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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: November 30, 2021) Case No.: PSH-22-0009
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Issued: April 5, 2022

Administrative Judge Decision

This Decision concerns the eligibility of XXXXX XXXXX (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 not be granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. As part of the investigation for his security clearance, the Individual completed a Questionnaire for National Security Positions (QNSP) in April 2019. Ex. 6. In response to the QNSP’s financial questions, the Individual indicated that he failed to file his Federal and state tax returns for the 2011 tax year. *Id.* at 50. Subsequently, the Local Security Office (LSO) asked him to complete a Letter of Interrogatory (LOI), in which he explained that he had also not filed his Federal or state tax returns for the 2012-2016 tax years. Ex. 5. Due to unresolved security concerns arising from his failure to file Federal or state tax returns, the LSO informed the Individual, in a Notification Letter dated October 8, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his 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) of the Adjudicative Guidelines. Ex. 1.

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.

Upon receipt of the Notification Letter, the Individual exercised his 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 the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted seven numbered exhibits (Exhibits 1-7) into the record. The Individual tendered 10 exhibits (Exhibits A-J) and testified on his 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 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.

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 admissions in the LOI that he had not filed his Federal or state tax returns for the 2011-2016 tax years. 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 his own behalf. He stated that he failed to file his 2011-2016 tax returns, in part, due to his “laziness.” Tr. at 10. He also explained that he thought he was entitled to a refund each year and wanted to “do[.]...right by letting [the tax authorities] keep [the refunds] to help out the deficit instead of just going ahead and filing, using the money foolishly.” *Id.*

The Individual testified that in 2017, he began consistently filing his tax returns each year, and when he visited his tax preparer to file his 2020 taxes, he also filed his outstanding Federal and state 2012-2016 tax returns. *Id.* at 12-13, 17. The Individual noted that he could not successfully file his Federal 2011 tax return as the Federal tax authority would not accept it past the 10-year filing deadline.² *Id.* at 11. At the time he filed his outstanding tax returns, he learned that he was not entitled to a refund for each of those years, as he originally thought. *Id.* at 14. The Individual testified that he likely owes “upwards of \$20,000” between the Federal and state tax authorities.³ *Id.* at 18. He noted that he is in the process of setting up a payment plan with the Federal tax authorities, but it has not yet been finalized as additional documentation is required. *Id.* at 16. As such, he has not begun making regular monthly payments. *Id.* Regarding the state tax authority, the Individual stated that he has not received any information requesting payment, but he will set up a payment plan if needed. *Id.* at 18. The Individual testified that, in looking to the future, he intends to file his taxes every year. *Id.* 14.

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 not sufficiently mitigated the Guideline F security concerns. I cannot find that granting 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 not be granted. The specific findings that I make in support of this decision are discussed below.

As discussed above, failure to meet financial obligations can raise security concerns as to an individual’s trustworthiness and reliability. Guideline F at ¶ 18. 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

² The Individual submitted an Account Transcript for his 2011 Federal taxes, showing an account balance of \$0.00; however, the document also indicates that a tax return was never filed. Ex. A. As such, it is unclear whether the Individual had a tax liability or a refund for this tax year. The record is silent as to the standing of the Individual’s 2011 state taxes.

³ The Individual submitted his Federal and state tax returns for the 2012-2020 tax years. Ex. B-J. Examination of these documents shows that he currently owes approximately \$15,000 to the state tax authority and approximately \$21,000 to the Federal tax authority. Ex. B-J.

on the individual's current reliability, trustworthiness, or good judgment. *Id.* at ¶ 20(a). Additionally, demonstrating that arrangements have been made with the appropriate tax authorities to file the taxes may mitigate the security concerns. *See id.* at ¶ 20 (g).

Here, the Individual has begun to take steps to mitigate the security concerns related to his tax situation. He has retained a tax preparer who has successfully filed his 2012-2020 tax returns, and the Individual has consistently been filing his taxes each year since 2017. *See id.* at ¶ 19 (f) (explaining that the failure to file tax returns as required by law can raise a security concern that disqualifies someone from holding a security clearance). However, the Individual currently has an outstanding tax debt of approximately \$36,000 between Federal and state tax authorities that he has not yet started to repay. The Individual has not yet arranged payment with the state tax authority, and although he is in the process of creating a payment plan with the Federal tax authority, it has not yet been finalized and payments have not been made. *See id.* at ¶ 20(g) (stating that an individual may be able to mitigate a Guideline F security concern if the individual "has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.").

Although the Individual has successfully filed his outstanding tax returns, I cannot find that these actions are sufficient, at this time, to mitigate the Guideline F security concerns. The Individual has taken the first steps in resolving the security concerns at issue; however, he has not yet established a payment plan with his state tax authority, finalized a payment plan with the Federal tax authority, or begun to repay his outstanding tax debt. Thus, for the foregoing reasons, I cannot find that the Individual has mitigated the DOE's security concerns under Guideline F.

VI. Conclusion

After considering all 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 not brought forth sufficient evidence to resolve the security concerns associated with Guideline F. Accordingly, I have determined that the Individual's access authorization should not be granted.

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