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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 18, 2016)
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Case No.: PSH-16-0031

Issued: June 23, 2016

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 be restored.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. On October 13, 2015, the individual reported that his wages had been garnished by the state in which he lives due to his failure to pay state taxes. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist. After this Personnel Security Interview (PSI) failed to adequately address these concerns, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. The individual was informed of this determination in a letter that set forth the DOE’s

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>.

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 an Administrative Judge 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 Administrative Judge. The DOE introduced 10 exhibits into the record of this proceeding. The individual introduced three exhibits and presented the testimony of his wife at the hearing, in addition to testifying on his own behalf.

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.

Criterion (l) defines as derogatory information indicating 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. Such conduct or circumstances include, but are not limited to, illegal behavior or a pattern of financial irresponsibility. As support for its invocation of this criterion, the Letter alleges that the individual has not filed his 2013 state or federal income tax returns, despite having received several notices from the Internal Revenue Service (IRS) and from the state tax authority.³

The individual does not dispute this allegation, and it adequately justifies the DOE's invocation of criterion (l) and raises significant security concerns. Failure to satisfy debts or 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), Guideline F.* Failure to file federal or state tax returns is specifically mentioned under *Guideline F* 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, 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 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

³ The Letter further alleges that the individual received an extension of time from the IRS to file his federal tax return, but then failed to do so within the allotted period.

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

A. Mitigating Evidence

At the hearing, the individual and his wife attempted to demonstrate that he is a reliable and trustworthy person, and that their failure to file their 2013 taxes was an isolated event that will not be repeated. The individual’s wife testified that they have now filed their 2013 tax returns, and that they received refunds from both the state and Federal governments. Hearing transcript (Tr.) at 9. She further stated that this was the only time “in the 18 or 19 years that” they have been together that they’ve “ever missed filing our taxes.” Tr. at 10.

The individual’s wife also talked about factors that complicated their tax returns and that contributed to their failure to file them in a timely manner. They were real estate investors, and she said that they were involved in a “short sale” of one of their properties in 2013.⁴ She further testified that their daughter was experiencing *grand mal* seizures in early 2014, and that her medication was not working. With her and her husband concerned about their daughter’s condition and occupied with taking her in for doctors’ visits and tests, the taxes “got put on the back burner.” Tr. at 12-13.

The individual’s wife then testified about the individual’s honesty and reliability. She pointed out that she has been married to him for 18 years, which “speaks . . . volumes of what I think about his trustworthiness.” Tr. at 14. He has been “a good person and a good husband and a good dad to our children” who has “always led our family in a positive direction.” *Id.*

The individual testified that they filed their 2013 returns in February 2016, and received both state and Federal refunds. Tr. at 22-23. As a partial explanation for this untimeliness, he said that in 2013 “we had quite a few things that made the complexity of that year more difficult than previous years and years since.” Tr. at 25. Those “things” included the previously-mentioned short sale, and

⁴ A “short sale” is a sale of real estate in which the net proceeds of the sale fall short of the debts secured by liens on the property, and in which the lien holders agree to accept less than the amount owed on the debt.

the installation of solar panels on their new home that entitled them to some tax credits. Their returns were “very complex,” and “some supplemental forms had to be filed” along with the standard tax returns. *Id.* During every previous year of their marriage, they had used a computer software program to complete and file their tax returns, and they actually started preparing their 2013 returns using this software. Tr. at 26-27. However, the software did not include a particular form that they needed to file, and the returns were not completed. Tr. at 27.

The individual also testified about his daughter’s medical condition. He said that he did not want to make any excuses for “being irresponsible about filing” his taxes, but her illness “was particularly traumatic.” *Id.* His daughter had her first seizure in March 2013, and then in December of that year they started happening more frequently. *Id.* During tax time she had several more seizures, and they were concerned with figuring out “why she was having them,” and “how we could help stop them.” Tr. at 28. The individual’s wife had to take advantage of her employer’s program whereby fellow employees could donate their sick leave to her so that she could remain home with their daughter. Tr. at 29.

The individual further stated that the 2013 returns were the only ones that he and his wife had ever not filed, and that a recurrence of this failure was unlikely because he intended to have his taxes professionally done from now on. Tr. at 30-31. He then acknowledged his responsibility for filing his tax returns in a timely manner, and he indicated that he would not fail to do this in the future. Tr. at 31.

B. Administrative Judge’s Findings

After careful consideration of this testimony and of the record as a whole, I find that the individual has adequately addressed the DOE’s security concerns under criterion (I), and that his security clearance should therefore be restored.

As an initial matter, the individual filed his 2013 state and federal tax returns in February 2016, and received refunds of \$1,256 and \$1,018, respectively. Individual’s Exhibit C. Furthermore, I find that the individual’s failure to file his returns in a timely manner was an isolated incident that is unlikely to recur. *See Adjudicative Guideline F*, ¶ 20(a) (that 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 is a potentially mitigating circumstance). Both the individual and his wife testified credibly that their 2013 returns were the only ones that they have failed to file in a timely fashion. There is nothing in the record that would suggest that this failure to file is indicative of a general inability or unwillingness to follow applicable laws, rules, or regulations.

The record in this matter also supports the individual’s testimony concerning the complexity of his tax returns. His federal return alone consisted of seven separate forms and schedules. The individual testified that he did not retain the services of a professional tax preparer in 2013 because he somewhat stubbornly insisted on trying to do them himself, and because he could not really afford to pay a tax professional anyway. Tr. at 35. However, the individual’s financial situation has improved significantly since 2013, he finally relented and hired a professional tax preparer to

submit the delinquent returns in February 2016, and he testified that he would continue to have his returns professionally prepared.

Finally, I found the individual's testimony about the embarrassment that he felt over his failure to file the returns in a timely manner and his commitment to avoid a similar occurrence in the future to be sincere and convincing. I believe that it is unlikely that the individual will find himself in a similar situation in the future.

V. CONCLUSION

For the reasons set forth above, I find that the individual has resolved the DOE's security concerns under criterion (I). Consequently, he has convinced me that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I conclude that the DOE should restore the individual's security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: June 23, 2016