



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).<sup>2/</sup>

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge<sup>3</sup> in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented no witnesses; the Individual presented his own testimony. The LSO submitted eight exhibits into the record; the Individual tendered twelve exhibits.

## 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 (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 with evidence to convince the DOE that restoring 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). Thus, 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 relates to information that a person 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 . . .” 10 C.F.R. §710.8(l).

<sup>3</sup> Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

## **B. Basis for the Administrative Judge'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, the LSO cites one criterion as the basis for suspending the Individual's security clearance, Criterion L. To support its allegations, the LSO references the Individual's state tax lien and the fact that he has not filed his federal taxes for tax years 2009 through 2012. The Individual's failures to meet his financial obligations raise a security concern under Criterion L, because his actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," all of which can raise questions about the Individual's reliability, trustworthiness and ability to protect classified information. *See* Guideline F of the *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). Specifically listed as a condition that raises a security concern is income tax evasion. *Id.* at ¶ 19(d).

## **IV. Findings of Fact and Hearing Testimony**

The Individual had an outstanding state tax lien in the amount of \$6,487 that has remained unpaid since 2007. DOE Ex. 1. At the hearing, the Individual testified that he has since paid a sizeable portion of the debt and now owes approximately \$2,196. Tr. at 13. In regard to the unfiled federal taxes, the Individual claimed that because of the unsatisfied state tax lien, he has not been able to file his federal taxes. Tr. at 15. He declared that he has been in a similar situation previously, having not filed his taxes after becoming ill in 1998. Tr. at 15. In 2002, he hired a Certified Public Accountant (CPA) and she was able to file his delinquent taxes. Then in following years, because he was underemployed, the filing of his taxes lapsed again. Tr. at 16. Again, the CPA was able to file his back taxes in 2008. Tr. at 16. At the hearing, the Individual stated that he has assembled the information necessary to complete his back taxes, but at present, he has no way to pay the CPA to file for the years 2009-2012.<sup>4</sup> Tr. at 20, 23. The Individual also asserted that there is no free or online service to help him with his taxes, because he has a rental property. Tr. at 20, 21. He concluded that he hoped to file his federal taxes in the "next couple of months." Tr. at 30.

## **V. Analysis**

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

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<sup>4</sup> Although not at issue here, the Individual claimed that he filed an extension for his 2013 taxes. Tr. at 31. He stated that there has never been a year that he has not received a refund. Tr. at 24.

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)<sup>5/</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should not be restored. I cannot 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.

In considering the evidence before me, I must look to the Adjudicative Guidelines to determine if the Individual has mitigated the security concern. The relevant paragraph lists five relevant conditions that could mitigate security concerns, including:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated 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;

Adjudicative Guidelines, ¶ 20(a)-(e).

In regard to the outstanding state tax lien, I find that the Individual has presented no evidence of mitigation. First, under paragraph 20(a), I cannot find that the behavior occurred so long ago or was so infrequent that it is unlikely to recur. The lien was first filed in 2010. Ind. Ex. C at 2. I cannot find mitigation because, although the Individual is working toward satisfying that debt, it is not yet paid in full. He testified, "I would say initially I started probably perhaps two years ago, then it became interrupted." Tr. at 12. The initial \$6,487, was significantly reduced by a levy against his bank account. Tr. at 29. Second, under paragraphs 20 (b) and (c), the Individual presented no evidence that failure to satisfy the state tax lien was largely beyond his control, or that he received or is receiving counseling for the problem. Third, under paragraph 20(e), it appears that the Individual initially disputed the validity of the lien. When questioned whether

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<sup>5</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

he ever tried to dispute the validity of the lien, the Individual stated, “Well, I tried to. So what I’m just doing instead is paying on it up to -- I would say some point when I’m in a position to either bargain with them or, you know, get resolution on it.” Tr. at 9. He presented no evidence of his attempt to dispute the lien. Finally, under paragraph 20(d), the Individual has initiated an effort to repay the lien. Tr. at 11-13. However, taken with the other unmitigated conditions, I find that the security concern regarding the state tax lien remains substantially unmitigated under Guideline F.

Likewise, the Individual has presented no evidence to mitigate the concern raised by his failure to file his federal tax returns for the tax years 2009 through 2012. First, the Individual cannot show that his behavior occurred so long ago or was so infrequent that it is unlikely to recur. At the hearing, the Individual testified that he has had other periods during which he failed to file his federal tax returns, but he became current in 2002 and again in 2008. This shows a pattern of irresponsible behavior regarding his filing of federal taxes. Furthermore, his having not filed his taxes for the last four years shows that the behavior is recent. Second, the Individual has not shown that his failure to file his taxes resulted from a condition that was beyond his control. Third, the Individual has not received counseling for his repeated failure to file his federal income taxes. Finally, he has not shown a good faith effort to file his taxes. Because the Individual has not filed his outstanding federal income taxes from the years 2009 through 2012, I find that the security concern regarding the state tax lien remains unmitigated under Guideline F.

Based on the foregoing, I find that the Individual has not sufficiently mitigated the security concerns associated with Criterion L.

### **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 not brought forth sufficient evidence to mitigate the security concerns associated with Criterion L. I therefore cannot 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 not 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.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals

Date : May 22, 2014