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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: April 2, 2021) Case No.: PSH-21-0033
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Issued: June 21, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (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 restored.

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 an Electronic Questionnaires for Investigations Processing (e-QIP) in October 2018. Ex. 6. In response to the financial questions, the Individual indicated that he had failed to file his Federal and state taxes for the 2014-2017 tax years. *Id.* at 41-42. Subsequently, the Local Security Office (LSO) asked him to complete a Letter of Interrogatory (LOI). Ex. 5. Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated May 29, 2020 (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 seven numbered exhibits (Exhibits 1–7) into the record. The Individual tendered 2 exhibits (Exhibits A-B) 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 is the failure to file Federal or state income tax returns. *Id.* at ¶ 19(f).

In citing Guideline F, the LSO relied upon the Individual’s admissions in the LOI that he had not filed his Federal or state taxes for the 2014-2018 tax years. Ex. 1. The LSO additionally alleged that, during a March 2019 Enhanced Subject Interview (ESI), the Individual stated his intent to file his 2014-2018 Federal and state taxes in June 2019, but that he later admitted in his January 2020 LOI that he had not yet filed them. *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. He stated that, as of the date of the hearing, his 2014 and 2015 Federal and state taxes had not been filed. Tr. at 9, 12. He further testified that, in approximately November of 2020, his 2016 and 2017 Federal and state taxes had been filed and accepted by the appropriate tax authorities. *Id.* at 9-11; *see* Ex. B.² The Individual explained that his 2018 state taxes were also filed and accepted in November 2020, and although his 2018 Federal taxes were filed at the same time, they were rejected by the IRS. *Id.* at 10-12, 14. He indicated that he did not know why the 2018 Federal taxes were rejected, but that his tax preparer was working to find an explanation. *Id.* at 11-12. The Individual noted that he did not know when the 2014 and 2015 Federal and state taxes would be filed, and additionally, he was unsure as to when the 2018 Federal tax issue would be resolved. *Id.* at 14.

The Individual explained that the problems with his taxes began in 2015 when he was unable to discern the amount of child support he had paid, and he needed this information for his taxes. *Id.* at 18-19. By 2016, when his 2015 taxes were due, he stated that he still did not have the child support information, and this problem continued through to his 2018 taxes. *Id.* at 19. The Individual noted that the relevant child support agency was garnishing his wages, and he was attempting to obtain the child support information directly from the child support agency. *Id.* at 19, 25. He acknowledged that he should have examined how much money was being removed from his paycheck, which is how he eventually obtained the information at some point in 2019.³ *Id.* at 24-25

The Individual testified that he knew that he had problems with his taxes in March of 2019, but he did not contact a tax preparer until August of 2020. *Id.* at 14-15. When asked why he waited over a year to begin resolving his tax issues, the Individual explained his difficulty in obtaining the child support information. *Id.* at 15, 17. He stated that he could not remember why there was “a gap” between obtaining the information and beginning to work on resolving the tax issues. *Id.* at 15. However, he explained that he has a “problem” with procrastination that impacts both his work and personal life. *Id.* at 16. He later stated that the delay between obtaining the child support information and seeking assistance with filing his taxes was due to his procrastination issue. *Id.* at 18.

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

² I note that the Individual’s Exhibit B contains invoices from the Individual’s tax preparer indicating that the 2016-2018 returns were prepared. However, the Individual did not submit any documentation that the returns were actually filed.

³ The Individual could not recall when he obtained the information about his child support payment, but he knew that it was in 2019. Tr. at 15.

that the Individual has not sufficiently mitigated the security concerns, as 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 restored. The specific findings that I make in support of this decision are discussed below.

As discussed above, failure to 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, demonstrating that arrangements have been made with the appropriate tax authorities to file the taxes may mitigate the security concerns. *See id.* at ¶ 20 (g).

Here, the Individual has begun to take steps to mitigate the security concerns related to his tax situation. He has retained a tax preparer who has successfully filed his 2016 and 2017 Federal and state taxes, and his 2018 state taxes. *See id.* However, his 2014 and 2015 Federal and state taxes, as well as his 2018 Federal taxes, have yet to be successfully filed. *Contra id.* Although the Individual is actively working with his tax preparer to successfully file the outstanding tax year returns, he readily admits that he procrastinated at least eight months in seeking help to file his taxes when he knew the DOE had concerns about them. Tr. at 15-16.

Although the Individual has taken actions to resolve his tax situation, I cannot find that these actions are sufficient, at this time, to mitigate the Guideline F security concerns. The Individual has taken the first steps in resolving the security concerns at issue; however, he has not yet demonstrated compliance in filing the outstanding tax years, nor has he demonstrated that he can consistently and reliably file his taxes. *Contra* Guideline F at ¶ 20(a), (g). 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 restored.

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