibility concerning financial matters rather than a deliberate attempt to mislead her questioners or falsify her answer. Moreover, I find that the factual inconsistency arising from this statement has been satisfactorily mitigated by her subsequent acknowledgment at the Hearing of her confusion and lack of recollection concerning the payments she made on her American Express government credit card in 1994, 1995 and 1996.

Based on the foregoing, I find that the individual did not deliberately provide false or misleading information to the DOE concerning her payments on her American Express government credit card at her 1998, 1999 and 2001 PSIs. While some of her statements at those PSIs and at the Hearing were irresponsibly inaccurate, I conclude that they were not deliberately false and misleading, and do not raise a security concern under Criterion (f).

#### IV. CONCLUSION

As indicated above, I have concluded that the individual has resolved the security concerns under 10 C.F.R. § 710.8(f) relating to the allegations of false or misleading testimony at his PSIs. However, the individual has not resolved the security concerns under 10 C.F.R. § 710.8(l) relating to financial irresponsibility. 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 granted. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: May 23, 2003