

Due to security concerns related to the Individual's unfiled tax returns, the LSO informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines. Ex. 1.

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. At the hearing, the DOE Counsel submitted nine numbered exhibits (Ex. 1–9) into the record. The Individual submitted nine lettered exhibits (Ex. A–I) into the record and testified on his own behalf.³ See Transcript of Hearing, OHA Case No. PSH-24-0096 (hereinafter cited as “Tr.”).

II. Notification Letter and Associated Security Concerns

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 in this guideline 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 that he had not filed his federal and state personal tax returns from 2018 to 2020, and 2022. Ex. 1. 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 *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).

³ The Individual submitted a post hearing exhibit, Exhibit I, which is a thirty-eight page document that contains a variety of tax and financial documents and emails, each of which pertains to different tax years at issue in the SSC.

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

In his July 26, 2023, QNSP, the Individual stated he had not filed his 2018 through 2020 federal and state tax returns because he lost all of his financial digital records. Ex. 7 at 354. He also stated in his QNSP that he was “[w]orking with [a] [t]ax profession[al] to file back tax returns.” *Id.*

On August 28, 2023, the Individual underwent an Enhanced Subject Interview (ESI) with an investigator from the Office of Personnel Management (OPM). Ex. 8 at 418. During the ESI, the Individual told the OPM investigator (investigator) that while preparing to file his 2018 tax returns, he found out that all of his 2018 financial records that he had stored in his online financial software program had disappeared. *Id.* at 419. He tried contacting the software company, but they were unable to retrieve any information for 2018. *Id.* He stated that the best option was for him to get his account statements and reload the information for 2018, however, he explained that for several reasons, including the amount of time and difficulty involved in obtaining his records, he did not file his 2018 taxes. *Id.* The Individual also told the investigator that in 2020, the pandemic “further deterred” him from taking action on his taxes. *Id.* He stated that his digital records are up to date for 2019 and 2020 so that he can file those tax returns, but because he has not rebuilt his 2018 financial records, he still had not filed his taxes for 2018 through 2020. *Id.* Additionally, he told the investigator that he filed his 2021 taxes, and he obtained an extension until October 2023 to file his 2022 taxes. *Id.* He stated he planned to resolve and file all outstanding tax returns by October 2023. *Id.* The Individual told the investigator that he was “researching for a tax professional within their [he and his wife’s] network to help them untangle 2018 and advise on how to report 2019 and 2020.” *Id.*

On January 22, 2024, the Individual submitted a response to his LOI. Ex. 6. In his LOI response, he reiterated the information that he provided to the investigator concerning the loss of his 2018 records, his difficulties in reconstructing his financial records, and his belief that the loss of these records affected his ability to file tax returns for the 2019 and 2020 tax years. *Id.* at 19, 22–23, 27. Regarding his federal and state taxes for 2018 through 2020, he stated that he and his wife “are working with a tax lawyer and tax prepare[r] to file back taxes.” *Id.* at 19, 23. He admitted that his “[t]ax situation snowballed” but asserted that he was “currently working to finally resolve it.” *Id.* at 30. Regarding his 2022 taxes, he provided a copy of his tax extension. *Id.* at 264. He also provided a copy of his prepared state and federal tax returns and associated tax preparation forms. *Id.* at 36–166, 175–78, 194–276. However, he stated that although he and his wife prepared the 2022 tax returns, they delayed in filing their taxes due to an alleged W-2 error by his wife’s former employer. *Id.* at 20, 24. He stated that although he does not know how much he owes in federal taxes for 2018 through 2020, “in a typical year, [they] owe \$5,000–\$10,000 in [f]ederal [taxes] but

[they] typically get [tax] refunds from the[ir] state [taxes].” *Id.* at 21. The Individual further stated in his LOI response that, other than his outstanding taxes, his financial situation is healthy such that he and his wife’s “[n]et [w]orth is currently more the [sic] \$2.2 million including all assets (property, cash accounts, retirement accounts). [They] currently have \$150,000 in available cash assets that can be used to resolve back taxes.” *Id.* at 28.

In his March 24, 2024, response to the SSC which accompanied his request for an administrative review hearing, the Individual stated that he is currently working with a local certified public accountant (CPA) to resolve his tax issues. Ex. 2 at 10. He asserted his belief that he does not pose “significant concerns” to the DOE regarding his “financial trustworthiness for continued eligibility for access authorization” because of his and his wife’s “current financial status of having a net worth of nearly \$2.4 million” and the fact that he has held a security clearance “since 1998 without incident.” *Id.*

The Individual testified that his tax filing difficulties started in approximately February 2019, when he began preparing to file his 2018 tax returns. Tr. at 10. He provided the same explanation, consistent with his ESI and response to his LOI, regarding why he did not file his 2018 tax returns: namely, because of a problem with his online financial software program that resulted in losing his 2018 digital financial records. *Id.* He stated that he and his wife filed their taxes jointly, and due to her job, she has a lot of tax deductions which are spent using their various accounts. *Id.* Since they do not keep paper receipts, in order to claim those deductions on their taxes, his only option was to get all the statements from his four credit cards, and two bank accounts, and go line by line to find all the expenses that were the deductions. *Id.* at 11. The Individual admitted that it was not an issue of the information being unavailable, but rather, he did not want to do the line-by-line work required to reconstruct his records in order to file his taxes. *Id.* He stated, “yeah, I didn’t want to do it. And then . . . it just got farther and farther from it and . . . I know I’m going to have to deal with this at some point, and I just didn’t.” *Id.* He admitted that, according to his January 2024 LOI response, at some point in time, he had consulted with a tax professional who told him he would have to go through those records line by line. *Id.* at 11. However, he testified that he chose not to hire the tax professional to do the work for him because that was going to “cost a lot of money” *Id.* at 11–12. When asked why he thought it was too expensive to hire a tax professional, given his written statements that he has a net worth of \$2.2 million, the Individual testified that his net worth is “not tied up all in liquid assets” and the tax attorney told him it could cost thousands of dollars to hire him. *Id.* at 12–13.

Regarding his 2019 taxes, the Individual testified that his 2019 taxes would be affected by the deductions from his 2018 tax returns. *Id.* at 15. Since he still had not filed his 2018 taxes when his 2019 tax returns were due, he did not file his 2019 taxes either. *Id.* at 14–15. He testified that at that time, he had not consulted anyone regarding his 2019 tax issues. *Id.* at 15. Regarding his 2020 taxes, the Individual testified that the situation “snowballed” and led to the same problem in 2020, which is why he also did not file his 2020 tax returns. *Id.* at 14–15.

The Individual admitted that in his July 2023 QNSP, he wrote that he was “working” with a tax professional at that time. *Id.* at 22. However, he testified that “‘working’ may not have been the correct term” because he didn’t have a signed agreement with a tax professional, but rather, he had just asked an accountant how they should proceed regarding his outstanding taxes. *Id.* at 23. He

explained that he told his wife that they were going to need an accountant to help file their outstanding taxes, and since his wife belonged to a networking group which included a couple of accountants, he and his wife were discussing which accountant they were going to hire. *Id.* at 25–26. The Individual acknowledged that even though he had started having discussions with tax professionals in July 2023, he did not hire a tax professional until January 2024. *Id.* at 26; *see also* Ex. A (Retainer with invoice dated January 27, 2024, from the Individual’s CPA to prepare 2018 through 2020 tax returns). When asked why he had a five-month delay in hiring a CPA to prepare his tax returns, he replied, “it’s just frustration, procrastination . . . it got to January, we got through the holidays . . . life happens, right?” Tr. at 27.

The Individual testified that after he hired the CPA, there was another delay in filing the Individual’s taxes because the IRS rejected the Individual’s power of attorney (POA) document multiple times when the CPA submitted the POA to the IRS in an effort to obtain the Individual’s tax records and transcripts. *Id.* The Individual testified that his CPA was finally able to obtain the Individual’s tax records in March 2024. *Id.* at 28.

Regarding filing and payment of his 2018 federal and state taxes, the Individual submitted a May 5, 2024, letter from his CPA which also included a copy of the Individual’s prepared 2018 federal and state tax returns. Ex. C. The letter stated that he owed \$10,745 in federal taxes and he will receive a refund of \$6,159 for his state taxes, which is consistent with the amounts reflected on his prepared federal and state tax returns. *Id.* at 1–2; Ex. I at 1–5. The Individual submitted his IRS Payment Activity record which verified that on May 13, 2024, he made a payment of \$10,745 for his 2018 federal taxes.⁴ Ex. F.

Regarding filing and payment of his 2019 federal and state taxes, the Individual submitted a May 5, 2024, letter from his CPA which also included a copy of the Individual’s prepared 2019 federal and state tax returns. Ex. D. The letter stated that he owed \$8,643 in federal taxes and he will receive a refund of \$7,302 for his state taxes, which is consistent with the amounts reflected on his prepared federal and state tax returns. *Id.* at 1, 3, 8. The Individual submitted his IRS Payment Activity record which verified that on May 13, 2024, he made a payment of \$8,643 for his 2019 federal taxes. Ex. F.

The Individual testified that he has not received any notices for penalties and interest for his 2018 and 2019 federal taxes, but he understands that the IRS will send him those notices. Tr. at 28–29. He stated that his CPA is planning on asking that the first year of penalties be waived for his 2018 taxes because he understands that it is possible to get a waiver on the first year of penalties. *Id.* at 28. The Individual testified that he understands that these penalties are part of his responsibility to fulfill his tax obligations and he asserted that he will pay the penalties once he receives the notices, including the penalties for tax years 2019 and 2020. *Id.* at 29.

⁴ Exhibit F, which is the Individual’s IRS Payment Activity record, contains verification of the Individual’s federal tax payments for tax years 2018, 2019, and 2021. The Individual’s 2021 tax returns were not listed as a security concern in the SSC. Regarding his 2021 federal taxes, Exhibit F shows that on October 19, 2022, the Individual made a payment of \$19,765 for his 2021 taxes, and a second payment was made on November 16, 2022, of \$1,076.19 also for his 2021 taxes. The Individual testified that the second payment was a payment for a penalty and interest for his 2021 taxes. Tr. at 28.

Regarding the status of his 2020 federal and state taxes, on May 20, 2024, the Individual's CPA notified him by email that he needed documentation of the Individual's stock sales in order to complete his 2020 tax return. Ex. I at 6–7. However, the Individual did not submit this documentation to the CPA until July 1, 2024. *Id.* at 6 (email dated July 1, 2024, from the Individual to his CPA confirming he sent the requested documentation to the CPA for 2020 taxes); *Id.* at 8–29 (copy of the Individual's 2020 financial documents) The Individual testified that he delayed providing the requested 2020 financial documents to his CPA until July 2024, partly because in April 2024, his father-in-law became ill and he and his wife were spending time helping him until he passed away a little over one week before the hearing. Tr. at 41–42. He also stated that his account had closed and that it took time to access the requested documentation, but once they did, they sent it to the CPA. *Id.* at 41. He testified that his CPA is currently working to finish preparing his 2020 tax returns. *Id.* at 20.

Regarding his 2022 federal and state taxes, the Individual testified that he is preparing his 2022 returns instead of using his CPA to do so. *Id.* at 42. He testified that he has not filed his 2022 tax returns because there is a dispute with his wife's former employer regarding her W-2 form. *Id.* at 16, 45. He stated that his wife worked for a company for only six weeks, during which she was given a signing bonus, however, after she no longer wanted to work there and resigned from her position, she had to pay the signing bonus back to the company. *Id.* The Individual testified that they paid the signing bonus back to the company, however, the company issued an erroneous W-2 to his wife which incorrectly included her bonus in her income and did not reflect that she had paid it back. *Id.* at 16. In support of his testimony, the Individual submitted a copy of his bank statement reflecting that a cashier's check in the amount of \$44,265, made payable to his wife's former employer, had cleared his account on December 19, 2022. Ex. I at 31. He also submitted a copy of his wife's erroneous W-2 for tax year 2022 that was issued by her former employer. *Id.* at 30. The Individual further testified that his wife had made multiple requests to her former employer for almost two years to correct the W-2, however, the employer has not been forthcoming in communicating with his wife. Tr. at 16–17. In support of his testimony, the Individual submitted email correspondence between his wife and her former employer which reflected that his wife emailed her employer and requested that they issue a corrected W-2 on April 18, 2023; April 20, 2023; June 8, 2023; October 9, 2023; and January 17, 2024. Ex. I at 33–38. Her former employer responded various times stating they would follow up and assist her or provide a response, but there is no indication that they provided a corrected W-2. *Id.* at 32, 34–37.

After he hired his CPA and told him about the issue involving the erroneous W-2 from his wife's former employer, his CPA told him to contact the IRS. Tr. at 17. The Individual stated that in February 2024, the IRS told his wife that there is a dispute form that they can submit to the IRS to dispute the incorrect W-2 and state the amount they believe was not part of her earnings. *Id.* The Individual stated he has the dispute form because the IRS sent it to him. *Id.* at 19. He stated that the dispute form is the only thing he has left to do so they can file their 2022 taxes which they had already prepared and are ready to file. *Id.* at 17. However, he testified that he has not yet submitted the form because "it's a difference . . . between us getting a refund or having to pay, you know several thousand dollars" *Id.* He stated that instead of submitting the dispute form, he wanted to get the corrected W-2 from his wife's employer before filing his 2022 taxes. *Id.* at 18. When asked

how much longer he is going to wait for his wife's former employer to issue a corrected W-2 before he decides to file the dispute form, he stated he will "just file the dispute form at this point . . . and then that should bring his [2022] taxes up to date." *Id.* at 19–20.

Regarding his future plans concerning his taxes, the Individual testified that "procrastination and frustration got me here. And now I'm taking care of it and plan to not be in this position going forward." *Id.* at 32. He stated that he filed his 2021 and 2023 tax returns on time. *Id.* at 45; *see also* Ex. H (IRS Transcript for 2021); Ex. G (IRS Transcript for 2023 taxes); *but see supra* note 4 (indicating that the Individual was assessed penalties and interest on his 2021 federal taxes for unidentified reasons). He also stated that in order to keep financial records for his taxes, he currently uses a different online software program, and he also ensures that at least twice per year he downloads a local copy of his financial records which he stores on his personal computer and backs up using online cloud storage. Tr. at 46–48. The Individual testified that he prepared his 2021 through 2023 taxes on his own using tax preparation software, but he may use the same CPA again to file his future tax returns. *Id.* at 48. He stated that other than working with his CPA to prepare and file his taxes, he has not participated in any type of financial counseling. *Id.* at 49.

V. Analysis

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.

The Individual's failure to file personal income tax returns as required is ongoing because, although he filed his 2018 and 2019 federal and state tax returns prior to the hearing, he has yet to file his 2020 and 2022 tax returns. Thus, I cannot find that the behavior occurred so long ago. Moreover, the fact that the Individual did not timely file his federal and state tax returns for four years reflects a recurring disregard for rules and regulations which also casts significant doubt on his reliability, trustworthiness, and judgment. Additionally, the Individual's behavior was frequent because he failed to file his tax returns for multiple years, three of which were consecutive, without any significant change in his behavior or attempt at resolution for several years until as recent as approximately six months prior to the hearing. Accordingly, I find the first mitigating factor does not apply to resolve the security concerns. *Id.* at ¶ 20(a).

While the Individual attributed his tax filing difficulties partly due to a loss of his 2018 digital financial records, he admitted that his decision not to file his taxes was not an issue of the information being unavailable, but rather, he did not want to do the line-by-line work required to reconstruct his records to prepare and file his taxes. Moreover, although a loss of digital records, or a dispute regarding a W-2 as in the case of his 2022 taxes, may have been partially out of his control, he has shown that he has not acted responsibly under the circumstances. He admitted that "procrastination and frustration got me here" and he chose not to hire a CPA until six months prior to the hearing. His rationale was because a tax professional told him it could cost thousands of dollars to retain him, which he found to be too costly. However, he asserted multiple times, as stated in his LOI and his response to the SSC, that his net worth is over \$2 million, which indicates that he had the financial means to seek professional tax assistance if needed. Moreover, he demonstrated that he has the capability to file his own taxes, as he testified that he filed his 2021 and 2023 tax returns on his own using tax preparation software. Thus, he had the ability to file his 2018 through 2020, and 2022 taxes on time. Instead, he did not file his 2018 and 2019 federal and state taxes until May 13, 2024, which is several years after they were due and only two months prior to the hearing.

Additionally, he said that part of the reason he delayed submitting his 2020 financial documents to his CPA until July 2024, the same month as the hearing, was because his father-in-law became ill in April 2024, and he began helping him at that time until his recent death. Although the illness of his father-in-law was a circumstance beyond his control, his illness did not begin until three years after the Individual's 2020 taxes were due in April 2021. Thus, he could have taken action to attempt to file his 2020 taxes several years prior to his father-in-law's illness, but he chose not to act responsibly under the circumstances. As stated above, he had the financial means to hire a CPA to assist him in filing his taxes but chose not to do so until several years later. Further, regarding his 2022 taxes, although he is disputing his wife's W-2 from her former employer, he admitted that he was informed in February 2024 by the IRS that he could file his taxes if he completed the dispute form that the IRS sent to him. Nevertheless, he has yet to file the dispute form and still has not filed his 2022 federal and state taxes. As the Individual has not acted

responsibly under the circumstances, I find that he has not mitigated the security concerns under the second mitigating factor. *Id.* at ¶ 20(b).

Regarding the third mitigating factor, the Individual testified he did not seek financial counseling. Additionally, although he has retained a CPA who has assisted him in successfully filing his 2018 and 2019 federal and state taxes, the Individual has yet to file his 2020 taxes, and delayed providing his CPA with the requested financial information. He also testified that he is preparing his 2022 taxes on his own rather than using the CPA to do so, and he still has not filed his 2022 taxes. Therefore, I find that the third mitigating factor is not applicable to this case. *Id.* at ¶ 20(c)

Regarding the fourth mitigating factor, there are no allegations in the SSC that the Individual has overdue debts to creditors. Rather, the security concerns are due to the Individual's failure to file his taxes. Therefore, I find that the fourth mitigating factor is not applicable to this case. *Id.* at ¶ 20(d).

Regarding the fifth mitigating factor, the Individual stated that he has not filed his 2022 federal and state tax returns because he and his wife are disputing an incorrect W-2 issued by his wife's former employer. He submitted a copy of the erroneous W-2 and proof that he and his wife had provided a payment to return his wife's bonus to her former employer. He also submitted evidence showing that his wife has taken action to resolve the issue by sending multiple email requests to her former employer to request that the employer issue a corrected W-2. However, the Individual testified that he was informed by the IRS that they could file his taxes if he filed a dispute form which the IRS provided to the Individual. Therefore, the Individual has a means to resolve the dispute and file his 2022 taxes, but he still has not done so. Therefore, I find that the Individual has not resolved the security concerns under the fifth mitigating factor. *Id.* at ¶ 20(e).

The sixth mitigating factor is irrelevant to the facts of this case as the LSO did not allege that the Individual demonstrated unexplained affluence. *Id.* at ¶ 20(f).

Regarding the seventh mitigating factor, the Individual submitted documentation sufficient to establish that he filed his federal and state income tax returns for years 2018 and 2019. However, he still has not filed his 2020 and 2022 federal and state taxes, nor has he made any arrangements with the IRS or his state taxing authority to file his personal income tax returns or pay any personal income taxes he may owe after his returns have been filed. Therefore, I find that the Individual has not resolved the security concerns under the seventh mitigating factor. *Id.* at ¶ 20(g).

While the Individual has begun to take steps to comply with his tax obligations, these efforts are too recent and limited to establish the applicability of any of the mitigating conditions under Guideline F. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline F.

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 not 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 not 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