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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: October 22, 2014) Case No.: PSH-14-0096
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Issued: February 4, 2015

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 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 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 granted.

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 September 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

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.

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 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, two witnesses testified. The individual presented her own testimony and that of one other witness; the DOE presented no witnesses. In addition to the testimonial evidence, the LSO submitted seven exhibits into the record; the individual tendered five 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 (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 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.

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).

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, 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 2008, 2009 and 2012 federal income tax returns. In addition, the LSO alleges that after talking to an investigator, she realized how critical it was to file her taxes. Despite this realization, she still had not filed her 2008, 2009 or 2012 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 2008, 2009 and 2012. 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 her mother's death in March 2008. According to the individual, after her mother passed away, she had to immediately step in to assist her father. The individual testified that her father suffered from dementia brought on by an earlier diagnosis of cancer and subsequent chemotherapy treatments. Transcript of Hearing (Tr.) at 40. She further testified that, as a result of his dementia, her father had difficulty analyzing information. *Id.* The individual stated that she had to assist her father with all of his paperwork including paying household bills, preparing documentation for disputed hospital bills related to her mother and preparing his income taxes. *Id.* at 41. She recalled one occasion in 2007 or 2008 before her mother passed away when her father was standing in the hospital room with a bag of bills and stated that he needed help. *Id.* at 42. She recalled that her father had over a month's worth of bills in the bag that had not been paid. *Id.* at 42.

During the same time period, in 2008, the individual testified that her daughter was going through a separation and subsequent divorce. *Id.* at 45. She explained that the situation was

highly volatile and that she was concerned about her daughter's safety. She recalled that she attempted to complete her 2008 taxes using a TurboTax computer program, but that she lost her data because of a computer virus. *Id.* at 46. The individual testified that at the same time her daughter and two grandchildren moved in with her, and that she boxed up her income tax papers and files in order to make room for them. *Id.* She admitted that during this time period she was consumed with her daughter's move and personal issues as well as her responsibilities for taking care of her father, who she stated was getting progressively worse. *Id.* The individual stated that she forgot about filing her 2008 and 2009 tax returns until she was preparing to move into a new home in 2013 (her daughter also moved into her own home at that time). *Id.* at 47. According to the individual, as she prepared to move, she came across the paperwork for her 2008 and 2009 taxes. *Id.* She testified that she filed an extension to file her 2012 return, and planned to file them all in October 2013 (the due date of her 2012 return with the extension).³ She further admitted that she told the investigator during an interview for her re-investigation in early 2013 that she would resolve her tax filings, but found herself overwhelmed at work and dealing with the fact that her father had been denied Medicare benefits, a new stressor according to the individual. *Id.* at 51. She noted that this issue was not resolved until August 2014. After compiling all of her paperwork, the individual filed her 2008, 2009 and 2012 in October 2014. Individual's Exhs. B, C and D.⁴ The individual stated that she owes about \$6,500 to the IRS and requested an installment agreement to pay the tax debt at the same time she filed her three returns. Individual's Exh. A.

The individual testified that she is embarrassed by this situation regarding her delinquent tax filings. *Id.* at 67. She further stated that she is remorseful for her actions and understands that she should have filed her taxes in a timely manner. The individual stated, however, that she did not intentionally fail to file her 2008, 2009 and 2012 returns and that she is an honest and trustworthy person. She also testified that her family and co-workers are aware of her tax issue and the individual does not believe she could be coerced by this information. She reiterated that she understands her obligation to file her tax returns. Finally, the individual testified that, despite the stressors in her life, she intends to file her taxes every year in a timely manner in the future. *Id.* at 76.⁵

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 granted. I find that granting the individual's DOE security clearance will not endanger the common defense

³ The individual testified that she filed hand-written 2010 and 2011 tax returns in a timely manner. *Id.* at 48. She testified that when she filed these returns it still did not occur to her that she had forgotten to file her 2008 and 2009 returns. *Id.* at 49.

⁴ The individual filed her 2013 return in October 2014. Individual's Exh. E.

⁵ The individual's co-worker, who has known the individual since 2006, testified on her behalf. She stated that she was aware of the individual's personal stressors, including her father's health issues. The co-worker testified that the individual is a reliable and trustworthy individual.

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 2008, 2009 and 2012 tax returns. She testified that she became overwhelmed with personal issues in her life, including the death of her mother, her father's dementia and the personal issues related to her daughter. While dealing with these issues, the individual forgot that she had not filed her 2008 and 2009 returns. According to the individual, she did not realize her delinquency until she found her tax paperwork as she prepared to move into a new home. Although she filed an extension for her 2012 return, she again became overwhelmed with work and her father's health issues and did not file her return until October 2014, along with the other two delinquent returns. She maintained that she did not willfully disobey the law when she failed to file her 2008, 2009 and 2012 tax returns.

Based on the evidence before me, I find that the individual's significant personal stressors, including the illness and subsequent passing of her mother, the overwhelming responsibilities related to her father's dementia, as well as her concerns for her daughter's safety during a volatile separation and divorce, all contributed to the individual's failure to file her federal tax returns for tax years 2008, 2009 and 2012. The individual has now filed her federal tax returns for 2008, 2009 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.

We recognize that the individual owes debt for unpaid taxes associated with her 2008, 2009 and 2012 tax returns and is in the process of negotiating a payment plan with the IRS to address the debt owed. As of the date of the hearing, the individual has paid \$150 toward her tax debt, although her installment agreement request has not yet been accepted by the IRS. Individual's Exh. A. In addition, we note that the Notification Letter did not specify financial responsibility as a separate concern, possibly because the LSO did not know of the individual's tax debt at that point. While it is arguable that the individual's failure to file her taxes in a timely manner and her present tax debt are inextricably intertwined, the record is devoid of any evidence of other indebtedness and it appears that the individual acted responsibly in attempting to establish a payment plan with the IRS. 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. Based on the foregoing I find that the individual has sufficiently 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'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 granted. 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: February 4, 2015