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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: November 6, 2023) Case No.: PSH-24-0013
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Issued: February 16, 2024

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 be granted.

I. Background

The Individual is currently employed with a DOE contractor in a position that requires her 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.) 6. In the QNSP, the Individual disclosed that she failed to file her federal and state income tax returns for tax year 2019, as "the time to file had already ended and it was [too] late[.]" *Id.* at 33. Following the Individual's submission of the QNSP, the Individual underwent an Enhanced Subject Interview (ESI) in December 2022, which was conducted by an investigator, and submitted a Letter of Interrogatory (LOI) in June 2023 at the behest of the Local Security Office (LSO). Ex. 7; Ex. 5.

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 her that it possessed reliable information that created substantial doubt regarding her eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Concerns) of the Adjudicative Guidelines. *Id.* The Notification Letter informed the Individual that she was entitled

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

to a hearing before an Administrative Judge to resolve the substantial doubt regarding her 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 her own behalf, presented the testimony of her current foreman, and submitted eight exhibits, marked as Exhibits A through H. The DOE Counsel submitted seven exhibits, marked as Exhibits 1 through 7, 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 June 2023 LOI that she failed to file her federal and state income tax returns for tax year 2019. 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 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.* § 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

Regarding the matter of her unfiled 2019 taxes, the Individual told the investigator and indicated in her LOI that “[b]y the time [she] thought about filing the [outstanding] taxes[,]” the filing deadline of April 15, 2020, had already passed. Ex. 7 at 63; Ex. 5 at 1. As a result, the Individual “was not sure what to do[,]” and at the time of the ESI, she was searching for a tax professional to assist her. Ex. 7 at 63. She told the investigator that she would file the income taxes in question in 2023. Ex. 7 at 63.

She confirmed in the June 2023 LOI that she had not filed her federal and state income tax returns for tax year 2019, and that her failure to do so was primarily due to COVID-19 shutdowns. Ex. 5 at 1. She also wrote that “[n]o federal or state taxes for tax year 2019 have been filed[] due to the fact that [she] did not owe taxes[.]” *Id.* The Individual stated that she did not owe any outstanding amount in unpaid federal or state income taxes for tax year 2019, and that based on her understanding of the law, she had up to three years “to file a request for a refund[.]” *Id.* She also stated her belief that if she did not owe an outstanding amount in federal or state income taxes, she was not required to file. *Id.* at 2. She also confirmed in the LOI that she had successfully filed all tax returns for all years subsequent to 2019. *Id.* She stated her intention to file her income taxes for tax year 2019. *Id.*

In her request for a hearing, the Individual indicated that she had prepared her tax returns for the 2019 tax year in mid-September 2023, and that they were mailed to the Internal Revenue Service (IRS) and the state tax authority two days after their preparation. Ex. 2 at 3, 8; Ex. F at 1–2.

At the hearing, it was revealed that the Individual had indeed filed her federal and state income taxes for tax year 2019 in May 2020, but she was under the mistaken belief that she had failed to do so while she was completing her 2022 QNSP, which ultimately resulted in a second 2019 tax filing in September 2023. Ex. A; Tr. at 24. The Individual testified that during the COVID-19 pandemic, she had visited several tax preparers to file her taxes prior to their due date, only to be turned away. Tr. at 24. So, she decided “to give it a little bit of time” in hopes that she would be accepted as a client at a later point in time. *Id.* Although she ultimately filed her federal and state income taxes for tax year 2019 in May 2020, this memory caused her some confusion when she was completing her 2022 QNSP. *Id.* She was further confused when she discovered that she was still in possession of her 2019 W-2 Wage and Tax Statement (W-2) while completing her 2022 QNSP. *Id.* at 24, 26–27. The Individual testified that as she was completing her QNSP, she was looking through “a notebook where [she] keeps . . . important information[.]” *Id.* When she discovered her 2019 W-2 in the notebook, she assumed that she had failed to file her income taxes for tax year 2019. *Id.* at 24–25, 27. She explained that she usually completes her taxes with the assistance of a program located at a local university, and it is their general practice to retain the W-2. *Id.* at 27. So, when she came upon the question pertaining to tax filings in the QNSP, she indicated that she had failed to file her income taxes for tax year 2019. *Id.* at 25. Accordingly, the

Individual filed her federal and state income taxes for tax year 2019 a second time in 2023.² *Id.* at 28. The Individual submitted a complete copy of the 2019 federal and state income tax returns that she filed in September 2023.³ Ex. A. A copy of these returns indicates that the Individual’s federal refund amount was \$590, and that her state refund amount was \$163. *Id.* at 2–3. The Individual testified that days prior to the second prehearing conference in this case, she had contacted an IRS representative to obtain a copy of her 2019 tax transcript. Tr. at 25, 30–31. The IRS representative alerted her to the fact that she had filed her federal income taxes for tax year 2019 in May 2020 and that she received her refund via direct deposit the same month. *Id.* at 25, 30. The tax transcript that the Individual submitted confirms that the Individual filed her federal income taxes for tax year 2019 in May 2020 and that she received her return the same month. Ex. G. It also indicates that the Individual received a refund of \$590. *Id.* The Individual also submitted a screenshot of her bank account statement indicating that she received a refund of \$163 from the state tax authority in May 2020. Ex. H; Tr. at 32–33.

The Individual’s foreman testified that the Individual requires an access authorization to access the secured areas in which she works, and that she is currently being escorted to perform her work duties. Tr. at 14. The Individual later clarified that although she had been escorted into secured areas, more recently, her work has been restricted to unsecured areas. *Id.* at 19. Her foreman went on to testify that he interacts with the Individual on a daily basis and noted that the contractor is “happy with her work.” *Id.* The foreman described the Individual as “an honest woman,” and he has not questioned “her ability to be around classified information[.]” *Id.* at 14–15. He confirmed his belief that the Individual is a trustworthy, honest, and reliable person. *Id.* at 16.

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;
- 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

² The Individual testified that she knew she had filed her income taxes for all other years “because [she] always file[s] her taxes.” *Id.* at 28.

³ To provide further evidence of her financial responsibility, the Individual submitted paperwork pertaining to loans that she had satisfied in full in September and December 2023, and the front page of her credit report, revealing her credit score. Ex. B; Ex. C; Ex. D.

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.

Although the Individual stated in her 2022 QNSP that she had failed to file her federal income tax return for tax year 2019, and further confirmed this information in the LOI and during the ESI, I am satisfied that the Individual has mitigated the stated concerns. Her confusion regarding the matter resulted in two filings. I have before me a copy of the tax filing, she sent to the IRS and state tax authority in 2023, indicating that the Individual was owed a federal return in the amount of \$590 and a state return in the amount of \$163. Not only did the IRS tax transcript clearly state that the Individual had filed her income taxes for tax year 2019 in May 2020, but it also stated that she received a refund in the amount of \$590 in 2020. Further, although I do not have a tax transcript from the state tax authority, I do have a screenshot of the Individual's bank account statement indicating that the Individual received a deposit in the amount of \$163 from the state in May 2020, the amount reflected in the 2023 tax filing. Therefore, I am satisfied that the Individual filed her federal and state income taxes for tax year 2019 in May 2020, which mitigates the stated concerns pursuant to mitigating factor (g).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the stated security concerns under Guideline F as set forth in the SSC. Accordingly, the Individual has demonstrated that granting her 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 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