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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: June 14, 2013)
) Case No.: PSH-13-0076
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Issued: August 27, 2013

Hearing Officer Decision

Ann S. Augustyn, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should grant the individual an access authorization.

I. Background

The individual is an applicant for a DOE security clearance. During a background investigation conducted by the Office of Personnel Management (OPM), information surfaced about the individual's failure to file federal income tax returns. When the Local Security Office (LSO) was unable to resolve the derogatory information during a personnel security interview (PSI), it requested and received permission to initiate an administrative review proceeding.

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In June 2013, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l). (hereinafter referred to as Criterion L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting a hearing, and I was appointed the Hearing Officer in the case. At the hearing that I conducted, two witnesses testified. The individual presented his own testimony and that of one other witness; the DOE presented no witnesses. In addition to the testimonial evidence, the LSO submitted six exhibits into the record; the individual tendered two exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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), *cert. denied*, 499 U.S. 905 (1991) (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 his 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. 10 C.F.R. § 710.26(h). Hence, an

² Criterion L refers to information indicating that an individual has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, there is only one criterion at issue in this proceeding, Criterion L. To support its charges, the LSO alleges that the individual he failed to comply with the law by not filing his 2010 and 2011 federal tax returns.

I find that the individual's failure to discharge his obligation to file his federal tax returns raises questions about his ability to comply with rules and regulations which, in turn, cast doubt on his reliability, trustworthiness and ability to protect classified information. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House at Guideline F (Adjudicative Guidelines), ¶ 19 (g).

IV. Findings of Fact and Analysis

The individual admits that he failed to file his federal tax returns for the tax years 2010 and 2011. Ex. 5 at 9-13, 17, 29-31. He claimed during the PSI and reiterated at the hearing that he did not know he had to file income tax returns. *Id.* at 13-14, Tr. at 27, 30-31, 33. At the PSI, he related: "I thought ...they just take taxes out of my check...I didn't know to go and file." Ex. 5 at 13. The individual, who was 20 years old in 2010, testified that he lived with his mother at all periods relevant to this proceeding. Tr. at 28, 29-30. He further testified that he never received his W-2 forms from his employers for the tax years 2010 and 2011 because he and mother moved three times during that time frame. He maintained that it was never his intent to defraud the federal government. Response to Notification Letter. He also testified that his failure to file his federal tax returns was in no way related to a desire to protest the requirement to file federal tax returns. Tr. at 29. He stated that he was immature during the time period in question, and did not understand the importance of filing taxes. Ex. 5 at 26. He provided documentary evidence to show that he has filed his 2010, 2011 and 2012 tax returns and received a refund for the tax years 2011 and 2012³. He added that he intends to file his tax returns in the future in a timely manner. Tr. at 29, 33, 39.

³ He testified under oath that he also received a \$408 tax refund for the 2010 tax year but was unable to produce the U.S. Treasury check. Tr. at 37.

The individual's mother testified that it was her mistake that he did not file his federal tax returns. *Id.* at 13-19. She stated that her tax preparer told her that if her son made less than \$7,000, he did not need to file a tax return. At the time, the individual did not know her son made more than \$7,000 for one of the tax years in question. She pointed out, and submitted her 2010 and 2011 tax returns to corroborate, that she claimed the individual as a dependent on her federal tax returns. *Id.* at 13; Attachment to Response to Notification Letter. She also corroborated her son's testimony that they moved and that he never received his W-2 forms until just before the administrative hearing. She concluded her testimony by stating that she will make sure that he files his tax returns in the future.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses 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 should be granted an access authorization. I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

The individual was young and immature when he failed to file his federal tax returns. He appears to have relied heavily on his mother for advice and instruction on this matter, as he lived with her until recently. The mother testified that after the OPM investigator questioned the individual about his failure to file federal tax returns, the individual asked her what he should do. *Tr.* at 20. The mother told the individual that the matter was already taken care of because she had claimed him as a dependent on her tax returns. *Id.*

Based on the evidence before me, I find that the mother's misunderstanding about her son's obligation to file federal tax returns, the individual's earnest ignorance of his own obligation in this regard, and the fact that the individual did not receive his W-2 forms all contributed to the individual's failure to file his federal tax returns for the tax years 2010 and 2011 tax years. Furthermore, the individual has now filed his federal tax returns for the tax years 2010 and 2011, thereby fulfilling his obligation to file tax returns for those years. He also submitted evidence that he filed his 2012 federal tax return, and testified credibly that he now understands his obligation to file federal tax returns and will do so in the future. His mother also now knows that her son must do his own tax filing and has committed to ensuring that he does so in the future. The individual and his mother convinced me that the conduct at issue happened under unique circumstances and is unlikely to recur. In the end, the record is clear that the individual's failure to file his federal tax returns stemmed from ignorance, not willful disregard of the law or negligence. In the end, the individual has mitigated the Criterion L security concerns at issue in this proceeding.

C. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After

considering all 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 have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with that criterion. I therefore find that granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual should be granted an access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: August 27, 2013