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United States Department of Energy
Office of Hearings and Appeals

In the matter of Personnel Security Hearing)
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Filing Date: January 9, 2013) Case No.: PSH-13-0002
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Issued: March 8, 2013

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) for 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 For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. In 2012, the individual’s wages were garnished for

¹An 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 also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov> . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

failure to pay state income taxes for the years 2004, 2008 and 2009. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in September 2012. After this personnel security interview (PSI) failed to adequately address the LSO's concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced six exhibits into the record of this proceeding. The individual introduced 25 exhibits and was the sole witness at his hearing.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (l), information is derogatory if it indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which 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 national security. As support for this criterion, the Letter cites information provided by the individual during his September 2012 PSI indicating that:

- He has not filed federal income tax returns for the years 2003, 2004, 2005 and 2006;
- He has not filed state income tax returns for the years 2002, 2003, 2005 and 2006;
- As of the date of the PSI, he had not filed his 2011 federal income tax returns; and
- He did not file his 2004, 2008 and 2009 state income tax returns until July 2012, when he was notified that the state was garnishing his wages for failure to pay taxes due for those years.

This derogatory information adequately justifies the DOE's invocation of criterion (l), and raises significant security concerns. Failure to meet financial obligations may indicate poor self control,

lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines), Guideline F.* Guideline F specifically cites failure to file federal, state, or local income tax returns as required as being a condition that could raise a security concern and may be disqualifying.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; 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 likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 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 the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein.* The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

At the outset of the hearing, the DOE Counsel stated that after reviewing state and federal income tax filing requirements and information in the individual's exhibits, he concluded that the individual was not legally required to file state or federal income tax returns in 2002, 2004, 2005 and 2006, because his income during those years did not meet the threshold amount that would have triggered

a filing requirement. Hearing Transcript (Tr.) at 12. I have reviewed this information, and I agree with the DOE Counsel that the individual was not required to file state or federal income tax returns for 2002, 2004, 2005 and 2006. The DOE's security concerns regarding the individual's failure to file returns for those years have therefore been resolved. Consequently, the hearing focused on the individual's failure to promptly file state and federal tax returns for 2003, state returns for 2008 and 2009, and federal returns for 2011.

The individual testified that he doesn't know why he did not promptly file his 2003 state and federal tax returns, and that he did not realize that his income for that year exceeded the reporting threshold until he filed the returns in February 2013, approximately one week before the hearing. Tr. at 19, Individual's Exhibits (Ind. Ex.) 3, 4. Even though he was owed money for 2002, he did not file the necessary tax return because he did not believe that the \$107 that he was due was worth the effort that would be involved.³ Tr. at 20. He added that he started filing returns beginning with his 2007 taxes because he received a letter from his state department of revenue informing him that he owed money for that tax year. Tr. at 20-21. The individual thought that he had filed his state income taxes in 2008 and 2009, and did not realize otherwise until the state garnished his wages in July 2012. Tr. at 22. He paid off the amount of the garnishment, and got most of that amount back when he actually filed his state returns for those years. Tr. at 23. The individual filed his federal returns promptly for the tax years 2007 through 2010, but he did not file his 2011 federal tax return until October 2012, after his PSI. When asked about the reason for this delay, he said that he did not remember, that he thought that he had filed a request for an extension of time to make the filing, and that the only reason he could think of for the untimely filing was because he did not have a stamp. *Id.* The individual is waiting to receive some information from an investment firm concerning his mutual funds before he files his 2012 tax returns, and he concluded that he is now aware of the importance of promptly filing his state and federal tax returns, and intends to do so in the future. Tr. at 24, 26.

Despite this assurance, I continue to have serious doubts about the individual's judgement and reliability. The individual's testimony and the record in this matter as a whole reveal that he has had an alarmingly cavalier attitude about his legal responsibilities to file state and federal income tax returns, and to do so in a timely manner. The individual did not bother to ascertain whether his taxable income in 2003 surpassed the filing threshold until he filed his returns in February 2013. He "thought" that he had filed state income tax returns in 2008 and 2009, until his wages were garnished in July 2012. Even after this garnishment, he did not file his 2011 federal tax return until October 2012, approximately six months after its due date, and he could not provide an acceptable reason for

³ The "effort" required was the completion and filing of IRS Form 1040 EZ, a one-page form that included 12 items. Ind. Ex. 1. Although the Notification Letter did not allege a failure to file his 2002 federal return, he apparently did not do so until approximately one week before the hearing.

this delay. Although he said that he believed that he had filed for an extension of time to file his federal return, the only extension of time request form that he submitted was for his state taxes. Ind. Ex. 16. This pattern of behavior is disturbing because it demonstrates an indifference on the part of the individual to his obligation to abide by legal requirements. This indifference has also been reflected in a failure to adhere to security requirements, at least to the extent that he admittedly failed to report the garnishment of his wages to the LSO within the prescribed time limit. Tr. at 26.

With the filing of his 2003 returns, the record in this matter indicates that the individual has now submitted all of the returns mentioned in the Notification Letter that he was required to file. Moreover, there is no indication that the individual currently owes any back state or federal taxes, interest, or penalties. However, the very brief period of responsible behavior demonstrated by the individual concerning his taxes (i.e., since the filing of his 2003 tax returns) does not offset his nearly nine year pattern of irresponsibility in this regard. Given this pattern, I am not convinced that the individual can be relied upon to file his tax returns promptly or adhere to other legal or security requirements in the future.

VI. CONCLUSION

As set forth above, I find that the individual has not successfully addressed the DOE's security concerns under criterion (1). I therefore conclude that he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: March 8, 2013