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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	March 7, 2012)	
)	Case No.: PSH-12-0021
_____)

Issued: June 4, 2012

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility. The Local Security Office (LSO) received information that the Individual had not filed a state income tax return for the year 2007. Exhibit (Ex.) 3 at 1. Consequently, LSO conducted a personnel security interview (PSI) with the Individual in October 2011. Ex. 7. Because the 2011 PSI failed to resolve the security concerns raised by the Individual’s failure to file tax returns, the LSO informed the Individual, in a February 2012 notification letter (Notification Letter), that derogatory information existed which raised security concerns under 10 C.F.R. § 710.8 (l) (Criterion L) and that her security clearance was suspended. Ex. 1. The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

The Individual requested a hearing on this matter. At the hearing, the DOE counsel introduced seven exhibits into the record (Exs. 1-7) but did not present any witnesses. The Individual presented her own testimony, as well as the testimony of a friend who was also a former supervisor (Supervisor) and a tax preparer (Tax Preparer). *See* Transcript of Hearing, Case No. PSH-12-0027 (hereinafter cited as “Tr”). The Individual additionally submitted five exhibits (Exs. A-E) into the record.

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *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) (*Adjudicative Guidelines*).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id*; *see generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criterion L

1. Failure to file Tax Returns

The facts of this case are essentially undisputed. Tr. at 47-48. In the 2011 PSI, the Individual admitted that she had not filed state or federal income tax returns for the years 2008 through

2010.² Ex. 7 at 21-22, 28-29, 40. She also admitted that she had received notices, dated August 2011, and a letter, from a state tax agency indicating that she had not filed state income tax returns for 2007 and 2008. Ex. 7 at 21, 23-27; *see also* Ex. 6 at 1-3; Ex. 3 at 1. The Individual also stated that, at the time of the PSI, she had not taken any action to follow up on the notices and the letter. Ex. 7 at 21-24, 24. The Individual also admitted at the PSI that she had not made filing tax returns a “priority.” Ex. 7 at 40.

2. The Associated Security Concerns

Criterion L concerns circumstances tending to show that an 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.” 10 C.F.R. § 710.8(l). Unwillingness to abide by rules and regulations, such as the requirement to file income tax returns, can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. *Adjudicative Guideline F*, ¶ 19(g); *Personnel Security Hearing*, Case No. TSO-1072 (October 17, 2011). Given the information indicating that the Individual has a history of failing to file state and federal tax income returns, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

The Individual testified that she made a serious error in judgment in not filing the tax returns. Tr. at 54. The Individual provided a number of explanations as to why she had failed to file tax returns for the period 2008 through 2010. Specifically, the Individual asserted that around 2004 or 2005 her computer broke down and that her usual method for preparing tax returns consisted of using tax preparation software. Tr. at 29, 49. Further, before 2006, the Individual had experienced a number of traumatic events in her life, namely the destruction of her hometown by a fire, a breakup with her live-in partner, the death of her father, and the onset of migraine headaches. Tr. at 30. These events caused her to isolate herself from friends and family members. Tr. at 31-32. During this period, the Individual believed that she had only the mental and physical resources to either go to work or prepare and file her taxes. Tr. at 32. Additionally, the Individual testified that during the period 2008 through 2010 she believed that she was not required to file tax returns because she would have been owed a tax refund in each of those years. Tr. at 51. Her belief was reinforced because in prior years she had never owed tax payments. Tr. at 52. The suspension of her security clearance has humbled the Individual and has impressed upon her the need to “deal with my taxes” and to make filing taxes a priority in her life. Tr. at 34.

The Individual has presented documentary evidence that her tax returns for the years 2008 and 2009 are completed and will be submitted soon. Ex. A-D. Further, she testified that a firm is obtaining information needed to file her tax return for the year 2010. Tr. at 42-43. The Individual testified that she will be receiving a refund for the tax years 2008 and 2009 and that she plans to purchase another computer with the refunds. Tr. at 44. Additionally, the Individual plans to be

² Available tax records suggest that the Individual may not have filed a state tax return for the year 2007. Ex. 5 at 1. However, a LSO case evaluation indicates that, contrary to an allegation made in the Notification Letter, the Individual filed a federal income tax return in 2007. Ex. 3 at 1; *see* Ex. 4 at 7.

more proactive in getting assistance from her family in the future should she experience additional problems. Tr. at 53-54.

The Individual's Tax Preparer testified that the Individual needs only to sign her 2008 and 2009 tax returns in order for the returns to be filed. Tr. at 57-59. The Tax Preparer testified that another firm is in the process of obtaining information needed to prepare the Individual's 2010 tax return. Tr. at 59. With regard to the Individual's 2011 tax return, the Tax Preparer stated that the Individual has already filed a request for an extension in the deadline. Tr. at 59. The Tax Preparer also testified that the Individual has been cooperative in getting him the information he has needed to prepare these returns. Tr. at 59-60.

The Supervisor testified that the Individual's work performance was excellent and that the Individual never had any lapses in security procedures while the Individual worked for her. Tr. at 14-15, 19. The Individual also submitted a statement from a former co-worker who stated that the Individual was very responsible, dedicated and has exhibited high moral standards. Ex. E. The co-worker also confirmed that the Individual suffered from periodic migraine headaches but was able to meet all of her work commitments. Ex. E.

In deciding whether an individual has mitigated the security concerns, a Hearing Officer must consider all relevant factors having a bearing on an individual's fitness to obtain or retain a security clearance. *See* 10 C.F.R. § 710.7(c). According to the *Adjudicative Guidelines*, among the factors that may serve to mitigate security concerns raised by an individual's financial problems, such as a failure to file required tax returns, are that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," and "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances." *Adjudicative Guidelines*, Guideline F, ¶ 20; *see Personnel Security Hearing*, Case No. TSO-0971 (March 1, 2011) (individual filed tax returns once he received necessary information from bankruptcy trustee); *Personnel Security Hearing*, Case No. TSO-1072 (October 17, 2011).

After reviewing the evidence before me, I cannot find that the Individual has mitigated the security concern raised by her recent, repeated, failure to file state and federal income tax returns. The Individual has presented some mitigating factors on her behalf – her recent attempts to file her missing tax returns, the fact that it appears that the Individual will not owe taxes for the years in question, and her excellent work record and general character. However, the Individual's admitted lapse in judgment – her failure to file tax returns for a period of three years – is recent and relatively extensive. Further, I cannot find that any of the reasons the Individual has offered to excuse her failure to file provides sufficient excuse to mitigate this significant lapse in judgment. Although the Individual cited her lack of a computer, the Individual compensated for this in 2006 by using a certified public accountant. Tr. at 29. When asked whether she considered using an accountant or getting another computer during the years 2008 through 2010 she replied "I probably thought about it, but I probably didn't – I just didn't push myself . . ." Tr. at 50.

With regard to the Individual's migraine headaches, it is beyond dispute that such headaches can be temporarily disabling. However, the Individual testified that at their worst, she would experience headaches approximately two to three times a month along with months where she would experience seven to eight headaches a month. Tr. at 51. Given the reported frequency of her headaches, I cannot find that her condition was so disabling to excuse her failure to file income tax returns or have a professional prepare her tax returns. Additionally, the negative events she cited as contributing to her failure to file income taxes occurred in 2000 or 2001. Tr. at 29-20. The Individual was still able to file tax returns for a significant period after these events. While I cannot rule out that the Individual's mental state was greatly affected by these significant events, there is not sufficient evidence in the record by which I can find that they would excuse her failure to file.

The record indicates that the Individual is a hardworking and dedicated employee who has not been involved any type of security lapse at work. Nonetheless, the Individual made a significant lapse in judgment in failing to file tax returns and has only recently begun to remedy her tax issues. Absent a longer period where the Individual demonstrates compliance with her legal responsibilities, I cannot find, as of the date of the hearing, that the Criterion L concerns have been resolved. *See Personnel Security Hearing*, Case No. PSH-11-0036 (March 28, 2012) (despite individual's excellent record in security matters at work, individual's recent repeated failure to comply with the law by filing tax returns is such to require non-restoration of clearance).

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve the concerns raised by the Criterion L derogatory information. Therefore, I cannot conclude that restoring the Individual's suspended access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: June 4, 2012