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In the Matter of: Personnel Security Hearing)
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Filing Date: February 29, 2024) Case No.: PSH-24-0072
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Issued: June 12, 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 not be granted.

I. Background

The Individual is employed by a DOE contractor and is seeking a position that requires him to possess access authorization. As part of the clearance adjudication process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in May 2023. Exhibit (Ex.) 6. In the QNSP, the Individual disclosed that he failed to file his federal and state income taxes for tax years 2020 and 2021. *Id.* at 57–58. The Individual stated that his tax forms were not submitted for both tax years due to "computer error," which was only discovered in March 2023. *Id.* He stated that he was "[i]n the process of refile[.]" *Id.*

The Individual underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator in July 2023. Ex. 7 at 121. In November 2023, the Individual signed and submitted a Letter of Interrogatory (LOI) at the behest of the Local Security Office (LSO). Ex. 5.

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 a substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Concerns) of the Adjudicative

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.

Guidelines. Ex. 1. 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). 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. *See* Transcript of Hearing, OHA Case No. PSH-24-0072 (hereinafter cited as "Tr."). The Individual also submitted fifteen exhibits, marked Exhibits A through O. The DOE Counsel submitted seven exhibits, marked as Exhibits 1 through 7.

II. Notification Letter

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).

The LSO alleged that the Individual failed to file his federal and state income tax returns for tax years 2020 and 2021. Ex. 1 at 1. The 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

The report of the ESI indicates that the Individual told the investigator that he failed to file his federal taxes for tax year 2020 “as a result of a technical error.” Ex. 7 at 122. He stated that he filed electronically and that he “assumed that he did not owe anything and that he would not receive a refund.” *Id.* Regarding his federal taxes for tax year 2021, he stated that he “had the same technical error with the software system[.]” *Id.* The report indicates that the Individual believed that “he would owe nothing, nor receive a tax refund” for tax year 2021. *Id.* at 122.

The Individual confirmed in his response to the November 2023 LOI that he had failed to file his federal and state income taxes for tax years 2020 and 2021. Ex. 5 at 18. Regarding tax year 2020, the Individual clarified that he requested an extension, but “never completed” his filings. *Id.* at 18–19. He stated that he “completed and submitted” his filings for tax year 2021, but it “never went through.” *Id.*

At the hearing, the Individual provided further context by stating that it was his practice to begin the filing process without submitting a filing to learn how much he was going to owe in taxes. Tr. at 12, 36–38. Once that approximate amount was determined, he would then file an extension, so he had time to save the approximate amount he owed. *Id.* at 36. He filed an extension for tax years 2020 and 2021. *Id.* at 32. He testified that on some occasions, he would file an extension, but he would fail to submit the filing. *Id.* at 12. He stated that he believed that he submitted his tax filings for tax year 2021, but that he never received a communication confirming the filing. *Id.* at 12, 39. When he further investigated the matter in 2023 on the Internal Revenue Service (IRS) website, he learned that his federal income taxes for tax years 2020 and 2021 had not been filed. *Id.* at 12, 39; Ex. 7 at 122.

At the time of the hearing, the Individual disclosed that he still had not filed his federal and state income taxes for tax years 2020 and 2021.² Tr. at 12, 15–16, 32. He indicated that there had been a death in the family in December 2023 and his “household is kind of emotionally wrecked[.]” *Id.* at 16–17.

Following the hearing, the Individual submitted copies of federal and state tax filings for tax years 2020 and 2021.³ Ex. A; Ex. B; Ex. C; Ex. D; Ex. L; Ex. M; Ex. N; Ex. O. The Individual submitted what appear to be two receipts signed by a tax professional, indicating that the Individual engaged her services at the beginning of June 2024 to prepare his federal and state income taxes for tax years 2020 and 2021. Ex. E; Ex. F. The Individual also submitted a shipping receipt from early June 2024, indicating that the Individual shipped a document. Ex. K. The tracking information indicates that the document reached its destination in the capital city of the Individual’s state of residence. *Id.*

² The Individual testified that his wages have been garnished by the State in connection with his 2020 tax obligation. Tr. at 32–33.

³ The exhibits that the Individual submitted following the hearing were accepted into the record. While the Individual initially submitted the first page of his tax filings, he subsequently submitted additional pages of both his federal and state tax filings. The federal and state tax filings for tax year 2020 are missing his spouse’s signature. Ex. L at 2; Ex. M at 5. The state income tax filing for tax year 2021 does not contain the paid preparer’s signature, the Individual’s signature, or his spouse’s signature. Ex. O at 5.

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 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.

As the Individual was under an ongoing obligation to file his state and federal income taxes on an annual basis and failed to file his federal and state income taxes for tax years 2020 and 2021 until after the hearing, I cannot conclude that the behavior happened so long ago. Further, as the Individual testified that he was in the habit of delaying his tax filings, and that his taxes would occasionally go unfiled following an extension, I cannot conclude that this behavior was infrequent or that it occurred under such circumstances that it is unlikely to recur. The Individual has failed to mitigate the stated concerns pursuant to mitigating factor (a).

While I am sympathetic to the fact that the Individual and his family were still grieving a recently deceased family member prior to the hearing, the Individual's federal and state income tax filings were due years prior to his family member's passing. Therefore, I cannot conclude that the Individual's failure to file tax returns as required was attributable to the death of his family

member. Additionally, while the Individual testified that he is certain that he filed his 2021 federal and state income taxes using a tax filing software and that the software malfunctioned, he learned of the malfunction in 2023, leaving him approximately one year to properly file those taxes prior to the hearing. Even if the tax filing software was responsible for the Individual's failure to timely file tax returns as required, the Individual's failure to take action to address the situation for approximately one year reflects poorly on his reliability and willingness to comply with rules and regulations. For the foregoing reasons, I cannot conclude that the Individual acted responsibly under the circumstances. Accordingly, the Individual has failed to mitigate the stated concerns under mitigating factor (b).

While, as indicated above, the Individual provided me with copies of tax returns, some of the returns are unsigned, which indicates that the filings are not complete. Beyond that, the Individual has not provided any documentation from the IRS confirming receipt of the tax returns in question or that the Individual fully paid any taxes, late fees, and penalties he may owe. While I do have a shipping receipt indicating that the documents the Individual shipped in early June 2024 reached the state capital, I have no information as to whether these documents consisted of state income tax filings for both tax years, a tax filing for one year, or any tax filing at all. For the foregoing reasons, I cannot conclude that that the Individual filed, or made arrangements with a tax authority to file, his federal and state income taxes for tax years 2020 and 2021. Accordingly, the Individual has not mitigated the stated concerns pursuant to mitigating factor (g).

There is no evidence that the Individual engaged a financial counseling service. Mitigating factor (c) is not applicable. As there was no allegation of overdue creditors or debts, mitigating factors (d) and (e) are not applicable. The SSC did not allege that the Individual displayed unexplained affluence. Mitigating factor (f) is thus not applicable.

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 concerns 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