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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: April 15, 2016 ) Case No.: PSH-16-0030  
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Issued: June 21, 2016

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s access authorization should be restored at this time.

**I. Background**

The Individual is employed by the DOE in a position that requires her to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s failure to file her federal and state income taxes in a timely manner for years 2013 and 2014. In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in January 2016.

On March 14, 2016, the LSO sent a letter (Notification Letter) to the Individual advising her that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8(l) (hereinafter referred to as Criterion L).<sup>2</sup>

<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

<sup>2</sup> Criterion L relates to information that a person has “[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

After receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing on June 8, 2016, convened pursuant to § 10 C.F.R. § 710.25 (e) and (g), the DOE introduced five exhibits (DOE Exs. 1-5) into the record. The Individual presented her own testimony, the testimony of two co-workers, and introduced five exhibits (Ind. Exs. A-E). *See* Transcript of Hearing, Case No. PSH-16-0030 (Tr.).

## **II. Regulatory Standard**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that, in these proceedings, an Administrative Judge 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 and 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 [or her] 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

## **III. Notification Letter and Associated Security Concerns**

As previously noted, the Notification Letter cited Criterion L as the basis for suspending the Individual’s security clearance. Criterion L concerns information that an individual has engaged in conduct “which tend[s] to show that the individual is not honest, reliable, or trustworthy.” 10 C.F.R. § 710.8(l). Further, federal agencies adjudicating security clearances must consider that an individual’s “unwillingness to abide by rules and regulations, . . . can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” *See Revised*

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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).

*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline F.

With respect to Criterion L, the LSO alleges that the Individual has demonstrated that she is not honest, reliable, or trustworthy by failing to file her state and federal taxes for years 2013 and 2014. Ex. 1 at 1.

#### **IV. Findings of Fact**

At the hearing, the Individual did not dispute that she did not file her taxes for years 2013 and 2014. Tr. at 24. However, she testified and provided written proof that all her taxes have now been paid and are current. Ind. Ex. A-D; Tr. at 37-40. The Individual testified that in 2010, she separated from her abusive ex-husband, who is the father of her two children. Tr. at 26. Prior to the separation, the ex-husband was attempting to establish a home improvement business. Tr. at 27. In order to establish the business, he accumulated significant debt in the Individual's name at The Home Depot and other stores.<sup>3</sup> Tr. at 27-28. When she and her husband separated, the Individual took responsibility for the debts, because the debts were in her name. Tr. at 27. Then in 2013, in an attempt to pay her mortgage, the Individual reduced the amount of withholding the Internal Revenue Service (IRS) was taking from her paycheck. Tr. at 26-27. Because of the reduction in withholding, instead of getting a refund when she completed her 2013 taxes, the Individual found that she owed money. Tr. at 26, 40. Therefore, she filed for an extension. Tr. at 40. However, as she was still dealing with her debts and being the only support for her two children, she did not file or pay the taxes for 2013. Tr. at 40. She repeated these actions for the 2014 tax year. Tr. at 40-41.

#### **V. Administrative Judge's 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 access authorization should be restored. I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

As an initial matter, I find that the LSO has properly raised a security concern under Criterion L, regarding the Individual's failure to file her 2013 and 2014 taxes. Failure to file federal and state tax returns is specifically mentioned in the Adjudicative Guidelines, "(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." Adjudicative Guidelines, ¶ 19(g). The Individual does not dispute that she failed to file her tax returns for years 2013 and 2014.

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<sup>3</sup> The Individual testified that since her husband did not have a sufficient credit history to establish the credit in his own name, they opened the accounts in her name. Tr. at 28.

In considering whether the Individual has mitigated the properly raised security concern, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Adjudicative Guidelines, ¶ 20(a)-(d).

Regarding the above factors, I find that, as applied to the instant matter, they sufficiently mitigate the security concerns raised by the LSO. With respect to ¶ 20(a), the Individual's irresponsible behavior occurred under such circumstances, her separation from her abusive ex-husband, that it does not cast doubt on her current reliability, trustworthiness, or good judgment. In early 2016, she filed all her back taxes, along with her 2015 returns. She is now totally current on filing with and paying both the state and federal tax authorities. Similarly, regarding ¶ 20(b), the condition that resulted in her failure to file her taxes and financial difficulties were due to her divorce. She acted responsibly in the situation by confirming that her mortgage was covered to keep the family home for her children, and at the time of changing her withholding she did not realize she would end up owing taxes. Tr. at 40.

The next two factors, ¶ 20(c) and ¶ 20(d), relate to the Individual's efforts to resolve her delinquent tax returns. More related to her financial stability than her filing of her tax returns, the Individual testified that she completed a course regarding financial peace. Tr. at 35. She stated that due to that, she is budgeting more successfully. Tr. at 35. Further, the Individual repaid all her overdue creditors in full without filing for bankruptcy. Tr. at 28.

The Individual's friend testified that the Individual was in a relationship that was not healthy in 2010. Tr. at 12. "As a result of ending that relationship is where [the Individual] was concentrating not only on the health and safety of her children but also the financial safety of her children." Tr. at 12. The friend continued that the Individual is an amazing mother and friend. Tr. at 14. She concluded that the Individual will never find herself in a similar financial situation again. Tr. at 14.

In the instant matter, I find that the Individual's actions have resolved the security concerns raised by her failure to file her 2013 and 2014 federal and state tax returns.

## **VI. Conclusion**

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Criterion L. I therefore find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals

Date: June 21, 2016