



On September 18, 2019, the LSO issued the Individual a letter in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. Ex. 1. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted seven numbered exhibits (Ex. 1–7) into the record. The Individual submitted thirteen exhibits (Ex. A–M) into the record. The Individual presented his own testimony, and the LSO did not call any witnesses.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines 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 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. Adjudicative Guidelines at ¶ 18. The Summary of Security Concerns listed as relevant facts the Individual's failure to file federal or state income tax returns for the 2014, 2015, 2016, 2017, or 2018 tax years. Ex. 1. The LSO's allegations that the Individual failed to file federal and state income tax returns justify the LSO's invocation of Guideline F. 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.

#### IV. FINDINGS OF FACT

The Individual disclosed on his November 2016 QNSP that he had not timely filed his federal income tax returns or paid federal income taxes for the 2014 and 2015 tax years. Ex. 6 at 47–48. At the hearing, he claimed that his tax troubles originated as a result of failing to file IRS Form 8332 (the “Tax Form”) with his 2013 federal income tax return. Tr. at 2; see also Ex. 2 at 1. (summarizing the bases for the Individual’s appeal and identifying failing to file IRS Form 8332 as the initial cause of his tax delinquencies). He explained that, pursuant to a divorce decree, he was entitled to claim his children as dependents, which necessitated filing the Tax Form. Tr. at 12–13. However, thinking the IRS already had a copy of the form because he had filed it the previous year, the Individual did not file the Tax Form with his 2013 federal tax return, and the IRS refused to process the tax return. *Id.* at 13; see also Ex. H at 1 (reflecting that the IRS rejected the Individual’s 2013 federal tax return by letter dated November 26, 2014, because he did not include the Tax Form with his federal tax return and directed the Individual to send a reply within twenty days).

The Individual claimed that he had difficulty getting the signed form from his wife and then once he did get the form, he lost it when his car was stolen with the Tax Form inside.<sup>2</sup> Tr. at 13–14. The Individual attributed his failure to take action to being busy at work, moving to a new residence, losing additional records needed to file subsequent tax returns, and being “afraid of doing something wrong . . . .” *Id.* In the face of these challenges, the Individual decided to “let it slide for a while.” *Id.*

Approximately thirty months after he submitted the QNSP and in response to the LOI, the Individual indicated that he had still not resolved his tax situation and that he had fallen further behind on filing income tax returns, having not filed 2014 through 2018 tax returns. Ex. 5. According to the Individual, he had “received the forms and [was] preparing to file all required taxes,” by May 15, 2019. *Id.* The Individual testified that he finally filed his 2015, 2016, 2017, and 2018 federal and state income tax returns in December 2019 and provided copies of the completed tax returns. *Id.* at 15–16; Ex. D; Ex. E; Ex. F; Ex. G.<sup>3</sup> He reported that he did not file his 2014 federal tax return on the advice of an IRS representative with whom he spoke by telephone in 2018. Tr. at 16–17.

Regarding his state taxes, the Individual offered into evidence a letter from his state taxing authority which indicated that his 2015 state personal income tax had been assessed at \$336.83. Ex. L at 2. He testified that he did not owe state personal income taxes for any other tax years, and that he had paid the balance of his state personal income taxes by phone shortly before the hearing.

---

<sup>2</sup> The Individual testified that he contacted his ex-wife to ask for a new copy of the Tax Form. Tr. at 13. He stated that several months passed before she provided him with a signed copy. *Id.* After receiving the Tax Form from his wife, he placed it in his vehicle and did not take any further action for a number of years. *Id.* at 13–14. In November 2016, the Individual’s vehicle was stolen with the Tax Form still inside. *Id.* at 14; Ex. 2 at 2. After the theft of his vehicle, the Individual once again requested that his ex-wife provide him with a copy of the Tax Form. *Id.* Even after receiving the form from his wife, he still did not file the form or any of his tax returns until December 2019. *Id.*

<sup>3</sup> The Individual submitted copies of completed federal tax returns, but did not provide documentation demonstrating that he had filed federal tax returns.

Tr. at 15, 18–19, 23; Ex. L at 1 (summarizing the Individual’s payments to his state taxing authority). The Individual asserted that the state taxing authority had “verbally confirmed that [he would] not be required to file [a] 2014 [state] tax return . . . .” Ex. L at 1. The Individual had no information concerning the status of his federal income tax returns or tax liability, and speculated that it would be several weeks before he received a response from the IRS. Tr. at 24.<sup>4</sup>

The Individual asserted that his tax troubles were “caused because of interactions with [his] ex-wife,” that he would not experience similar issues in the future because his children were now adults who he would not claim as dependents, and that he would not need information from his ex-wife in the future to file his tax returns. *Id.* at 20. He further claimed that he got busy and let his taxes lapse. Tr. at 12, 14, 15, 17. When asked why he had waited until December 2019 to take action to address his tax situation despite receiving the Statement of Security Concerns in August, the Individual indicated that he had been “busy at work.” *Id.* at 15. The Individual concluded that he had ample savings on hand, and that he could easily pay any taxes the IRS might notify him that he owes. *Id.* at 20–21.

## VI. ANALYSIS

The Individual did not contest the accuracy of the factual assertions in the Statement of Security Concerns, but indicated that he had filed state and federal income tax returns in December 2019 and paid his state income taxes in January 2020 to resolve the security concerns. Tr. at 10–11, 15. An individual can mitigate security concerns related to failure to file or pay taxes under Guideline F of the Adjudicative Guidelines by showing that:

- 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;
- 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; or,
- 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)–(b), (g).<sup>5</sup>

The first two mitigating condition under Guideline F are not applicable in this case because the Individual’s behavior was frequent, recent, and casts significant doubt on his reliability and judgment because he irresponsibly delayed filing or paying taxes for many years. While the Individual attributed his tax problems to his ex-wife, he allowed years to go by without taking any action to resolve his tax situation even after his ex-wife provided him with the Tax Form.

---

<sup>4</sup> By email dated January 31, 2020, the Individual indicated that he had not heard from the IRS and had not been able to “retrieve any updates about his tax returns” on the IRS website. Ex. M.

<sup>5</sup> The other four mitigating conditions under Guideline F concern non-tax debts and unexplained affluence, and are obviously not applicable in this case. Adjudicative Guidelines at ¶ 20(c)–(f).

Moreover, the Individual indicated in his April 2019 response to the LOI that he would file his taxes by May 15, 2019, but did not take any action until December 2019. The Individual was responsible for these lengthy delays, not circumstances outside of his control, and his decision to defer his legal obligation to file and pay taxes because he was “busy” and “afraid of doing something wrong” casts serious doubt on his reliability and judgment. Accordingly, I find that the first two mitigating conditions under Guideline F are inapplicable in this case. Guideline F at ¶ 20(a)–(b).

The Individual has not fully satisfied the other mitigating condition potentially applicable in this case concerning making arrangements to file and pay taxes. The Individual provided evidence that he has resolved his state tax obligations. However, he did not demonstrate that he filed his federal income tax returns, did not know his federal income tax liability, and has not made any arrangements to pay his federal income taxes. While the Individual testified that he contacted the IRS and is waiting for a response concerning the amount he owes, the Individual’s delay in taking steps to ascertain what he owed was of his own making and prevents him from satisfying the mitigating condition. Guideline F at ¶ 20(g).

Having concluded that the Individual’s failure to file or pay federal or state income taxes for five consecutive tax years was the product of his own poor judgment and inaction, I find that none of the mitigating conditions under Guideline F are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

## **VII. 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 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 Summary of Security Concerns. Accordingly, I have determined that the Individual’s access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

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