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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: March 10, 2016)	Case No.: PSH-16-0029
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Issued: June 24, 2016

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me, I have determined that the DOE should restore the Individual’s suspended access authorization.

I. Background

The Individual is employed by DOE in a position that requires her to maintain a DOE security clearance. In October 2015, the Individual reported that her wages had been garnished because of unpaid taxes. Exhibit (Ex.) 6. In December 2015, the LSO conducted a personnel security interview with the Individual (PSI). Ex. 7. The Individual admitted that she had not submitted Federal or State tax returns for the year 2013. Because the PSI did not resolve the LSO’s concerns regarding her unfiled 2013 Federal and State tax returns, the LSO informed the Individual, in a February 2016, letter (Notification Letter), that it had reliable information that created a substantial

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

doubt regarding her eligibility to hold a security clearance and that her security clearance was suspended. Ex. 1.

The Notification Letter explained that the derogatory information fell within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (l) (Criterion L). Criterion L refers to information that suggests that an individual ha “[e]ngaged 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.” 10 C.F.R. § 710.8(l).

Upon his receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The DOE submitted nine Exhibits (Exs. 1-9) into the record. At the hearing, the Individual presented her own testimony along with the testimony of her spouse (Spouse) and her supervisor (Supervisor) along with three Exhibits (Ex. A-C). *See* Transcript of Hearing, Case No. PSH-16-0029 (“Tr.”).

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual 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 (1998) (“clearly consistent with the national interest standard for granting 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).

An individual must come forward with evidence to convince the DOE that restoring his 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). The individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations 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, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's 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 am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.* In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).

III. The Notification Letter and the Security Concerns at Issue

The LSO cites the Individual's admissions in the PSI that she had failed to file her 2013 State and Federal tax returns as Criterion L derogatory information. Given the Individual's admissions in the PSI, the LSO had sufficient ground to invoke Criterion L. Conduct involving unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

IV. Findings of Fact

The Individual testified that she and her Spouse typically use a commercial tax preparation software to prepare their tax returns. Tr. at 24. Her and her Spouse's tax return was complicated by the fact that in 2011 they had purchased a second home and decided to rent their original home. Tr. at 26. However, a year and a half after renting their original home, the mortgage company that held the mortgage on their original home informed them that, by the provisions of their mortgage, they were required to physically live in their original home. Tr. at 26. Because they could not afford the mortgage payments on both homes, in 2013 they decided to move back to their original home and sell their other house in a "short sale." Tr. at 26. The short sale of their second house created difficulties in filing their 2013 Federal and State taxes since the software did not have an electronic version of a tax form they needed to complete their tax return. Tr. at 24. The Individual remembers using the software to request an extension to file her 2013 Federal and State tax returns. Tr. at 27.

The Individual testified that in 2013, her teen-aged daughter was diagnosed with epilepsy with *grand mal* seizures. Tr. at 33. Beginning in December 2013, her daughter's seizures became more frequent and on one occasion her daughter was taken by ambulance from her school to the hospital. Tr. at 33. Throughout 2014, the Individual had to take her daughter to numerous visits for medical tests and examinations. Tr. at 33. During this period, the Individual knew that she needed to take

action on her unfiled 2013 tax returns but viewed caring for her daughter as a higher priority. Tr. at 33-34.

In October 2015, the Individual reported to the LSO that she had a wage garnishment taken from her paycheck because of unfiled taxes. Tr. at 27; *see* Ex. 3. The garnishment totaled approximately \$1,700. Tr. at 28. The Individual and her Spouse paid the garnishment in full after several months. Tr. at 28. After the LSO conducted the PSI with the Individual, she and her Spouse hired a tax preparation service to file their 2013 Federal and State tax returns. Tr. at 29; *see* Ex. C. Their 2013 tax returns resulted in a Federal tax refund of approximately \$1,000 and a State tax refund of \$1,200. Tr. at 29; Ex. C.

The Individual testified that she and her husband have completed a financial management program offered by their church. Tr. at 36. This program offered instruction in dealing with debt and savings as well as planning for retirement. Tr. at 36. As of the date of the hearing, the Individual and her Spouse have no debt. Tr. at 36; Ex. A (May 2016 credit report).

The Spouse testified and confirmed the Individual's testimony regarding the circumstances which led to their garnishment for unpaid taxes. Tr. 45-50. The Supervisor testified that she has worked with the Individual since 2006. Tr. at 10. She confirmed that the Individual missed a significant amount of time from her job because of her daughter's illness. Tr. at 12-13. The Supervisor believes that the Individual is an excellent worker and is very conscientious with her duties. Tr. at 13. In her opinion, the Individual is very honest, reliable and responsible. Tr. at 14-15. The Supervisor also testified that the Individual's duties require her to process a great deal of personal information and that she has always been responsible and respectful of employee's privacy. Tr. at 18.

V. 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should be restored.

I find that the Individual's failure to file her and her Spouses' 2013 Federal and State tax returns to be an isolated event which was triggered by extraordinary circumstances not likely to be repeated. *See* Adjudicative Guidelines, Guideline E, ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). Other than her 2013 tax returns, there is no evidence that the Individual has failed to comply with the requirement to file timely tax returns. A review of the Individual's 2013 tax return indicates that this return was indeed made complex by her and her Spouses' need to sell their second house with a short sale. *See* Ex.C. The Individual's failure to follow up and file the 2013 returns was hindered by another unique circumstance – her daughter's serious medical issues.

The Individual has submitted medical records that confirm her testimony regarding the amount of time the Individual needed to take to address her daughter's medical needs. *See* Ex. B. I found the Supervisor's testimony convincing regarding the Individual's reliability and trustworthiness. Further, the Individual and her Spouse have taken action to increase their financial skills. Given this, I find that there is an extremely low probability that the Individual will fail to comply with the requirement to file timely tax returns in the future.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has presented sufficient information to resolve the security concerns raised by the Criterion L derogatory information recorded in the Notification Letter. Thus, I conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should be restored.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: June 24, 2016