

Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her 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 as 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 thirteen exhibits (Ex. A1 through E) into the record and presented the testimony of seven witnesses, including her own testimony.

II. 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 her eligibility for a security clearance. The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for denying the Individual a security clearance. Ex. 1. It is well established that “[f]ailure 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.” Adjudicative Guidelines at ¶ 18. Among the conditions set forth in this guideline that could raise a disqualifying security concern is the failure to file or pay 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 she had not filed her Federal tax returns for the 2015-2017 tax years. Ex. 1. The LSO also cited the Individual’s admission in the LOI that she had not paid her 2019 Federal income taxes and that she owes the Internal Revenue Service (IRS) \$4,194.32. *Id.*

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 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.

IV. FINDINGS OF FACT

The Individual testified regarding the problems that led to her not timely filing her Federal income taxes for 2015-2017. She stated that, in January 2015, she and her husband got married and blended a family of six children, including five children that were living at home. Tr. at 79. She testified that her husband also lost his job in 2015, which resulted in a loss of \$62,000 of annual income, and it became very difficult to financially support their family with primarily her income. *Id.* at 80. The Individual asserted that, for approximately a year-and-a-half, her husband was only able to obtain sporadic, temporary employment with minimal income. *Id.* at 81. The Individual and her husband decided to file a joint tax return for 2015, however, after preparing their 2015 tax return, they were overwhelmed with the large amount of taxes that they owed.² *Id.* at 80, 97. She asserted that, prior to the 2015 tax year, she always filed her taxes on time and always received a tax refund, so she was unaware that there was an option to request and set up a tax payment plan, and she mistakenly believed that she had to pay their tax liability in full at the time of filing. *Id.* at 79, 81-82. Regarding her 2016 and 2017 Federal taxes, the Individual testified that she and her husband were surprised that they again owed a large tax liability, and since they were already behind on their 2015 taxes, they were not sure how they were going to be able to pay future taxes in 2016 and 2017. *Id.* at 98. She stated that they discussed seeking professional help to assist them with their finances and taxes, however, they ultimately did not obtain professional tax assistance at the time that their 2015, 2016, or 2017 tax returns were due. *Id.* The Individual indicated that in discussing their tax situation with her husband, she initially disagreed with his suggestion to not file their taxes on time until he found a job and they were able to pay their taxes. *Id.* at 54-55, 106. However, she stated that they ultimately chose not to file their 2015-2017 Federal tax returns on time because they did not have enough money to pay their tax obligations. *Id.* at 81, 106. She also indicated that it was difficult to engage in detailed conversations with her husband regarding finances and tax debts because he typically does not want to pay attention to financial matters. *Id.* at 98.

The Individual testified that she began filing her Federal tax returns on time starting with her 2018 taxes because she had started earning a higher income and decided that they needed to start filing their taxes on time.³ *Id.* at 98-99. The Individual testified that she and her husband filed their 2019 taxes on time, and their tax return reflected that they were supposed to receive a tax refund. *Id.* at 99-100; Ex. C5 at 1-2. She testified that in February 2022, however, she received a letter from the IRS stating that after the IRS had processed their 2019 tax return, the IRS had since determined that they owed \$4,194 in taxes. Tr. at 100; Ex. C5 at 10. The Individual testified that the IRS letter

² The Individual submitted copies of her Federal tax returns from 2015 through 2021, which reflect that she and her husband have filed a joint Federal tax return every tax year from 2015 through 2021. Ex. C1 at 1; Ex. C2 at 1; Ex. C3 at 1; Ex. C4 at 1; Ex. C5 at 1; Ex. C6 at 1; Ex. C7 at 1.

³ The SSC contained no allegations regarding the Individual's 2018 taxes. Ex. 1. The Individual submitted a copy of her IRS transcript for her 2018 Federal taxes which reflected that she filed her 2018 taxes, including an \$800 payment at the time she filed her taxes, and she paid off the remaining balance in August 12, 2019. Exhibit C4 at 2.

stated that their payment was due in March 2022, and she asserted that she paid their 2019 tax obligation by the March 2022 deadline. *Id.* In support of her testimony, the Individual submitted a copy of her IRS transcript for 2019 which confirmed the same. Ex. C5 at 3–4, 8. She also submitted her bank account record which reflects that the IRS cashed the check she sent for payment of her 2019 taxes. Ex. C5 at 11.

The Individual further testified that she filed her 2020 and 2021 Federal taxes on time. Tr. at 82, 90–91. In support of her testimony, she submitted copies of her Federal tax returns for the 2020 and 2021 tax years and copies of her IRS transcripts for 2020 and 2021, both of which reflect that she has a zero balance owed for the 2020 and 2021 tax years.⁴ Ex. C6; Ex. C7.

Regarding her 2015–2017 Federal tax returns, the Individual testified that she had always intended to file those returns. Tr. at 100. The Individual asserted that her plan was to begin paying off their state tax debts first because it was a lower amount before starting to address the 2015 through 2017 Federal tax returns. *Id.* at 100–01. She stated that, in January 2021, she and her husband went through an audit for their state taxes, and they paid their outstanding state tax balance of \$9,900 by the auditor’s deadline in early 2022. *Id.* at 102. They then proceeded to address their 2015 through 2017 Federal taxes. *Id.* For her 2015 taxes, the Individual asserted that she obtained the assistance of a tax professional in 2022 to help her understand the proper filing procedures and regulations for outstanding Federal taxes. *Id.* at 82. She testified that the tax professional advised her to make the largest payment possible and then request a payment plan for the outstanding tax balance, which is when she first learned about the option of setting up a payment plan with the IRS. *Id.* at 81–82, 84, 93–94. She followed the tax professional’s advice by paying \$1,500 when she filed her 2015 taxes on April 12, 2022. Tr. at 84; Ex. C1 at 3–4. She also submitted a copy of her 2015 Federal tax return that was prepared and filed by the tax professional, which reflected that she owed \$9,272 in 2015 taxes. Tr. at 83–84; Ex. C1 at 2–3. In July 2022, the Individual made a second payment to the IRS for \$7,772 to pay off the remainder of her outstanding 2015 Federal taxes, and she submitted her July 2022 proof of payment to the IRS which supported her testimony. Ex. C1 at 5–8; *see* Tr. at 85. She testified that she subsequently received a letter from the IRS dated August 8, 2022, which stated that the IRS needed an additional 60 days to send her a complete response on what action they may take regarding her 2015 taxes. Ex. F; Tr. at 85–86. The IRS informed her in the letter that she does not need to take any further action at present, and the Individual testified that she has not received any further correspondence from the IRS regarding her 2015 taxes. *Id.*

Additionally, the Individual testified that she filed and paid her 2016 Federal taxes, and she submitted a copy of her 2016 Federal tax return and proof of payment dated April 13, 2022, for \$3,654. Tr. at 86–87; C3. She also testified that she filed and paid her 2017 Federal taxes and submitted a copy of her 2017 Federal tax return and proof of payment dated April 13, 2022, for \$3,931. Tr. at 87–88; Ex. C3. She further testified that, from the beginning of 2022 through July 2022, she paid a total of approximately \$28,000 in state and Federal taxes combined. *Id.* at 102. She testified that in order to pay all of her outstanding taxes, she took out a home equity loan with a revolving credit line and a loan against her retirement account from her employer. *Id.* at 102–03. She asserted that she has only used a portion of her home equity loan, so that she still has \$40,000 available in her credit line. *Id.* She further stated that she has had no problems making her current

⁴ The SSC contained no allegations regarding the Individual’s 2020 or 2021 taxes. Ex. 1.

loan payments on the amount she borrowed to pay her outstanding state taxes and Federal 2015-2017 taxes, and she is not delinquent on any of her additional financial obligations that are unrelated to taxes. *Id.* at 92, 103, 105.

The Individual testified regarding the actions she has taken to ensure that she will not fail to file or fail to pay her taxes in the future. She admitted that her failure to file and pay her taxes on time in the past was a temporary lapse in judgment on her part, and she acknowledged that it was not the correct decision to make at the time she decided not to file her taxes on time. *Id.* at 106. The Individual asserted that, for the future, she will file her taxes on time every year. *Id.* at 93. She testified that she fully understands, after consulting with the tax professional, that she needs to always file her taxes by the tax deadline, and, if she owes taxes, she needs to make as large of a payment as possible, even if it is not for the full amount. *Id.* at 108–09. Additionally, she took an online tax course on personal income tax preparation and provided examples of lessons she learned from the course and the tax professional, including the option of requesting a payment plan with the IRS and requesting a tax filing extension. Tr. at 83, 94, 108–09; Ex. D. She asserted that she also now understands how to obtain financial resources such as a home equity loan if she were ever in a future situation in which she did not have sufficient funds to address a large tax debt. Tr. at 106. The Individual further testified that she maintains a family budget and asserted that she successfully manages the family finances so that her income by itself sufficiently provides for their family financial obligations, which will prevent a future financial problem if her husband were to unexpectedly become unemployed. *Id.* at 104, 109–10. She also provided an example of how she successfully handled an unexpected expense due to her husband’s medical emergency, by using credit card payments and funds from their savings to pay off medical bills. *Id.* at 110–11. The Individual further asserted that she contributes additional funds to her savings account every month because her new job has a higher salary which allows her to do so while also satisfying her financial obligations. *Id.* at 104–05; *see* Ex. E (Email dated August 9, 2022, from the Individual’s employer reflecting her recent job promotion). Moreover, she testified that since approximately 2020, her husband has done side jobs to make extra income. *Id.* at 112. Further, she stated that she and her husband currently have only one child living in the home, a high school senior who works part-time to pay for some of her own expenses, which alleviates some of the Individual’s financial obligations. *Id.* at 110. The Individual asserted that, since they no longer have to support five children in the home, it “has relieved quite a burden on [them] financially.” *Id.*

The Individual’s husband corroborated the Individual’s testimony regarding the financial difficulties they experienced starting in 2015, including his unemployment and the need to provide for five of their six children who still lived in the home. Tr. at 41, 48. Regarding their 2015 taxes, the husband stated that he suggested to the Individual that they should wait until he was able to obtain employment and build up their savings before filing their tax returns so that they would be able to pay their taxes. *Id.* at 48, 54–55. He indicated that the Individual did not like his idea, but they made a mutual decision to not file their 2015 taxes on time because they did not have the financial means to pay their tax liability. *Id.* at 50, 55. The husband further indicated that, regarding the 2016 and 2017 tax years, things “just kind of piled up ... one expense after another with the children, ...[so] it was financially hard at that point” to pay their taxes. *Id.* at 50. The husband testified that he and the Individual have now paid all of their state and Federal tax liabilities including their 2021 taxes. *Id.* at 42–43. He stated they have continued to build up their savings, and he additionally works to add to a small fund that he keeps in case they have a future tax or

other financial obligation. *Id.* at 51; 59. The husband also provided two examples of how he and the Individual successfully handled unexpected expenses of car repairs and additional school expenses for one of their daughters. *Id.* at 59.

The Individual's manager and her colleague who was her former deputy group leader ("colleague") both testified that they were aware of the security concerns involving the Individual's taxes. *Id.* at 11–12, 24. Her manager testified that he works in daily, close contact with the Individual. *Id.* at 11. He asserted that when the Individual disclosed her tax problems to him, she was forthright and took accountability in admitting her actions and details of her multi-year failure to pay taxes. *Id.* at 15–17, 19. He asserted that her disclosure to him has not affected his positive views of her reliability and trustworthiness. *Id.* at 13–14, 18. The colleague testified that he has never known the Individual to exercise bad judgment, and she has always abided by rules and regulations. *Id.* at 24. He asserted that he finds her to be reliable and trustworthy. *Id.* at 25–26.

Three of the Individual's friends from her childhood testified that they have known the Individual since they were in middle school, they were both aware of the DOE's security concerns regarding her taxes, and they both have current contact with her approximately once every month. *Id.* at 31, 65, 71–72. One friend testified that the Individual had informed her that she had some issues with her taxes, and her husband had been unemployed, but they did not discuss any further details regarding the Individual's financial problems. *Id.* at 34–35. All three friends asserted that the Individual exhibits good judgment, and they find her to be reliable and trustworthy. *Id.* at 32–33, 66–67, 72–73.

V. ANALYSIS

A. Guideline F

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...; 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.

Adjudicative Guidelines at ¶ 20.

Mitigating factors (a) and (g) apply in this case. Regarding mitigating factor ¶ 20 (a), the Individual has provided supporting evidence showing that the circumstances resulting in her late filing of her 2015–2017 Federal taxes and the late payment of her 2019 taxes are unlikely to recur. She has credibly shown that she recognizes her previous mistakes in judgment and has taken effective action to fully resolve her tax issues. She sought advice from a tax professional to assist her in filing her outstanding taxes and who informed her of the option to request an IRS payment plan. She now understands and has demonstrated that she will file her taxes on time every year. She successfully demonstrated how she implemented the lessons she learned from her online tax course and her tax professional including by establishing a payment plan for her 2015 taxes and responsibly using a home equity line of credit and retirement loan to pay off her outstanding taxes. She maintains her family budget effectively such that she is current on her loan payments and not delinquent on any accounts. She has also shown her current reliability and good judgment by submitting tax documentation proving that she has paid all of her tax debts in full, through and including her 2021 taxes. Moreover, she and her husband have both taken additional actions to prevent future financial problems from recurring in that her husband works at “side jobs” in addition to his primary full-time job to supplement his income, and the Individual has established a separate savings account, which she contributes to every month. Both the Individual and her husband provided examples of how their additional efforts enabled them both to manage various unexpected expenses without financial hardship. Further, the Individual and her husband currently only have financial responsibility for one child since the rest of their children no longer reside in their home. This fact, coupled with the Individual’s promotion at her job, and her husband’s full-time employment and “side jobs,” have greatly alleviated their financial burdens.

The circumstances set forth in ¶ 20(g) are also present in the instant case. The Individual has shown that she filed her outstanding Federal tax returns for 2015–2017, and she provided evidence that she entered into a payment plan for her 2015 taxes and successfully complied by paying off her entire balance to the IRS. She also filed her 2016 and 2017 Federal tax returns and paid off her outstanding tax liabilities for 2016 and 2017 at the time she filed her tax returns without the need for a payment plan because she obtained a home equity line of credit and a retirement loan. Regarding her 2019 taxes, she provided copies of her timely filed tax return which reflected a refund she anticipated receiving, which is why she had not paid 2019 taxes. She also provided subsequent IRS documentation from February 2022 which reflected that the IRS had subsequently reviewed her 2019 tax return and determined that she owed \$4,194.32 in taxes that was due in March 2022. Since the Individual provided proof of full payment in March 2022, she has complied with the IRS requirements by paying the amount owed on her 2019 Federal taxes.

For these reasons, I find the Individual has presented sufficient evidence to satisfy the mitigating conditions set forth at ¶ 20(a) and ¶20(g).⁵

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. After considering all of 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be restored.

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

⁵ I have not addressed the mitigating factors at ¶ 20(b) and ¶ 20(c) as they do not require consideration in light of the fact that the Individual has shown mitigation under ¶ 20(a) and ¶ 20(g). The mitigating factor at ¶ 20(d) does not apply in this case because the Individual had no overdue creditors from debts aside from taxes, and the mitigating factors at ¶ 20(e) and at ¶ 20(f) do not apply to the facts of this case because the SSC allegations concern outstanding tax liabilities.