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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: August 15, 2023)	Case No.: PSH-23-0123
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_____)		

Issued: November 21, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 granted.

I. Background

The Individual is currently employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the investigation process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in October 2022. Exhibit (Ex.) 8. In the QNSP, the Individual disclosed that he had "failed to file or pay Federal, state, or other taxes when required by law or ordinance." *Id.* at 52. The Individual specifically indicated that he had failed to file or pay federal income tax for tax years 2020 and 2021. *Id.* at 52–53. Following the submission of the QNSP, the Individual underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator in November 2022. Ex. 9. Subsequently, the Local Security Office (LSO) instructed the Individual to complete a Letter of Interrogatory (LOI), which he submitted in April 2023. Ex. 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that 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.

derogatory information raised security concerns under Guideline F (Financial Concerns) of the Adjudicative Guidelines. *Id.* The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). Ex. 2. The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and submitted 11 exhibits, marked as Exhibits A through K. The DOE Counsel submitted nine exhibits, marked as Exhibits 1 through 9, and did not call any witnesses.

II. Notification Letter

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE raised security concerns under Guideline F of the Adjudicative Guidelines.

Guideline F provides 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." Adjudicative Guidelines at ¶ 18. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are a "[f]ailure to file . . . or failure to pay annual Federal, state, or local income tax as required[.]" *Id.* at ¶ 19(f).

Under Guideline F, the LSO alleged that the Individual admitted in the April 2023 LOI that he failed to file "his federal income tax return for tax year[s] 2020 and 2021." Ex. 1 at 1. The LSO's invocation of Guideline F is 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 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 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.* § 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 and Hearing Testimony

During the hearing, the Individual explained that, as a contractor, he worked in various states, but that throughout the relevant period, he maintained a residence in State 1. Hearing Transcript, OHA Case No. PSH-23-0123 (Tr.) at 14–15, 39. Once he secured employment in State 2, he worked and lived in State 2 most of the year, but he would visit his wife at their residence in State 1 up until her passing in January 2023. *Id.* at 14-15, 17, 38, 41; Ex. B at 1.

During the November 2022 ESI, the Individual confirmed that he had not yet filed federal income taxes for tax years 2020 and 2021. Ex. 9 at 82; Tr. at 16. He explained to the investigator that his wife usually filed the taxes, but due to her “health condition,” the taxes had gone unfiled. Ex. 9 at 82. In a statement accompanying his request for a hearing, the Individual explained that his wife fell ill in 2019 or 2020. Ex. 2 at 2. In a subsequent written statement, the Individual indicated that he used to “share[] the responsibility of the household” with his late wife. Ex. A at 1. He also stated that “[d]ue to [his] absence, [his wife] managed [their] finances.”² *Id.* During his wife’s illness, the Individual “had suspected . . . that her mental capacity could be diminished[]” and that his wife did not have the ability to handle the household finances, especially because the treatment for her illness included an operation on her brain. Tr. at 42.

According to the Individual, although his wife was ill, a team of five treating physicians “felt that she was competent and encouraged [them] to allow her to maintain nonstrenuous household chores and responsibilities, including [their] financial obligations.” Ex. A at 1; Ex. H at 2; Tr. at 41–42; Ex. 6 at 1; Ex. 2 at 1. Not only “were her physicians highly optimistic of her prognosis[,]” but the Individual’s wife wanted to continue handling the household finances, despite the Individual’s suggestion that he “assume the duties of the taxes[.]” Ex. 2 at 2. The Individual stated in his written request for a hearing that his wife “vehemently disagreed” and “insisted that she continue” handling the taxes. *Id.* He stated that he would discuss the household finances with his late wife on a monthly basis, and “there was no mention of late or missed payments.” Ex. A at 1. He also never saw “any evidence of oversights, procrastination, or errors.” Ex. H at 2; Ex. 6 at 1. The Individual indicated, in his request for a hearing, that his wife “had been punctual” in terms of filing their taxes in the years prior to 2020, and he “did not see deterioration in her illness.” Ex. 2 at 1. However, the Individual accepted “ultimate responsibility” for his financial state and recognized that his current financial state is his “failure.” Ex. H at 2; Tr. at 43.

During the November 2022 ESI, the Individual stated that he was “working with his spouse to gather the necessary documentation” to file their 2020 and 2021 taxes and that they intended “to hire an accountant in” December 2022. Ex. 9 at 82. He testified that upon his return to State 1, following his wife’s passing, he learned in early February 2023 that no action had been taken on the matter of the taxes. Tr. at 16–17, 19; Ex. A at 2. In the April 2023 LOI, the Individual explained that because his wife would handle the finances, he was “unaware of her oversights” and that since

² The Individual testified that his wife primarily handled the household finances because he “never knew how stable [he] would be on a job.” Tr. at 41.

her passing, he had “discovered many problems” and was in the process of “correcting [those] oversights.” Ex. 6 at 1. When he returned home following his wife’s passing, he “discovered that [their] financial documents and taxes were not opened or sorted.” Ex. 2 at 2. At the time he completed the LOI, the Individual was in State 1, collecting necessary documentation to file the outstanding income taxes. *Id.*

The Individual described his federal income tax forms for tax years 2020 and 2021 as being in a state of “disarray.” Tr. at 17, 22; Ex. A at 2; Ex. 2 at 1. The Individual testified that he “figured that if . . . those forms were in the situation that they were, then [he] had suspected that [he] would probably have financial problems, as well.” Tr. at 17. The Individual indicated that following his wife’s passing, he also discovered “credit card statements with unbelievable charges on them.” Tr. at 17–18, 34–37, 39–40; Ex. 2 at 1. The Individual testified that the credit card statements revealed “charges that [he] . . . needed to research” and that he felt his wife “was being taken advantage of[.]” Tr. at 34–35. In January 2023, he found a credit card statement that contained a charge of \$2,500 for travel. *Id.* at 40. While he was investigating the charge, he learned the credit card had late charges, which he immediately resolved with his credit union by transferring the requisite funds. *Id.* In the following months, he began uncovering credit card statements for cards that were in his wife’s possession. *Id.* When asked about the balance on the credit cards, the Individual testified that just one card had a balance of approximately \$24,000. *Id.* at 39–40. Accordingly, the Individual reached out to each financial institution and “brought [himself] current and paid those [balances] off.” *Id.* at 40. He resolved the matter of the outstanding credit card balances in either July or August 2023. *Id.* The Individual also stated in his written request for a hearing that he “discovered late bills, county taxes and income taxes” that resulted in him “physically visit[ing] offices” to pay “all delinquencies without dispute or requesting variances.” Ex. 2 at 2. The process of collecting necessary documents and satisfying the aforementioned outstanding obligations “took [the Individual] several months[.]” *Id.*

Following the arrangements the Individual made for his wife’s burial, he “gathered all the documentation,” and immediately “called . . . the tax preparer.” Tr. at 18–19. The Individual testified that he “was able to get through to [the tax preparer]” in either February or March 2023. *Id.* at 19. The tax preparer informed the Individual that she would help the Individual file his federal income taxes for tax years 2020 and 2021, and the Individual testified that he even offered her more money to expedite the filing process. *Id.* at 20. In May 2023, the Individual signed and provided the DOE a Certificate to Provide Information, indicating that he would file “[d]ocumentation in the form of a certified mailing receipt, electronic filing receipt, or electronic verification from the Internal Revenue Service [(IRS).]” Ex. 7. He testified that at the time he signed the certificate, his intention was “to file the taxes as quickly as possible.” Tr. at 22. The Individual stated that, based on his records, the tax preparer “finally tried to do something with the taxes[.]” in June or July 2023, and she told him “that she was going to have the taxes done around the date of July 15th[.]” *Id.* at 20, 25. By July 18, he realized that the tax preparer either “was not answering [his] phone [calls] or she [did not] file the taxes.”³ *Id.* at 23–28. As the Individual’s tax

³ The Individual testified that he attempted to secure the services of a different tax preparer during this time, but he “was finding out that they were all so busy[.]” and accordingly, he “was hesitant to drop [the tax preparer] when [he] was thinking that she was working on the taxes[.]” Tr. at 26. He testified that he “chose wrong.” *Id.*

preparer failed to respond to his emails and calls,⁴ he hired a certified public accountant (CPA) in State 2 in August 2023. *Id.* at 23–29; Ex. A at 2; Ex. C at 1; Ex. D at 1; Ex. E at 1; Ex. F at 1; Ex. G at 1; Ex. 2 at 1. In an August 2023 letter signed by the CPA, the CPA stated his understanding that “this is a time sensitive matter” and that he is “working diligently [with the Individual] to complete the returns as quickly as possible.” Ex. G at 1. The Individual indicated in a written statement that his CPA has “experience[] with complicated tax returns” and has “contacted the IRS for historical data.” Ex. H at 3; Tr. at 29. He testified that he “needed somebody that understood the gravity of [his] situation” and that he “needed an accountant that could do some forensics, because [he] was finding . . . more documents.” Tr. at 29. Through three separate questionnaires the Individual completed, his CPA was able to gather information that led him to conclude that filing the Individual’s taxes “was not going to be as simple as what the previous tax preparer had suggested it would be.” Tr. at 30–32; Ex. I; Ex. J; Ex. K. An examination of the questionnaires reveals that such matters as the sale of real estate, self-employment income and related expenses, rental income, information regarding improvement to real estate, and relevant tax documents for employment in different states are all pertinent to the Individual’s tax filings. Ex. I; Ex. J; Ex. K.

Although the Individual’s CPA went on extended leave from October 2023 to November 2023, the Individual testified that he had been in contact with the CPA’s assistant. Ex. H at 1; Tr. at 33–34. However, as of the hearing date, the Individual’s federal income taxes had not been filed for tax years 2020, 2021, and 2022.⁵ Tr. at 16. The Individual indicated that he feels that “because of [the CPA’s] . . . persistence in his work[,]” his tax returns “will be one of [the CPA’s] first orders of business” upon his return to the office. Tr. at 34. The Individual also indicated that he does not anticipate owing the government any outstanding amount in taxes, as he usually has more money withheld from his paycheck than he expects to be taxed, and further, because he intends “to take a more active role in handling financial matters,” he “does not anticipate any future financial issues.” Ex. 9 at 82–83; Tr. at 35–36; Ex. 6 at 1–2; Ex. 2 at 1. The Individual testified that he was not “involved too much” before his wife’s passing, “because of [his] travels[,]” but now, he has “made sure that [he has] documentation” and that he maintains duplicate documents on his computer. Tr. at 35.

V. Analysis

The Adjudicative Guidelines provide that 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;

⁴ The Individual submitted emails from May and July 2023, in which he asked his tax preparer for a status update. Ex. C at 1; Ex. D at 1; Ex. E at 1; Ex. F at 1. It should be noted that it appears he sent the July 18 email in which he asked the tax preparer to send proof of filing to an incorrect email address. Ex. E at 1.

⁵ At the hearing, the Individual confirmed that he had not yet filed income taxes for tax year 2022 and stated that he had also engaged the tax preparer to file his taxes for tax year 2022. Tr. at 24–25, 29, 38. It should be noted that the SSC did not allege that the Individual failed to file income taxes for tax year 2022. Ex. 1 at 1.

- 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 knew that his 2020 and 2021 taxes had not been filed at least as early as October 2022, which was when he disclosed it in the QNSP. As of the date of the hearing, the Individual's 2020, 2021, and 2022 federal income taxes were still outstanding. The Individual testified as to the circumstances that led to this situation, including that his wife had been solely responsible for the couple's finances, that she was unable to file the taxes for tax years 2020 and 2021 due a serious illness, that he remained unaware of their financial woes throughout this time, and that the Individual's efforts to engage the services of tax professionals since his wife's death has so far not yielded any success. While I am sympathetic to the hardships and struggles that the Individual described, unfortunately the Individual provided hardly any evidence, aside from his own statements, to corroborate his testimony. There was no testimony or written accounts from witnesses with knowledge of his situation, and there were no documents or receipts that could corroborate his efforts to resolve his financial situation, outside of the unfiled income taxes. Had such evidence been provided, I might have been able to find that the Individual's failure to file his taxes "occurred under such circumstances that it is unlikely to recur." *Id.* at ¶ 20(a). But based on the Individual's testimony alone and the thin record before me, I am unable to make such a finding. The Individual's taxes remain unfiled, and given the complexities they entail and the complications the Individual has encountered thus far, I am not left without any doubt that his tax situation will be resolved soon. As such, I cannot conclude that the Individual's 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 pursuant to mitigating factor (a). Additionally, I cannot conclude that the financial problems were largely beyond the Individual's control and that he acted responsibly under the circumstances pursuant to

mitigating factor (b), for the simple reason that he knew for at least a year prior to the hearing that his federal income taxes had not been filed.

There is no indication in the record that the issue of the Individual's unfiled federal income taxes for tax years 2020 and 2021 is the sort of financial issue that is amenable to financial counseling, and assuming it is, the income taxes have not yet been filed, and accordingly, the problem has yet to be resolved and is not under control. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (c).

As the SSC does not contain any allegations of affluence or delinquent debts, the mitigating factors at (d), (e), and (f) are not applicable in this case.

Additionally, as there is no indication in the record that the Individual has made arrangements with the IRS to file or pay any federal income taxes owed for tax years 2020 and 2021, the requirements of mitigating factor (g) have not been met.

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 not brought forth sufficient evidence to resolve the stated security concerns under Guideline F as set forth in the SSC. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals