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January 27, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 21, 2002

Case Number: VSO-0571

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (the individual) for continued access authorization 1/ 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." Based on the record before me, I have determined that the individual's access authorization should not be granted.

I. Background

The individual is employed at a DOE facility where his work requires him to have an access authorization. The local DOE security office issued a Notification Letter to the individual on June 20, 2002. The Notification Letter alleges under 10 C.F.R. § 710.8(l) that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, or which 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."

The security concerns in the Notification Letter are based on the following factual allegations:

- (1) A credit report dated August 14, 2001, listed three judgments against the individual, with unpaid balances of \$4,783, \$5,017 and \$710.
- (2) A credit report listed an involuntary repossession by American Credit with an unpaid balance of \$5,657 and a past due amount of \$617.
- (3) A credit report reflected that many of the individual's credit accounts were charged off as bad debts by the businesses involved.

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

- (4) On August 14, 2001, the individual participated in a DOE Personnel Security Interview (PSI) and provided derogatory information concerning his delinquencies.
- (5) The U.S. Office of Personnel Management (OPM) completed a Single Scope Background Investigation on the individual in January 2002. It was disclosed in the investigation that the individual has had a continuing history of delinquencies regarding consumer credit responsibilities.
- (6) A credit report dated February 7, 2002, in addition to ten previous delinquent accounts, reflects two additional collection accounts with unpaid balances of \$250 and \$229.

Because of the security concerns that these facts presented, the case was referred for administrative review. The individual filed a request for a hearing on the concerns in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel called two witnesses, the Director of the local Personnel Security Division and the individual. The individual, who was not represented by counsel, testified on his own behalf, and called his supervisor. The DOE submitted six written exhibits prior to the hearing.

II. Standard of Review

The applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting 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). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in § 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of participation; the age and maturity of the individual at the time of the conduct; 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; and the likelihood of continuation or recurrence.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. 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 has presented

derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his 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). *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. For the reasons discussed below, I do not recommend granting this individual's access authorization.

III. Findings of Fact

The individual admits the factual allegations in the Notification Letter. During the hearing, the individual was given the opportunity to present evidence in an attempt to mitigate the security concerns in the Notification Letter, and this Decision will focus primarily on whether the individual met his burden of showing that restoring his access authorization is warranted under 10 C.F.R. Part 710.

The events leading to the present proceeding began when a DOE contractor requested that the individual be granted an access authorization as a condition of his employment. The individual underwent a routine investigation of his eligibility to obtain a DOE access authorization. In the course of this investigation and a subsequent PSI, the individual admitted a number of facts that raised concerns about his financial responsibility. The PSI revealed a series of financial delinquencies that had been incurred over a period of time and had not been resolved. Specifically, a total of four credit reports were run on the individual which listed three judgments against the individual that have not been paid. Those three judgments include an unpaid balance of \$4,783 owed to an attorney filed in 1999, an unpaid balance of \$5,017 owed to a bank filed in 1999 and an unpaid balance of \$710 owed to a hospital also filed in 1999. Hearing Transcript (Tr.) at 15. In addition, the individual's financial delinquencies included an involuntary repossession of an automobile with an unpaid balance of \$5,657. *Id.* at 16. The Notification Letter lists various other charged-off collection accounts indicating unpaid balances. In total, the individual possesses delinquencies in the amount of \$35,649. *Id.* at 25. As of the date of the hearing, the individual has taken no action to pay his debts.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. 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). After due deliberation, I have determined that the individual's access authorization should not be granted at this time. I cannot find that granting the individual's 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). The specific findings I make in support of this decision are discussed below.

A. Whether the Individual's Financial Irresponsibility Constitutes a Security Concern

A pattern of financial irresponsibility raises serious security concerns for a number of reasons. A pattern of financial irresponsibility can be evidence of poor judgment or unreliability on the part of an individual. Financial irresponsibility can render an individual susceptible to coercion. Financial irresponsibility also raises a serious doubt about an individual's ability to handle classified material and follow security regulations. *Personnel Security Review* (Case No. VSA-0048), 25 DOE ¶ 83,010 at 86,545 (1996). In many cases, the consequences of financial irresponsibility have led individuals to participate in deceptive, dishonest or illegal activities. Most important, history has shown that financial pressure is perhaps the most common motivation for espionage. In summarizing DOE's security concern, the Security Director stated that "the security concern is that he has handled his finances irresponsibly. He has an inordinately heavy debt, with very limited means of trying to get out from under, and he has not demonstrated any real effort, through the information that we have obtained, to actually take care of all this debt." Tr. at 30.

In this case, the individual's conduct regarding his debt clearly shows a pattern of financial irresponsibility that raises a concern regarding his judgment and reliability. First, the individual admits that he has done nothing to minimize his debt and does not appear to be receptive to the option of filing for bankruptcy to discharge his debts. Second, the individual's failure to make payments toward his debt, however small, even after having received notice during a PSI that such failure may jeopardize his opportunity for a security clearance calls into question his sound judgment. Third, the individual's inability to better his financial situation after having articulated an intention to do so raises doubts with regard to his reliability and trustworthiness. Tr. at 20. Based on the foregoing, I find that the individual's conduct regarding his debt raises a Criterion L concern.

B. Whether the Criterion L Concern is Resolved

Having found ample information to support the existence of a Criterion L concern, I now turn to the issue of whether the individual has met his burden of mitigating that concern. For the reasons set forth below, I find that he has not.

In this case, the individual blames the bulk of his financial delinquencies on his divorce from his first wife and subsequent alimony and child support obligations. Tr. at 36. According to the individual, he was earning \$40,000 a year from his primary profession. ^{2/} As a result of divorce proceedings, the individual was ordered to pay approximately \$2,375 a month in child support and alimony, which left him with very little money to live on. He further asserts that prior to 1997, before his divorce, he had no financial difficulties. During the hearing the individual stated:

I would like nothing more than to be able to address each and every one of these debts, and to do so honestly. It's somewhat overwhelming to find yourself in this situation and have, on one hand, an obligation that is of the utmost importance, which

^{2/} The individual currently earns \$72,000 a year.

is my alimony and child support. I've had to put that first, and it's made it difficult and nearly impossible to address these debts as a result.

Tr. at 39.

The individual further testified that his financial delinquencies would not allow him to be blackmailed or coerced. He acknowledged that he has done nothing to address the debt reflected in his credit report, but stated that his alimony and child support obligation will be reduced to \$900 in three years "which will free up a considerable amount to pay my debts." Tr. at 41. When asked why he has not attempted to pay even a small \$30 unpaid balance off, the individual responded that "I'm not going to say at some point or another I couldn't have found \$30 to address something. But I've . . . there are times when \$30 is . . . the difference in having lunch for a few days. I guess being overwhelmed by the total picture and not really picking out a little piece of it." *Id.* at 45. The individual is now remarried and is currently obligated to pay child support for four children in addition to providing for his new wife and baby. He testified that once his new wife, who is currently on maternity leave, returns to work, several hundred dollars should be available on a monthly basis to apply to his debt. *Id.* at 48. He testified that he is reluctant to ask family members for assistance and is not interested in filing for bankruptcy.

After considering the record before me, I find that the individual has not mitigated the Criterion L concern. Previous opinions 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 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-0108), 26 DOE ¶ 82,764 at 85,699 (1996) (affirmed by OSA, 1997). The individual has failed to demonstrate a new pattern of financial responsibility. As of the date of the hearing, the individual has not made any steps to reduce or eliminate his overwhelming debt, not even the smaller unpaid delinquencies. Nor has the individual been successful in seeking credit counseling. In addition, the individual had two and one-half year old judgments on his credit report at the time of his PSI, and these debts remain unpaid. The individual's stated intention of paying down his debt three years from now when his child support and alimony obligations are reduced is insufficient to mitigate the DOE's present security concerns.

III. Conclusion

For the reasons set forth above, I find that there is sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L as to the individual's access authorization. I find further that the individual has failed to bring forth sufficient evidence to mitigate the DOE's security concerns concerning his financial irresponsibility. Accordingly, after considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not yet demonstrated that granting his access authorization would not endanger the common defense and would be clearly consistent with the national interest. I therefore find that the individual's access authorization should not be granted. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth

at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: January 27, 2003