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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: January 16, 2020)	Case No.: PSH-20-0028
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Issued: August 26, 2020

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and 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 conclude that the Individual’s access authorization should not be granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. As part of the investigation for his security clearance, the Individual completed a Questionnaire for National Security Positions (QNSP) in October 2017. Ex 7. In response to the financial questions, the Individual indicated that he had failed to file or pay his Federal and state taxes for the 2012-2016 tax years. *Id.* at 52-53. Subsequently, the Local Security Office (LSO) asked him to complete a Letter of Interrogatory (LOI). *See* Ex. 1. Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated April 30, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his 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). Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of

¹ 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.

Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eight numbered exhibits (Exhibits 1–8) into the record. The Individual tendered 22 exhibits (Exhibits A–V) and testified on his own behalf. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case 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 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.

III. Notification Letter and Associated Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cited Guideline F of the Adjudicative Guidelines. Guideline F addresses one’s “[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 this guideline that could raise a disqualifying security concern are the inability to satisfy debts and an unwillingness to satisfy debts regardless of the ability to do so. Guideline F at ¶ 19(a), (b). Additionally, the failure to file Federal or state income tax returns, or the failure to pay Federal or state income tax returns, may also serve as disqualifying conditions. *Id.* at ¶ 19(f).

In citing Guideline F, the LSO relied upon the Individual’s admissions in the QNSP and the LOI that he had not filed: (1) his personal state taxes for the 2012 tax year, (2) his personal Federal or state taxes for the 2013-2016 tax years; and (3) his Federal or state business income taxes for the

2013-2017 tax years. Ex. 1. The LSO further alleged that the Individual owed approximately \$25,000 to the Internal Revenue Service (IRS), resulting from his business income taxes for the 2012 tax year, and that he had taken no action to make arrangements to pay the debt. *Id.* Lastly, the LSO asserted that the Individual had three outstanding collections accounts totaling approximately \$1,200. *Id.*

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below. At the hearing, the Individual testified on his own behalf and presented the testimony of his father.

A. Taxes

The Individual testified that, in 2012, he started his own business and was fully aware of his obligation to file taxes. Tr. at 36. Contrary to the allegations in the Summary of Security Concerns, the Individual explained that he filed his taxes for the 2012 tax year in 2013. *Id.* at 39; Ex. S. However, he noted that, after filing, he owed both Federal and state income tax. Tr. at 39. Although he established a payment plan with the state and paid off that tax obligation, he did not make any payments toward the approximately \$8,000 he owed in Federal taxes. *Id.* at 39- 40. The Individual estimated that, as a result of this unpaid tax bill, he currently owes approximately \$28,000, attributing \$23,000 to penalties and interest.² *Id.* at 39-40. The Individual explained that although he did receive notices from the IRS, he did not have a “good reason” for failing to pay the 2012 taxes. *Id.* at 41.

In the subsequent tax years, 2013-2016, the Individual testified that he failed to file his taxes because he “just thought [he] had time,” and it was something that could wait.³ *Id.* at 42-44. He indicated that he did not attempt to find help with his taxes because he was “just too busy.” *Id.* at 43. In spite of making a profit of \$467,602 in 2015, the Individual stated that he decided not to file his taxes due to his expenses. *Id.* at 44. He noted that he was focused on “trying to make money,” and he felt that he could “deal with [taxes] later.” *Id.* at 46.

In 2017, after the Individual began working for his current employer, he decided that he needed to reach out for help with his taxes because many of his coworkers were encouraging him resolve any personal issues prior to applying for a security clearance. *Id.* 47, 54. The Individual stated that he located a tax company to resolve his tax problems; however, he felt that the company’s services were too expensive, and he decided, instead, to begin saving his money. *Id.* at 47. The Individual noted that he subsequently completed his QNSP in October 2017. *Id.* at 54.

In November 2019, after becoming aware that the DOE had concerns with regard to his tax situation, the Individual contacted a second tax resolution company. *Id.* at 48. Four days prior to the hearing on this matter, the Individual retained the company’s services. Ex. N. The Individual

² These are the figures as represented by the Individual.

³ The Individual testified that, although the LSO alleged that he admitted that he had not filed his Federal or state business tax for the 2017 tax year, he terminated his business operations in 2016 and did not have any business income during the 2017 tax year. Tr. at 24-26.

testified that all of his outstanding tax returns, both Federal and state, had been filed, and he was working with the tax resolution company to establish a “temporary payment program” with the IRS. Tr. at 14, 33; Ex A-M, S. The Individual clarified that the “temporary payment plan” would consist of a voluntary submission of monthly payments, in the amount of \$100-\$200, to the IRS, in the hopes that those payments would help him in negotiating with the IRS. Tr. at 33-34, 58. He indicated that he hoped that he could negotiate the tax balance with the IRS to a “considerably lower” amount. *Id.* at 70. The Individual testified that, at the time of the hearing, his outstanding Federal tax debt was approximately \$180,000. *Id.* at 55. With regard to his outstanding state tax debt, the Individual stated that he knew he owed money for outstanding state taxes, and although he was unsure as to the exact amount owed, he knew it was at least \$21,000. *Id.* at 56-57.

B. Collection Accounts

With regard to the three outstanding collections account, totaling approximately \$1,200, the Individual testified that all three accounts had been paid in full. Tr. at 31-33. The Individual additionally submitted communications from each of the creditors showing that the accounts did not have a balance. Ex. P-R. The Individual clarified that he believes that notices from these creditors were lost in the mail when he moved; however, upon seeing them listed in the Summary of Security Concerns, he “took care of them right away.” Tr. at 62. The Individual additionally explained that he is taking action to “build up” his credit by opening credit cards and then quickly paying off the debt. *Id.* at 61.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony 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 has not sufficiently mitigated the security concerns, noted by the LSO, with regard to Guideline F. 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). Therefore, I have determined that the Individual’s security clearance should not be granted. The specific findings that I make in support of this decision are discussed below.

As discussed above, failure to satisfy debts and meet financial obligations can raise security concerns with regard to an individual’s trustworthiness and reliability. Guideline F at ¶ 18. An individual may be able to mitigate the security concerns by demonstrating 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. *Id.* at ¶ 20(a). Additionally, an individual may be able to mitigate the security concerns if he has resolved his debts, is receiving financial counseling, or has made arrangements with the appropriate tax authorities to file or pay the taxes and is in compliance with that arrangement. *See id.* at ¶ 20 (c) (d), (g).

Here, the Individual has begun to take steps to mitigate the security concerns related to his financial situation. He has resolved all three of his outstanding collection accounts; he is working on establishing and improving his credit; he has filed all of his overdue tax returns, and has hired a tax

resolution service to help him resolve his tax debt. It also appears that he has hired a financial counselor to establish a budget for him.⁴ The Individual believes that he is “showing persistence [and] a pattern of taking care of things.” Tr. at 66. The actions taken by the Individual to improve his financial situation are indeed admirable, but I cannot find that they are sufficient, at this time, to mitigate the Guideline F security concerns.

Although the Individual has filed all of his overdue tax returns, he did not take significant action to rectify the situation until he became aware that the DOE had a security concern regarding his finances, even after receiving warnings from his coworkers approximately two years prior. *See* Guideline F ¶ 19(b). I note that the Individual has now filed all of his outstanding tax returns; however, as of the date of the hearing, he has yet to make any payment to the IRS or state tax authority toward his approximately \$200,000 overdue tax bills. *Contra id.* at ¶ 20(g). Finally, the Individual did not obtain the services of the tax resolution company until four days prior to the hearing, and did not seek out financial counseling until after the hearing had concluded. *Contra id.* at ¶ 20(a).

The Individual has begun to take the first steps in resolving the security concerns at issue; however, he has admitted to a history of failing to file or pay his taxes and has not yet demonstrated that he can consistently and reliably file and pay them. *Id.* For the foregoing reasons, I cannot find that the Individual has mitigated the DOE’s security concerns under Guideline F.

VI. Conclusion

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline F. Accordingly, I have determined that the Individual’s access authorization should not be granted.

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

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

⁴ The budget was submitted after the hearing, but within the established deadline; however, as such, I was unable to inquire about the details of the financial counseling service the Individual employed in creating this budget. Ex. V.