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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: February 29, 2024)
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Case No.: PSH-24-0071

Issued: June 25, 2024

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 and Findings of Fact

The Individual is employed by a DOE contractor in a position that requires him to hold an access authorization. On February 10, 2023, the Individual completed a Questionnaire for National Security Positions (QNSP) in which he disclosed that, in the prior seven years, he had “failed to file or pay Federal, state, or other taxes when required by law.” Exhibit (Ex.) 7 at 96.² Specifically, he indicated that he had not filed his state or federal taxes for the 2015 through 2020 tax years. *Id.* at 96–98. In mid-2023, the Individual was interviewed by an Office of Personnel Management investigator. Ex. 8 at 157. According to the report prepared by the investigator, the Individual stated in the interview that his unfiled taxes were “all almost complete and [would] be filed by the end of July.”³ *Id.* at 161.

Due to ongoing concerns about his tax situation, the Local Security Office (LSO) requested that the Individual complete a Letter of Interrogatory (LOI) which the Individual signed on November 30,

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.

² The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

³ Although it is unclear when exactly the Individual’s federal back taxes were filed, a DOE Case Evaluation indicates that, as of January 2024, the Individual’s federal back taxes were appropriately filed. Ex. 3 at 16.

2023. Ex. 6. In that LOI, the Individual reported that he had filed his state income tax returns for the 2016 through 2022 tax years. *Id.* at 45. He wrote: “I did file and have gotten returns for 2017, 2018, 2020, 2021, and 2022. I am currently waiting on a return for 2016 and 2019.” *Id.* That same day, an LSO representative (Representative) engaged in an email exchange with the Individual. Ex. 3. According to the email exchange, the Individual was attempting to send the Representative photos of his federal tax returns.⁴ *Id.* at 21. The Representative stated that she was not able to accept photos of the Individual’s tax returns and wrote: “Please look over your answers. I do not know what is meant by ‘I’ve gotten returns’ for 2017, 2018, 2020, and 2021. Do you mean refunds or the tax forms?” *Id.* The Individual responded within the hour with information regarding his federal income taxes. *Id.* at 20. On December 4, 2023, the Representative thanked the Individual for his prompt response and stated, “you keep sending me the [Internal Revenue Service] tax returns. I need copies of the state tax returns.” *Id.* at 19. The following morning, the Individual wrote:

I was able to go over my paper work and it turns out I didn’t file my state taxes because I zeroed out on my federal taxes[.] So therefore I’m not required to file the state taxes. Sorry about that[.] I will fix [the LOI] now and sen[d] it over to you.

Id. at 18. On December 6, 2023, the Individual submitted a revised LOI in which he stated that he had not yet filed his state income tax returns for the 2015–2022 tax years. Ex. 5 at 31.

Due to security concerns related to the Individual’s taxes and candor, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) that accompanied the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eight numbered exhibits (Exs. 1–8) into the record. The Individual introduced nine lettered exhibits (Exs. A–I) into the record and testified on his own behalf.⁵ The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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

⁴ The photos of the tax returns that the Representative references in the email exchange are not included in the record in this case.

⁵ The Individual submitted eight exhibits under the label of “Exhibit A,” and he separately submitted a ninth exhibit. For purposes of clarity, I labeled each exhibit individually.

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 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.

III. Notification Letter and Associated Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SSC specifically cites Guideline E and Guideline F of the Adjudicative Guidelines. Ex. 1.

Guideline F relates to security risks arising from financial distress. It provides that a “[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 [an] 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. Conditions that could raise a security concern under this guideline include the failure to file annual state income tax returns. *Id.* at ¶ 19(f). In citing Guideline F, the LSO alleged that the Individual had not filed his state income tax returns for the 2015 through 2022 tax years. Ex. 1 at 5.

Guideline E relates to security risks arising from personal conduct. It provides that “[c]onduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations can raise questions about an individual’s trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. Of special interest under this guideline is the “failure to provide truthful and candid answers during national security investigative or adjudicative processes.” *Id.* Conditions that could raise a security concern under this guideline include “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” *Id.* at ¶ 15(a). In citing Guideline E, the LSO noted that the Individual provided discrepant answers regarding his state tax returns in the November 30, 2023 LOI, the email exchange with the Representative, and the December 6, 2023, LOI.⁶ Ex. 1 at 5.

IV. Hearing Testimony

⁶ I note that the LSO alleged that there was a December 5, 2023, LOI; however, it appears that the LSO mistakenly referenced the email exchange as an LOI. Ex. 1 at 5.

The Individual testified that at the time he received the LOI on November 30, 2023, he was attending a weeklong class required for his job. Tr. at 11. He stated that he felt like he had “a small window” in which to complete it, and he “believe[d]” that the Representative asked him to send his response to the LOI “before the day was over.” *Id.* As such, he felt “under pressure” and was trying to complete the LOI during his class and on his phone as he did not have access to a computer. *Id.* Regarding his answer about his state income taxes, he stated that he was confused by the question and “assumed that all [his] taxes were done according to the [certified public accountant (CPA)] that [he] was using.” *Id.* at 12.

The Individual stated that although he had access to some of his tax records on his phone, he:

didn’t have everything in order. I was trying to make the files into a PDF on my phone. [The Representative] kept requesting “I need it in a PDF form, and you didn’t put the date.” So I kept redoing it, redoing it. And then it just – it was a mess on my part. I wish I would have had more time. I should have talked to my supervisor about maybe retaking the class and getting this done. I was just nervous I wanted to try and get it done, and it was just a miscommunication on my part.

Id. The Individual explained that in the past, he had never filed his taxes because he was “just lazy or didn’t . . . care,” so when he “finally got a good job” with the DOE contractor, “everything was so confusing[,]” and he “really didn’t have a clue what was going on.” *Id.* at 13, 17.

The Individual testified that, prior to completing the LOI, he obtained the services of a CPA (CPA 1) with whom his parents maintained a relationship, and according to CPA 1, he was not required to file state taxes because he “zeroed out on [his] federal taxes.” *Id.* at 14–15. He stated that he did not know what CPA 1 meant by zeroing out, but he “was just going off of what [CPA 1] had said[, and he] believed him.” *Id.* at 14, 18, 23. The Individual testified that after communicating with the Representative, he went back to CPA 1 and told him that he needed to file his state taxes, and CPA 1 indicated that he would “start working on them[.]” *Id.* at 15. However, CPA 1 “passed away a couple weeks later” due to cancer. *Id.*

The Individual testified that he then secured the services of a second CPA (CPA 2),⁷ and CPA 2 was able to successfully file the Individual’s outstanding state taxes within three days. *Id.* at 15, 19. The Individual testified that he received “a fair amount of money” as a tax refund, and he stated:

[h]onestly, I don’t know why I didn’t [file] in the past. A lot of the time I listened to my father who always said “Oh, I’ll help you, I’ll get somebody to help you out,” and when it came time to do them, I just couldn’t get the help. I didn’t know who to turn to or what to do and – I finally stopped listening to other people. I’ve been doing a lot more on my own.

⁷ The Individual could not recall when exactly he secured the services of CPA 2, but estimated that it was January, February, or March of 2024. Tr. at 20.

Id. at 20–21.⁸

The Individual testified that he timely filed his 2023 taxes using an online tax filing system. *Id.* at 21, 24. He stated that he did not use a CPA for his most recent taxes because he wanted to learn the process himself as he did not want “to ever get in a bind like that again.” *Id.* He stated that he will never file his taxes late again because “it’s been such a hassle, . . . [s]o I want to be on top of everything.” *Id.* at 22. The Individual elaborated, stating that he is choosing to do his own taxes so that if DOE were to inquire about them again, he would have firsthand knowledge and proof that they were properly completed. *Id.* The Individual stated that, in the future, if he receives a questionnaire from the DOE again, he will “read it more thoroughly” and ask for clarification if he is confused by a question. *Id.* at 16. He reiterated that he was not intentionally being dishonest but was merely confused as this was his first experience with the tax process and he “was still learning.” *Id.* The Individual added that not only has he grown in his tax knowledge, but he is enrolling in college to further his education. *Id.* at 17.

The Individual submitted his state tax returns for the 2015 through 2023 tax years. Ex. A–I. The Individual testified that he obtained the copies of the tax returns from his state’s tax authority’s website to show that it was “official that [he had] done [his] taxes.” *Id.* at 24. He stated, “I just figured you can’t get any more official than that.” *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual during 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 mitigated the security concerns cited by the LSO under Guideline E and Guideline F of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should be granted. The specific findings that I make in support of this decision are discussed below.

A. Guideline E

An individual may be able to mitigate security concerns under Guideline E through the following conditions:

- a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

⁸ The Individual received over \$2000 in tax refunds in filing his state back taxes. Ex. A; Ex. D; Ex. E; Ex. F; Ex. G; Ex. H.

- c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- f) The information was unsubstantiated or from a source of questionable reliability; and,
- g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Id. at ¶ 17.

Mitigating factors (a), (c), and (d) are the only factors relevant to this analysis, and as such, they are the only factors I will address.

A review of the email exchange between the Representative and the Individual makes clear that the Individual made prompt efforts to address any erroneous information that he provided in the LOI. The Individual responded to the Representative's initial inquiry regarding the LOI within the hour and was punctually responsive to any of her inquiries thereafter, which the Representative herself acknowledged. Although it is arguable that the Individual was confronted with the erroneous information on the LOI before he attempted to correct it, a review of the exchange also reveals confusion on the Individual's part. The Individual's testimony made clear that he was feeling pressured to complete the LOI in a less than ideal environment, and he also testified that he received incorrect information and advice from CPA 1, which he merely restated in the LOI. Although I have nothing in the record to corroborate this testimony, I found the Individual's thorough, detailed account of the circumstances surrounding his state tax return situation credible, and there is circumstantial evidence to support that his account is truthful.

At the outset, I note that the Individual was honest and upfront about his negligent tax situation when he initially completed the QNSP in February 2023. Furthermore, not accepting the Individual's testimony regarding the failure of CPA 1 to appropriately file the state taxes would mean that the Individual appropriately filed ten years of federal back taxes but intentionally neglected the state taxes, even when he was due over \$2000 in tax refunds. I find that scenario to be highly unlikely. Lastly, it is clear that once the Individual learned that the state taxes were still outstanding, after his exchange with the Representative, he promptly obtained the services of CPA 2 and appropriately filed the state taxes. Given the Individual's prompt efforts to remediate his errors, the unique circumstances under which he completed the LOI, and the unique circumstances surrounding the information he

received from his CPA, I find that the Individual has mitigated the security concerns pursuant to factors (a) and (c). *Id.* at ¶ 17(a), (c).

Further, the Individual has acknowledged his errors, identified methods he can use to avoid them in the future, and as explained above, has undertaken efforts to grow and educate himself. All of these measures give me confidence that the Individual will not suffer the confusion he previously experienced. As such, it is clear to me that the Individual has taken positive steps to alleviate the circumstances that contributed to the provision of erroneous information, and therefore such behavior is unlikely to recur. *Id.* at ¶17(d).

For the forgoing reasons, I find that the Individual has mitigated the Guideline E security concerns.

B. Guideline F

An individual may be able to mitigate security concerns under Guideline F by meeting the following conditions:

- 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 . . . 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; 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.

Mitigating factors (a) and (g) are the only factors relevant to this analysis, and as such, they are the only factors I will address.

At the outset, I note that prior to obtaining employment with the DOE contractor, the Individual had not filed his taxes, and this behavior continued for a number of years. However, it is clear to me, based on the Individual's testimony, which I found to be highly credible, that once he obtained employment with the DOE contractor, he began taking his responsibilities and obligations seriously. He sought out the services of CPA 1 to file his back taxes, and once he learned that CPA 1 had failed to properly file his state taxes, he sought out CPA 2 to ensure that they were promptly addressed. However, the Individual's efforts did not stop there. He has since learned how to file his taxes on his own so that he will have firsthand assurance that they have been properly submitted. Given the Individual's recent personal growth and the false information he received from CPA 1, I find that the Individual's failure to file his state income taxes occurred under unique circumstances that are not likely to recur and do not cast doubt on the Individual's current reliability, trustworthiness, or good judgment. *Id.* at ¶ 20(a). Furthermore, the Individual has filed all his outstanding state income taxes and timely filed his 2023 state income taxes. *Id.* at ¶ 20(g). As such, I find that the Individual has successfully mitigated the Guideline F security concerns.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and 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 Guideline E and Guideline F security concerns. Accordingly, I find the Individual has demonstrated that granting his security clearance would not endanger the common defense 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.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals