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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: April 11, 2023) Case No.: PSH-23-0071
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Issued: June 26, 2023

Administrative Judge Decision

Phillip Harmonick, 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

On July 7, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with a periodic reinvestigation of his eligibility for access authorization. Exhibit (Ex.) 6 at 43.² The Individual disclosed on the QNSP that he had not filed or paid federal or state personal income taxes for the 2020 and 2021 tax years and estimated that he owed \$7,000 in unpaid taxes. *Id.* at 39.

The local security office (LSO) subsequently issued the Individual a letter of interrogatory (LOI) concerning his financial and tax situation. Ex. 5. In his response, the Individual indicated that he had not yet filed federal or state personal income tax returns for the 2020 and 2021 tax years, and that he did not know how much he owed in unpaid taxes. *Id.* at 5.

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 The internal pagination of numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, Ex. 6 is not consecutively paginated throughout the document, and the forty-third page of Ex. 6 is not numbered. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, 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 hearing. The LSO submitted seven exhibits (Exs. 1–7). The Individual submitted two exhibits (Exs. A–B). The Individual testified on his own behalf. Hearing Transcript (Tr.) at 3, 9. The LSO did not call any witnesses to testify. *Id.* at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1. “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.” Adjudicative Guidelines at ¶ 18. The SSC cited the Individual’s failure to file federal or state personal income tax returns for the 2020 and 2021 tax years. Ex. 1. The LSO’s allegations that the Individual failed to file federal and state personal income tax returns as required justify its invocation of Guideline F. Adjudicative Guidelines at ¶ 19(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 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 Dep’t 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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *Id.* at § 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 did not timely file federal or state personal income tax returns for the 2020 or 2021 tax years. Ex. 6 at 43; Ex 5 at 5; Tr. at 14. On April 18, 2022, the Individual made a payment of \$1,000 to the Internal Revenue Service (IRS) for the 2021 tax year in connection with filing a request for an extension to file his federal personal income tax return for the 2021 tax year. Ex. A at 10. The IRS granted the Individual an extension to October 15, 2022, to file the tax return. Ex. C at 4.

On July 7, 2022, the Individual signed and submitted the QNSP. Ex. 6 at 43. The Individual disclosed on the QNSP that he had not filed or paid federal or state personal income taxes for the 2020 and 2021 tax years and estimated that he owed \$7,000 in unpaid taxes. *Id.* at 39.

The Individual was interviewed by an investigator (Investigator) on October 12, 2022, as part of a background investigation into his eligibility for access authorization. Ex. 7 at 58. During the interview, the Individual indicated that he failed to file federal or state personal income tax returns, or to pay personal income taxes, “due to [the] COVID-19 pandemic situation interrupting [his] regular . . . schedule.” *Id.* at 59. The Individual told the Investigator that he planned to file his tax returns later that month and pay the \$7,000 in unpaid personal income taxes that he estimated that he owed by the end of 2022. *Id.* However, the Individual did not file the tax returns, and his extension from the IRS to file his personal income tax return for the 2021 tax year elapsed. Ex. C at 4.

The LSO issued the Individual the LOI in November 2022. Ex. 5 at 1. The Individual submitted his response to the LOI on December 7, 2022. *Id.* at 7. In his response, the Individual indicated that he did not timely file personal income tax returns due to “work[ing] a lot of hours” during the COVID-19 pandemic, having limited time due to daily chores and responsibilities in his personal life, and having to devote time to resolving the theft of his vehicle. *Id.* at 5. The Individual also asserted that he had waited to resolve his unpaid taxes due to spending approximately \$2,000 on vehicle repairs in 2022. *Id.* The Individual indicated that he was unsure how much he owed in unpaid personal income taxes, but that he planned to file his tax returns during his time off for the holiday season. *Id.* at 6.

In April 2023, the Individual completed and filed federal personal income tax returns for the 2021 and 2022 tax years. Tr. at 14; Ex. A; Ex. C at 3–5. The IRS accepted the Individual’s personal income tax return for 2022 and issued him a tax refund of \$9,150 on May 12, 2023. Ex. C at 5, 7. On May 18, 2023, the Individual paid \$3,233 to the IRS for the 2021 tax year. Ex. C at 4, 7; *see also* Ex. A at 12 (showing that the Individual calculated that he owed \$3,233 on his federal personal income tax return for 2021).

At the hearing, the Individual testified that he filed his federal personal income tax return for the 2020 tax year and state personal income tax returns for 2020, 2021, and 2022. Tr. at 14, 16. The Individual provided copies of unsigned tax returns that he claimed to have sent to the IRS and his state taxing authority. Ex. A at 1–9, 15–16, 21–22. However, the Individual denied having received any confirmation from the IRS or state taxing authority that these tax returns were received. Tr. at

16–17. The Individual did not submit other evidence, such as certified mail receipts, electronic filing receipts, an affidavit from a tax preparer, etc., that might have substantiated his claim to have filed the tax returns in question. Moreover, the Individual’s IRS tax transcripts show that the IRS received the Individual’s tax returns for 2021 and 2022, but not 2020. *Compare* Ex. C at 1–2 (failing to show that the IRS received a tax return for the 2020 tax year and indicating “no tax return filed”) *with* Ex. C at 3–5 (showing that the IRS received the Individual’s tax returns for the 2021 and 2022 tax years in May 2023). In light of the Individual’s IRS tax transcript reflecting that the IRS has not received the Individual’s tax return for the 2020 tax year, and the absence of evidence corroborating the Individual’s claim to have filed the tax returns in question, I find that the Individual did not demonstrate that he filed his 2020 federal personal income tax return or his state personal income tax returns for 2020, 2021, and 2022.

V. ANALYSIS

A. Guideline F

Conditions that could mitigate security concerns 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 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.

Adjudicative Guidelines at ¶ 20.

The Individual's failure to timely file personal income tax returns did not happen "long ago" as he only claimed to have filed the tax returns approximately five weeks prior to the hearing and, as explained above, the Individual has not demonstrated that he filed all federal and state tax returns he was required to file. Nor was the situation "infrequent" as the Individual failed to file personal income tax returns for consecutive years. Moreover, the Individual relied on vague excuses related to the COVID-19 pandemic and being busy at work for his failure to comply with his obligation to timely file personal income tax returns. Despite telling the Investigator that he would file the tax returns in October 2022, and the LSO that he would file the tax returns during the 2022 holiday season, the Individual delayed filing until mere weeks before the hearing. The Individual's failure to timely meet his legal obligations, and delay in following through on commitments to file his personal income tax returns, present serious doubt as to his trustworthiness and ability or willingness to comply with rules and regulations when not subject to monitoring as in the case of the hearing process. Accordingly, I find the first mitigating condition under Guideline F inapplicable. Adjudicative Guidelines at ¶ 20(a).

The Individual has not established the presence of an external factor that prevented him from timely filing his personal income tax returns. Rather, the Individual cited to the COVID-19 pandemic and work and personal obligations, which were surely present for millions of Americans who timely filed their personal income tax returns. I find that the Individual has not established the applicability of the second mitigating condition. *Id.* at ¶ 20(b).

The third mitigating condition is inapplicable because the Individual did not assert that he pursued financial counseling. *Id.* at ¶ 20(c). The fourth and fifth mitigating conditions are inapplicable because the LSO did not allege that the Individual had unresolved consumer debts. *Id.* at ¶ 20(d)–(e). The sixth mitigating condition is inapplicable because the LSO did not allege that the Individual had displayed unexplained affluence. *Id.* at ¶ 20(f).

The seventh mitigating condition is inapplicable because the Individual did not satisfactorily establish that he filed his federal personal income tax return for 2020 or his state personal income tax returns for 2020, 2021, and 2022. *Id.* at ¶ 20(g). Whether or not the Individual owes taxes for those tax years cannot be determined until the IRS and the Individual's state taxing authority receive and process the tax returns in question. Moreover, even if the Individual had demonstrated that he filed the tax returns, I would nevertheless find that the mitigating effect of having done so would be outweighed by the security concerns presented by the Individual's unexplained delay in filing his tax returns after having committed to the Investigator and LSO to do so promptly.

I find that the Individual's explanations for not meeting his legal obligation to timely file personal income tax returns, and failure to timely file the personal income tax returns after representing to the Investigator and LSO that he would do so, raise serious doubt as to his trustworthiness and ability or willingness to comply with rules and regulations. I harbor concerns that this pattern of behavior will recur when the Individual is no longer subject to monitoring through the adjudication of his eligibility for access authorization, and that his casual disregard for his tax obligations may present itself with respect to rules and regulations directly applicable to his obligations as a clearance holder. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline F of the Adjudicative Guidelines. 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 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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals