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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: February 1, 2023) Case No.: PSH-23-0055
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Issued: June 22, 2023

Administrative Judge Decision

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 not be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In May 2022, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 6. In the QNSP, the Individual disclosed that he failed to file his Federal and State personal income tax returns for the 2016–2021 tax years. Ex. 6 at 34–36. On June 24, 2022, the Individual underwent an Enhanced Subject Interview (ESI) with an investigator from the Office of Personnel Management (OPM).² Ex. 7 at 56. During the ESI, the Individual told the OPM investigator that he failed to file his yearly Federal and State personal income taxes, from 2016 to 2021, because he lost “some income Statements from stock dividends and was waiting for replacements when he forgot about it.” *Id.* at 57. The Individual also told the

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.”

² Numerous exhibits offered by DOE contain documents with printed page numbers that are inconsistent with the pagination of the exhibits. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

investigator that he was “currently working on” his taxes and planned on filing the returns “within the next few weeks.” *Id.*

Subsequently, the Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual completed on November 1, 2022. Ex. 5. In his LOI, the Individual reported that he had not filed his Federal and State personal income tax returns from 2016 to 2021. *Id.* at 1. He reported he did not file taxes for these years because he “lost a piece of info for the first year and had to request a replacement document, and the process just kinda [sic] fell off [his] radar.” *Id.* at 3. He also reported that he has “learning disabilities” and “tax forms are harder to read [than] most other government documents [he has] to deal with.” *Id.* He stated that he was “still working on gathering and sorting all the info for all these years” and he “[s]hould be close to being able to [file].” *Id.* at 1. He also reported that he does not owe taxes for the years he did not file as he did not claim exemptions for the years 2016–2021, and he stated that he received a notice from the Internal Revenue Service (IRS) indicating that he should have refunds available. *Id.* at 1–2.

Due to unresolved security concerns stemming from the Individual’s disclosures, the LSO informed the Individual, in a Notification Letter dated January 4, 2023, 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 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 as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted seven numbered exhibits (Exs. 1–7) into the record and did not call any witnesses at the hearing. The Individual submitted seven lettered exhibits (Exs. A through G) into the record and testified on his own behalf. *See* Transcript of Hearing (hereinafter cited as “Tr.”).

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 his 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 Federal or State income tax returns or to pay Federal or State income tax as required. *Id.* at ¶ 19(f). In citing Guideline F, the LSO relied upon the Individual’s admissions, in the QNSP and LOI, that he had

not filed his Federal and State personal tax returns from 2016 to 2021. Ex. 1. The cited information justifies the LSO's invocation of Guideline F.

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 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.

IV. FINDINGS OF FACT

The Individual testified that for the 2016 tax year, he wanted to prepare his Federal and State tax returns, but he either lost, or misplaced, a form he needed to file his Federal return. Tr. at 11, 37. He stated:

[i]t took a couple weeks before it showed up, so it was just kind of put on the pile of things to get done and slipped off my radar. And since I didn't have the Federal tax return done, I couldn't do the State return, because it requires information from the Federal return, so it slipped. I knew that I didn't owe any taxes for that year, so I was going to – it just slipped off the radar.

Id. at 11. The Individual further testified that he never owes taxes because he does not claim exemptions, and he ensures that more money is withheld from his income than he believes he will ever owe. *Id.* at 20.

The Individual stated that by the time he needed to file his 2017 taxes, he had received the missing form, and he had all the information he needed to file his 2016 tax return. *Id.* at 27–28. He stated he was aware that tax returns were due to be filed in April 2017, and he knew that he "needed to submit [his] tax forms for [his] refund," but he did not file his 2016 tax returns even after he had received the missing form. *Id.* at 28. He stated he believes he started preparing a portion of his

2016 tax returns, but did not finish the returns for 2016 or 2017. *Id.* at 29. The Individual further testified he was aware he could file for an extension to file his tax return, however, he stated he never filed an extension for the 2016 through 2021 tax filing periods. *Id.* He indicated that filing an extension would have required him to do additional paperwork. *Id.* He also stated he did not start the process to file his tax returns until his security clearance came up for review last summer. *Id.* at 32.

Regarding his additional delinquent tax returns for the subsequent tax years 2018 through 2021, the Individual stated that it took him additional time to review and organize his tax related documents partly due to a learning disability, so that by the time his 2017 taxes were due, he had double the amount of work to do to prepare his taxes and he indicated that he became overwhelmed. *Id.* at 30–31. He stated that by not filing his 2016 and 2017 taxes, “it just sort of snowballed.” *Id.* at 31. He again asserted that he either misplaced or lost the tax document that he needed to complete his Federal tax return and “that caused the beginning of the cascade of not filing” his taxes. *Id.* at 37. He further explained that when his security clearance came up for review last summer, he may have mistakenly thought that he was “only two, maybe three years behind on [his] taxes, not . . . six or seven [years behind].” *Id.* at 31.

The Individual further testified that his learning disability makes filing his tax returns more difficult. *Tr.* at 30. The Individual explained that since he was a child, he has had a disability that makes it more difficult for him to read and organize information from written sources. *Id.* at 30, 34. When asked if he has received any accommodations for his asserted disabilities, he stated that other than in college when he received extra time to take his college tests, he has had “59 years to adjust to these issues as best as possible.” *Id.* at 35. He stated he can prepare his own tax returns, but it just takes him longer to go through all the information. *Id.* at 40.

The Individual explained that, more recently, it took him a few weeks to review the tax forms and instructions to prepare his tax returns for 2016 through 2021, and when he started the process of preparing his tax returns, it took him months to organize and review his tax related records. *Id.* at 30, 32. He stated that he never contacted the IRS, or his State tax authority, to ask questions about tax instructions or to get assistance. *Id.* at 30–31, 33. He also stated he never sought assistance with filing his taxes from a tax preparation service because “[his] work at DOE has made [him] very conservative on who [he] might give personal identifiable information to,” and he assumes identity thieves would “target tax professionals.” *Id.* at 40. The Individual further stated, “I can do my own taxes.” *Id.* He explained, “[i]t just takes me longer to go through all the information to make sure that I’m applying all the appropriate restrictions for things like . . . deduct[ions] from my rental properties” *Id.* He stated, “[s]o all those kinds of things I can do myself. I don’t really need a tax preparer for that.” *Id.* at 41. He also stated he never used tax preparation software or obtained assistance from anyone else to help him prepare and file his tax return. *Id.* at 30, 41.

The Individual further testified that he has never received any financial counseling or financial education classes because, he asserted, he does not have “any real financial problems.” *Tr.* at 41–42. He asserted that he pays his credit cards in full every month; he makes “three times the average income for [his State]. . . .”; and he has not had a tax debt in the last 25 or 30 years because he always overpays his taxes so that he receives a refund. *Id.* at 42, 44. The Individual further indicated that his failure to timely file his taxes was not due to any financial problems, but rather

“missing that one piece of documentation was the trigger of the cascade of failures to file.” *Id.* at 42. He testified that he took “full responsibility for not having done this [filing] sooner.” *Id.*

The Individual submitted documentation showing that he filed his outstanding Federal and State personal tax returns for years 2016 through 2021 ahead of the hearing date. Tr. at 12. Regarding his Federal taxes, the Individual submitted copies of his unsigned Federal tax returns for tax years 2016 through 2021 and a copy of an IRS Account Transcript for each of those years. Ex. A; Ex. B; Ex. C; Ex. D; Ex. E; Ex. F. The Individual’s IRS Account Transcripts reflected that for each of those years, the IRS received the Individual’s tax returns in February 2023 and subsequently processed all of his Federal tax returns between March and April 2023. Ex. A at 3; Ex. B. at 3; Ex. C at 3; Ex. D at 3; Ex. E at 3; Ex. F at 3. The Individual testified that he overpaid his Federal taxes for 2016 through 2018 but he did not receive a refund from the IRS because he needed to file his taxes earlier since “there’s a three-year limit on when you can receive a refund and the exceptions for that three-year limit didn’t apply to [him].” *See* Tr. at 13–15. In support of his testimony, the Individual’s IRS transcripts for 2016 through 2018 and his Federal tax returns for 2016 through 2018 reflected that for each of those years, the Individual had overpaid his federal taxes. Ex. A at 2–3; Ex. B. at 2, 4; Ex. C. at 2, 4.

Regarding his Federal taxes for 2019 through 2021, the Individual testified that he received a refund for each of those years. Tr. at 16–17, 25. For his 2019 Federal taxes, his IRS tax transcript reflected that he was issued a refund of \$1,830 on March 15, 2023, and the Individual also submitted a copy of his bank statement showing a deposit from the IRS for \$1,830 on March 15, 2023. Ex. D at 3; Ex. G at 5. For his 2020 Federal taxes, he submitted an IRS tax transcript showing that he was issued a refund of \$2,320 on March 22, 2023, and a copy of his bank statement showing a deposit from the IRS for \$2,320 on March 22, 2023. Ex. E at 4; Ex. G at 5. For his 2021 Federal taxes, the Individual submitted an IRS tax transcript showing that he was issued a refund for \$3,042 on April 5, 2023, and a copy of his bank statement showed a deposit from the IRS for \$3,042 on April 5, 2023. Ex. F at 4; Ex. G at 5. In addition, the Individual submitted a copy of his IRS online account showing that for tax years 2019, 2020, and 2021, he had a zero balance because he owed no taxes. Ex. G at 4.

Regarding his 2016 through 2021 State taxes, the Individual submitted copies of his unsigned State income tax returns for 2016 through 2021 and a screenshot from his State Taxation and Revenue Department website, which shows the filing status of his 2016 through 2021 State tax returns as “Late – Processed.” Ex. A at 45; Ex. B at 5–6; Ex. C at 5–6; Ex. D at 4–5; Ex. E at 5–6; Ex. F at 5–6; Ex. G at 1. The Individual explained that his State tax returns for 2016 through 2021 do not show a signature because he retrieved them from the State Taxation and Revenue Department website, which only provided copies that omitted portions of the social security number and the signature. Tr. at 21–25. He stated that he does not have documentation showing when his State tax returns were received or processed. *Id.* at 23. He stated he would have filed the returns in approximately January or February of 2023. *Id.* The Individual also testified that he owed no taxes for 2016, 2017, or 2018 to the State Taxation and Revenue Department, however, he did not receive any refunds for those three years because the State has a three-year limit on when he could receive a refund. *Id.* at 19. His State tax returns for 2016 through 2018 reflected that for each of those years, the Individual had overpaid his State taxes. Ex. A at 5; Ex. B. at 6; Ex. C. at 6.

Regarding his State taxes for 2019 through 2021, the Individual stated that he was eligible to receive a refund for each of those years. Tr. at 25. He submitted a screenshot of his online account from his State Taxation and Revenue Department website which reflected that he received a tax refund in the amount of \$376 for his 2019 State taxes on February 27, 2023; he received a refund of \$535 for his 2020 State taxes issued on March 2, 2023; and he received a refund of \$97 for his 2021 State taxes issued on March 23, 2023. Ex. G at 2. This was consistent with a copy of his bank statement which showed deposits from the State for the same refund amounts that were shown in the screenshot of his online account. Ex. G at 3.

The Individual testified that he filed his Federal and State taxes for year 2022. Tr. at 17. He asserted that his future plans regarding filing his taxes are to “keep up with them on a regular basis.” *Id.* at 19. He testified that he has not put any structures in place to help him remember to file his taxes every year because “there’s plenty of reminders in the media to tell you that tax[-]day is coming up.” *Id.* at 20. The Individual explained that he starts seeing reminders to file taxes on television at the end of December, and at the beginning of the year in January. *Id.* at 26. He also stated that as it gets closer to April, he gets reminders in the media that taxes are due. *Id.* He admitted that he saw those same reminders to file his taxes from 2016 through 2021. *Id.* at 26–27.

When asked what he would do in the future if he was missing a document necessary to prepare his taxes, he stated that these days, more information is available online in electronic form to download, so he will more than likely be able to get any documentation he is missing from an online website. Tr. at 43. The Individual also asserted that undergoing the administrative review process has impacted him and is sufficient for him to assure that he will file his taxes on time in the future.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness 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 security concerns noted by the LSO regarding Guideline F. 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.

- (a) The Adjudicative Guidelines provide that conditions that could mitigate a security concern under Guideline F include: 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 . . . 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;
- (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.

I find that factor ¶ 20 (a) does not apply to resolve the security concerns. First, the Individual's pattern of failing to file his tax returns continued until as recently as 2021, and therefore cannot be said to have occurred so long ago. Also, very little time has passed since the Individual took significant action to mitigate the security concerns, as he did not choose to file his 2016 through 2021 Federal and State tax returns until approximately February 2023, which was one month after he was notified his security clearance was being suspended. Thus, as of the hearing date, the Individual could only demonstrate an approximately four-month history of taking action to file six years of delinquent tax returns. Second, the Individual's behavior was frequent because he failed to file his tax returns for six consecutive years without any significant change in his behavior or attempt at resolution.

Third, his behavior did not occur under such circumstances that it is unlikely to recur. Losing or misplacing a document is not an unusual circumstance and is not a sufficient basis upon which to fail to satisfy a legal requirement to file a tax return. What I find especially concerning is that even after obtaining the missing document he needed to file his 2016 tax return, the Individual did not file his 2016 tax returns and continued to not file taxes through 2021. While the Individual asserted that his learning disability made preparing his tax returns more time-consuming, he was able to file his delinquent tax returns in 2023 for six years he had missed without assistance from the IRS, a tax preparer, or tax preparation software. He admitted that he could prepare and file his taxes on his own and asserted he did not need financial counseling. Moreover, after he was notified in the January 2023, Notification Letter that his security clearance was suspended, the evidence shows that he was able to successfully file all of his delinquent tax returns one month later, in approximately February 2023. Additionally, aside from his testimony at the hearing, he provided no corroborating evidence of his learning disability. Therefore, I do not find it credible that the Individual's learning disability was of such severity that it rendered him unable to timely file his tax returns for six consecutive years. In addition, I do not find credible the Individual's assertions that the messages he receives from the media are sufficient reminders for him to file his taxes on time in the future. He admitted that he received such media messages for each tax year from 2016 through 2021, and they did not spur him to timely file his tax returns for those years. Thus, I cannot conclude that the Individual's failure to file his tax returns is unlikely to recur.

By failing to file his tax returns for an extended period, from 2016 through 2021, and choosing not to take significant actions to resolve his tax issues until very recently, the Individual has also shown that his behavior continues to cast doubt upon his current reliability, trustworthiness, or good judgment. Despite his assurances to the OPM investigator in June 2022, that he was going to file his delinquent tax returns “within the next few weeks,” he still had not filed his tax returns as of November 2022. Ex. 7 at 57. He then provided additional subsequent assurances by stating that he was “close to being able to file” in his November 2022 LOI response. Ex. 5 at 1. However, the Individual did not file his delinquent tax returns until approximately February 2023, which shows that he delayed filing his taxes for eight months after the assurances that he provided to the OPM investigator. This significant delay demonstrates that the Individual’s assurances are not supported by his actions, thereby casting doubt on his reliability and trustworthiness. Moreover, the Individual provided no reasonable excuse for his failure to seek an extension to file his tax returns despite knowing he was able to do so, which casts doubt on his judgment and ability to take appropriate action in the future. The Individual has not demonstrated he can be trusted to consistently file his tax returns every year. His continued failure to file these returns until prompted to do so because of the present proceeding creates serious doubt as to the Individual’s ability to be trusted to follow rules or regulations. Therefore, I find the Individual has not mitigated the security concerns under factor ¶ 20(a). *See Personnel Security Decision*, OHA Case No. PSH-19-0040 (2019) (Administrative Judge’s finding that despite filing all his outstanding tax returns, the Individual did not mitigate under ¶ 20 (a) in part because of the pattern of failure to file taxes continued until relatively recently and over an extended period of time).

Regarding factor ¶ 20(b), there is no evidence the Individual’s failure to file tax returns for six consecutive years was due to circumstances beyond his control and that he acted responsibly under the circumstances. As noted above, the Individual allegedly failed to file his 2016 tax return because he did not have a document necessary to prepare the return. However, despite having obtained the missing document in 2017, the Individual still failed to act responsibly under the circumstances by neglecting to file his 2016 tax returns when he had all tax related information which he needed to do so, and he continued to not file any tax returns for five additional years. Moreover, although he was aware that he could file a request for an extension, by deciding to instead avoid addressing his tax filing obligations, he again did not act responsibly under the circumstances. While he asserted that he took full responsibility for not filing his tax returns sooner, his behavior demonstrated a lack of responsibility over a continuous six-year period. Therefore, I find the Individual has not mitigated the security concerns under factor ¶ 20(b).

Regarding factor ¶ 20(c), the Individual’s failure to fail his tax returns from 2016 to 2021 was not due to financial strain, for which the Individual would have benefitted from financial counseling. The Individual also testified he did not seek financial counseling. Therefore, I find that mitigating factor ¶ 20(c) is not applicable to this case.

Regarding factor ¶ 20(d), there is no evidence the Individual owed taxes because of his failure to file tax returns from 2016 to 2021 or that he has any overdue debts that need to be resolved. Therefore, I find that mitigating factor ¶ 20(d) is not applicable to this case.

Regarding factor ¶ 20(e), the Individual did not owe any taxes nor does he have any past-due debt resulting from his failure to file tax returns from 2016 to 2021. Therefore, I find that mitigating factor ¶ 20(e) is not applicable to this case.

Regarding factor ¶ 20(f), the security concerns raised by the LSO do not involve unexplained affluence. Therefore, I find that mitigating factor ¶ 20(f) is not applicable to this case.

Regarding factor ¶ 20(g), the Individual submitted documentation sufficient to establish that he filed his Federal and State income tax returns for years 2016 through 2021. Nevertheless, I find that this mitigating factor is outweighed by my concerns described above. Any mitigation provided by the Individual's very recent filing of his delinquent tax returns is overshadowed by the longstanding nature of the behaviors that have raised these security concerns. As explained above, I am not convinced that the Individual's behavior is unlikely to recur. Accordingly, I conclude that the Individual has not resolved the Guideline F security concerns.

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 not 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 not 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