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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: May 1, 2019 ) Case No.: PSH-19-0026  
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Issued: July 19, 2019

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “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 security clearance should not be granted.

**I. BACKGROUND**

The Individual is employed by the DOE in a position that requires him to hold a security clearance. During his background investigation, information pertaining to the Individual’s failure to file tax returns or pay owed taxes for 2004 prompted the Local Security Office (LSO) to issue a Letter of Interrogatory to the Individual in January 2019. The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter also informed him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on May 1, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented his testimony. *See* Transcript of Hearing, Case No. PSH-19-0026 (hereinafter cited as “Tr.”). The LSO submitted six exhibits, marked as Exhibits 1 through 6 (hereinafter cited as “Ex.”). The Individual submitted 18 exhibits, marked as Exhibits A through R.

<sup>1</sup> Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

## 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 his eligibility for a security clearance. That information pertains to Guideline F of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline F addresses the failure to live within one's means, satisfy debts, and meet financial obligations which 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 or trustworthiness and the individual's ability to protect classified or sensitive information. Adjudicative Guidelines ¶ 18. The 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 can raise a security concern under Guideline F. *Id.* ¶ 19(f). The LSO alleges that the Individual (1) owes \$1,734 for the tax year 2004 to the Internal Revenue Service (IRS); (2) has not filed his 2016 or 2017 federal tax returns with the IRS; and (3) has not filed his 2016 or 2017 state tax returns. Ex. 1. Accordingly, the LSO's security concerns under Guideline F are justified.

## 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

The Individual explained that he owed money to the IRS in 2004 due to receiving a lump sum payout from a retirement fund when he left his employment and not realizing that he needed to pay tax on it. Tr. at 8. When he received the tax bill, he did not have the funds to pay the tax due. *Id.* He has now paid all of the tax due for 2004. Ex. B. As for his 2016 and 2017 tax returns, the Individual explained that he was in a motor vehicle accident in September 2016 that kept him out of work for two months. Tr. at 10. During this time, his wife was not employed. *Id.* When his tax return was due in April 2017 and again in April 2018, the Individual and his wife failed to file their taxes because they did not have the income to pay any tax amount due. *Id.* When he was hired for his current DOE contractor job and realized that his failure to file his taxes for 2016 and 2017 became an issue, he began to work on correcting that situation by refinancing his home. *Id.* at 11. The Individual provided evidence that he filed and paid his federal and state tax returns for 2016 and 2017.<sup>2</sup> Exs. A, C, O-R. Further, he provided evidence that he has paid his 2004 tax debt in full. Ex. B.

#### **V. ANALYSIS**

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all of the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting security clearances, I am unable to grant a security clearance if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual a clearance is not an unacceptable risk to national security.

The Adjudicative Guidelines outline conditions that could mitigate the Guideline F security concerns. These include that “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

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<sup>2</sup> During the hearing, the Individual stated that he had not paid his taxes prior to 2016, although he had filed those tax forms. After the hearing, the Individual provided receipts for the payment of those back taxes. Exs. I-N.

identity theft), and the individual acted responsibly under the circumstances.” *Id.* at ¶ 20(b). Although the Individual indicated that part of his financial problems were related to an unexpected medical emergency, his motor vehicle accident, there is no evidence before me indicating that the timing or the nature of his medical problems prevented him from filing his 2016 or 2017 returns. The Individual stated that he failed to file both years because he did not have the funds to pay any amount due. However, it was incumbent on the individual to file his returns, and then to work out a payment plan. Accordingly, the Individual failed to act “responsibly under the circumstances,” as required by ¶ 20(b). The Individual’s continued failure to file these returns, as well as his failure to pay his 2004 tax obligation, until prompted to do so because of the present proceeding, creates serious doubt in my mind as to the Individual’s commitment or ability to be trusted to follow security rules or regulations.

Arguably mitigating factors described in paragraphs 20(d) and (g) might be applicable in this case. These mitigating factors, state that “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” and 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.” Adjudicative Guidelines F at ¶ 20(d), (g). The information that the Individual has provided shows that he is now current on all his tax bills, both with the IRS and the state, and thus, some mitigation under paragraphs 20(d) and (g) is applicable. Nonetheless, I find that these mitigating factors are outweighed by my concerns described above. Further, I find no other evidence that would indicate that such a failure to file taxes will not occur again in the future. *See Personnel Security Hearing*, Case No. PSH-18-0009 (2018) (Administrative Judge’s decision to restore security clearance based in part upon finding that Individual had provided evidence indicating that a failure to pay debts or file taxes was unlikely to reoccur in the future).

For the reasons above, I cannot find that the Individual has resolved the Guideline F concerns raised by the Individual’s failure to file and pay his taxes to the IRS and state.

## 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 Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting DOE access authorization to the Individual “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 access authorization to the Individual.

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

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