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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: September 19, 2016)	Case No.: PSH-16-0074
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_____)	

Issued: January 11, 2017

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXXX., (“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, I conclude that the Individual’s access authorization should be restored at this time.

I. Background

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

On August 11, 2016, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the

¹ 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.

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).²

After receipt of the Notification Letter, the Individual exercised his 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 convened pursuant to 10 C.F.R. § 710.25 (e) and (g), the DOE introduced nine exhibits (DOE Exs. 1-9) into the record. The Individual presented his own testimony and the testimony of his tax advisor. *See* Transcript of Hearing, Case No. PSH-16-0072 (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 LSO cites Criterion L as the basis for suspending the Individual’s security clearance. The Criterion L derogatory information that the LSO relies upon is the Individual’s failure to file and pay his 2007, 2008, 2012, 2013, and 2014 federal income taxes. DOE Ex. 1; *see*

² 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).

DOE Ex. 8 at 10-13, 13-24, 26-33, 38-40. The failure to file annual Federal, state, or local income tax returns as required 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. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline F, at ¶ 19 (g) (Adjudicative Guidelines).

IV. Hearing Testimony and Evidence

The Individual does not dispute the accuracy of the information cited in the Notification Letter. During a June 2016 Personnel Security Interview (PSI), the Individual admitted that he had not filed his 2012, 2013, and 2014 federal income taxes. DOE Ex. 1; DOE Ex. 8 at 10-13, 13-24, 26-33, 38-40. During the PSI and at the hearing, the Individual testified that he filed his 2007 and 2008 income tax returns, but the IRS never withdrew the money from his account. DOE Ex. 8 at 10-13; Tr. at 8, 35. He stated that he used the same tax preparer both years. Tr. at 7-8. His current tax advisor testified that she knew his previous tax preparer, who is an enrolled agent and registered tax preparer. Tr. at 34-35. She opined very strongly that the Individual's previous tax preparer did file the Individual's tax returns. Tr. at 34-35, 47. She stated that it is very common for the IRS to lose tax returns, especially ones that are filed electronically. Tr. at 35.

As to the Individual's 2012, 2013, and 2014 tax returns, both he and his current tax advisor testified that he had formed a limited liability corporation (LLC), which made his return more difficult. Tr. at 26, 40. In addition to the added complexity of having the LLC, the Individual's wife and son were not cooperating regarding information required for his tax returns. Tr. at 20, 40, 53. The Individual and his current tax preparer both also testified that he approached other tax preparers to help him file his returns, but the other tax preparers did not follow through, some after taking the fee to prepare the return. Tr. at 36, 40, 44.

As of the date of the hearing, the Individual has filed all his tax returns, paid all the taxes due and is on a payment plan for the penalty and interest that may be due. Tr. at 15-16, 43; DOE Ex. 2. He is presently waiting to hear from the IRS regarding the amount of penalty and interest that will be owed. Tr. at 43; DOE Ex. 2. However, the tax advisor stated that it is her opinion that he will not be required to pay penalties and interest and will get a refund once the IRS processes his returns. Tr. at 43.

The tax advisor also stated that, although the Individual and his wife are separated, he needs cooperation from his wife that he was not getting. Tr. at 40. The Individual's situation was further exacerbated due to that fact that his son was in legal trouble and the Individual's wife was hiding the situation from the Individual. Tr. at 40. The tax advisor concluded that the Individual has been extremely cooperative since he first consulted with her in June 2016. Tr. at 45.

V. Administrative Judge's Findings and 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 security concerns under Criterion L regarding the Individual's failure to file his federal taxes. A failure or inability to 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. Adjudicative Guidelines, ¶ 18. A condition which may raise a security concern would be the failure to file annual Federal income tax returns. Adjudicative Guidelines, ¶ 19 (g).

In considering whether the Individual has resolved the properly raised security concerns, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate the Criterion L 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;
- (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), (c)-(d).

Given the above factors, I find that the Individual has resolved the security concerns raised by the LSO.

Regarding the Individual's failure to file his 2007 and 2008 Federal tax returns, the Individual and his tax advisor testified that the returns were filed properly and on time. There is no evidence to show that the Individual had not filed his taxes prior to 2007 and in fact, he filed his 2009, 2010, and 2011 tax returns in a timely manner. The Individual's tax advisor testified that it is common for the IRS to lose tax returns and she was not surprised that it claimed not to have received his returns. At the time of the hearing, both tax returns had been filed and the taxes paid. Regarding the Individual's failure to file his 2012, 2013, and 2014 Federal tax returns, the Individual and his tax advisor both testified that he did not know how to account for a Limited Liability Corporation (LLC), which started in 2012. Further, they both testified that he was not getting all the information regarding that LLC that he needed to file his taxes. The Individual did consult with other tax preparers, who could not help him with those tax years. Further, the record reflects that he consulted his current tax preparer prior to receiving the Notification Letter. Due to the fact that the Individual is current on filing his tax returns, I find that he has satisfied paragraphs 20 (a), (c), and (d), above.

Based on the foregoing, I find that he has resolved the concerns related to his 2007, 2008, 2012, 2013, and 2014 Federal taxes.

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 associated security concerns. 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: January 11, 2017