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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: August 23, 2021)	Case No.: PSH-21-0103
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_____)	

Issued: October 22, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 denied.

I. Background

On December 27, 2019, 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 she had not filed her federal or state tax returns for tax years 2015 and 2017. Ex. 9 at 43-45. The QNSP asked the Individual to explain her failure to file these tax returns. She responded by stating "forgot and couldn't afford added taxes" and "I forgot and couldn't afford to pay." Ex. 9 at 4. She further admitted that she had failed to pay her federal or state taxes for tax years 2012, 2015, 2017, and 2018. Ex. 9 at 45. The Individual indicated that she intended to address these tax deficiencies by filing her delinquent returns and entering payment plans with the Internal Revenue Service (IRS) and the state. Ex. 9 at 44-45.

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.

The Individual subsequently underwent a background investigation conducted by the United States Office of Personnel Management (OPM). On March 20, 2020, OPM issued a report of its findings. Ex. 10 at 1. The OPM's report stated that it obtained a credit report for the Individual on December 31, 2019, indicating that the Individual had an outstanding collection account (the Account) in the amount of \$1,383. Ex. 6 at 4; Ex. 10 at 115, 117.

On April 21, 2020, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 8 at 1. The Individual submitted her response to the LOI on May 6, 2020 (the May 2020 Response) in which she stated that she had filed her federal and state tax returns for tax years 2015 and 2018 and indicated that she could forward verification that she had filed both returns. Ex. 8 at 1-2. The April 2020 LOI asked the Individual about the status of her federal and state tax filings for tax year 2017. In her May 2020 Response, she responded by stating: "I used a neighborhood tax preparer to file these taxes but they kept my paperwork, pending payment. I did not know how I could file without the paperwork, and finances kept me from paying." Ex. 8 at 1. The April 2020 LOI also asked the Individual about the status of her federal and state tax filings for tax year 2016. In her May 2020 Response, she responded by stating: "When I went to file both [f]ederal and [state] taxes for 2017, I discovered I had forgotten to file for 2016. The preparer kept that paperwork, too, so I could not figure out how to file on my own." Ex. 8 at 2. The Individual further admitted that she had an outstanding tax obligation for tax year 2012. Ex. at 2-3.

In her May 2020 Response, the Individual further stated that she was hoping to "arrange for a settlement after consulting a lawyer." Ex. 8 at 3. She explained that her failure to file her tax returns resulted because "I was poor, and I was, and continue to be, disorganized." Ex. 8 at 4. The Individual asserted that she was making monthly payments of "around" \$40 to settle the Account. Ex. 8 at 4. When asked to explain the reason for her financial difficulties, she stated: "I was unemployed from December 2018 to April 2019, and then again from June to late August 2019, and then during Oct. and Nov. of 2019. My rent was over \$1300/month and I was receiving \$430/week unemployment, which I needed to pay other expenses." Ex. 8 at 9. She indicated that she was trying to find a lawyer "who specializes in debt management." Ex. 8 at 9. She further noted that her spouse had passed away in 2005, leaving her with inadequate financial resources, which was exacerbated by periods of unemployment. Ex. 8 at 9-10.

The LSO issued a second LOI to the Individual.² Ex. 7 at 1. The Individual submitted her response to the second LOI on October 14, 2020 (the October 2020 Response). Ex. 7 at 10. The second LOI asked about the status of her 2015, 2017, and 2018 federal and state tax filings and required her to "provide official documentation" for any of her 2015, 2016, 2017, and 2018 federal and state tax returns that had been filed and accepted. Ex. 7 at 1. The Individual responded by first claiming that the state had confirmed to her that she had filed her 2015 and 2018 returns on time, and then stating that she was waiting for official confirmation from the state. Ex. 7 at 1-2. She further claimed that the IRS web site confirmed that her 2015 and 2018 federal returns were filed on time, and that she would send confirmation. Ex. 7 at 1-2. She admitted that her federal and state returns had not been filed for tax years 2016 and 2017 but claimed that "I am in the process

² The second LOI indicates that it was also issued on April 21, 2020, but the context in which it was sent suggests that it was actually issued in October 2020. Ex. 7 at 1.

of filing that as soon as I can obtain the supporting documentation. I will send confirmation when that happens.” Ex. 7 at 1. The Individual further admitted that she owed the IRS \$18,693.30 for tax year 2012, \$761.74 for tax year 2013, \$3,243.30 for tax year 2015, and \$493.24 for tax year 2018. Ex. 7 at 2. The Individual also indicated that she “probably” owed federal taxes for tax years 2016 and 2017. Ex. 7 at 2. The second LOI asked the Individual “What actions have you taken to resolve your outstanding federal tax debt?” She responded by stating “I have contacted an attorney to see if I can get an affordable repayment plan.” Ex. 7 at 2. The Individual admitted that she owed the state \$12,362.64. Ex. 7 at 3. The Individual further indicated that she had arranged a payment plan with the state to pay \$378.16 a month for 36 months to resolve her outstanding tax obligation to the state. Ex. 7 at 3. The Individual admitted that she had not resolved the Account, claiming that she had been unable to contact the Account creditor. Ex. 7 at 3-4. The second LOI asked the Individual to provide a reason for her financial difficulties. She responded by citing her “prolonged periods of unemployment.” Ex. 7 at 6. She subsequently further explained:

In summer/fall 2018, I was the victim of a home invasion robbery that took available cash and led me to selling my very affordable home . . . and moving to a far more expensive apartment. I had a long-term contract job at the National Weather Service that went to a new company that slashed my income by 35%. I struggled to pay my bills on the lower income and that led me to take higher income but (ultimately) less stable contract jobs that had long periods of unemployment.

Ex. 7 at 7.

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 her eligibility to hold a security clearance. Specifically, the Notification Letter alleged that the Individual failed to file her federal and state tax returns for tax years 2016 and 2017; failed to provide the LSO with proof that she had filed her federal and state returns for tax year 2015 as requested; had outstanding, unresolved tax obligations to the IRS of \$18,693.30 for tax year 2012, \$761.74 for tax year 2013, \$3,243.30 for tax year 2015, and \$493.24 for tax year 2018; and has an unresolved collection account in the amount of \$1,383. The Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and on August 23, 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. *See* Transcript of Hearing, Case No. PSH-21-0103 (hereinafter cited as “Tr.”). The DOE Counsel submitted ten exhibits marked as Exhibits 1 through 10. The Individual submitted 5 exhibits marked as Exhibits A through E.

A letter dated September 24, 2021 (Exhibit A), from a tax attorney (the Tax Attorney) representing the Individual, stated that the Individual had retained him, on April 30, 2021, to “advise her on how she may resolve her existing tax debts.” Ex. A at 1. The Tax Attorney stated that the

Individual has entered into a formal monthly payment agreement with the state tax authority that will allow her to pay her state tax debts in full over a 60-month period. Ex. A at 2. The Tax Attorney further stated that, “We are in the [i]nitial stages of researching her federal income tax debts, and developing our advice on how [the Individual] may resolve them.” Ex. A at 2. The Tax Attorney further opined:

The circumstances that gave rise to the tax problem are outside of [the Individual's] control: she was widowed with an autistic, special needs, child. Those factors were clearly outside her control, and placed a terrible financial burden on her. When she had a windfall, she paid for her needs and the needs of her child, and that did not leave money left over for the taxes.

Ex. A at 3.

The record includes a copy of a credit report for the Individual dated September 14, 2021. Ex. B at 1. That credit report showed that the Account remains in collection status, with the outstanding balance reduced from \$1,383 to \$672. Ex. B at 7. Another credit report, dated September 14, 2021, also shows that the Account remains in collection status, with the outstanding balance reduced from \$1,383 to \$672. Ex. C at 90. The Individual also submitted a screenshot (Ex. D) from an IRS webpage showing that the Individual continues to owe the IRS \$18,912 for tax year 2012; \$783 for tax year 2013; \$3,319 for tax year 2015; and \$536 for tax year 2018. Ex. D at 1. The record also includes a short email from the Tax Attorney’s office to the Individual dated August 19, 2021 (Ex. E), indicating that they were continuing to work on the Individual’s case and had made some progress. Ex. E at 1.

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 her 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). Under Guideline F, the Individual’s failure to file her federal and state tax returns for tax years 2017, 2016, and 2015, her outstanding federal and state tax debts, and her unpaid collection account. 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. Guideline F specifically states that an Individual’s “inability to satisfy debts” and “[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(a) and (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).

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 her 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 contended that her financial liabilities were caused by extended periods of unemployment and turmoil in her personal life. She further contended that she has made substantial efforts to remedy those shortcomings and hopes to continue to remedy them. Tr. at 7.

The Individual testified that her husband had died, leaving her to care for her teenage daughter, who is on the autism spectrum and who suffers from major depression. Tr. at 10-11. The Individual described herself as “intermittently employed.” Tr. at 11. The Individual has received royalties for her decedent husband's literary works, usually amounting to \$3,000 to \$4,000 per year. Tr. at 17. Some of her tax debt is attributable to a much larger than expected royalty payment of \$40,000 in 2012. Tr. at 11-12, 17. The Individual has also suffered from depression. Tr. at 12. The Individual admitted that she has “had problems filing taxes some years.” Tr. at 12. The Individual claimed that she has spent the past two years trying to get caught up on her finances. Tr. at 12. The Individual testified that the Tax Attorney is currently negotiating with the IRS on her behalf. Tr. at 20. She hopes to enter a payment plan to resolve her debt to the IRS. Tr. at 20. She testified that she has to “nag” the Tax Attorney to get him to take action. Tr. at 20. The Individual testified that she has received credit counseling in the past, around 2008 or 2009. Tr. at 25. The Individual testified that she is now careful to ensure that sufficient funds are deducted from her pay to ensure that her tax obligations are met. Tr. at 26. The Individual testified that she is receiving counseling to address her anxiety about her finances and that her counselor has provided her with strategies to address her financial concerns. Tr. at 26-27. She testified that she

has spent almost \$10,000 in legal fees to address her tax issues. Tr. at 31. The Individual also testified that all of her state tax returns have now been filed. Tr. at 33.

When the Individual was questioned about her 2017 tax returns, she claimed that she “paid [her] tax attorney” to file her 2017 federal taxes; however, on further questioning, she was unsure if her attorney had completed that filing. Tr. at 13-15. She subsequently admitted that her 2017 federal tax returns have not been filed, even though she has allegedly paid to have them filed. Tr. at 32. She testified that she has filed her state tax returns for tax year 2017 and has entered a payment plan with the state. Tr. at 13, 15. She testified that she pays the state \$230 a month.³ Tr. at 15.

When questioned about her 2016 tax returns, the Individual stated:

I attempted to file them at the time, and I went to a tax preparer thinking that I was missing deductions, and they could help me, and they went through my return and basically gave me the same results I got by using a tax filing service. I did not have that kind of money at the time, so they retained my documentation in lieu of pay. I couldn't file without coming up with a fee for them, and I just didn't have the money.

Tr. at 16. The Individual testified that she never paid the tax filing service and has not had her documentation returned to her. Tr. at 16. She testified that she is unaware if her federal tax return for 2016 has been filed. Tr. at 33.

When the Individual was questioned about the status of her 2015 tax returns, she stated: “I filed them with Free Tax USA, so I can submit an exhibit when I have a copy of the return from Free Tax USA.” Tr. at 17. The Individual subsequently contended that she has a copy of that return, even though she has not submitted it. Tr. at 33-34. The Individual testified that she was unsure if she paid her federal or state taxes for tax year 2015. Tr. at 18. The Individual testified that the most she owes the IRS for tax year 2015 would be “around \$300.”⁴ Tr. at 18.

The Individual was questioned about the Account at the hearing. The Individual testified that she had agreed to a payment plan with that creditor. Tr. at 21. She was unsure of the amount of her monthly payment for this debt.⁵ Tr. at 22.

V. Analysis

The Individual has experienced several financial hardships including several periods of unemployment. However, these difficult circumstances did not excuse the Individual from her obligation to file her income tax returns, or to have entered into agreements with the IRS and state tax authorities to address her outstanding obligations. Nevertheless, the Individual has started to address her tax and financial issues by hiring the Tax Attorney, filing her state tax returns, and

³ In her response to the second LOI, the Individual claimed that she is paying \$378.16 a month for 36 months to resolve her outstanding tax obligation to the state. Ex. 7 at 3.

⁴ Ex. D indicates that the Individual owes the IRS \$3,319 for tax year 2015.

⁵ Both Ex. C and Ex. D document that the Individual has reduced this debt from \$1,383 to \$672.

entering payment plans with the state and her collection account creditor. However, serious security concerns about the Individual remain. During the present proceeding, the Individual has repeatedly claimed that she filed her federal tax returns for 2015, yet she has repeatedly been unable, or unwilling, to provide documentation of this fact. The Individual claimed that she had filed her federal tax return for 2015 and that she was in possession of a copy of that tax return, yet even when she was given an opportunity to provide a copy of that document in the days following the hearing, she did not do so. Moreover, the Individual, during her hearing testimony, repeatedly provided testimony that was inconsistent with other information she had provided. Further, she did not exhibit the familiarity with her finances and tax status that one would expect of a person in her circumstances. Most importantly, the Individual has not shown that she has filed her federal tax returns for 2015, 2016, and 2017, and has not yet agreed to a settlement or repayment plan for her outstanding debt of \$23,190 owed to the IRS. Given the Individual's past failure or unwillingness to provide accurate information to the LSO or OHA, her stated intention to resolve her tax issues at some unknown point in the future is insufficient to resolve the security concerns raised by her failure to file her federal tax returns and pay her federal taxes.

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 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

Guideline F at § 20(a)-(g).

The Individual's failure to file or pay her taxes in a timely manner has continued into the present and therefore continues to cast doubt on her current reliability, trustworthiness, and good judgment. Accordingly, Guideline § 20(a) does not provide mitigation of the security concerns raised under Guideline F.

While the conditions that originally caused the Individual's financial circumstances were largely beyond her control, she has not shown that she acted responsible under the circumstances. Moreover, her difficult circumstances did not excuse her failure to file her tax returns. Accordingly, Guideline § 20(b) does not provide mitigation of the security concerns raised under Guideline F.

While the Individual has received or is receiving representation from a legitimate and credible source, the Tax Attorney, she has not yet clearly shown that the problem is being resolved or is under control. Accordingly, Guideline § 20(c) does not provide mitigation of the security concerns raised under Guideline F.

While the Individual has initiated an effort to repay overdue creditors or otherwise resolve debts, questions remain about her willingness or ability to adhere to any future agreements to resolve or repay these debts. Moreover, the Individual has still not shown that she has filed her delinquent federal tax returns. Accordingly, Guideline § 20(d) does not provide mitigation of the security concerns raised under Guideline F.

The Individual has not submitted any evidence indicating that she has a reasonable basis to dispute the legitimacy of her past-due debt or tax obligations. Accordingly, Guideline § 20(e) does not provide mitigation of the security concerns raised under Guideline F.

Guideline § 20(f) clearly does not apply to the circumstances of this case and therefore does not provide mitigation of the security concerns raised under Guideline F.

While the Individual has made arrangements with the state tax authority and her collection account creditor to file or pay the amounts owed to them, and is apparently in compliance with those arrangements, she has yet to make such arrangements with the IRS, nor has she shown that she filed her delinquent tax returns. Accordingly, Guideline § 20(g) does not provide mitigation of the security concerns raised under Guideline F.

For these reasons, I find that the Individual has not resolved the security concerns raised under Guideline F.

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 not mitigated the security concerns raised under Guideline F. Accordingly, the Individual has not demonstrated that granting her 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 denied. 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