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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: May 21, 2021) Case No.: PSH-21-0066
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Issued: December 29, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In 2020, as part of a reinvestigation for her security clearance, the DOE learned that the Individual failed to file her 2019 Federal and state taxes before the April 15th tax deadline. Ex. 4. In September 2020, the Individual completed a Letter of Interrogatory (LOI), in which she stated that she was “working on” her 2019 taxes. Ex. 5. In December 2020, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding her 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 her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel

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.

submitted six numbered exhibits (Exhibits 1-6) into the record. The Individual tendered 12 exhibits (Exhibits A-L) and testified on her 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 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 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.

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 admission in the LOI that she had not filed her Federal or state income taxes for the 2019 tax year.
Ex. 1

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 her own behalf and presented the testimony of her supervisor, a previous work colleague, and two associates with whom she interacts through her

work in a non-profit organization. The Individual's supervisor and her colleague both testified that the Individual is reliable, demonstrates sound judgment, and is trustworthy. Tr. at 13-14, 22-23.

The first associate (Associate 1) testified that he has known the Individual for 16 years through their work in the non-profit organization (Organization). *Id.* at 28. He stated that the Individual has served with him on the Board of Directors, which is responsible for financial allocations of the Organization. *Id.* at 31. Associate 1 explained that the Individual is highly involved in the Organization's charitable work and is responsible for managing and distributing financial donations. *Id.* at 31-32. He noted that the Individual has always been responsible and trustworthy regarding the management and distribution of the contributions. *Id.* at 32. Associate 1 stated that he "trust[s the Individual] implicitly" and has never observed any defects in her judgment. *Id.* at 33. He further added that she has never violated any of the Organization's rules or regulations and is careful to ensure that the Board of Directors is compliant with all relevant rules and regulations, including state statutory law. *Id.* at 34, 36.

The Individual's second associate (Associate 2) testified that he has known her through the Organization for approximately six years. *Id.* at 42. He stated that he served as a trustee of the Organization with the Individual, and they were responsible for managing the Organization's financial affairs and orchestrating fundraising efforts. *Id.* Associate 2 noted that he "never had any issue with [the Individual] exercising her fiduciary responsibilities to the organization," and he felt that she demonstrated "sound and effective judgment." *Id.* at 43-44. Associate 2 added that the Individual has "always been cognizant" of the Organization's policies and regulations and corrects others who are not abiding by them. *Id.* at 45. He affirmed that the Individual is both reliable and trustworthy. *Id.* at 46.

The Individual testified that she filed her 2019 Federal and state income taxes on October 20, 2020. *Id.* at 54, *see* Ex. A-B, K-L. She explained that she filed her 2019 taxes beyond the April 15th deadline because she was waiting to receive financial information from an investment firm that had recently acquired her previous investment firm. *Id.* at 73. The Individual stated that she has always prepared her own taxes and, apart from one tax year, she has always received a tax refund. *Id.* at 56. She testified that she believed that if a taxpayer was due a refund, the taxpayer was not required to file taxes by the April 15th deadline. Tr. at 56, 82, 85. Therefore, because she was expecting a refund for the 2019 tax year, she did not file her taxes by the April 15th deadline. *See id.* at 55-56. The Individual clarified that she has never failed to file her taxes, and although her 2019 taxes were filed late, she always intended to file them and thought that she was complying with all tax laws because she was due a refund. *Id.* at 67, 69.

The Individual testified that, in November 2020, she completed an online tax preparation course, and now knows that she was operating under a mistaken assumption regarding the late filing of her 2019 taxes. *Id.* at 57, *see* Ex. C. She stated that, through the course, she also learned about filing amendments to a tax return and filing for an extension from the appropriate tax authority. Tr. at 92-93. She added that she will take these steps in the future if she does not have all her financial information prior to the April 15th deadline. *Id.* The Individual further testified that, to avoid future tax problems, she has stopped preparing her own taxes and has hired a professional tax preparation service, which she intends to continue to use for all future tax years. *Id.* at 57. She additionally affirmed that this tax preparation service prepared and filed her 2020 taxes before the April 15th deadline. *Id.* at 57-58, Ex. H-I.

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 that the Individual has sufficiently mitigated the security concerns noted by the LSO regarding Guideline F. I find that restoring 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 be restored. The specific findings that I make in support of this decision are discussed below.

As discussed above, failure to meet financial obligations, including the failure to file annual Federal or State income tax returns as required, can raise security concerns regarding an individual's trustworthiness and reliability. Guideline F at ¶¶ 18, 19(f). 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, an individual may be able to mitigate the security concerns if she is receiving financial counseling or has made arrangements with the appropriate tax authorities to file the taxes and is in compliance with that arrangement. *See id.* at ¶ 20(c), (g).

In this case, the Individual successfully filed her 2019 Federal and state tax returns in October 2020. *See id.* at ¶ 20(g). At the outset, I note that the Individual's explanation that she did not know she was required to file her taxes by the April 15th deadline if she was expecting a refund is not a legitimate excuse. However, although the Individual's taxes were filed late, as soon as she became aware that she was not in compliance with the tax law, she promptly took action to file her taxes. Further, the Individual recognized that she was not sufficiently knowledgeable regarding tax law, and she has ensured that she will not encounter similar tax problems in the future by completing a tax course and employing the services of a professional tax preparation company. *Id.* at ¶ 20(c). For the foregoing reasons, I 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 brought forth sufficient evidence to resolve the security concerns associated with Guideline F. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual's access authorization should 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