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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 3, 2019) Case No.: PSH-19-0050
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Issued: November 26, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 and Special Nuclear Material.”¹ 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 conclude that the Individual should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold access authorization. On January 26, 2018, the Individual signed and electronically submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 6 at 43. The Individual disclosed on the QNSP that he had failed to file his Federal income tax returns for tax years 2015 and 2016. *Id.* at 37.

On December 3, 2018, the local security office (LSO) issued the Individual a Letter of Interrogatory (LOI) concerning the reasons he failed to timely file tax returns and the status of the tax returns. Ex. 5. In his response to the LOI, the Individual again admitted that he had failed to file his Federal income tax returns for tax years 2015 and 2016. *Id.* at 1. The Individual also admitted that he had not filed his state income tax returns for tax years 2015 and 2016. *Id.* at 2.

The Individual’s failure to file his Federal and state income tax returns raised substantial security concerns about the Individual. Accordingly, the LSO informed the Individual, in a notification

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

letter dated February 25, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under "Guideline F, Financial Considerations" of the Adjudicative Guidelines. Ex. 1.

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 September 3, 2019. At the hearing that I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-19-0050 (hereinafter cited as "Tr."). The LSO submitted seven exhibits, marked as Exhibits 1 through 7. The Individual submitted three exhibits marked as Exhibits A through C.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline F (Financial Considerations) as the basis for denying the Individual a security clearance. Ex. 1.

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations. Adjudicative Guidelines at ¶ 18. In invoking Guideline F, the Notification Letter indicated that the Individual had not filed Federal or state personal income tax returns or paid federal or state personal income taxes for tax years 2015 and 2016. Ex. 1 at 1–2. The Individual's failure to file Federal or state income tax returns and failure to pay Federal and state income taxes justify the LSO's invocation of Guideline F in the Notification Letter. Adjudicative Guidelines 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. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

IV. FINDINGS OF FACT

The Individual signed his completed QNSP on January 26, 2018. Ex. 6 at 43. The Individual disclosed on the QNSP that he had not filed his Federal income tax returns for tax years 2015 and 2016. *Id.* at 37. In answer to the prompt on the QNSP concerning the reasons for his failure to file tax returns, the Individual responded “I only have excuses and laziness, I didn’t think about it.” *Id.*

In his response to the LOI, the Individual indicated that he had not taken any steps to file his outstanding Federal tax returns or to pay his Federal income taxes for tax years 2015 and 2016, and further disclosed that he had not filed state tax returns or paid state personal income taxes for those tax years. *Id.* at 1-2.

In response to the LSO’s inquiries concerning his reasons for not filing or paying federal or state personal income taxes, the Individual stated that he “used to have a terrible habit of being unorganized and forgetful.” *Id.* at 1–2. The Individual expressed that he was working to address his lack of organization, and indicated that he intended to have his tax situation resolved by “the end of December [2018] or in January [2019].” *Id.*

The Hearing

At the hearing, the Individual testified that he had filed his outstanding Federal income tax returns for tax years 2015 and 2016. Tr. at 15. The Individual also entered into evidence a letter from a tax preparer indicating that she had filed the Individual’s Federal tax returns on behalf of the Individual on October 23, 2019. Ex. A.² The Individual owed federal income taxes, but did not pay the full balance when he filed the tax returns. Tr. at 16; *see also* Ex. C at 2 (indicating that the Individual owed \$1,137 in U.S. personal income taxes for the 2016 tax year). As of the date of the hearing, the Individual further admitted that he had not filed his state income taxes for tax year 2015. Tr. at 23.³ The Individual speculated that he owed state personal income taxes for the 2015 tax year, but could not say how much with certainty. *Id.*

When asked why he had waited until October 23, 2019, two days prior to the hearing, to file his federal income tax returns even though he had promised to do so by January 2019 in his response to the LOI, the Individual responded that the area in which he resided “had a bunch of snowstorms and [then he] forgot.” Tr. at 16. The Individual asserted that he would avoid filing taxes late in the future by using a tax preparation service instead of preparing the tax returns himself. *Id.* at 17.

V. ANALYSIS

² I conducted the hearing concerning this matter on October 25th. Thus, the Individual did not file his federal income tax returns until two days prior to the hearing.

³ After the hearing, the Individual submitted a shipping label dated October 25, 2019, as a late-filed exhibit which he asserted demonstrated that he had filed his 2015 state personal income tax return. Ex. B.

The Individual did not contest any of the allegations contained in the Notification Letter, and acknowledged his responsibility for not timely filing his tax returns. *Id.* at 12–13. However, the Individual asserted that he had filed all of his outstanding tax returns, would pay the taxes he owed, and would not fall behind on filing tax returns in the future. As described below, I find that the Individual has not mitigated the security concerns asserted by the LSO under Guideline F.

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline F if:

- (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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;
- (c) 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income; and
- (g) 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 at ¶ 20(a)–(g).

The first two mitigating conditions are not applicable in this case because of the recency of the Individual's tax issues and the Individual's failure to timely address the concern. The Individual attributed his failure to file state and federal personal income tax returns in consecutive years to laziness and disorganization. When the LSO brought to his attention that this information placed his eligibility for a security clearance at risk in the LOI, the Individual did not take action for over ten months and attributed the delay to forgetfulness. As the Individual did not take action to resolve his unfiled tax returns until shortly before the hearing, which occurred eight months after the Notification Letter had been issued, and did not identify any circumstances beyond his control that caused the delay, I find that the Individual's behavior continues to cast doubt on his reliability, trustworthiness, and good judgement, and that the first two mitigating conditions under Guideline F are not applicable. *Id.* at ¶ 20(a)–(b).

Although the Individual testified that he had filed all but one outstanding tax return as of the date of the hearing, and provided documentation purporting to show that he filed that tax return after the hearing, I find that the seventh mitigating condition under Guideline F (¶ 20(g)) is inapplicable. Although the Individual provided documentation to show that he filed his outstanding Federal income tax returns, he still owes over \$1,000 in unpaid Federal income taxes and does not yet know the extent of his unpaid state income taxes. Moreover, the Individual did not provide documentation establishing that he made arrangements to pay the taxes that he owes. Since the Individual has not paid or arranged to pay the Federal and state income taxes that he owes, the seventh mitigating condition under Guideline F is not applicable. *Id.* at ¶ 20(g).

Given the available evidence, the remaining four mitigating conditions under Guideline F are not applicable in the present case. Accordingly, I conclude that the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of 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 should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals