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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: February 8, 2018	)	Case No.: PSH-18-0006
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Issued: May 9, 2018

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**Administrative Judge Decision**

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William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX XXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I have determined that the individual should not be granted an access authorization.

**I. Background**

The individual is employed by a DOE contractor that requested a security clearance on his behalf. When completing a Questionnaire for National Security Positions (QNSP) in January 2016, the individual certified that, in the past seven years, he had failed to file or pay federal or state taxes. An Office of Personnel Management (OPM) investigator spoke with the individual in November 2016 regarding those issues. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual on February 13, 2017. On April 26, 2017, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline F of the Adjudicative Guidelines.

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<sup>1</sup> 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.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and on February 7, 2018, I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of one witness and testified on his own behalf. In addition to the testimonial evidence, the individual submitted 25 exhibits (Exhibits A-Y) into the record. The LSO tendered five numbered exhibits into the record (Exhibits 1-5). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or letter designation. The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 requires me, 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). 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 (1988) (“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).

The individual must come forward at the hearing with evidence to convince the DOE that granting or 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 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited Guideline F as the basis for administrative review of the individual’s request for access authorization. Guideline F addresses “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations.” Guideline F at ¶ 18. It is well established that 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. *Id.* Among the conditions set forth in that guideline that could raise a disqualifying security concern are the inability to satisfy debts; a history of not meeting financial obligations; and failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required. Guideline F at ¶ 19(a), (c), (f).

As the basis for invoking Guideline F, the Notification Letter cites to the individual’s failure to file federal and state taxes for tax years 2011 through 2015, as well as his failure to pay federal

and state taxes owed for tax years 2009 and 2010. Ex. 1 at 1-2. These allegations adequately support the invocation of Guideline F, and they raise serious security concerns.

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

In tax years 2009 and 2010, no taxes were withheld from the individual's earnings. Ex. D; Ex. F; Ex. 4 at 18. He filed taxes for both of those years, incurring debts to his state of residence and the federal government. Ex. 4 at 19. He owed the state approximately \$1500 for 2009 and \$1838 for 2010. *Id.* The individual estimated that he owed the federal government approximately \$3000 for 2009 and 2010. *Id.* at 24–25. The individual did not file state or federal taxes for tax years 2011, 2012, 2013, 2014, and 2015. *Id.* at 18–23, 65.

In January 2016, the individual applied for a security clearance. Ex. 5. The QNSP asked whether he had failed to file or pay state or federal taxes for any of the previous seven years when required to do so by law or ordinance. The individual indicated that he had failed to file and pay state and federal taxes for tax years 2010, 2011, and 2012. *Id.* at 41–42. He indicated that some of the tax debt had been satisfied through a garnishment. *Id.* at 42. For the remaining tax debt, he stated, “I have been saving money and working on a plan to pay my taxes. I’m going to set up a payment plan.” *Id.* at 42–43.

In November 2016, the individual spoke with an OPM investigator. Ex. 4 at 15. He told the investigator that he would look into resolving his debts. *Id.* He stated that he intended to contact the state and the IRS in the near future to set up payment plans. *Id.* at 27.

On February 13, 2017, the LSO conducted a PSI of the individual. Ex. 4. The LSO interviewer asked about the source of the individual's financial problems. The individual explained that he had several current debts, including payments for a motorcycle he purchased to use recreationally. *Id.* at 29, 39. The individual stated that he had been saving money to pay his tax debts in a lump sum. *Id.* at 18, 21, 27. At the time, he had about \$1900 in savings. *Id.* at 40. He stated that all of his extra money goes to savings. *Id.* at 39.

During the PSI, the individual stated that he did not file his taxes from 2011 to 2015 because he believed that he would get money back and thus was not required to file. *Id.* at 20–22. The investigator informed the individual that he was required by law to file taxes every year. *Id.* The individual stated that he could file state returns for all of his past tax years by the end of the week and that he was just waiting for his most recent year's tax documents—received the week before—so he could take care of everything all at once. *Id.* at 23. At the time of the PSI, the individual's last contact with the state tax office had been in October 2016. *Id.* at 27. When asked why he had failed to contact the state as he said he would during his November 2016 OPM interview, the individual responded that he had “just been workin’ a lot and been busy at work,” and that he had been saving money to pay everything at once because he didn't want too many payments. *Id.* at 27–28. The individual stated that the IRS garnished his wages, starting in 2014, until his federal tax debts from 2009 and 2010 were fully paid. *Id.* at 32; Tr. at 38. He further stated that he intends to file and pay his taxes every year going forward. Ex. 4 at 35. The individual told the LSO that his financial situation was sufficient to cover only those bills he was paying at the time of the PSI, but that he did not have enough coming in to begin payments on his delinquent debts. *Id.* at 35.

The individual had one witness at the hearing, his mother. She testified that she had been working with the individual to get his past tax returns filed. *Id.* at 11. She further testified that they were having difficulty getting his paperwork together for 2014, but that they were currently working on tax years 2015 and 2017. *Id.* at 12. When asked what she thought would happen in the future, she testified that she believed the individual would file and pay all of his taxes. *Id.* at 12–13. She also stated that she would help him financially, if needed. *Id.* at 17–18.

The individual testified that he initially ran into trouble with his taxes because, when he was young, he had a contractor job and did not know that his employer would not withhold his taxes. *Id.* at 24. In September 2011, he started a payment plan of \$200.00 per month to the IRS, but only made the first payment. *Id.* at 25; Ex. N. The individual implied that he was unable to continue the IRS payment plan because several family issues had created new financial obligations for him. Tr. at 25. However, he later testified that those obligations began in 2014. *Id.* at 28. When asked why he did not file taxes from 2011 to 2015, the individual stated that he had tried to file but did not have the money to pay a preparer, again citing the family-related financial obligations. *Id.* at 41. He made no mention of his belief, stated at the PSI, that he did not have to file taxes because he would be getting money back.

The individual submitted documents showing that, on April 5, 2018, he filed returns for tax years 2015 and 2017. Ex. U; Ex. X. The individual wanted to show that he intends to meet his tax and financial obligations in the future. Tr. at 30. He stated that he used a tax preparer for those years and that, as soon as he paid for the preparation of his 2016 return, that return would be filed as well. *Id.* at 30. The individual stated that he would pay the tax preparer for the 2016 return on the following Monday.<sup>2</sup> *Id.* at 30. For tax year 2017, the individual's federal refund was just over \$1000. *Id.* at 35. For 2015, his federal refund was less than \$30. *Id.* at 35. The individual intends to put all of that money toward his state tax debt once he receives it. *Id.* at 35–36. Contrary to his statements during the PSI regarding why he did not file taxes for so many years (*i.e.*, that he anticipated getting refunds), the individual now states that he anticipates owing money for tax years 2011 and 2012, once those returns are prepared and filed. *Id.* at 40. The tax preparer he used would only prepare returns for tax years 2015 and 2017. Ex. T; Tr. at 41.

As of the hearing date, the individual had not paid any amount on his state tax debt. Tr. at 39. He stated that he had intended to set up a payment plan but then was unable to continue working without a security clearance. *Id.* at 39. He also stated that he did not want to start a payment plan and have missed payments or stop paying altogether by the time of his hearing. *Id.* at 42. The individual stated that he had been saving money for his debts. *Id.* at 43. He stated that he performs chores for his family and helps care for his elderly relatives; in return, his family has been helping him financially. *Id.* at 43.

On May 4, 2018, the individual submitted proof that the state has applied his 2017 refund of approximately \$500 to his 2009 tax debt. Ex. Y.

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<sup>2</sup> The individual has not submitted any documentation showing that he filed his 2016 return. He was given two weeks from the hearing date to submit additional documents. Tr. at 47.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual and his witness 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 should not be granted a security clearance at this time. I cannot find that granting 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.

The LSO's Guideline F concerns are based on the individual's failure to pay his 2009 and 2010 federal and state taxes, and his failure to file state or federal taxes for tax years 2011–2015. Failure to live within one's means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual's reliability and trustworthiness. Guideline F at ¶ 18. Here, the individual has a long history of not meeting his financial obligations. Indeed, he has had financial difficulties for the majority of his adult life. He has habitually failed to file his taxes and has left his tax debts unpaid for nearly a decade. *Id.* at ¶ 19(a), (c), (f).

Guideline F provides that the following conditions may mitigate security concerns:

- (1) 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 (*id.* at ¶ 20(a));
- (2) 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances (*id.* at ¶ 20(b));
- (3) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control (*id.* at ¶ 20(c));
- (4) the individual initiated and is adhering to a good-faith effort to repay overdue creditors (*id.* at ¶ 20(d)); and
- (5) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. (*id.* at ¶ 20(g)).<sup>3</sup>

I find that none of the mitigating factors of Guideline F apply to the facts of this case. The behavior that led to these concerns continued even beyond the individual's 2016 QNSP admission that he failed to fulfill his legal obligation to file taxes. Accordingly, the individual has failed to establish that "the behavior happened so long ago" as to be unlikely to recur, pursuant to Guideline F at ¶ 20(a). Similarly, the individual has failed to establish that the financial issues were "beyond

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<sup>3</sup> Paragraphs 20(e) (reasonable basis to dispute) and (f) (unexplained affluence) of the mitigating factors are not applicable to these facts.

[his] control,” pursuant to Guideline F at ¶ 20(b), as witnessed by the fact, among other evidence, that he purchased and made payments on a motorcycle for recreational use while leaving his tax debt unpaid. *Id.* at ¶ 20(b).

During his PSI, the individual stated that he would not be financially able to begin payments on his debts and he did not indicate how he planned to satisfy them—or the new debts he expects to incur once he files his 2011 and 2012 returns—beyond using the tax refunds he will receive this year. Accordingly, he has failed to establish “clear indications that the problem is being resolved,” pursuant to Guideline F at ¶ 20(c). Further, the individual has not made any voluntary payments on his state tax debt, even though his stated savings at the time of the PSI could have paid his debt in full for either 2009 or 2010; accordingly, he has not shown that he is “adhering to a good-faith effort” to pay his taxes, pursuant to Guideline F at ¶ 20(d). Finally, the individual has not made any arrangements with the state to make payments of any amount, and therefore has not established mitigation under Guideline F at ¶ 20(g).

Over the last year and a half, the individual has offered shifting justifications for his failure to file and pay state and federal taxes, and repeatedly promised that he would soon set up a payment plan to resolve his debts. Although the individual verbally acknowledges that he owes the debts and intends to pay, he has not put those words into action. His contradictory justifications for his actions do little to mitigate concerns that he will repeat his behavior in the future when he is no longer under the government’s scrutiny. His broken promises to begin payments indicate that he is unlikely to resolve his tax debts in full; indeed, his only payment to date on his state tax debt was an involuntary<sup>4</sup> application of his refund to his debt.

While I recognize that the individual has begun the process of mitigating the LSO’s concerns about his failure to file his taxes, he has not begun to mitigate any concerns that he has failed to pay his taxes. I am not convinced that he will fulfill his obligations in the near future. Even if the behavioral issue of failing to file and pay taxes were resolved, the debt would remain, and the debt in itself presents a security risk. I therefore find that the individual has not resolved the LSO’s concerns under Guideline F.

## **VI. Conclusion**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual’s eligibility for a security clearance under Guideline F of the Part 710 regulations. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting the individual’s DOE 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). Accordingly, I find that the DOE should not grant an access authorization to the individual at this time.

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<sup>4</sup> Though the individual expressed a desire to use his tax refunds to pay his tax debts, the May 2018 payment was involuntary because the state would have applied his refund to his debt regardless of his desire to do so.

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

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals