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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 17, 2021) Case No.: PSH-22-0034
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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 restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. As part of a reinvestigation for his security clearance, the Individual completed a Questionnaire for National Security Positions (QNSP) in January 2021. Ex 6. In response to the QNSP’s financial questions, the Individual indicated that he had failed to file his Federal tax returns since 2011. *Id.* at 52. Subsequently, the Local Security Office (LSO) asked him to complete a Letter of Interrogatory (LOI), in which he explained that he had since filed his tax returns for the 2011-2013 tax years, but he had not yet filed his tax returns for the 2014-2019 tax years. Ex. 5. Due to unresolved security concerns arising from his failure to file Federal tax returns, the LSO informed the Individual, in an August 2021 Notification Letter (Notification Letter), that the Individual’s security clearance was suspended. In the letter, the LSO asserted 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 did not tender any exhibits, but he 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 letter asserted that the derogatory information fell under 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 stated that the Individual had failed to file his Federal tax returns for the 2014-2019 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 retained the services of a tax accountant approximately six months to a year prior to receiving the August 2021 Notification Letter, and although he has been working with the tax accountant, as of the date of the hearing, he had yet to file his 2014-2021 tax returns.² Tr. at 14-15, 19. The Individual claimed that he filed an extension with the Federal tax authority, but he stated that did not have any documentation regarding any such extension.³ *Id.* at 14-15. The Individual indicated that he did not know if he was entitled to a refund or owed any money for any of the outstanding tax years. *Id.* at 15.

The Individual stated that he stopped filing his taxes because he “just got behind because [he] love[s] real estate investing,” but he needs “somebody that can hold [him] accountable for keeping track of [his] spending.” *Id.* at 19. He testified that it is his intention to file all his outstanding taxes and pay any outstanding tax debt. *Id.* at 17-18. The Individual noted that, at this time, he is “trying [his] best to get all [his] information together,” and he believes that he is “basically 80 to 90 percent done” with gathering all the appropriate information. *Id.* at 18.

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 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 not be restored. 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 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 the first steps to mitigate the security concerns related to his tax situation. He has retained the services of a tax accountant and begun gathering his documentation; however, at this time the Individual has yet to file his tax returns for the 2014-2021

² The Individual testified that his tax accountant explained that he cannot file his 2021 Federal tax return until his outstanding tax returns have been successfully filed. Tr. at 15.

³ It is unclear from the Individual’s testimony which tax year(s) the extension was related. Tr. at 14-15.

tax years.⁴ Furthermore, he has not adequately demonstrated that he has made any arrangements with the Federal tax authority regarding his outstanding tax returns. As such, I cannot, at this time, find that the Individual has mitigated the Guideline F security concerns.

VI. Conclusion

After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all 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 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

⁴ I note that as of the date of this decision, the Individual's 2021 taxes are not yet late; however, I include them in his outstanding tax returns as the Individual testified that he is unable to file his 2021 tax return until his other outstanding taxes have been successfully filed. *See* Tr. at 15.