

Hearing, Case No. PSH-19-0006 (hereinafter cited as “Tr.”). After the hearing, the Individual submitted two additional exhibits (Ex. J-K).

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline F of the Adjudicative Guidelines. Ex. 1. “Failure 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 or sensitive information.” Guideline F at ¶ 18. In invoking Guideline F, the LSO cited the Individual’s failure to file her Federal and state income taxes for tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2017, as security concerns under Guideline F. Ex. 1. The failure to file income taxes justifies the LSO’s invocation of Guideline F. Guideline F at ¶ 19(f).

III. REGULATORY STANDARDS

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 of 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 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.

IV. FINDINGS OF FACT

In December 2017, the Individual submitted a Questionnaire for National Security Positions (QNSP). Ex. 6. “Section 26 – Financial Record” of the QNSP asks: “In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” Ex. 6 at 28. The Individual answered in the affirmative, elaborating that she had not paid or filed taxes for approximately seven years due to irresponsibility. *Id.* She estimated her tax liability to be

approximately \$5,000² and stated that she planned to contact the Internal Revenue Service (IRS) to begin payment. *Id.* at 28-29.

During her background investigation interview in March 2018, the Individual stated that she had no taxes withheld from her paycheck during the relevant years because she did not believe she earned enough money to care for her children. Ex. 7 at 51. In November 2018, DOE sent the Individual a Letter of Interrogatory, requesting additional information about her taxes. Ex. 5. At that time, the Individual had still not filed her Federal or state income taxes for 2010 through 2015 or 2017, however, her responses indicated that she had filed her 2016 Federal and state taxes. *Id.* at 3. The Individual also provided documentation that she had engaged a tax service to assist her in preparing her missing tax returns. *Id.* at 4, 6. At the time she submitted her responses to the Letter of Interrogatory, she did not know the balance of her Federal or state tax liability nor had she begun repayment. *Id.* at 4. Before the hearing, the Individual submitted her filed Federal and state tax returns for the relevant tax years. Ex. A-G. The submitted documentation, filed with the appropriate tax authorities in March 2019, shows a combined tax liability of approximately \$18,000. *Id.*

At the hearing, the Individual testified that she did not contest any of the information in the Notification Letter. Tr. at 9. The Individual stated that, during the relevant years, she did not file taxes because she was raising her children alone and needed more money. Tr. at 13. She testified that she only filed taxes for 2016 because her son needed her tax information in order to apply for federal student aid. Tr. at 13-14. Although the Individual recognized that at some point there would be consequences, she testified that she never received letters or notices from any tax authority or collection agency regarding her failure to file or pay her taxes. Tr. at 14. The Individual indicated during the hearing that she had not yet filed her 2018 Federal or state income taxes. Tr. at 19-20.

The Individual testified that, in October 2018, she hired a tax service to assist her in filing her Federal and state income taxes for the relevant years. Tr. at 15. Although there was some miscommunication regarding paperwork that delayed the process, in March 2019, the Individual filed the paperwork for tax years 2010 through 2015 and 2017. Tr. at 16-19. She testified that she was advised it might take a few weeks for the IRS and state tax authorities to accept the tax returns. Tr. at 20. She stated that she hopes to be able to negotiate a lower tax liability and set up a payment plan. Tr. at 21-22. She testified that she has no concerns about her ability to make whatever payments are required by the tax authorities because she is now a different person and has a good job. Tr. at 23-24. After the hearing, the Individual submitted two additional state tax returns for 2015, which indicated an additional tax liability of approximately \$1,400. Ex. J-K.

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 not be granted. I cannot find that granting

² It is unclear from the QNSP whether the Individual estimated her tax liability as \$5,000 in total or for every year she failed to file.

the Individual a 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).

Guideline F provides that security concerns arising from financial considerations can be mitigated when 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. Guideline F at ¶ 20(a). In this case, the Individual's tax situation is not only recent, but it is also unresolved. Although she has now filed her taxes for the relevant years, the appropriate tax authorities have not yet accepted the Individual's tax returns. Further, she has not yet negotiated a reduced tax liability amount nor set up a payment plan with the relevant tax authorities. Because of the ongoing nature of the Individual's financial concerns, I cannot find that this mitigating condition applies.

Guideline F allows for mitigation of Guideline F security concerns when the conditions that resulted in the financial problems were largely beyond the person's control and the individual acted responsibly under the circumstances. Guideline F at ¶ 20(b). The Individual testified about the circumstances in her life that led to her decision to not file or pay her taxes, however, she also acknowledged, on several occasions, that irresponsibility played a major part in this decision-making. Because the Individual admittedly did not act responsibly in handling her finances, I find that this mitigating condition does not apply. An individual can also mitigate Guideline F security concerns by demonstrating that the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. Guideline F at ¶ 20(g). Although the Individual submitted evidence documenting the measures she has taken to file her Federal and state income taxes, she has not yet been able to arrange for repayment. Based on the foregoing, I cannot find that the Individual has mitigated the Guideline F security concerns raised in the Notification Letter.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should not be granted. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Brooke A. DuBois
Administrative Judge
Office of Hearings and Appeals