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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 27, 2021) Case No.: PSH-21-0113
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Issued: November 19, 2021

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. During a background investigation, derogatory information was discovered which showed that the Individual had not filed taxes for 2016 or 2017. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him 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 presented the testimony of one witness and testified on his own behalf. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted seven exhibits, marked as Exhibits 1 through 7 (hereinafter cited as “Ex.”). The Individual submitted 12 exhibits, marked as Exhibits A through L.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

¹ Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to 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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline F (Financial Considerations) addresses “[f]ailure to live within one's means, satisfy debts, and meet financial obligations.” Adjudicative Guidelines 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.* The conditions set forth in that guideline that could raise a disqualifying security concern are inability to satisfy debts or unwillingness to satisfy debts; a history of not meeting financial obligations; deceptive or illegal financial practice; consistent spending beyond one's means or frivolous or irresponsible spending; failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required; unexplained affluence; borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and concealing gambling losses, family conflict, or other problems caused by gambling. Adjudicative Guidelines at ¶ 19. The LSO alleges that the Individual did not file his state or federal tax returns for tax years 2016 and 2017. 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 entire process is a conscientious scrutiny of a number of 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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual's CPA testified at the hearing. The CPA had recently prepared the Individual's 2016 and 2017 taxes. Tr. at 12. He testified that the Individual had contacted him in March 2021 and explained that he needed those tax years filed because they had caused a problem in his background investigation. *Id.* The CPA asked the Individual for source documents, which the Individual procured from the IRS. *Id.* at 12–13.

The CPA testified that in 2016, the Individual made less than \$600 and was a dependent of his parents and, therefore, was not required to file taxes because his income did not meet the income threshold at which submission of a tax return was required. Tr. at 14. In 2017, the Individual was no longer a dependent and made just under \$10,000, but his income still did not meet the filing threshold and, therefore, he was not required to file his taxes. *Id.* at 14–15. For both 2016 and 2017, the Individual did not meet the filing thresholds for his state. *Id.* at 15. The CPA determined that the Individual did not owe any tax for 2016 or 2017 and was in fact entitled to small refunds. *Id.* at 16.

The CPA testified that the Individual did not violate the law by not filing taxes for 2016 and 2017. Tr. at 15–16. However, the Individual chose to file for those years because of the LSO's security concerns. The CPA testified that the Individual had filed tax returns for 2018, 2019, and 2020 on his own. *Id.* at 18. The CPA believed that the Individual was competent to file his own taxes in the future, but had also made himself available to help if the Individual needed assistance in the future. *Id.* at 18.

The Individual testified that he believed it was his duty as a citizen to pay taxes and file tax returns. Tr. at 26, 34. He did not file in 2016 and 2017 because, at that time, he did not believe he was required to file due to his limited income. *Id.* at 25–26. On his Questionnaire for National Security Positions, when asked if he had failed to file taxes, he indicated that he had and that his failure to file was a mistake. *Id.* at 24. The Individual testified that he described his failure to file as a mistake because the wording of the question made him think that he had done something wrong by not filing. *Id.* at 26–27. He used the term “mistake” because he assumed, after reading the question, that he was incorrect in his belief that he was not required to file tax returns for 2016 and 2017. *Id.*

When he received the Summary of Security Concerns, he began working to gather the documents necessary to file his 2016 and 2017 taxes. Tr. at 28. He also contacted the CPA, who had helped his family with their taxes in the past, and retained him to help file his taxes for 2016 and 2017. *Id.* at 29. The Individual was able to obtain the necessary documents from the IRS, which he submitted into evidence as Exhibits J and K. *Id.* at 30. The CPA informed the Individual that he was not legally required to file for 2016 and 2017 because of his income level, but the Individual wanted to file voluntarily to ensure that there was no confusion in the future regarding his compliance with

the law. *Id.* at 31. After his returns were filed, the Individual followed up with the IRS to confirm that they had received his filings. *Id.*

After 2017, the Individual prepared and timely filed his own taxes each year. *Tr.* at 33, 40. He intended to continue doing so as long as his taxes remained simple and intended to retain the CPA if he did not feel capable of correctly preparing his own taxes. *Id.* at 33. The Individual expressed that he is committed to acting responsibly and following rules in the future. *Id.* at 34. He testified that if he is unsure about his obligations in the future, he will ask questions to clarify his obligations. *Id.* at 35. He reiterated that his failure to file taxes in 2016 and 2017 was not an attempt to avoid his legal tax obligations. *Id.* at 37.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Failure to live within one’s means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F provides, in relevant part, that the following conditions may mitigate security concerns:

- (1) 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));
- (2) 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 (*id.* at ¶ 20(b));
- (3) 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 (*id.* at ¶ 20(c)); and
- (4) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. (*id.* at ¶ 20(g)).

Mitigating factor (1) is applicable in this case. The Individual presented evidence sufficient to show that he was not legally obligated to file state or federal taxes in 2016 or 2017 and testified that this was the reason he did not previously file returns for those years. Under such circumstances, the Individual's decision not to file tax returns for those years does not cast doubt on his current or past reliability, trustworthiness, or good judgment. His subsequent pattern of timely filing his tax returns indicates that his failure to file returns is unlikely to recur. The Individual has now filed his 2016 and 2017 tax returns, despite not being obligated to do so, citing a desire to avoid even the appearance of non-compliance with his obligations. Furthermore, he is entitled to refunds and owes no outstanding balance to state or federal tax authorities.

For the foregoing reasons, I find that the Individual has mitigated the Guideline F security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline F of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant access authorization to the Individual at this time.

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals