

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

In the Matter of Personnel Security Hearing	)	
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Filing Date: January 15, 2014	)	Case No.: PSH-14-0006
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Issued: June 5, 2014

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. During a background investigation, 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.

In January 2014, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created a substantial doubt regarding her 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

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<sup>1</sup> 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 the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting a hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, five witnesses testified. The individual presented her own testimony and that of four other witnesses; the DOE presented no witnesses. In addition to the testimonial evidence, the LSO submitted six exhibits into the record; the individual tendered 16 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*, 494 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 (9<sup>th</sup> 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 restoring her 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 her 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 individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> 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).

## **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role 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). 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 failed to comply with the law by not filing her 2011 and 2012 federal income tax returns. In addition, the LSO alleges that the individual admitted that she was aware of her obligation to file taxes yearly and that she knew that she was in violation of the law by not filing her taxes.

I find that the individual failure to discharge her obligation to file her federal tax returns raises questions about her ability to comply with rules and regulations which, in turn, cast doubt on her 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 she failed to file her federal income tax returns for the tax years 2011 and 2012. Ex. 6 at 13, 19 and 20, Tr. at 84. She claimed during the PSI and reiterated at the hearing that there were a number of setbacks or stressors in her life that contributed to the non-filing of her tax returns, including the fact that she and her husband owned three businesses between 2008 and 2013 which they were forced to close due to poor sales. Tr. at 87-89, 91. In addition, the individual testified that her mother-in-law's stroke and subsequent death, challenges related to her son's Autism and Asperger's Syndrome, as well as significant job stressors, also caused a setback in filing her tax returns. The individual testified that she filed timely extensions for her 2011 and 2012 tax returns. However, due to the aforementioned setbacks, the individual was unable to complete her tax returns and the extensions expired. She testified that she called her Certified Public Accountant (CPA) to file an additional extension and was told that only one extension is permitted. The individual further testified that in August 2013, she met with her CPA to assist with filing her 2011 and 2012 tax returns. During the hearing, she submitted documentary evidence that indicates that her 2011 tax return was filed on December 16, 2013 and that her 2012 tax return was filed on January 7, 2014. Ex. C, D and F. The individual reiterated that during the periods of time that her taxes remained unfiled, her job became stressful and extremely busy and that it took a great deal of time to gather and reconcile her business receipts and papers, specifically her profit and loss statements. Tr. at 101.

The individual acknowledged that she knew she was in violation of the law by not filing her tax returns, but testified that it was not her intent to not file her 2011 and 2012 tax returns and that she was not willfully breaking the law. *Id.* at 96. She stated that she asked her CPA, who was working on a complicated audit for another customer, to move faster on completing her returns once she realized the seriousness of her non-filings. *Id.* at 92. The individual testified that other than her 2011 and 2012 tax returns, she has never failed to file any other returns in the past. She further testified that her 2013 tax returns were filed in March 2014, a month before the due date which she stated is typical for her. *Id.* at 90, Ex. G. According to the individual, the stressors in her life have been resolved; she has simplified her life and has no intention of opening future family businesses. *Id.* at 109. The individual testified that her future intentions are to file her tax returns in a timely manner despite any stressors that may arise for her. *Id.* at 111.

The individual's CPA testified that he has known the individual since 2004 and that other than the 2011 and 2012 tax years, the individual has never been late on filing her tax returns. *Id.* at 11 and 12. According to the CPA, he assisted the individual in filing her 2011 return on December 16, 2013 and he filed her 2012 return on January 7, 2014. *Id.* at 12. The CPA testified that the individual's 2011 and 2012 returns were complicated by the fact that the individual owned a number of businesses and thus had a number of transactions to record. He also noted that the individual's family issues, particularly the passing of her mother-in-law, contributed to her late returns, and that the individual filed timely extensions, but missed the deadlines. *Id.* at 13. The CPA testified that the individual is a good record keeper and a conscientious taxpayer. *Id.* at 15. He further testified that the individual is very reliable and detail-oriented. *Id.* at 14. The CPA reiterated that he believes the individual did not file her 2011 and 2012 tax returns because of the demands of business and family. *Id.* at 15. He further testified that he believes that the individual acted responsibly and did not willfully avoid the law. He does not believe the individual will ever file her tax returns late again. *Id.* at 16.

The individual's husband testified that their tax filings have been complicated over the last couple of years by a number of family issues, including their son's special needs and his mother's sickness, as well as problems related to the family's three businesses. *Id.* at 58. He testified that the individual never intended to not file her 2011 and 2012 tax returns. *Id.* at 66. The individual's husband further testified that it was a slow process to gather the business information to complete their taxes. According to the individual's husband, their stressors have now been resolved. *Id.* at 81. His future intentions are to work with the individual on making sure that future tax returns are filed in a timely manner. *Id.* at 82.

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's access authorization should be restored. I find that restoring 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 dealing with a number of significant stressors in her life when she failed to file her 2011 and 2012 tax returns. She testified that when she realized that she would not be able to complete her returns in a timely fashion, she filed six-month extensions for more time. When she realized she would not be able to meet the extended October deadlines, she asked her CPA to file another extension. However, her CPA told her that the Internal Revenue Service only allowed one extension. According to the individual, it took a great deal of time to gather tax documentation regarding her family's three failed businesses. She maintained that she did not willfully disobey the law when she failed to file her 2011 and 2012 tax returns.

Based on the evidence before me, I find that the individual's significant job stressors, the sickness and subsequent passing of her mother-in-law and complications related to three failed family businesses all contributed to the individual's failure to file her federal tax returns for tax years 2011 and 2012. Furthermore, the individual has now filed her federal tax returns for the tax years 2011 and 2012, thereby fulfilling her obligation to file tax returns for those years. She has also submitted evidence that she filed her 2013 federal tax return, and testified credibly that she now completely understands her obligation to file federal tax returns in a timely fashion and will do so in the future. The individual 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 her federal tax returns stemmed from the overwhelming stressors in her life, not a willful disregard of the law. In the end, the individual has adequately 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 restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: June 5, 2014

