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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: March 15, 2021 ) Case No.: PSH-21-0027  
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Issued: May 14, 2021

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> 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 security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. On December 14, 2017, the Individual completed a Questionnaire for National Security Positions (QNSP). Ex. 11. The Individual disclosed on the QNSP that he had not filed his state or federal taxes for several years. Ex. 11 at 42–47. Subsequently, the Local Security Office (LSO) asked him to complete Letters of Interrogatory (LOIs) regarding his failure to file tax returns, and unresolved collection accounts. Ex. 8; Ex. 9. The Individual's responses to the LOIs did not resolve the security concerns, and the LSO informed the Individual, in a letter dated June 12, 2020 (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 letter titled "Statement of Security Concerns" (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines. Ex. 1.

<sup>1</sup> 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.

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 (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted thirteen numbered exhibits (Ex. 1–13) into the record. The Individual submitted 24 exhibits (Ex. A through X) into the record and presented his own testimony.

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

Regarding the LSO’s Guideline F security concerns, the SSC listed the following facts: The Individual owes a total of \$48,716 in federal income taxes for tax years 2005 through 2018; the Individual admitted in a response to a Letter of Interrogatory (LOI) that he has not developed a payment plan or made any payments to the IRS; the Individual has not developed a payment plan or made any payments to resolve his state income tax debt of approximately \$500 for the 2017 tax year; the Individual admitted in various LOIs that he has not taken any steps to resolve his two collection accounts; and the Individual has additional collection accounts totaling \$2,879.<sup>2</sup> Ex. 1. The Individual’s inability or unwillingness to satisfy debts, history of not meeting financial obligations, and failure to file state and federal taxes justify the LSO’s invocation of Guideline F in the Notification Letter. Adjudicative Guidelines at ¶ 19(a)–(c), (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 entire process is a conscientious scrutiny of several 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

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<sup>2</sup> The SSC asserts that a letter and invoice by the Individual’s accountant dated July 29, 2019 reflects he owes \$48,716 in federal income taxes for tax years 2005 through 2018. Ex. 1 at 1. However, the OHA reviewed the record and did not find such a document specifying a total of \$48,716 of outstanding federal tax debt.

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)(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 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 submitted a QNSP to the LSO on December 14, 2017, and disclosed that he had not paid his federal taxes for tax years 2005 through 2007, and 2009 through 2011. Ex. 11 at 42–45. In his QNSP, he stated that for those tax years, the IRS had audited his tax returns. Further, the IRS audited the tax preparation service he had employed for improper tax preparation. *Id.* at 43–44. The LSO submitted an Office of Personnel Management (OPM) Report which included the Individual’s 2012 financial records obtained as part of the Individual’s 2012 security clearance investigation. Ex. 12 at 251–54. The 2012 financial records show that the Individual filed his federal taxes for tax years 2005 through 2011, and that as of December 2012, he had outstanding tax debt for those years.<sup>3</sup> *Id.* In addition, in the Individual’s October 22, 2019, response to the second LOI, he stated that he had filed his federal and state income taxes for tax years 2005 through 2011, and 2018. Ex. 8 at 3–5.

During a December 5, 2018, Enhanced Subject Interview (ESI), the Individual told an OPM investigator that he intended to contact the IRS within the next few months to arrange a payment plan to repay his federal income tax debt for 2005 through 2017. Ex. 12 at 73, 76–77. However, in the Individual’s July 21, 2019, response to the first LOI, he admitted that he had not established a payment plan to satisfy his debt with the IRS, nor had he made any payments to the IRS. Ex. 9 at 6. He also admitted that he had not filed his 2012 through 2017 federal income tax returns, and stated he planned to get an accountant to help him file his federal tax returns for those years. Ex. 9 at 2–3.

During the December 5, 2018, ESI, the Individual told the OPM investigator that he estimated that he owed \$500 in state taxes for the 2017 tax year, and he intended to contact the state’s taxation and revenue department to establish a payment plan to resolve his state tax debt. Ex. 12 at 77. He further told the OPM investigator that he planned to repay the debt in full by the end of 2019. *Id.*

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<sup>3</sup> The OPM investigator’s report states that the Individual’s 2012 financial record was obtained through the Department of Treasury. Ex. 12 at 251. The 2012 financial record showed detailed federal tax information from 2005 through 2011. *Id.* at 251–54. The detailed information included W-2 withholding credit amounts, tax refunds issued, dates when installment agreements were established, and outstanding tax balances owed for each year. *Id.*

In his July 21, 2019, response to the first LOI, the Individual stated that he still had not filed his state income taxes returns for tax years 2012 through 2017. Ex. 9 at 4.

In addition to his unpaid tax debts, the Individual disclosed during the December 5, 2018 ESI, that he had two outstanding debts, one owed to a hospital (Creditor 1) for medical bills in the amount of \$1,550 and another owed to a wireless carrier (Creditor 2) in the amount of \$952, both which were referred to a collection agency. Ex. 12 at 78–79. He told the OPM investigator that he planned to pay off the debts by the end of 2019. *Id.* In his July 2019, response to the first LOI, he admitted that he had not taken steps to resolve the collection account for Creditor 1. Ex. 9 at 8. In his October 22, 2019, response to the second LOI, he responded that he had not yet established a payment plan or paid off the debt owed to Creditor 2, but stated that he will pay off the debts before the end of 2019. Ex. 8 at 1. Additionally, in the LOI, he was asked about an additional medical debt from a collections account totaling \$377 (Creditor 3), to which he replied that he had not resolved that debt. Ex. 8 at 2.

At the hearing, the Individual testified regarding the allegations in the SSC and his mitigation efforts. Transcript (Tr.) at 8–60. He asserted that he has now filed his earlier tax returns beginning with tax year 2005. Tr. at 15. Exhibit 12 indicates that the Individual has filed tax returns for 2005 through 2010 and the value of the tax refunds, tax credits, and taxes assessed for those years. Tr. at 55–58; Ex. 12 at 251–54.

With regard to his 2012 through 2018 tax returns, the Individual testified that he did not file those tax returns on time because his long time significant other, who had always taken care of all his tax paperwork, underwent extensive medical treatment and ultimately passed away in 2013. *Id.* at 13–14, 16. The Individual testified that after his significant other’s death, he fell into a deep depression. *Id.* at 14. Due to his depression, he “just didn’t care” and “[t]he only thing that kept me going was my job.” *Id.* He admitted that “for some reason the years [of unfiled taxes] just kept going. I mean I lost a handle on it. And pretty soon I noticed, ...I want to fix it.” *Id.*

The Individual further testified that eventually he obtained the services of a tax preparer (Tax Preparer A) who prepared all his federal and state tax returns from tax years 2012 through 2018 on July 29, 2019. Tr. at 25–31; Exs. D–Q (tax returns). Those tax returns reflect that the Individual is entitled to a state tax refund and a federal tax refund for tax year 2013, but that he owes federal and state income taxes for tax years 2012, 2014, and 2015 through 2018. *Id.* The Individual testified that although Tax Preparer A finalized his federal tax returns for 2012 through 2018, he was the person who ultimately needed to file them directly with the IRS. *Id.* at 25. He testified that he filed those tax returns approximately one to three months prior to the hearing. *Id.* at 33.

The Individual explained that although Tax Preparer A had prepared the returns in July 2019, he did not look at the returns and so he forgot to sign them. *Id.* He also stated that in March 2020, he contacted a company (Company A) to assist him in resolving his tax liabilities, and he submitted a letter from Company A dated March 3, 2020, that reflects he had retained their services. *Id.* at 32–33; Ex. A; *see* Ex. B. He stated that one of the employees at Company A misinformed him that the company could file his federal tax returns for him. Tr. at 33–34. Once he realized that the company employee gave him wrong information, he then filed his federal tax returns. *Id.* He also asserted that his delay was partly due to the fact that he had difficulty learning how to file and

process his tax returns since he had previously relied on his significant other to do all of his tax paperwork. *Id.* at 34–35. Regarding his 2019 federal and state tax returns, the Individual testified that he hired a different tax preparer (Tax Preparer B) to prepare those tax returns. *Id.* at 49–50. Additionally, though not referenced in the SSC, the Individual submitted copies of his 2019 federal and state tax returns which were prepared on August 8, 2020, and reflected he owed taxes for both his federal and state tax returns. Ex. C.

As for his outstanding tax debt, the Individual stated that in March 2020, he hired Company A and asserted that they are working for him to negotiate with the IRS and state tax authorities in order to obtain a payment plan for the Individual which is affordable for him. Tr. at 9–10; Exs. A–B. The Individual admitted that as of the date of the hearing, he has not made any payments for any of his outstanding tax debt. Tr. at 37. He asserted that Company A told him that as soon as the IRS receives and processes his tax returns, Company A will begin negotiating with the IRS to obtain a payment plan, however, he does not know how long that process will take. *Id.* at 36–37. Regarding his outstanding state tax debt for 2012 through 2019, he stated that he has not paid any of his state tax debt because he is waiting for Company A to obtain a payment plan for him. *Id.* at 19. He asserted that Company A told him that they can obtain one payment plan that would incorporate all his outstanding state tax debt. *Id.* After the hearing, the Individual submitted a payment receipt from his state taxation and review department which reflects that he made a \$350 payment on May 5, 2021, satisfying his state tax debt for tax year 2019. Ex. W.

The Individual also provided testimony regarding his additional non-tax related debts. Tr. at 43–47. He asserted he has no knowledge of the alleged \$377 debt that he owes for what appears to be a medical services debt. Tr. at 47; Ex. 1. While a previous credit report dated May 1, 2019, reflects the \$377 debt, the most recent credit report in the record, dated April 22, 2021, does not include this debt, and shows no outstanding debts. Ex. 10 at 2; Ex. 13. At the hearing, the Individual stated that he paid the outstanding medical debt to Creditor 1 on the Friday before the hearing, and he provided a receipt for his payments. Tr. at 43, 45–46; Ex. R. The Individual also claimed that he attempted to pay the outstanding debt to Creditor 2 on the Saturday before the hearing, but the location that he visited could not take his payment. Tr. at 44. He submitted proof that he paid Creditor 2 after the hearing. Ex. X.

Additionally, the Individual testified that he has kept up with all of his other debts including his monthly car payments. Tr. at 49. An updated credit report dated April 22, 2021, reflects that the Individual has no delinquent accounts. Tr. at 47; Ex. 13.

## **V. ANALYSIS**

### **A. Guideline F**

As discussed above, failure to satisfy debts and meet financial obligations can raise security concerns about an individual's trustworthiness, reliability, and ability to protect classified or sensitive information. Guideline F at ¶ 18. Conditions that may mitigate security concerns under Guideline F, in relevant part, include the following:

(d) the individual initiated and is adhering to a good-faith effort to replay overdue creditors or otherwise resolve debts;

(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(d), (g).

The Individual has begun to take steps to mitigate the security concerns related to his financial situation. He has filed all of his overdue tax returns, and he submitted evidence showing that he paid his 2019 state tax debt after the hearing. He also hired a firm for the purposes of negotiating an affordable payment plan for his overdue federal and state taxes. Additionally, he has paid off his other non-tax related debts to Creditor 1 and Creditor 2. As for the alleged \$377 debt which the Individual testified to being unaware of, the most recent credit report no longer reflects this debt and shows he is current on all his non-tax accounts.

Although the Individual has filed all of his overdue tax returns, he did not file those returns until approximately one to three months prior to the hearing, despite the fact that he aware that the DOE was concerned about his failure to file his taxes. The Individual claimed that the untimely death of his significant other in 2013 led to his falling into a deep depression, which impaired his motivation to file his 2012 through 2019 tax returns. These returns were ultimately not filed until the current year. As further mitigation, the Individual explained that he was used to having his significant other file all his tax returns, so after she died, it was difficult for him to figure out how to complete and file his taxes. While it is understandable that the Individual was depressed after the passing of his long term life partner and that it may have been difficult to learn how to file his taxes, these factors are inadequate justification for his delay in filing his taxes for eight years until he was forced to address the issue as raised by his QNSP and LOIs. In addition, while he submitted evidence showing he paid his 2019 state taxes, he has yet to pay his 2019 federal taxes, and admitted he has not made any payments towards his outstanding federal and state tax debt for tax years 2012 through 2018. Regarding his collection account non-tax debts, he was aware of those debts since the date of his responses to his July and October 2019 LOIs, yet he did not pay off the debt to Creditors 1 and 2 until very recently. For these reasons, the Individual has not satisfied the mitigating conditions described in Guideline F ¶ 20(d).

Regarding the mitigating factor of Guideline F ¶ 20(g), the Individual submitted evidence reflecting that he had contacted a company (Company A) to assist him in resolving his tax liabilities. However, he did not contact Company A until March 2020. In addition, while he asserts that Company A will negotiate an affordable payment plan for his outstanding state and federal tax debts, as of the date of the hearing, he has not made any payment arrangements with either the IRS or his state taxation and review department for the tax years at issue. As such, I cannot find that the Individual has sufficiently resolved the Guideline F security concerns.

## **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 Guidelines 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.

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

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Administrative Judge

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