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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: December 1, 2021) Case No.: PSH-22-0012
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Issued: April 4, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX. (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 August 6, 2020, the Individual, an applicant for a DOE security clearance, submitted a Questionnaire for National Security Position (QNSP) to a local security office (LSO). Exhibit (Ex.) 6 at 2. In this QNSP, the Individual reported that he had not filed or paid his federal or state tax returns for tax years 2015, 2016, and 2017. Ex. 6 at 36-38. The QNSP asked the Individual to explain his failure to file these tax returns. He responded by stating "Poor business ethic, never had enough money to pay, became overwhelming." Ex. 6 at 36. The QNSP further asked the Individual to provide a description of any actions that he had taken to address these tax deficiencies. The Individual responded by stating: "Honestly, I am petrified and so overwhelmed by my tax issues that I have mentally shut off responsibility to fix this issue. I do plan on finding a company to help consolidate my taxes and establish payments. I need help?" Ex. 6 at 38. He subsequently stated: "I have not [taken] any actions, but I am working on getting help as we speak." Ex. 6 at 38.

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). During this investigation, an OPM investigator conducted an Enhanced Subject Interview (ESI) of the Individual on September 9, 2020, in which he questioned the Individual about his failure to file tax returns. The OPM Investigator reported:

Subject made a deliberate decision to not deal with filing and payment of taxes due to being overwhelmed. Subject estimates subject owes taxes in the amount of about \$12,000. The listed annual estimates are based upon what subject had to pay in 2014, when subject last filed with [the state tax authorities]. Subject is currently in the process of looking for a tax attorney or accountant that can help subject resolve this matter. Subject wants to resolve this matter as soon as possible, but is unable at this time to provide an estimated date as to when that will happen.

Ex. 7 at 37. OPM issued a report of its findings on January 26, 2021. Ex. 7 at 1.

On April 15, 2021, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 5 at 1. The Individual submitted his response to the LOI on April 26, 2020 (the Response). Ex. 5 at 4. In this Response, the Individual admitted that he had not filed his Federal and state income taxes for tax years 2015, 2016, and 2017. Ex. 5 at 1-2.

On July 7, 2021, 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 his eligibility to hold a security clearance. Specifically, the Notification Letter alleged that the Individual failed to file his federal and state tax returns for tax years 2015, 2016 and 2017. The Notification Letter further informed the Individual that he 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 December 1, 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-22-0012 (hereinafter cited as "Tr."). The DOE Counsel submitted seven exhibits marked as Exs. 1 through 7. The Individual submitted 5 exhibits marked as Exs. A through E.

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 his eligibility for a security clearance. In support of this determination, the LSO cited Guideline F of the Adjudicative Guidelines. Under Guideline F, the LSO cited the Individual's failure to file his federal and state tax returns for tax years 2017, 2016, and 2015 as derogatory information. 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

None of the Individual’s exhibits indicate that the Individual has filed his outstanding tax returns, has paid his outstanding tax debts, or has entered into a repayment plan with the IRS or state tax authorities. At the hearing, the Individual admitted that he had not yet filed his Federal or state tax returns for tax years 2015, 2016, and 2017. Tr. at 10-11. He attributed his failure to do so to “a mental block.” Tr. at 12, 16. He further described himself as a “big-time procrastinator.” Tr. at 16.

V. 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 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 his taxes in a timely manner has continued into the present and therefore continues to cast doubt on his current reliability, trustworthiness, and good judgment. Accordingly, Guideline § 20(a) does not provide mitigation of the security concerns raised under Guideline F.

The conditions that caused the Individual's financial circumstances were not beyond his control, and he has not shown that he acted responsible under the circumstances. Accordingly, Guideline § 20(b) does not provide mitigation of the security concerns raised under Guideline F.

The Individual is not receiving representation from a legitimate and credible source, and he has not 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.

The Individual has not initiated an effort to repay or otherwise resolve his tax debts, and questions remain about his ability to adhere to any future agreements to resolve or repay these debts. Moreover, the Individual has admitted that he has not filed his delinquent Federal and state 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 he has a reasonable basis to dispute the legitimacy of his 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.

The Individual has not made arrangements with the IRS or the state tax authority to file or pay the amounts owed to them. 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 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 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