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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 21, 2023	)	Case No.:	PSH-24-0015
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Issued: March 1, 2024

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**Administrative Judge Decision**

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Brenda B. Balzon, 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."<sup>1</sup> 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 restored.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In October 2022, the Local Security Office (LSO) received an incident report that indicated the Individual received an Earnings Withholding Order to satisfy a state tax debt in the amount of \$294. Exhibit (Ex.) 3 at 17.

Subsequently, the LSO asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual completed on March 9, 2023. Ex. 6. In the March 2023, LOI, the Individual reported that the \$294 state tax debt was satisfied on October 13, 2022. *Id.* at 30. The Individual reported that he had not filed his federal personal income tax return for 2021, and he reported that he had not yet paid his state property taxes for 2021. *Id.* The Individual further reported in his LOI that his 2021 federal personal income tax return would be filed by June 2023. *Id.* at 31. On May 18, 2023, the Individual completed a second LOI. Ex. 5. In the May 2023, LOI, the Individual reported he still had not filed his federal personal income tax return for 2021 and that he intended to file

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<sup>1</sup> 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."

this return in June 2023. *Id.* at 22. The Individual also reported he owed a state property tax debt of approximately \$6,000, but he intended to satisfy this debt by fall 2023. *Id.* at 24.

Due to the unresolved security concerns stemming from the Individual's disclosures in the March 2023, LOI and the May 2023, LOI, the LSO informed the Individual, in a Notification Letter dated October 11, 2023, that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. Ex. 1 at 6–7. 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. *Id.* at 5.

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 16 lettered exhibits (Exs. A-H, J-N, and P-R)<sup>2</sup> into the record and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-24-0015 (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 substantial doubt concerning his eligibility for a security clearance. The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for suspending the Individual's 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 under Guideline F 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 his March 2023 and May 2023 LOIs, that he had not filed his federal personal tax return for 2021 and he had not paid his state property taxes, “resulting in a \$6,000 outstanding tax debt.” Ex. 1 at 5. 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*

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<sup>2</sup> The Individual did not submit an exhibit labeled I or O into the record.

*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. *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

At the hearing, the Individual testified that he did not timely file his federal personal income tax return for 2021 because he became “overwhelmed” by his home renovation project. Tr. at 13. The Individual explained that in 2019, his wife received an inheritance from her mother, in the form of stock. *Id.* at 21–22, 26. In 2021, the Individual decided to sell his home so he can use the sale proceeds to supplement his impending retirement. *Id.* at 14, 20–21. However, the Individual’s home needed “significant repairs” before it could be marketed for sale. *Id.* at 14, 20. The Individual stated that since 2021, he and his wife “were using [the wife’s] stock to help supplement the construction project” by selling the stock and using the cash to fund the renovation. *Id.* at 21–22. The Individual did not state when he began selling his wife’s stock. *Id.* at 21. He explained that he did not know that the money he gained from selling the stock would be taxed, so “we didn’t set aside money to pay the [Internal Revenue Service (IRS)] and [sic] State.” *Id.* at 25. He believed that because his wife inherited the stock, and because at the time they sold the shares, the value of the stock dropped, they would not have to pay taxes on the money they received. *Id.* When the Individual filed his 2021 federal personal income tax return, in July 2023, he stated he “misunderstood how taxes work,” and he was “shocked” when he learned he owed a lot of money in taxes because of the sale of the stock. *Id.* He also explained that because he believed he would receive a tax refund from the IRS, he did not believe filing the return late would “be an issue,” and he did not request an extension to file his federal personal income tax return. *Id.* at 14–15, 24–25.

As to why the Individual did not timely file his state property taxes, he again referenced his home renovation project, testifying that he was “involved with a very chaotic home project. It’s really hard to explain the level . . . . It was fully consuming me.” Tr. at 19–20. He submitted “before and after” photos of his house to demonstrate the extensiveness of the renovation. Ex. N. The Individual testified that when he learned he owed a significant amount of property taxes, he chose to get a home equity loan to obtain the funds necessary to pay the taxes. Tr. at 17, 22; Ex. 5 at 24. The Individual explained that he was using his wife’s stock to supplement the home renovation project, and

it got to the point where we were using it so much that I didn’t want her to have to sell stock to pay the taxes. I said, Look, we’re already running out of money to

finish our home renovation project. We're going to need to get some kind of refinance loan anyway. Let's just go get a loan, it will cover the taxes, it will give us the amount of money needed to finish the project.

Tr. at 21–22. The Individual also explained that because he encountered delays in getting his bank to process his loan, it took him three months to get the loan proceeds to pay his state property taxes. *Id.* at 17–18, 21.

The Individual further testified that in March 2023, the LSO raised the issue of his tax filings during its reinvestigation, which prompted him to resolve all his tax issues. Tr. at 16. He stated that he initially had difficulty obtaining the documentation he needed to file his 2021 federal personal income tax return. *Id.* at 21. He explained that due to the renovation to his home, he did not have a home office; he did not have a filing system; and he was unable to find the documents necessary to prepare and file his tax returns. *Id.* at 20–21. He stated it took him a month to find the documents he needed to file. *Id.* at 21. He stated he hired a Certified Public Accountant (CPA) who “knew what documents [he] needed to find from the different agencies” and helped him obtain all the documents he needed to prepare his taxes. *Id.* at 21, 28. Due to those delays, he stated that he did not have the forms completed to file his 2021 federal personal tax returns until July. *Id.* at 21.

The Individual submitted documentation to support his testimony that he resolved his 2021 federal personal income taxes and his 2021 state property taxes. As evidence that he filed his federal personal income tax return, he submitted a copy of his IRS account payment history, showing he paid the balance due for his 2021 personal federal income taxes. Ex. A; Tr. at 12. As for the Individual's 2021 state property taxes, the Individual testified that he has paid his property taxes. Tr. at 18–19, 30. In support of his testimony, he submitted a copy of his property tax statements and a document showing his county property tax payment history, with both exhibits reflecting that he paid his property taxes for 2020, 2021, and 2022. Ex. P; Ex. Q; Ex. F.

The Individual explained that he will not have issues filing his taxes in the future. Tr. at 30. He explained that his home renovation is seventy-five percent complete, and he has the resources to file and pay his taxes moving forward. *Id.* at 23, 30. The Individual submitted a copy of an account statement from two retirement accounts held by his wife, showing balances of over \$146,000 and \$50,000 available to pay any taxes he may owe.<sup>3</sup> *Id.* at 23–24, 31; Ex. G; Ex. H.

The Individual also explained he has prepaid his state and federal taxes for next year. Tr. at 23, 33. He submitted a copy of his IRS payment history, which reflects that the IRS received \$4,500 in estimated tax payments for year 2023. Ex. A. The Individual submitted a copy of an IRS payment voucher for year 2023, and a copy of a cashier's check, in the amount of \$4,500, as evidence he submitted \$4,500 in estimated taxes to the IRS for year 2023. Ex. D. The Individual also submitted a copy of state tax vouchers and a cashier's check in the amount of \$3,950, made payable to his state franchise tax board, as evidence he has pre-paid his state income taxes for year 2023. Tr. at 31–32; Ex. E. The Individual further testified that he has retained a tax professional, a CPA, who

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<sup>3</sup> The Individual also submitted a declaration from his wife, indicating the funds and stock holdings in the investment accounts “have been shared jointly with my husband throughout our entire marriage of 38 years.” Ex. J.

educates him about his taxes every time they meet. Tr. at 14, 25–26. He also stated the CPA is very helpful to him in getting all the documents he needs to complete his taxes. *Id.* at 28. The Individual also stated his CPA provided him with detailed instructions on how to file and pay his taxes and provided him vouchers to submit his payments. *Id.* at 27; Ex. 2 at 12–14. The Individual testified that he intends to use this CPA for all his tax filings in the future. Tr. at 29, 32.

## 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 sufficiently mitigated the security concerns raised by his failure to file his federal personal income tax return and pay his state property tax debts. I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should be restored. The specific findings that I make in support of this Decision are discussed below.

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 . . . 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.

Regarding factor ¶ 20(a), I find that the Individual's failure to file his 2021 federal personal income tax return and his failure to pay his 2021 state property taxes stemmed from him being disorganized and heavily preoccupied with his extensive home renovation. He testified that his purpose for the renovation was to make the house marketable so that he could sell his home and use the sale proceeds to supplement his impending retirement. I find that the Individual has put forth sufficient evidence to show that his failure to file his federal taxes and pay his property taxes occurred under such unique circumstances that it is unlikely to recur. The Individual testified that the renovation is now seventy-five percent complete and he provided demonstrative evidence in the form of "before and after" photos to show the extensiveness of the renovation and which reflects that it is near completion. The Individual also presented evidence that he hired a CPA, who assisted him with his tax filing and educated him on tax issues, and whom he intends to use for his future tax filings. Regarding the Individual's state property taxes, he showed that he successfully paid his property taxes by obtaining a loan to resolve the debt in full. Finally, the Individual has pre-paid his estimated 2023 federal and state taxes, and demonstrated through his financial statements for his retirement accounts that he has money available to pay any taxes he may owe in the future. Therefore, I find the Individual's untimely filing of his federal personal income tax return and failure to timely resolve his state property tax debt is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment. Accordingly, I find that the Individual has mitigated the security concerns under factor ¶ 20(a) of the Adjudicative Guidelines.

Regarding factor ¶ 20(b), the Individual acknowledged that the conditions that contributed to his failure to timely file his federal personal income tax returns and pay his state property taxes – his choice to renovate his home and his failure to organize the documents needed to timely file and pay his taxes – were conditions that were within his control. The Individual also acknowledged that his failure to file his federal personal tax return was based on a false assumption that he would not owe taxes and would merely have to pay a late fee. Therefore, I find that factor ¶ 20(b) of the Adjudicative Guidelines does not apply to this case.

Regarding factor ¶ 20(c), the Individual's failure to pay his state tax debt or timely file his 2021 federal personal income tax return was not due to an inability to manage his finances, which formal financial counseling would address. The Individual credibly testified that he consulted with a tax professional who is a CPA, and who instructed the Individual on proper filing, his payment obligations, and information regarding what documentation he needed to file his taxes. The Individual submitted his IRS payment history establishing that he resolved his federal personal income taxes for 2021. The Individual also submitted property tax statements and a copy of a cashier's check, demonstrating he paid his outstanding state property tax debt. Finally, the Individual submitted evidence he has pre-paid his estimated state property taxes and federal income taxes for next year, along with statements from his retirement accounts indicating he has over \$196,000 available to pay any taxes he may owe in the future. Therefore, I find that the Individual has resolved his untimely filing of his 2021 federal personal income tax return and his failure to timely pay his state property tax debts, and has mitigated the security concerns under factor ¶ 20(c) of the Adjudicative Guidelines.

Regarding factor ¶ 20(d), the Individual explained that he used the funds he obtained from a home loan, as well as his personal earnings, to resolve his federal and state tax debts in full, without having to enter into a payment arrangement with the federal and state taxing authorities. Also, as explained above, the Individual submitted documentation establishing that he has resolved his federal personal income tax filing and paid state property taxes for years 2020 through 2022. The Individual also submitted documentation establishing that he has pre-paid his estimated federal personal and state property taxes for next year, and he provided evidence he has over \$196,000 in retirement savings available to resolve any tax debts he may have in the future. Therefore, I find that the Individual has mitigated the security concerns under factor ¶ 20(d) of the Adjudicative Guidelines.

Regarding factor ¶ 20(e), the Individual did not dispute the legitimacy of his past-due state property tax debt, nor the LSO's finding that he failed to timely file his 2021 federal personal income tax return. Therefore, I find that mitigating factor ¶ 20(e) of the Adjudicative Guidelines 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) of the Adjudicative Guidelines is not applicable to this case.

Regarding factor ¶ 20(g), the Individual submitted documentation sufficient to establish that he filed his 2021 federal personal income tax return, paid his federal personal income taxes, and resolved his state property tax debts, without the need to enter into a payment arrangement with the federal or state taxing authorities. The evidence he submitted reflects that he has complied with the federal and state taxing authorities, and I therefore find that he has mitigated the security concerns under mitigating factor ¶ 20(g) of the Adjudicative Guidelines.

For the reasons cited above, I find that the Individual has mitigated the Guideline F security concerns raised by his failure to timely file his 2021 federal personal income tax return and pay his state property tax debts.

## **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