

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: February 29, 2024) Case No.: PSH-24-0068
)
)
_____)

Issued: June 18, 2024

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. During the investigation into his eligibility to possess a security clearance, the Individual disclosed that he had failed to file federal and state income taxes for over two decades. Consequently, the DOE Local Security Office (LSO) informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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.

hearing. At the hearing, the Individual testified on his own behalf. The LSO did not call any witnesses. The Individual submitted four exhibits, marked Exhibits A through D. The LSO submitted eight exhibits, marked Exhibits 1 through 8.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1. Guideline F provides that that an individual's "[f]ailure 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. Conditions that could raise a security concern include an individual's "[f]ailure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required . . ." *Id.* at ¶ 19(f). In the SSC, the LSO cites that the Individual has not filed his federal income tax returns for tax years 1998 through 2022 and his admission that he has not filed his state income tax returns for tax years 1999 through 2022. 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 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 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 or her 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.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

² References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

IV. FINDINGS OF FACT

The record reflects that the Individual admitted that he failed to file federal tax returns for the tax year 1995 and every year from 1998 through 2022. Ex. 7 at 129–32 (reporting in his May 2021 Questionnaire for National Security Positions (QNSP) that he failed to file federal and state tax returns as required by law for the tax years 2013 through 2020); Ex. 6 at 76–79 (disclosing in a June 2023 QNSP that he failed to file federal and state taxes for 1995 and 2022); Ex. 5 at 26, 29 (disclosing in his response to a Letter of Interrogatory (LOI), dated November 2023, that he failed to file federal income tax returns from 1998 through 2012 and tax year 2021).

The record also reflects his admission that he failed to file his state income tax returns from 1999 through 2022. Ex. 5 at 29–32 (reporting that he failed to file his state income tax returns from 1999 to 2022); *see also* Ex. 7 at 129–32 (reporting his failure to file state tax returns from 2013 through 2020) *and* Ex. 6 at 76–79 (disclosing his failure to file state tax returns for 1995 and 2022). During an August 2023, interview with an investigator, he stated he would contact the federal and state tax agencies about filing his tax returns by September 2023. Ex. 8 at 202. In his LOI response, he admitted that he “had been told” that failing to file income tax returns is against the law. Ex. 5 at 33. He also confirmed in his LOI response that, during a 2010 interview with DOE in connection with a prior security clearance application, he had previously been made aware “of the concerns regarding failing to file income tax returns.” *Id.* He did not provide an excuse for his failure to file his returns other than stating that he “forgot [he] needed to file” his returns. *Id.* at 26. He stated that it “was an oversight” and that he “will be gathering [his] W-2s and start handling it.” *Id.* at 33.

In a letter the Individual submitted to the LSO dated February 2, 2024, the Individual reported that he had filed his federal tax returns for 1998 to 2022, except for 2015 because he had not been able to locate his W-2 for that year. Ex. 2 at 10; *see also* Hearing Transcript, OHA Case No. PSH-24-0068 (Tr.) at 11–12, 14–16, 18–23. He also indicated that he was “working on getting the state filings filed.” Ex. 2 at 10. Included with his letter were twenty-four certified mail receipts, each dated December 9, 2023, and addressed to “Dept. of the Treasury, Internal Revenue Service.” *Id.* at 11–15.

At the hearing, the Individual explained that the twenty-four certified mail receipts are evidence that he sent his federal tax returns to the U.S. Internal Revenue Service (IRS). Tr. at 16; Ex. 1 at 11–15. He explained he completed these filings by mailing a “zero return” for each year, representing that he did not earn any taxable income for the tax year. *Id.* at 17, 19, 22, 40. He explained that he chose to submit a zero return to the IRS “[b]ecause it states that [he is] not liable for any income tax according to the IRS UCC code.” *Id.* at 36. He further explained that any time a person files a tax return, “it’s a self-assessment” of their income. *Id.* at 23–24. The Individual was asked about his employment history, after which he explained that, from 1998 to 2022, he worked as either a W-2 or W-4 employee for contractors, and he did not own his own company during that period. *Id.* at 24. He explained that although he was employed, he submitted the zero returns indicating he had zero income, and he does not know if he owed taxes or is entitled to a refund. *Id.* at 17, 24. He stated that if the IRS believes he owes any money as a result of tax liability, they will send him a letter and “we’d have to dispute that.” *Id.* at 25. Since December 2023, the Individual recalled receiving one notice from the IRS indicating one of his returns was being

reviewed, but he stated he did not receive any communication from the IRS indicating his federal income tax returns were accepted. *Id.* at 27–28.

As for his 2015 federal income tax return, he stated he filed it before the hearing. *Id.* at 22. The Individual submitted a copy of a certified mail receipt addressed to “Dept. of the Treasury,” and on which the Individual wrote “2015 1040.” Ex. B; Tr. at 26 (testimony confirming the same). As for his 2023 federal income tax return, he stated that he used a tax preparation service, but he instructed the preparer not to file it because he instead took care of it by mailing a zero return to the IRS. *Id.* at 21, 29–30. He testified that he also intends to submit a zero return when he files his 2024 federal tax return. *Id.* at 36.

As for the Individual’s state income tax returns, he first testified that he did not file his state income tax return for 1999. *Id.* at 14–15, 18. He explained that he received a notice indicating he owed \$300 in taxes for that year, but he also received a letter stating that the amount had been “cleared,” and, in any event, he “never took care of it.” *Id.* at 15–16. As for his state income tax returns for years 2000 to 2022, the Individual stated he applied to the state tax authority for a “managed audit” for those years. *Id.*; *see also* Ex. D (document entitled, “Managed Audit Application Confirmation”). He stated that he does not know how the audit is going to work, but he believes that after he is contacted about his application, he will submit his W-2s and “then assess the situation.” Tr. at 19. He stated he filed his 2023 state income tax return by using a tax preparation service, and he submitted a document he referred to as a receipt as evidence of filing. *Id.* at 27, 29; *see* Ex. A (an invoice from a tax preparation service indicating a balance due for preparing federal and state tax forms).

The Individual further testified that there was no excuse for his failure to timely file his state and federal income tax returns from 1998 to 2022, he “just let it go and just didn’t deal with it.” Tr. at 24. He acknowledged that “every once in a while” he would receive a notice from the IRS reminding him of his obligation to file his tax returns, but he “just let it go.” *Id.* at 25. The Individual stated that “the same issue” of his failure to file his state and federal tax returns was raised when he was being considered for an access authorization in 2010. *Id.* at 34. He explained that now he is “working on rectifying it,” and he is doing what he needs to do to file and be compliant so that he can be eligible for a DOE security clearance. *Id.* at 32.

V. ANALYSIS

Under Guideline F, the following conditions could mitigate security concerns based on financial considerations:

- (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, . . . divorce or separation . . .), 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.

I find that none of the above conditions apply to resolve the Guideline F concerns. As for condition ¶ 20(a), the Individual's two-decade-long pattern of failing to file his state and federal income tax returns occurred as recently as 2022, and as of the hearing, the Individual had not filed his delinquent state income tax returns. Consequently, I do not conclude that the conduct occurred so long ago that it no longer poses a security concern. In addition, the Individual failed to file his state and federal income tax returns for more than twenty consecutive years, so the Individual's behavior was frequent. Finally, the Individual asserted he failed to file his state and federal income tax returns because he forgot to do so, and there is no evidence from which to conclude the circumstances around his conduct were unusual. The Individual's conduct leaves me unable to conclude that his behavior is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment. Therefore, I find the Individual has not mitigated the security concerns related to his failure to file his state and federal tax returns under condition ¶ 20(a).

As for condition ¶ 20(b), the Individual did not present evidence that his failure to file his state and federal income tax returns was due to circumstances largely outside of his control. On the contrary, in his November 2023 LOI and during the hearing, the Individual represented that there was no excuse for his failure. Therefore, I find the Individual has not mitigated the security concerns related to his failure to file his state and federal tax returns under condition ¶ 20(b).

As for condition ¶ 20(c), the Individual did not present evidence to support that his failure to file his state and federal income tax returns was due to circumstances from which the Individual would have benefitted from financial counseling. Therefore, I find mitigating condition ¶ 20(c) is not applicable to this case.

As for mitigating conditions ¶ 20(d), ¶ 20(e), and ¶ 20(f), I find they do not apply to resolve the security concerns for the following reasons. As to ¶ 20(d) and ¶ 20(e), the LSO's concerns are not derived from the Individual's failure to repay creditors or resolve debt, and these conditions are

therefore not applicable. As to ¶ 20(f), the condition is not applicable because the security concerns raised by the LSO do not involve unexplained affluence.

Finally, I find that ¶ 20(g) does not apply to resolve the security concerns for the following reasons. First, while the Individual provided evidence that he filed his delinquent federal tax returns, he has not provided any documentary evidence from the IRS that his submissions were received or to otherwise substantiate his testimony. Furthermore, he testified that he filed a zero income return for every tax year, including 2023, but he also unequivocally testified that he earned income for each of those same tax years. He failed to adequately explain why, considering his testimony that he earned income for each of those years, he chose to report to the IRS that he did not earn income. Thus, I remain concerned that he has not yet met his obligation to file his delinquent federal tax returns. Furthermore, his testimony confirmed that he has not yet filed any state tax returns and merely requested an “audit” from the state tax authority on the eve of the hearing. I therefore conclude that he has not made arrangements with the appropriate tax authorities to file his delinquent returns.

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 of 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 SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals