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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: March 2, 2022)	Case No.: PSH-22-0062
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_____)	

Issued: June 24, 2022

Administrative Judge Decision

Brenda B. Balzon, 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 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. On May 26, 2021, the Individual electronically submitted a Questionnaire for National Security Positions (QNSP) as part of his application for a security clearance. Exhibit ("Ex.") 6 at 45. The Individual disclosed on the QNSP that he had failed to file his federal and state tax returns for 2017. Ex. 6 at 40. In October 2021, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI) inquiring about his failure to file income taxes. Ex. 5. In his response to the LOI, the Individual stated that he had not filed his federal and state taxes for 2017 because he had been unable to obtain his tax documentation from his former employer. Ex. 5 at 1-2.

The LSO informed the Individual, in a letter dated January 7, 2022 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility

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.

to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted seven numbered exhibits (Ex. 1–7) into the record. The Individual submitted five exhibits (Ex. A through E) into the record, and testified on his own behalf.

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 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 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. *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).

The LSO alleges that the Individual did not file his federal or state tax returns for tax year 2017. Ex. 1. 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.

IV. FINDINGS OF FACT

The Individual testified that in 2017, he was working as a driver for a technology based ride-sharing company. Transcript (“Tr.”) at 11. He attempted to prepare his taxes for timely filing, however, he was missing a mileage document from the aforementioned ride-sharing company, his employer at the time (“previous employer”). *Id.* at 18. He needed the mileage document so that he could file a Schedule C form with his taxes in order to write off the depreciation of his vehicle. *Id.* The Individual testified that his previous employer had mailed the document to him in 2017, however, he had moved to a different location and lost the document during the course of moving to his new residence. *Id.*

The Individual testified that he tried calling his previous employer in 2018, when he was timely preparing his 2017 taxes. Tr. at 22. He asserted that he called his former employer’s customer service phone number. However, the customer service number was an automated system that would only redirect him to their website. Tr. at 11, 19, 21–23. The former employer’s online system did not provide the Individual with an option that allowed him to speak to an in-person representative on the phone. Tr. at 11, 19. After his failed attempts to reach his former employer by phone, he tried logging into their website in an attempt to obtain his mileage document via the driver portal. *Id.* at 11–12, 18–19, 23. However, he was denied access to the driver portal because he was no longer employed as a driver for the former employer. *Id.* at 18–19. The Individual testified that he was unable to access the online driver portal to obtain his mileage document unless he first met several time-consuming, expensive requirements. *Id.* at 19. Specifically, he was required to go through a re-enrollment process to enroll again as a driver, even though he was no longer a driver and had no interest in being employed again by the former employer. *Id.* at 11–12, 18. The re-enrollment process required him to pay a fee to the former employer, provide his car registration, car insurance and driver’s license, obtain a vehicle inspection which would have required him to use annual leave from his current job and pay a vehicle inspection fee. *Id.* at 11, 19. In yet another attempt to contact the former employer, the Individual tried to check their website to see if they had an email address, however, the website just referred him to a Frequently Asked Questions section of the website which only referred him to their driver portal. *Id.* at 24. The Individual indicated that he tried to find another way of obtaining his mileage document but he was not aware of any other method by which he could obtain the document. *Id.* at 50.

The Individual testified that he considered contacting the Internal Revenue Service (IRS) because he knew that some documents from employers are required to be sent to the IRS. He asserted, however, that since the document that he needed was not required to be sent to the IRS, the IRS could not provide him with the needed milage document. *Id.* at 50-51.

The Individual asserted that he tried contacting his former employer again in 2018, 2019, and 2020 to attempt to obtain his missing mileage document. *Id.* at 22. However, he kept getting redirected to the website when he tried calling their phone number. *Id.* at 19, 23. The Individual stated that after making numerous failed attempts to obtain his mileage document from his previous employer, he decided not to file his 2017 taxes and receive the tax refund that he was entitled to receive. *Id.* at 27.

The Individual's testimony was consistent with the explanation he provided in his response to the LOI. Ex. 5 at 1; Tr. at 27. In the LOI, he explained that he knew that he was entitled to a tax refund for his 2017 taxes because he had used a commercial tax preparation software program to prepare his tax return and the software tax form indicated that he was entitled to a tax refund. Tr. at 28. In support of his testimony, the Individual submitted a copy of his 2017 state and federal tax returns as prepared using the commercial software tax forms, and the documentation reflected that he was entitled to a refund. Ex. A at 2. He also submitted a document from a tax preparation company which was signed by a tax professional in January 2022 and also reflected that the Individual was entitled to a tax refund for both his federal and state taxes for 2017. Ex. C at 5 at 1, 116; Tr. at 27–28.

The Individual acknowledged that, at some point after his numerous failed attempts in 2017 to contact the former employer, he “put off” further attempts to obtain his mileage documents and made a mistake in not timely filing his 2017 taxes. Tr. at 11. He explained that another reason for his failure to file his 2017 taxes on time was that he did not know all the rules regarding how to file his taxes when he had missing documents. *Id.* at 15. He believed that if he had filed his 2017 taxes without including his mileage form, then his tax refund would have been denied. *Id.* at 11. His testimony on this issue was consistent with the answers he had provided on his LOI. Ex. 5 at 2. The Individual admitted that he did not have a lot of knowledge about filing taxes, and he now realizes that he should have contacted a tax professional to obtain assistance in filing his 2017 taxes. Tr. at 27.

The Individual testified that he resumed his efforts to contact his former employer again after he received the LOI in October 2021. Tr. at 26–27; Ex. 5. He searched online for a phone number, and when he called the former employer again, he was able to speak to a person, unlike his attempts in previous years. He was finally able to obtain his mileage document sometime between October 2021 and January 2022. Tr. at 12, 19. The Individual testified that he submitted his mileage document when he filed his 2017 federal and state taxes in January 2022. *Id.* at 12; Ex. C. In support of his testimony, he submitted copies of his federal and state tax returns.² Ex. A. He also asserted that prior to submitting his 2017 taxes, he wanted to make sure that everything was correct on his tax forms, so he hired a tax professional to review his 2017 tax returns. Tr. at 13–14. In support of his testimony, the Individual submitted a copy of a document prepared by a tax

² The Individual's Exhibit A contains purported copies of his 2017 federal and state tax returns which he prepared online using the commercial tax software. Tr. at 12-13; Ex. A. He asserted that although Exhibit A does not include his signature on his tax returns, those are the same copies of his prepared tax returns which he printed and mailed to the IRS and state tax authority. Tr. at 13. He testified that he did not make a copy of the tax returns that he mailed. *Id.* The Individual explained that as soon as he received the LOI, he realized that he needed to file his taxes to resolve the DOE's security concerns stated in the LOI. *Id.* Thus, his main goal was to obtain his mileage document and file his 2017 taxes, so he did not think about making copies of the tax forms prior to mailing them. *Id.*

preparation company which included a signature by the tax professional who reviewed his tax returns, dated January 12, 2022.³ Ex. C.

The Individual asserted he has made several attempts to contact the IRS to confirm that the IRS received his 2017 tax returns. Tr. at 34. He recounted that when he calls, he stays on hold for long periods of time until the IRS automated phone system informs him that they are no longer answering calls for the day and that he should try calling again the next day. *Id.* The Individual asserted that he has also tried going through all the different prompts of the IRS automated phone system and indicated that none of the prompts apply, and that the last prompt referred him to the IRS website. *Id.* at 34. The Individual asserted that he has tried using the IRS website to track his refund; however, the website only allows him to track his refund for the last three tax years, which does not include the 2017 tax year. *Id.* at 34–35. The Individual also testified that he has retrieved and reviewed his IRS tax transcripts including the past several years of taxes; however, for 2017, his tax transcript still shows no record by the IRS that they have received his taxes. *Id.* at 35. Regarding his state taxes, he testified that he attempted to call his state tax authority to verify receipt of his 2017 tax returns, but he stated that their phone number just refers the caller to the IRS main phone number. *Id.* at 38–40.

The Individual asserted that he has learned from his mistake of previously not filing his 2017 tax returns on time and that he is now financially responsible. *Id.* at 17. He testified that, other than his 2017 taxes, he has always filed his taxes for every tax year prior to 2017 and after 2017. *Id.* at 12, 41–42. Moreover, he asserted that in other tax years, he has always filed his taxes as early as possible, so that he can obtain his tax refund as quickly as possible. *Id.* at 28. The Individual testified regarding his future intent concerning his taxes. He explained that he does not anticipate that he will have future problems with filing taxes because he only needs one W-2 form for his current job in order to file his taxes, and he does not have any other tax documents that he needs to obtain when filing taxes because he has a noncomplicated tax return. *Id.* at 46. He further testified that if he were ever to encounter difficulty in trying to obtain tax documentation to file his taxes in the future, he would hire a tax professional to assist him. *Id.*

In addition, the Individual provided written statements from his former roommate and his girlfriend to support his assertions that he is financially responsible. Ex. D; Ex. E. The Individual's former roommate, who was also his former coworker, submitted a notarized letter stating that based on his observation, the Individual exemplified good character as a coworker and as a roommate. Ex. D. He further stated that the Individual was a responsible roommate, who always paid for his half of the rent expenses and bills on time. *Id.*; see Tr. at 15-16. The Individual's girlfriend submitted a letter in which she stated that she has been in a relationship with the Individual since March 2018. Ex. E. She stated that although she did not know him at the time he did not file his taxes, she is aware of how the Individual has handled his finances for the past four years. *Id.* She asserted that he is financially responsible and does not rely on anyone to assist him with his financial obligations. *Id.* Moreover, the girlfriend stated that she has observed that the Individual is very responsible regarding paying his bills and asserted that when she was injured due to a car accident, the Individual also assisted her financially while continuing to meet his own financial obligations. *Id.*

³ The Individual stated that he mailed his 2017 taxes to the IRS and state tax authority on the following date. Tr. at 14-15.

V. ANALYSIS

The Adjudicative Guidelines provide that conditions that could mitigate a security concern under Guideline F include:

- (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 judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, ...unexpected medical emergency,...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...;
- (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

Adjudicative Guidelines at ¶ 20(a)–(g).

Two of the above mitigating factors are applicable in this case. First, the circumstances set forth in the mitigating factor at ¶ 20(a) are present in the instant case. The Individual has provided credible testimony, partially corroborated by supporting written evidence, regarding the behavior that led to his late filing of his 2017 taxes, and the actions he took that demonstrate his current reliability, trustworthiness, or judgment. As the Individual testified, he was unable to timely obtain the mileage document that he needed to submit with his 2017 tax returns in order to claim a tax deduction related to his former employment as a driver for a technology-based ride-sharing company. He provided testimony that was consistent with his earlier written responses to an LOI, including a discussion of numerous unsuccessful attempts to contact his former employer to request his mileage document.

The Individual also admitted that he made a mistake in not filing his 2017 taxes and provided a credible explanation as to why his previous behavior of not filing his taxes is unlikely to recur. As he stated, he no longer works for his previous employer so he does not need to obtain mileage documents or additional tax documents to itemize tax deductions. Instead, his current employer provides him with a W-2 wage and tax statement, a document that he needs in order to file his taxes. He has also timely filed his tax returns for all tax years prior to 2017 and after 2017, which shows that he has learned from his past mistake regarding not filing taxes. In addition, he testified that if he ever encountered a situation in the future where he was unable to obtain a tax document, he would hire a tax professional to assist him in resolving such a matter. He demonstrated his

willingness to hire a tax professional by submitting a document from a tax preparation company which reflected that he had hired a tax professional to review his 2017 tax returns to ensure they were properly completed when he finally was able to obtain his mileage document and file his 2017 taxes. Furthermore, I find that the Individual's assertions regarding his sense of financial responsibility, which reflect on his current reliability, judgement, and trustworthiness, are also supported by the written statements from his former roommate and his girlfriend, who both have firsthand knowledge of the ways in which the Individual handles his financial obligations and manages his finances.

The circumstances set forth in the mitigating factor at ¶ 20(g) are also present in the instant case. The Individual testified that he was able to obtain his mileage document at some point during the time frame between October 2021 and January 2022. He testified that he filed his 2017 taxes in January 2022, the date after the tax professional he hired reviewed his 2017 tax returns. The Individual did not submit a signed copy of his tax returns because he stated that he did not think about making a copy prior to mailing his 2017 tax returns to the IRS and state tax authority. However, I find that the tax documents that he did submit, copies of his 2017 tax returns and a document by a tax professional who reviewed the Individual's 2017 tax returns and signed his confirmation of review on January 12, 2022, are sufficient to support his credible testimony that he filed his 2017 tax returns on January 13, 2022. Moreover, the Individual provided credible testimony regarding his ongoing attempts to contact the IRS and his state tax authority to obtain verification of receipt of his 2017 tax returns. He provided detailed explanations of his efforts, including trying to use the online IRS website and obtaining his IRS tax transcripts. In addition, the written evidence that the Individual submitted reflects that he is going to receive a refund for both his state and federal tax returns for 2017, so he has no outstanding tax obligations.

For the foregoing reasons, I find that the Individual has presented sufficient evidence to satisfy the mitigating conditions under ¶ 20(a) and ¶ 20(g), and therefore has resolved the security concerns under Guideline F.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's security clearance should be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals