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

In the Matter of Personnel Security Hearing)

Filing Date: March 24, 2014)

Case No.: PSH-14-0027

Issued: June 23, 2014

Administrative Judge Decision

Shiwali G. Patel, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Department of Energy (DOE) should restore the individual’s access authorization.²

I. BACKGROUND

The individual is an employee of a DOE contractor and currently holds a suspended access authorization. A Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI) with a personnel security specialist on January 15, 2014, to address concerns that were raised during a background investigation with regard to her failure to file income taxes for 2011 and 2012. After the PSI, the LSO determined that there was derogatory information that cast into doubt the individual’s eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. DOE Exhibit (Ex.) 1. The Notification Letter also informed the individual that she was

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning her eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge. The DOE introduced seven exhibits into the record of this proceeding (Exs. 1-7). The individual introduced four exhibits (Exs. A-D) and presented the testimony of two witnesses, in addition to her own testimony. *See* Transcript of Hearing, Case No. PSH-14-0027 [hereinafter cited as “Tr.”].

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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 regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to subsection (l)³ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Ex. 1. The LSO cited the following regarding the individual’s financial irresponsibility concerning her income taxes: 1) the individual failed to file her federal and state income taxes for the years 2011 and 2012, and 2) the individual stated that she would file her income taxes within four weeks during an interview with the Office of Personnel Management (OPM) on August 29, 2013, but admitted during her PSI

³ Criterion (l) defines as derogatory information when 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.” 10 C.F.R. § 708.8(l).

on January 15, 2014, that she had not taken any action towards filing her outstanding income tax returns. *Id.*

The above information adequately justifies the DOE's invocation of criterion (1), and raises security concerns. The failure 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*].

IV. FINDINGS OF FACT AND ANALYSIS

The individual acknowledges that she failed to file her income tax returns for 2011 and 2012. She testified that she has filed taxes for her entire working life, or for the last 30-40 years, and that she never failed to file her income taxes before. Tr. at 34. The individual has worked for the DOE contractor since 2012, and previously she worked for subcontractors at the DOE contractor's facility. Tr. at 24. She has held a DOE clearance since the mid-1980s, and this is the first time that she has had her clearance suspended. Tr. at 25. Since the mid-1990s, while working full-time for a DOE contractor, the individual also worked part-time at a business that she started with others, working one day during the week and weekend. Tr. at 27-28; Ex. 6 at 27.

Due to her part-time job with her business, her bookkeeping was complicated and she hired an accountant to assist her in filing her taxes. The individual testified that she filed an extension for her 2011 tax return; however, she was still unable to complete her return by the extended deadline. Tr. at 56. At the hearing, the individual explained why she failed to file to her federal and state income taxes for 2011 and 2012. She stated that her database malfunctioned in late 2011 and she lost records from several years back. Tr. at 35; Ex. 6 at 16. That database generated reports that she gave to her accountant to assist in her tax filings. Ex. 6 at 21. She also has a chronic illness, fibromyalgia, which she testified affects her stress levels. Tr. at 35.

The individual testified that much of the stress that affected her failure to file her 2011 and 2012 income taxes resulted from her part-time job. Tr. at 54-55. There were problems that arose from her part-time job that were unexpected and she felt disturbed by not recognizing them when they were "brewing." Tr. at 38. She realized that the problems overwhelmed her and interfered with her responsibilities, such as filing her tax returns, because she had to deal with those problems during the times she was not working. Tr. at 37, 41. As she was distressed by what occurred from her part-time job, she decided to simplify her life and retire from that job, which she did in September 2012; yet, there were still matters that she was dealing with from that part-time job that were not resolved until February 2014. Tr. at 39. The individual credibly testified that it was during the PSI in January 2014 when she realized the seriousness of her failure to file those taxes, and that the PSI was a "wake-up call." Tr. at 43. At the PSI, she acknowledged that it was against the law to not file her taxes. Ex. 6 at 33. Moreover, the individual testified that she believed that she would not owe any taxes since in the last 20 years she only owed taxes about once. Tr. at 27.

In explaining why she failed to file her 2011 and 2012 income taxes within four weeks of her interview with the OPM investigator on August 29, 2013, the individual stated that she was distracted because she was focusing on issues that arose from her part-time job. Tr. at 41. When she met with the OPM investigator in August 2013, she honestly believed that she could file her taxes within four weeks, and she testified that she was not trying to deceive the OPM investigator. Tr. at 42.

Earlier this year, the individual filed her 2011, 2012 and 2013 income taxes, and she is current on all her taxes. Tr. at 47. The individual's accountant electronically filed her 2013 income tax returns in mid-March 2014, for which she is expected to be refunded \$3143.00 on her federal and state income tax returns. Ex. D; Tr. at 30. She also submitted a letter from her accountant dated February 2014, indicating that her 2011 income tax returns were completed and that she was due a total refund of \$5308.00 from her federal and state income tax returns. Ex. A. She mailed in her 2011 income tax returns in March 2014. Tr. at 31. The individual testified that she initially filed her 2012 income taxes with her 2011 income taxes, but then amended her 2012 income taxes after realizing that her reported income was incorrect because she was missing a W-2 form from a former employer. Tr. at 32-33. Thus, after receiving the W-2 form from her former employer, she amended her 2012 tax returns, ended up owing \$2099.00, and mailed the amended tax return with her payment in early May 2014. Tr. at 33; Ex. C.

The individual credibly testified that she understands her obligation to file her taxes and that in the future, she will ensure that she files her income tax returns on time, or at least seek an extension for the filings. Tr. at 39. She testified that she feels "ashamed" by having behaved "irresponsibly." Tr. at 39. With regard to her electronically saved data, she now backs up her files offline. Tr. at 40. However, even if her database malfunctions again, the individual testified that she understands that she still has to file her taxes on time or request an extension. Tr. at 40. Furthermore, she explained that as a result of the experience from her part-time job, she has been sorting out her "baggage," and that she is committed to not allowing her tax filings to lapse again. Tr. at 46. Moreover, as the individual is no longer self-employed, her bookkeeping is less complicated, and her stress levels that resulted from her previous part-time job have decreased, allowing her to focus on her responsibilities. Tr. at 51, 56.

In addition to the individual, two witnesses testified. The first witness, who has known the individual professionally and intimately since the early 1980s, testified that in the end of 2012 through 2013, he noticed that the individual seemed withdrawn and stressed. He testified that this was uncharacteristic of her. Tr. at 18. She informed him that she had a problem concerning her part-time job, which preoccupied her. Tr. at 19-20. That witness also testified that the individual is very honest and trustworthy. Tr. at 20. Another witness, the individual's supervisor with the DOE contractor, testified that she is a very reliable employee and that there is no reason to question her honesty. Tr. at 13.

Given the evidence before me, I find that the security concerns raised by the LSO have sufficiently been mitigated, and that the individual's access authorization should be restored. She filed her taxes soon after she realized the seriousness of having to file them during the PSI in January 2014, and the problems that led to her not filing her tax returns – computer database failure and stress from her

part-time business – have been resolved or are under control, such that I find that it is not likely that she would face the same issues again. *See Adjudicative Guidelines* ¶ 20(c); *In the Matter of Personnel Security Hearing*, OHA Case No. PSH-14-0006 (June 5, 2014) (concluding that the individual mitigated the concerns regarding her failure to file income taxes after the stressors that contributed to the individual's failure to file income tax returns were resolved and the individual since filed her outstanding income taxes). Moreover, the record establishes that the individual's failure to file her tax returns was uncharacteristic of her and she has since been responsible in handling her tax returns. She credibly testified that she understands the seriousness of not filing her taxes and will ensure that she files them in the future. Accordingly, I am convinced that the individual's conduct was a temporary lapse in judgment that will not likely recur in the future, and that it does not cast doubt on her reliability, trustworthiness or good judgment.

V. 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 (I). However, 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 at issue. 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 security clearance 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.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: June 23, 2014