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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: July 21, 2021 ) Case No.: PSH-21-0094  
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Issued: October 21, 2021

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (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 access authorization should not be restored.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the security clearance process to maintain his clearance, the Individual completed and signed a Questionnaire for National Security Positions on June 29, 2017, in which the Individual admitted that he had failed to pay his 2011 federal and state income taxes. Ex. 7. The Local Security Office (LSO) subsequently obtained a copy of the Individual’s credit report on July 6, 2017. Ex. 5. Later, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel Management (OPM) investigator on June 18, 2019. Ex. 8. Based on the information provided, the LSO asked the Individual to complete a Letter of Interrogatory (LOI), which he submitted on December 8, 2020. Ex. 6. In the LOI, the Individual disclosed the fact that not only had he failed to satisfy his federal and state income tax obligations for tax year 2011, but also for tax years 2010, 2012, 2013, 2014, 2015, 2016, 2017, and 2018. Ex. 6. Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The Notification Letter informed the

<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.

Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and 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 in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and submitted six exhibits, marked as Exhibits A through F (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0094 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted eight exhibits, marked as Exhibits 1 through 8.

## **II. Notification Letter and the Associated Security Concerns**

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: 1) the Individual owes \$125,439 in unpaid income taxes to the Internal Revenue Service (IRS) for tax years 2010, 2011, 2014, 2015, and 2016; (2) the Individual owes \$18,212.57 in unpaid taxes to his state of residence for tax years 2011, 2012, 2013, 2016, 2017, 2018, and 2019; (3) an unpaid judgment totaling \$13,444 was filed against the Individual in 2012; (4) the IRS placed a lien against the Individual's property in 2014 for the nonpayment of his federal income taxes, and although he was notified of the lien, he has failed to establish a payment plan; and (5) a judgement was filed against the Individual in the amount of \$9,542 in 2012 for the nonpayment of a veterinary bill, and although the current amount owed has reached \$13,444, the Individual has failed to establish a payment plan. Ex. 1 at 1-2. Guideline F specifically states that an "inability to satisfy debts," an "unwillingness to satisfy debts regardless of the ability to do so," "a history of not meeting financial obligations," and, a "failure to file . . . federal, state, or local income tax returns or failure to pay [them] as required" are all potentially disqualifying conditions. Guideline F at ¶ 19(a)-(c), (f). Accordingly, the LSO's security concerns under Guideline F are 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).

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**

In his June 29, 2017 QNSP, the Individual acknowledged that he had failed to pay his 2011 federal income taxes, indicating that he was initially provided a refund before a subsequent audit revealed he owed money, in the approximate amount of \$130,000. Ex. 7 at 34-35. A lien was placed against the Individual’s property in 2014 to satisfy this outstanding amount. Ex. 7 at 36. He also stated that he owed an estimated \$9,000 for failing to satisfy his 2011 state income taxes. With regard to this debt, the Individual asserted that he had established a payment plan. Ex. 7 at 35. The Individual did not provide any further information regarding his federal and state income tax returns in his 2017 QNSP.

During the investigation process, the Individual was confronted with the fact that he “failed to pay federal taxes correctly for tax year 2011,” resulting in a delinquency of approximately \$130,000 after an audit was conducted. Ex. 8 at 61. At the time of the ESI, the Individual indicated that he was in the process of establishing a payment plan with the IRS to satisfy this delinquency, and that he “now claims his taxes differently to ensure [he does not] experience financial difficulties again.” *Id.* at 61. Not only did his 2011 income taxes remain unsatisfied at the time he completed his December 2020 LOI, but he had also failed to establish a payment plan. Ex. 6 at 1-2. The foregoing was also true of the delinquent state income tax. Ex. 6 at 3. In an attachment to the LOI, the Individual further disclosed that he owes the IRS \$46,257 for tax year 2010, \$59,514 for tax year 2011,<sup>2</sup> \$7,621 for tax year 2014, \$5,726 for tax year 2015, and \$6,321 for tax year 2016. Ex. 6 at 19.<sup>3</sup> Regarding his state income taxes, he stated in the LOI that he owed the state \$4,775.70 for tax year 2012, \$3,38247 for tax year 2013, \$314 for tax year 2016, \$150 for tax year 2017, \$210.75 for tax year 2018, and \$379.65 for tax year 2019. Ex. 6 at 18.<sup>4</sup>

In the LOI, the Individual confirmed that the IRS placed a lien against his property in 2014 for the nonpayment of taxes in the amount of \$108,000. Ex. 6 at 4. This federal income tax debt was incurred in either 2011 or 2012, as the Individual disagreed with the amount owed. Ex. 6 at 4-5.

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<sup>2</sup> This amount differs from the amount he reported on his 2017 QNSP. The Individual claimed in the attachment that he disagreed with the audit and hired legal representation. Ex. 6 at 19.

<sup>3</sup> The Individual submitted an unsigned “No-Nonsense Contract” with a tax service to evidence the fact that he had retained their services. Ex. C. The Individual testified that he ultimately signed this document. Tr. at 16. He also submitted an August 6, 2021, email exchange between his wife and a representative of a tax service, in which the Individual’s wife asks for “a path forward to set up a payment plan with the IRS.” Ex. B. The Individual admitted that this was the last communication he had with the tax group and stated that does not regularly “check in with them.” Tr. at 23.

<sup>4</sup> In an attachment to his request for an administrative review hearing, the Individual stated that he had satisfied all delinquent state income taxes, having submitted an electronic check in the amount of \$20,558.13 on April 20, 2021. Ex. 2 at 1-2. Regarding his federal income taxes, the Individual repeatedly stated in the December 8, 2020, LOI that he intended to establish a payment plan to resolve the matter of his outstanding federal income taxes. Ex. 6.

Although he stated he hired an attorney to resolve the matter, the Individual could not provide details regarding the status of the lien, except to say that it had not been satisfied. Ex. 6 at 5.

He was also confronted with the fact that a judgement was entered against him in the amount of \$9,542 for failing to pay for services rendered by a veterinarian, as he had disagreed with the stated price of these services. Ex. 8 at 63. The judgement was entered in October 2012, and at the time the Individual completed his LOI, the debt totaled \$13,444. Ex. 5 at 3; Ex. 6 at 9-11. The Individual submitted a filed Satisfaction of Judgment dated April 23, 2021, indicating that he had satisfied the judgment against him and that the matter was dismissed with prejudice. Ex 2 at 3-4.

## **V. Hearing Testimony**

At the hearing, the Individual testified that he had employed the services of a veterinarian in conjunction with the management of his business, who he would occasionally pay in cash for services rendered. Tr. at 10. The Individual further testified that, although the veterinarian received payment in cash, he would continue to bill the Individual for this amount, resulting in a disagreement over the amount owed. Tr. at 10. After negotiations over the debt failed, the veterinarian filed a lawsuit against the Individual, resulting in a judgement against him when he failed to appear for the court date. Tr. at 10-11. When asked if he understood that he had to pay the judgement, the Individual said he “never got... a notice of payment[,]” and that the matter was “forgotten over the years.” Tr. at 11. He did not seek any further information regarding the judgement entered against him, because he “walked away [from the business] and [did not] want to look back.” Tr. at 12. The Individual satisfied the judgment after the OPM investigator brought the matter to his attention. Tr. at 11.

Regarding his state and federal income taxes, the Individual was audited in either 2013 or 2014 for the taxes he filed in 2011. Tr. at 13. He considered the amount the IRS indicated he owed for tax year 2011 to be exorbitant, and further, he denied being given a reason for the audit and could not recall an explanation for the discrepancy in the amount owed. Tr. at 13-14, 21. The Individual retained an attorney in 2014 and asserted that it took the attorney “time” to file an Offer of Compromise to settle the matter. Tr. at 14-15. When asked if the Individual retained the attorney after he received a notice of lien from the IRS against his home, the Individual asserted that he does not own a home, and that upon searching for a copy of the lien, he concluded that “there is no lien.” Tr. at 16-17.

The Individual then went on to retain the services of a tax group in 2016. Tr. at 16, 18. When asked what he did between 2016 and 2019 to address the matter of his outstanding taxes, the Individual stated that he retained the tax group to “come up with some kind of payment plan, some kind of agreement, some kind of this, some kind of that[.]” to specifically address his federal taxes. Tr. at 18; Ex. C. As they failed to come to an agreement regarding his taxes, he received a notice of levy on his income from the IRS. Tr. at 18; Ex. A. The Individual admitted that he has never made direct contact with the IRS, and further, that he has not yet submitted a necessary form to the tax group so that negotiations may continue with the IRS. Tr. at 19-20. He later stated that he failed to satisfy his federal taxes because the IRS would have required him to fully satisfy the amount owed for the first tax year he was delinquent before he could begin making payments on subsequent tax years. Tr. at 21. He stated this was problematic because he did not have the ability to satisfy the

outstanding amount for the first year he was delinquent. Tr. at 21. When he began communication with the tax group in 2016, he believed the matter of his outstanding federal income taxes would be resolved within a year, and when asked if he took any action when the matter was not resolved within twelve months, he simply stated he was “still in communication years after with [the tax group.]” Tr. at 23-24. However, the Individual did not provide any communication he received from the IRS through the tax group. Tr. at 24. He attributed the delay in resolving the matter of his outstanding taxes to the difficulties in establishing communication with the IRS, and further, he stated that he stopped his endeavor to obtain his tax transcripts for the hearing, as it takes eight to twelve days to process the request. Tr. at 24-25.<sup>5</sup>

Although the Individual submitted a payment receipt to evidence the fact that he had satisfied his outstanding state income tax obligation, he did state that it took him until April 2020 to submit payment because he “did not agree with the audit,” and that it took some time for counsel “to come to a conclusion on how much [he] really owe[s].” Tr. at 20-21.

The Individual confirmed that he had obtained a loan in February 2020 for a recreational vehicle in an amount exceeding \$26,000. Tr. at 27; Ex. F at 4. The Individual did not find this loan problematic despite his ongoing tax issues, because he was “paying the government for the levy, and [it was his] intention...to come up with a...payment plan with the IRS.” Tr. at 27. The Individual also secured a loan for \$8,500 to satisfy the judgement against him and a second loan of more than \$26,000 for the purposes of purchasing a pontoon boat. Tr. at 27; Ex. F at 5-6.

## **VI. Analysis**

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline F if:

(a) 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;

(b) 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

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<sup>5</sup> As the Individual had stated his intention to establish a payment plan to resolve the matter of his outstanding federal income taxes in the December 2020 LOI, the Individual was asked what he had done to that end between December 2020 and August 2021, when his wife emailed the tax group. Tr. at 29. The Individual did not provide any specific information regarding any actions taken between December 2020 and August 2021 concerning his outstanding federal income taxes. Tr. at 29-30.

counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(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(a)-(g).

While the Individual satisfied the judgement against him and provided evidence of payment made to resolve the matter of his outstanding state income taxes, I cannot conclude that the Individual has mitigated Guideline F concerns, since he currently has unresolved federal tax debt. There is no evidence that the Individual has established a payment plan with the IRS and is complying with those arrangements. Not only has the Individual failed to file or pay his federal income taxes for years, but there is scant evidence that the Individual took any meaningful actions to resolve the matter. Although the Individual sought the assistance of the tax service in 2016, he could not explain why virtually no action had been taken to resolve the matter of his outstanding taxes. The only evidence the Individual submitted in this respect is an August 2021 email between his wife and a representative of the tax service, asking for “a path forward” in their endeavor to establish a payment plan with the IRS. Ex. B. This strongly indicates the Individual did not begin the process of taking any definitive action to resolve the matter of his delinquent income taxes until August 2021, despite the assurances he had previously put forth in the LOI and voiced to the OPM investigator. He further admitted that he had not yet completed the paperwork the tax service requested of him to continue negotiations with the IRS.

Not only did he take these measures too late in the security process to successfully address the concerns raised by his circumstances, but his delay casts serious doubt on his judgment. Despite his repeated assurances that he would establish a payment plan to satisfy his outstanding federal income taxes, the Individual could only provide reasons and justifications for his failure to take prompt or substantive action. In fact, the Individual’s admitted lack of contact with the IRS and his failure to reach out to the tax group to resolve the matter prior to August 2021 is a strong indication of his reluctance to resolve the matter, and a seeming misunderstanding of his continuing obligation to satisfy his income tax obligations. This conclusion is further confirmed by the fact that the Individual secured two loans more than \$26,000 each for the purpose of purchasing a recreational vehicle and a pontoon boat. It is notable that the payments on the aforementioned loans exceed \$800 every month, money that he could be saving for payments on his outstanding federal income taxes. Ex. F at 4, 6. Accordingly, the Individual has not

successfully mitigated Guideline F concerns pursuant to ¶ 20(a) and (g). I need not address the remainder of the mitigating factors, as they are not applicable in this case.

## **VII. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both 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, the Individual has not demonstrated that restoring 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 not be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

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