

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)

Filing Date: November 10, 2015)

Case No.: PSH-15-0093

Issued: February 17, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s request for a security clearance should be denied.²

I. BACKGROUND

During an initial background investigation of the Individual, a Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO conducted a Personnel Security Interviews (PSI) of the Individual on July 9, 2015. Because the PSI did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO

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 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.doe.gov/OHA>.

forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on January 16, 2016.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-15-0093 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9. The Individual submitted two exhibits, marked as Exhibits A and B.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraph (l)³ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

To justify its reliance on Criterion L, the LSO alleged that the Internal Revenue Service (IRS) had filed tax liens against the Individual in 2010 and 2013, totaling \$157,873.09, and a state government had filed a tax lien against him for \$15,400.46. In addition, the LSO found that the Individual failed to file a federal tax return or pay his federal taxes for tax years 1978 through 1992, and 2002, failed to file his state tax returns or pay state taxes for tax years 1989 through 1992, had a tax lien of \$42,150.18, placed against him for unpaid federal taxes from tax years 2007, 2008, and 2009, and that the Individual admitted that, during the period starting in 1972 and continuing until 2004, he had falsely claimed on his tax withholding forms that he was married, when he was actually single, and claimed ten deductions when he had no actual dependents.

The Individual's pattern of financial irresponsibility, dishonesty, failure to observe rules and regulations, as alleged, adequately justifies the LSO's invocation of Criterion L, and raises significant security concerns. The Adjudicative Guidelines state in pertinent part:

Failure or inability to live within one's means, satisfy debts, and 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . .

³ Criterion L refers to information indicating that the Individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

- (d) deceptive or illegal financial practices such as . . . income tax evasion, . . . ; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶¶ 18, 19.

The Administrative Guidelines further provide: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. Conditions that could raise a security concern and may be disqualifying also include: “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.” Adjudicative Guidelines at ¶ 16(d).

The Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of human nature, Administrative Judges apply the guidelines in conjunction with the information available in the adjudicative process. The Administrative Judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision.

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The 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 and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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 continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On June 23, 2015, the LSO obtained a credit report for the Individual. Ex 6 at 1. That credit report revealed that the IRS had filed tax liens against the Individual in 2010 and 2013, totaling \$157,873.09. Ex. 6 at 5-6. The credit report further indicated that these liens had been released in 2011 and 2015. Ex. 6 at 5-6.

On July 9, 2015, the LSO conducted a PSI of the Individual. During this PSI, the Individual admitted that he did not file federal tax returns or pay his federal taxes for tax years 1978 through 1992, and 2008 through 2013. Ex. 8 at 60, 80-90. The Individual further admitted that he had falsely claimed on his tax withholding forms that he was married, when he was actually single, and claimed ten deductions on his tax withholding forms when he had no dependents in order to “save money” since 1977. Ex. 8 at 72-73. The Individual also repeatedly stated that he did not pay his taxes because he believes that the tax system is unfair, and asserted that his failure to pay his taxes was justified. Ex. 8 at 89, 93-94, 112, 127-128. The Individual stated that he did not start paying his back taxes until “I settled down here, and got married, and then this clearance thing came up” approximately seven years ago. Ex. 8 at 90, 95. The Individual admitted that he had engaged in an illegal act: income tax evasion, by failing to file and pay his taxes, and that he was aware that failing to pay taxes was against the law. Ex. 8 at 98, 112. The Individual reported that the IRS had taken him to court for nonpayment of taxes in the middle to late 1980s. Ex. 8 at 108. At a result of these court proceedings, he was placed on supervised probation for a four-year period, and required to make regular payments to the IRS. Ex. 8 at 109. The Individual reported that he now claims zero deductions in order to catch up on his tax obligations. Ex. 8 at 114. The Individual claimed that his 2014 Federal taxes had been filed correctly. Ex. 8 at 96. The Individual further stated that he intends to pay his taxes in the future. Ex. 8 at 98, 113, 128. The Individual stated that some of his tax debts had been resolved by the passage of the statute of limitations. Ex. 8 at 106. However, the Individual admitted that his only motivation for resolving his tax issues was to obtain a security clearance so he could keep his job. Ex. 8 at 143-144.

V. ANALYSIS

The Individual attempted to resolve or mitigate the security concerns about his financial responsibility, judgment, reliability, and trustworthiness raised by the information set forth in the summary of security concerns by submitting copies of a letter from the IRS confirming that the Individual had entered into an installment payment agreement with the IRS (Ex. A), and a bank statement showing that two payments of \$1,000 each had been made from his checking account to the IRS (Ex. B).

In his testimony at the hearing, the Individual admitted that he had failed to pay his federal taxes from 1978 to 1992, and in 2002, which resulted with the IRS placing tax liens totaling \$115,722.91 against him. Tr. at 11. The Individual further admitted that the IRS placed tax liens against him totaling \$42,150 for tax years 2007, 2008, and 2009. Tr. at 12. The Individual stated that he had failed to file or pay taxes for those years because he “just wanted to keep my money.” Tr. at 12. He further explained that he had attended meetings of an anti-tax group that had convinced him that the income tax was unconstitutional, and that “the government is like taking more than they should” while “the worker is the one that’s paying for everything.” Tr. at 13. The Individual testified that he thought he would avoid the eventual consequences of his tax evasion because he didn’t expect he would “live this long.” Tr. at 14. The Individual testified that he “had to go to court” in the late 1980’s and was placed on probation because of his tax evasion. Tr. at 15. He was required to make regular payments to the IRS as a condition of his probation, but he stopped making these payments as soon as his probation

was concluded. Tr. at 15-16. The Individual admitted that he was not filing or paying his federal taxes even when he was on probation. Tr. at 17.

The Individual testified that he had resolved most of his outstanding debt to the IRS through his payments and the tolling of some of the debts by the statute of limitations. Tr. at 19-20, 29. The Individual testified that he had sent his return for tax year 2013 to the IRS, but that the IRS claimed they had not received it. Tr. at 19. The Individual, however, did not know how much he currently owes the IRS. Tr. at 21, 37. The Individual stated that he filed his tax return for tax year 2013 in 2015. Tr. at 21. He further admitted that he didn't file his return for tax year 2014, when he "should have filed." Tr. at 22. The Individual admitted that he claimed ten deductions on his federal tax withholding forms and claimed he was married for many years when he was single and had no dependents. Tr. at 23. The Individual testified that he stopped claiming ten deductions about four years ago when he was confronted by his employer. Tr. at 27, 33. The Individual admitted that if his employer had not confronted him, he would probably still be claiming ten deductions. Tr. at 33. The Individual testified that he is now working with the IRS to resolve his tax issues, and expected to have them resolved this year. Tr. at 24, 36. The Individual testified that he entered into a payment plan with the IRS, about six months ago, in which he has \$1000 a month deducted from his checking account. Tr. at 28, 38. The Individual testified that at one point, the IRS had garnished his wages for nine to ten months. Tr. at 30.

The Individual has obviously exhibited a profound lack of judgment, lack of trustworthiness, unwillingness to comply with laws, and unreliability, when he chose to evade his tax responsibilities for a considerable period of time. This profound lack of judgment and trustworthiness, and unreliability has been magnified by the Individual's lack of remorse, his inability or unwillingness to acknowledge his previous errors in judgment, and his attempts to rationalize his actions, that have continued throughout this proceeding and were exhibited in his hearing testimony. His previous behaviors and failure to acknowledge his past errors in judgment cast doubt on the Individual's current reliability, trustworthiness, and good judgment. Guideline F at ¶ 20(a). Accordingly, I find that the Individual has not resolved the security concerns, raised under Criterion L by his repeated and intentional failure to meet his tax obligations.

For the reasons stated above, I find that the Individual has not provided sufficient mitigation to resolve the security concerns raised by his outstanding tax debts and evasion of tax responsibilities.⁴

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has not demonstrated that granting his request for a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should be not granted a security clearance at this time. The Individual

⁴ The Adjudicative Guidelines set forth a number of conditions that could mitigate security concerns arising from an individual's tax evasion. See Adjudicative Guideline F at ¶ 20. However, none of these conditions are present in the instant case.

may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: February 17, 2016