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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 4, 2021) Case No.: PSH-21-0034
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Issued: June 21, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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."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's access authorization should be granted.

I. Background

On February 1, 2018, the Individual, an applicant for a DOE security clearance, submitted a Questionnaire for National Security Position (QNSP) to a local security office (LSO). In this QNSP, the Individual reported that he had not filed his Federal or state tax returns for tax years 2016 and 2017. Ex. 10 at 35-36. The Individual subsequently underwent a background investigation conducted by the United States Office of Personnel Management (OPM). On July 30, 2019, OPM issued a report of its findings indicating that an OPM investigator (the Investigator) conducted a Triggered Enhanced Subject Interview (TESI) of the Individual on April 25, 2018. Ex. 11 at 1, 58. During this TESI, the Individual confirmed that he had not filed his Federal or state tax returns for tax years 2016 and 2017 and explained that he had not filed because he was self-employed and found preparing the tax returns to be intimidating. Ex. 11 at 61. He stated that he planned to contact an accountant within two weeks to file these returns. Ex. 11 at 61. The first accountant he tried to hire had retired. Ex. 11 at 61. The Individual was subsequently contacted

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.

by the Investigator by telephone on May 8, 2018. Ex. 11 at 66. During this conversation, the Individual indicated that he was working with a bookkeeper to complete and file his delinquent tax returns. Ex. 11 at 66. On October 9, 2019, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 7 at 1. The Individual submitted his response to the LOI on October 16, 2019, in which he stated that he had hired a tax expert to prepare his Federal and state tax returns for Tax years 2016 and 2017, and expected to file his returns for those years within two weeks. Ex. 7 at 1. He further provided the following explanation for his delinquency: “In 2016 I switched accounts from a sole prop to a LLC and lost my online banking records. To save money I have been working on my books myself and missed the due date.” Ex. 7 at 1.

On January 7, 2020, the Individual filed his outstanding tax returns for tax years 2016 and 2017 with the Internal Revenue Service (IRS) and the state taxing authority (the State). Ex. 8; Ex. 9.

On February 6, 2020, the LSO began the present administrative review proceeding by issuing a Notification Letter informing the Individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve these substantial doubts. *See* 10 C.F.R. § 710.21. The only derogatory information concerning the Individual cited in the Notification Letter was the Individual’s failure to file his Federal and state tax returns for tax years 2016 and 2017.

The Individual requested a hearing on August 6, 2020. On August 18, 2020, the Individual submitted copies of his Federal and State tax returns for tax years 2016 and 2017 to the LSO. Ex. 8; Ex. 9.

On March 31, 2021, 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual and his wife. *See* Transcript of Hearing, Case No. PSH-21-0034 (hereinafter cited as “Tr.”). The DOE Counsel submitted eleven exhibits marked as Exhibits 1 through 11. The Individual submitted seven exhibits marked as Exhibits A through G.

II. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cited Guideline F of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). Guideline F (Financial Considerations) provides that an individual’s 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.” Guideline F at ¶ 18. Under Guideline F, the LSO alleged that the Individual had failed to file both his Federal and state tax returns for tax years 2016 and 2017. Guideline F specifically states that an Individual’s “[f]ailure to file...Federal, state, or local income tax returns or failure to pay [them] as required”

constitute potentially disqualifying conditions. Guideline F at ¶ 19. Accordingly, the LSO's security concerns under Guideline F were justified.

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) (strong presumption against the issuance of a security clearance).

An 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. The Hearing

At the hearing, the Individual testified regarding the circumstances that led to the late filing of his 2016 and 2017 taxes. He testified that he is self-employed, and that he had tried to do his own record-keeping for his business to save on the costs of professional bookkeeping services. Tr. at 28, 31–32. He asserted that due to his variable income, it was difficult for him to garner sufficient funds for this expense.² Tr. at 31–32. When he attempted to do his own bookkeeping, he became overwhelmed. Tr. at 41–42, 49. The Individual acknowledged that he made a mistake in failing to timely file his 2016 and 2017 taxes. Tr. at 32. He also testified and provided evidence to demonstrate the actions he has taken to mitigate the LSO's security concerns. He testified that he filed his 2016 and 2017 federal and state taxes through a professional tax service. Tr. at 34, 39, 47. In support of his testimony, he submitted post-hearing evidence of a tax summary document prepared by his tax preparation professional dated January 7, 2020. Ex. E. The written summary stated that, based on his prepared tax returns, he owed the IRS \$140 for tax year 2016, and \$2,494 for tax year 2017. *Id.* The tax summary document further showed that the Individual would receive a \$149 refund from the State for tax year 2016, and a \$73 refund from the State for tax year 2017. *Id.* The Individual also submitted copies of his state tax returns for tax years 2016 and 2017, both of which reflected the same dollar amounts for his refunds that were listed on the written tax summary. Exs. E, F, and G. The Individual testified that he successfully arranged an approved

² The Individual explained that he had obtained a quote for the cost of professional record-keeping services, however, the initial fee alone for setting up accounting books for his company ranged from \$2,700 to \$2,900. Tr. at 32.

payment plan with the IRS combining the balances he owes for tax years 2016 and 2017 into one \$50 monthly payment. Tr. at 33. The Individual corroborated this testimony by submitting a May 19, 2021, payment receipt for a \$52.69 online payment (\$50 payment plus \$2.69 convenience fee) to the IRS. Ex. C; Tr. at 33–34. The Individual also testified that he has set up an automatic payment withdrawal for future monthly payments with the IRS and submitted written confirmation that his future automatic monthly tax payments have been set up. Tr. at 42; Ex. D.

The Individual testified regarding his future intent concerning his taxes. He testified that he has filed all of the tax returns for all tax years after 2017 through the present that he is required to file. Tr. at 48. He testified that he will continue making monthly payments in compliance with his IRS payment agreement, and indicated that if he and his wife are able to accrue additional savings in the future, he plans to pay off the remaining balance in one payment. Tr. at 33. He further testified that he plans to hire a Certified Public Accountant (CPA) to prepare and file his taxes for future tax years. Tr. at 32. He stated that the CPA he plans to hire has experience working with business taxes. Tr. at 38.

The Individual testified that he has taken actions to successfully maintain compliance with his monthly 2016 and 2017 federal tax payments while decreasing his overall debts and gaining control of his finances. He submitted a budget which itemized total monthly expenses for May 2021 and reflected that he and his wife have a combined monthly income of \$7,000. Ex. A. Regarding his income, he testified that his monthly net income varies since his work hours vary and had previously decreased during the COVID-19 crisis. Tr. at 28, 30. He stated that his monthly income ranges from \$1,000 to \$2,500; however, recently his work hours have increased and his net income the month prior to the hearing was \$2,700. Tr. at 30. His budget reflected that in May 2021, after paying for all expenses including his monthly tax payments, he had a remaining balance of \$185. Ex. A. The Individual also testified that he and his wife are actively participating in a personal finance program which includes a debt management course. Tr. at 35–36. He also submitted a financial action plan with specific action items to decrease debt and meet financial goals including saving 30% of his business income for purposes of next year's taxes. Ex. B.

The Individual's wife ("the wife") testified that she has known the Individual since 2018 and married him in February 2021. Tr. at 16–17, 26. Regarding the Individual's taxes, she stated she is aware that he has begun the process of filing and arranging a payment plan for his outstanding taxes. *Id.* She asserted that the Individual told her that his future tax plans are to continue complying with his payment arrangement for his outstanding tax balance, and in the future he will hire her CPA to prepare his taxes so that they can meet their future tax obligations. Tr. at 19. Regarding how they meet their current financial obligations, the wife stated that they currently pay their bills jointly. Tr. at 25–26. She testified regarding their monthly budget that the Individual submitted into evidence, providing greater details on their itemized expenses and income. Tr. at 19–24. Her testimony was generally consistent with the totals listed on their budget. Tr. at 21–23; Ex. A. She further stated that their combined monthly income ranges from \$4,000 to \$6,000 because her income also varies. Tr. at 23–24. The wife also testified regarding the debt management course that she and the Individual have been taking since approximately January 2021. Tr. at 19–21, 35–36.

V. Analysis

The Individual has successfully mitigated the security concerns raised under Guideline F regarding his failure to file his Federal and state tax returns for tax years 2016 and 2017 by: filing all four outstanding returns on January 7, 2020; showing that he does not have any outstanding tax obligations to the State; and showing that he has entered into a payment plan with the IRS to resolve his outstanding Federal tax debt. The Adjudicative Guidelines set forth a number of mitigating conditions that can mitigate security concerns under Guideline F, including § 20(a) which provides that mitigation may occur when “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,” and § 20(g) which provides that mitigation may occur when “the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.”

The circumstances set forth in § 20(a) are present in the instant case. The Individual has provided supporting evidence showing that the circumstances resulting in his late filing of his 2016 and 2017 Federal and state taxes are unlikely to recur by showing that he recognized his previous mistakes in judgment and has taken effective action to fully resolve his tax issues. Moreover, he has shown that he intends to rely upon tax professionals going forward to prevent a recurrence of his tax issues. The Individual has demonstrated his current reliability, trustworthiness, and good judgment by taking corrective actions that have resolved his tax issues. The circumstances set forth in § 20(g) are also present in the instant case. The Individual has shown that he filed his outstanding tax returns and has entered into (and is complying with) a payment plan to pay the balance of his outstanding Federal tax obligation.

For these reasons, I find the Individual has presented sufficient evidence to satisfy the mitigating conditions under § 20(a) and § 20(g).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline F. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be granted. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals