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February 5, 2004
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing
Date of Filing: September 5, 2003
Case Number: TSO-0066

This Decision concerns the eligibility of XXXXXX XXXX XXXXXXXXX (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."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. 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

^{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. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual received a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on July 25, 2003, alleging that the individual "engaged in unusual conduct... which tends to show that [he] is not honest, reliable, or trustworthy, or which furnishes 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) (Criterion L). The basis for this finding is summarized below.

The Notification Letter indicates that on November 26, 2002, the individual and his wife filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code, based upon a substantial amount of unsecured debt owed to credit card companies. The Notification Letter further states that on March 3, 2003, a Personnel Security Interview (PSI) was conducted with the individual during which he provided the following information regarding his bankruptcy: (1) after filing the bankruptcy petition, the individual allowed his vehicle to be repossessed rather than reaffirming the full amount of debt owed on the vehicle, (2) a considerable part of his credit card indebtedness resulted from activities such as purchasing new cars every few years and taking a vacation to Disney World, (3) approximately three years prior to the PSI, the individual borrowed \$50,000 on a line of credit established for the individual by his father although the individual was financially unstable at the time, and (4) the individual expressed an unwillingness to attempt to satisfy his unsecured debts.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on September 5, 2003, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On September 10, 2003, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called as its sole witness the Personnel Security Specialist who conducted the PSI with the individual. Apart from testifying on his own behalf, the individual called his counselor, his supervisor, a co-worker and a close friend. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual has been employed by a DOE contractor for 22 years and was issued a DOE security clearance when he began his employment. However, in September 2002, the individual and his wife made the decision to file a petition for bankruptcy after reviewing their financial condition and consulting with an attorney. The individual immediately notified his employer of his decision and the bankruptcy petition was filed on November 26, 2002. In December 2002, the individual's employer notified DOE Security of his bankruptcy petition and, as customary in such circumstances, his employer required the individual to complete a Personal Financial Statement and Questionnaire. This information was forwarded to DOE Security and a Personnel Security Interview (PSI) was conducted with the individual on March 3, 2003. On the basis of the information provided by the individual in the Questionnaire and during the PSI, DOE Security suspended the individual's security clearance on May 28, 2003, and referred the matter for administrative review. The facts and circumstances that led the individual to file for bankruptcy are summarized below.

The individual has been married twice. During his first marriage, from 1979 to 1986, the individual was in charge of paying the bills and his family was financially stable. The individual and his first wife were divorced in 1986, and the individual received custody of their two sons. The individual continued to be financially stable during the ensuing years while raising the two boys essentially as a single parent. The individual lived a moderate lifestyle and had only one credit card.

The individual remarried in 1993. According to the individual, his second wife enjoyed living a more extravagant lifestyle than himself and liked having "new things." The individual immediately bought a new house. The individual's wife purchased a new car every two to three years and new clothes on a regular basis. She also enjoyed taking yearly vacations to the beach. According to the individual, his wife had a stack of credit cards and she frequently used credit to finance her purchases. Nonetheless, the individual's wife convinced him after one year of marriage to place her in charge of their finances. The individual's wife was given charge of their checking account. She received the individual's paycheck and was responsible for paying their bills.

The individual's wife has held several jobs during their marriage. At different times, she worked as volleyball coach at a local school, and as a waitress. She also tried starting a housecleaning business and a paralegal home study program. She purchased two expensive dogs with the intent of breeding puppies for sale, and later started a horse stable business providing boarding and riding lessons. However, none

of these jobs or business ventures proved to be fruitful. According to the individual, his wife brought in an average of \$10,000 to \$15,000 in yearly income, yet she continued to spend excessive amounts of money using credit cards.

After a few years of marriage, the individual refinanced his home which resulted in a better monthly cash flow. Notwithstanding, a few years later, during the 1996-1997 time frame, the individual found it necessary to take out a second mortgage on his home to pay off their credit card debts. Over the next few years, the individual and his wife once again accumulated an excessive amount of credit card debt. During the 1999-2000 time frame, the individual took out a \$50,000 loan on a line of credit established for the individual by his father. The individual used this money to pay off their credit card debts, and left his wife in charge of paying their bills. Despite their previous financial difficulties, their credit card spending continued unabated. In 2001, they purchased another new vehicle and took a two-week vacation to Disney World during which they spent approximately \$3,000 using credit cards. Then in 2002, his wife made two large purchases to support her horse riding and stable management business including a new horse for \$5,000 and a horse trailer for \$7,000. Both of these purchases were also made with credit cards.

In September 2002, the individual's wife informed him that they could no longer meet their obligations. According to the individual, he knew that their credit card debts were mounting but he was "dumbfounded" to hear that they could not pay their bills. The individual recounts that he thought their total credit card debt was in the neighborhood of \$20,000 but after going through all of the paperwork, he found that it was greater than \$80,000. The individual believes that as much as one-third of this is perhaps attributable to finance charges. The individual found out that his wife had been using credit cards to consolidate and pay off other credit cards, but in September 2002 she had finally reached the point of being denied any more credit cards and they had insufficient cash to pay their bills. The individual went to an attorney who advised him to file a voluntary petition under Chapter 7 of the United States Bankruptcy Code. The bankruptcy petition was filed on November 26, 2002, and finalized in May 2003. Under the bankruptcy, the individual discharged \$83,000 in unsecured credit card debt.

Following the suspension of his security clearance, the individual went to see his Employee Assistance Program (EAP) counselor who referred the individual to a behavioral counselor. According to the individual, the suspension of his security clearance led him to address the underlying issues that caused his bankruptcy. The individual has seen the counselor every two weeks since June 2003. The individual's wife has refused to seek counseling.

The individual states that in the ten months following the filing of their bankruptcy petition, he and his wife lived within the budget imposed by the bankruptcy trustee.

However, this changed dramatically in September 2003. First, his wife accepted the gift of a puppy and then spent approximately \$600 out of their checking account for accessories and veterinarian charges. The individual later discovered that the wife had secretly purchased a \$9,000 horse by taking \$3,000 out of their savings account, \$1,000 out of their checking account and borrowing \$5,000 from her friend. The individual had a heated confrontation with his wife after she refused to return the horse. At this point, the individual made the decision to separate from his wife and went to see a divorce lawyer.

Pursuant to his meeting with the divorce lawyer, a Separation Agreement between the individual and his wife was executed. The individual and his second wife have one child together, a daughter, born in 1998. Under the terms of the Separation Agreement, the wife moved out of the house in October 2003, with custody of their daughter and the individual is required make \$1,400 a month in child support payments. Following his separation, the individual prepared a new budget of his monthly income and expenses. In November 2003, the individual went to see a consumer credit counselor who reviewed the individual's budget. While the consumer credit counselor noted that the individual has little money left over each month, she considered his budget to be reasonably in line with his income and obligations.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard 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). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or 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 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 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, it is my opinion that the individual's access authorization should not be restored at this time since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion L; Unusual Conduct

In the Notification Letter, DOE Security asserts it suspended the individual's security clearance based upon its finding that he has "engaged in unusual conduct . . . which tends to show that [he] is not honest, reliable, or trustworthy, or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interest of the national security." 10 C.F.R. § 710.8(l) (Criterion L). DOE Security's concerns arise out of the individual's filing for bankruptcy in November 2002. Bankruptcy is a legal means for resolution of financial problems, and an individual may become free of debt by virtue of a bankruptcy. As we have noted in prior decisions, however, this does not mean that there are no DOE security concerns related to the bankruptcy or more particularly to the individual's financial behavior leading to the bankruptcy. *See Personnel Security Hearing, Case No. TSO-0026, 28 DOE ¶ 82,925 (2003); Personnel Security Hearing, Case No. VSO-0520, 28 DOE ¶ 82,862 (2002); Personnel Security Hearing, Case No. VSO-0288, 27 DOE ¶ 82,826 (1999); Personnel Security Hearing, Case No. VSO-0081, 25 DOE ¶ 82,805 (1996).*

At the hearing, the Personnel Security Specialist expressed his view that the individual's bankruptcy was not caused by personal hardship but the result of the individual's poor judgment and unreliability. Tr. at 64. The Personnel Security Specialist pointed out that two to three years prior to the bankruptcy, the individual received help from his father who established a line of credit to pay off the individual's existing credit card debts. The Personnel Security Specialist found inexcusable the individual's conduct in allowing his credit card debts to once again amass to an unpayable level by September 2002.^{2/} According to the Personnel Security Specialist:

^{2/} Citing the Guideline F of the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, the Personnel Security Specialist opined that the individual had

(continued...)

“Poor judgment and unreliability raise security concern because they bring into question [whether] the individual has the judgment and reliability necessary to safeguard classified information. This is not a hardship case. In my opinion, irresponsible behavior is what led to this bankruptcy.” Tr. at 64-65.

Having reviewed the circumstances of this case, I have concluded that DOE Security correctly invoked Criterion L on the grounds of financial irresponsibility. It is apparent that the individual’s insurmountable indebtedness leading to bankruptcy was not the result of conditions beyond the individual’s control. Accordingly, I turn to whether the individual has presented sufficient mitigating evidence to overcome the concerns of DOE Security.

B. Mitigating Circumstances

The individual makes several assertions to mitigate the security concerns stemming from his bankruptcy. The individual first claims that it was his wife whose excessive credit card spending to support her lifestyle and business ventures led to their financial ruin, and he was not aware of the extent of their indebtedness until September 2002, when she admitted that she was unable to pay their bills. Tr. at 148, 215-16; DOE Exh. 3 at 1; DOE Exh. 4 (PSI) at 16. Secondly, the individual asserts that he voluntarily entered into behavioral counseling in June 2003, after a referral from his EAP counselor, and has made substantial progress in confronting the issues that led to his financial predicament. Tr. at 169-70; Ind. Exh. 6. Finally, the individual asserts that he and his wife have now separated, and he is adhering to a workable budget that was reviewed and approved by a credit counselor. Tr. at 183-85, 187-88, 215; Ind. Exh. 5. These matters are addressed successively below. For the following reasons, I have concluded that the individual has failed to adequately mitigate the security concerns of DOE.

I find initially that the record supports the individual’s assertion that his wife’s compulsive spending comprised the predominant share of the credit card debt leading to their filing for bankruptcy. It is apparent that much of the \$83,000 in credit card debt can be attributed to his wife’s penchant for new clothes, new cars, and beachfront vacations, in combination with her lavish spending to finance unsuccessful business ventures. Close friends of the individual testified that in their observation the individual lived a modest lifestyle but his wife tended toward extravagance. Tr. at 88, 97, 118-20. The individual’s behavioral counselor similarly expressed the view the individual’s second wife whom he married in 1993, was the root of their voluminous indebtedness culminating in bankruptcy, describing her as “controlling . . . and

2/ (...continued)
demonstrated “a history of not meeting financial obligations” and an “inability or unwillingness to satisfy debts.” Tr. at 62.

compulsive in her spending.” Tr. at 15, 24. In reaching this conclusion, the behavioral counselor points out that the individual was financially stable during his first marriage which ended in 1986, and raised two boys as a single parent without financial difficulty. *Id.*; Tr. at 123, 137. Thus, I accept the individual’s contentions regarding his wife’s spending habits. The individual further appeared candid in testifying that he was not fully aware of the extent to which his wife had layered credit card debt upon credit card debt because his wife was in charge of their finances. See Tr. at 213-14.

However, the fact that the individual’s wife had a predominant role in their financial collapse does not absolve him from responsibility. The individual was aware of his wife’s substantial use of credit cards early in their marriage, when he made the questionable decision to place his wife in charge of their finances. Tr. at 145.^{3/} In this capacity, the individual’s wife maintained their checking account, received his paycheck and payed the bills. After a few years of marriage, the individual found it advantageous to refinance their home to help their cash flow situation. Nonetheless, their credit card debts grew steadily in the years following the refinancing to the degree that the individual found it necessary by the 1996-97 time frame to take out a second mortgage on their home to pay them off. Tr. at 25, 148. Undeterred, however, the individual and his wife continued to accumulate excessive credit card debt. In 1999, the individual was forced to borrow \$50,000 on a line of credit established for him by his father to consolidate and pay off their credit card debts which had again burgeoned to an unmanageable level. *Id.* Following this action, the individual still left his wife in charge of their finances, and their credit card purchases again escalated and became insurmountable in 2002, exacerbated by his wife purchasing on credit a new horse for \$5,000 and a horse trailer for \$7,000.

I find that the individual displayed very poor judgment and unreliability in leaving his wife in control of their finances after she had clearly shown during their marriage that she was unable to control her credit card spending or regulate their finances.^{4/} Instead of rectifying the matter, the individual continued to facilitate her excessive credit card spending until they were inextricably headed toward bankruptcy. Tr. at 213. The individual now admits, in retrospect: “I was in some denial and avoidance, and I recognize that. It was keeping the family happy. It was keeping her happy. . . . [M]y role and the pattern of behavior was one of supporting her spending habits and making

^{3/} The individual testified: “[S]he had a stack of credit cards when I married her. I remember when we first got married, I was surprised . . . It was like a deck of cards, almost. . . . She liked the fact that she had them. That gave her spending power.” Tr. at 145.

^{4/} The individual holds a masters degree in business, Tr. at 135, and thus his decision to leave his wife in charge of their finances was not due to any inability on his part.

the means to settle them on a regular basis.” Tr. at 148-49.^{5/} Thus, I find that the individual was in active complicity with his wife, and I cannot excuse the individual’s irresponsibility, poor judgment and unreliability based upon his wife’s excessive spending and bad financial management.^{6/}

The individual’s assertion that he was unaware of the magnitude of their credit card debts until September 2002, hardly alleviates my concern regarding his conduct. The individual maintains that “I knew that we were making all of our payments. How much money was going out and she was spending in all the credit cards, I was not fully cognizant or aware of that.” Tr. at 148. I find it inconceivable that the individual would not have regularly monitored their level of credit card spending after having undergone two previous episodes of financial crisis. Rather than mitigating the security concerns, the individual’s inattention under these circumstances serves only to accentuate my finding of financial irresponsibility on his part.

Moreover, I find that while the predominant share of the credit card spending is attributable to the individual’s wife, the individual’s own expenditures comprised a considerable portion of their credit card debt. The individual believes that finance charges, associated with his wife using credit cards to pay of other credit cards, account for as much as \$30,000 of the \$83,000 in unsecured debt subject to the bankruptcy. Tr. at 218. The individual concedes, however, that his own spending accounted for approximately 25 percent of the principal credit card debt, and that in the four months preceding their financial collapse in September 2002, the individual himself ran up charges of approximately \$6,100 on one credit card. Tr. at 77, 211, 222. Thus, the individual was hardly an innocent bystander in their financial ruin.

I find commendable the individual’s decision to seek behavioral counseling in June 2003. By the time of the hearing, the individual had attended 13 sessions with the behavioral counselor. Ind. Exh. 6. The counselor testified that the individual has made considerable progress in addressing the behavior that led to the bankruptcy, and particularly his permissiveness with his wife. *Id.*; Tr. at 17-18, 29-30. The individual

^{5/} According to the behavioral counselor: “I think the part that [the individual] contributed is that he allowed it to go on. He didn’t set limits with her. He tried to set limits, I think, from time to time, and -- but he -- eventually he would give in to her. . . . [H]e needs to take responsibility for that, and I think he has taken responsibility for that.” Tr. at 33.

^{6/} When asked to explain his acquiescence to his wife’s spending excesses, the individual stated: “[F]irst, foremost, you know, I love my wife. . . . The other thing is . . . the frog and water syndrome. It’s growing acclimated to an untenable situation. You take a frog, you drop it in hot water and he jumps out. But if you take a frog and you drop him in cold water and you slowly bring the water temperature up, the frog is going to sit there until it boils to death.” Tr. at 199.

separated from his wife in October 2003, after finding out that his wife had secretly purchased a special breed of horse at a cost of \$9,000 by taking \$3,000 out of their savings account, \$1,000 out of their checking account and borrowing \$5,000 from her friend. Tr. at 179-80. Following their separation, the individual formulated a new monthly living budget which he had reviewed by a consumer credit counseling service. While noting that the individual “has only a small amount of money left over each month,” the consumer credit counselor determined that “his current budget . . . is in line with his present income and obligations.” Ind. Exh. 5. The individual’s friends and co-workers consider him to be honest and a person of high integrity, Tr. at 86-87, 105, 124, and I was impressed with the individual’s candor in expressing his intention and motivation to maintain financial stability.

Notwithstanding, I find that the individual has failed to sufficiently mitigate the concerns of DOE Security. “Once an individual has demonstrated a pattern of financial irresponsibility, he must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” *Personnel Security Hearing*, Case No. VSO-0520, 28 DOE ¶ 82,862 at 86,023 (2002), *citing Personnel Security Hearing*, Case No. VSO-0108, 26 DOE ¶ 82,764 at 85,699 (1996). I am unable to find that the individual has met this standard at this time. The individual has only recently begun to live on the new budget he crafted after separating from his wife. Ind. Exh. 2. There is little room in the budget after paying the \$1,400 in child support payments required under the Separation Agreement. Ind. Exh. 1. While the individual has made significant progress in his behavioral counseling sessions, the counselor stated that “[the individual] has still got things ahead of him . . . he’s still facing some major life events.” Tr. at 31. The counselor recommended that the individual remain in counseling “maybe six more months, maybe once a month.” Tr. at 34.

Finally, I note that in separating from his wife in October 2003, the individual has ostensibly removed himself from her spending influence. However, I am unconvinced that there has been closure with respect to that relationship or that their separation will inevitably end in divorce. According to the behavioral counselor, “there’s still a hope there that he can save his marriage,” Tr. at 29, and the individual himself stated that reconciliation is possible if “she were to get professional counseling and recognize that she has issues.” Tr. at 231. Thus, I find that there are unresolved issues regarding the individual’s wife affecting when the individual will be able to achieve a prolonged period of emotional and financial stability. Until this occurs, the security concerns associated with his past financial irresponsibility remain.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(l) in suspending the individual's access authorization. For the reasons I have

described above, I find that the individual has engaged in conduct that tends to show that he is not reliable and trustworthy. I further find that the individual has failed to mitigate the legitimate security concerns stemming from his conduct. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: February 5, 2004