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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: January 30, 2019) Case No.: PSH-19-0008
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Issued: April 25, 2019

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires that he hold a security clearance. The Local Security Office (LSO) came into possession of derogatory information about the Individual regarding his failure to file federal income taxes for several years. The LSO conducted a Personnel Security Interview (PSI) of the Individual in August 2018. Several weeks later, the Individual’s security clearance was suspended.

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

¹ Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of four witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-19-0008 (hereinafter cited as "Tr."). The LSO submitted eight exhibits, marked as Exhibits 1 through 8 (hereinafter cited as "Ex."). The Individual submitted 13 exhibits, marked as Exhibits A through M.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline F of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline F (Financial Considerations) addresses "[f]ailure to live within one's means, satisfy debts, and meet financial obligations." Adjudicative Guidelines at ¶ 18. It is well established that 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. *Id.* The conditions set forth in that guideline that could raise a disqualifying security concern are inability to satisfy debts or unwillingness to satisfy debts; a history of not meeting financial obligations; deceptive or illegal financial practice; consistent spending beyond one's means or frivolous or irresponsible spending; failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required; unexplained affluence; borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and concealing gambling losses, family conflict, or other problems caused by gambling. Adjudicative Guidelines at ¶ 19.

The LSO alleges that the Individual failed to file his federal income taxes for tax years 2014–2017, despite his knowing that it was against the law to do so and despite his having participated in an Administrative Review hearing in 2012 for his failure to file federal income taxes for 2008–2010.² Notification Letter at 1–2. Accordingly, the LSO's security concerns under Guideline F are justified.

III. REGULATORY STANDARDS

² The Individual's security clearance was restored in that Administrative Review. OHA Case No. TSO-1116 (2012).

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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). The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 (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 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 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual ran an E-Bay shop for several years through which he sold used scientific equipment. Ex. 6 at 22–23. In order to file his federal income taxes, the Individual needed certain inventory information from his business. *Id.* at 21. For tax year 2013, the Individual lost the information. *Id.* As of 2018, he had not attempted to access the information, though he knew it was available online. *Id.* The Individual filed for one extension, which expired 6 months later. *Id.* at 26. He did not request further extensions. *Id.* He failed to file his federal income taxes for tax years 2014–2017 for the same record keeping reasons as his failure to file for 2013. *Id.* at 41. In his August 2018 PSI, the Individual promised to have his 2013 taxes filed within 3 months. *Id.* at 32.

The Individual submitted documentation into the record showing that he suffers from clinically diagnosed hoarding disorder. Ex. F.

At the hearing, the Individual presented the testimony of his daughter, his co-worker, his Certified Public Accountant (CPA), and his therapist. The CPA testified that the Individual had come to him about six weeks prior to the hearing date with the issue of delinquent tax filing and engaged his services to prepare and file his federal income taxes returns for tax years 2013–2018. Tr. at 19–20. His firm has a tax power of attorney for the Individual that will extend indefinitely until the

Individual affirmatively cancels it. *Id.* at 21, 32. The firm will be filing the Individual's taxes next year as well. *Id.* at 28. If the firm does not receive the information it needs to timely file his taxes, it will affirmatively contact the Individual to obtain the information. *Id.* at 24–25. The firm has also provided the Individual with a tax organization tool to help him gather the necessary documents to complete his return. *Id.* at 25. The CPA testified that the Individual's taxes are not complex and that the Individual's E-Bay small business essentially ceased operations after 2013. *Id.* at 27. He further testified that the Individual has established a long-term relationship with his firm. *Id.* at 28. The CPA estimated that the Individual's tax refunds due will almost certainly be sufficient to cover any penalties accrued as a result of his late filing. *Id.* at 34.

The Individual's daughter testified that the Individual gets overwhelmed trying to find things so he got behind on his taxes because he could not find the necessary paperwork. Tr. at 37. She testified that the Individual's hoarding behavior began about 15 years ago, around the time that she and her sister left for college. *Id.* at 38, 51. She testified that she has not been able to go inside the Individual's house in 10 years because the clutter affected her health. *Id.* at 38. However she has seen inside the front door recently and she testified that several bags of trash have been removed from the home. *Id.* at 46–47. She testified that the Individual attends weekly therapy sessions and has been making progress in organizing his home and his life. *Id.* at 39–40. She testified that the Individual's wife also struggles with hoarding behaviors but is not currently in therapy. *Id.* at 48.

The Individual's co-worker had known the Individual for about two years. Tr. at 54. He testified that he and the Individual are both "big talkers" and, as a result, they know each other very well. *Id.* at 54–55. He testified that the Individual was honest with him about the unfiled status of his tax returns. *Id.* at 55. He saw the Individual as a mentor for work, but also for how to deal with life's problems. *Id.* at 56. He supports the Individual's continued use of therapy and will support him in whatever other ways he needs. *Id.* at 58.

The therapist had met with the Individual four times over a six-week period. Tr. at 65. The Individual had called the therapist to get help about seven weeks prior to the hearing. *Id.* The therapist testified that the Individual's attorney of record in this case had referred the Individual to him. *Id.* The therapist further testified that the Individual's hoarding behavior began about 17 years ago. *Id.* at 66. It started with acquisition of items for sale through his E-Bay small business, but eventually the Individual began saving more than just valuable items and started saving everything. *Id.* About 10 years ago, the Individual got behind on filing his taxes because he thought he needed more information and eventually he was unable to access his relevant information due to the disorganization in his home resulting from his hoarding behavior. *Id.* at 67. The Individual was able to get his tax situation in order for a brief time, but eventually his hoarding behaviors returned and intensified. *Id.* The home became packed with books, newspapers, and mail, which covered and engulfed the furniture. *Id.* at 67–68.

The therapist testified that the Individual recently reported having cleaned about 10 percent of his clutter. Tr. at 71. He testified that, though he had not interviewed the Individual's spouse, he did not get the impression that she was supportive of his efforts to change his hoarding behaviors. *Id.* at 73. However, he believed that the Individual could recover even if his wife did not. *Id.* at 86. The therapist gave the Individual a good prognosis, testifying that the Individual has good insight

into his hoarding behaviors. *Id.* at 74. He believes that the Individual is quite honest and open. *Id.* at 80–81. The therapist was aware of the Individual’s use of an organization professional’s services to help support his cleaning and decluttering activities. *Id.* at 76. He believed that using such a professional’s services was helpful to the Individual. *Id.* He anticipated that the Individual needed about three to six months of therapy to recover. *Id.* at 89.

The Individual testified that his tax returns had been filed for 2013–2017 and would file his 2018 returns once he had obtained his wife’s signature. Tr. at 91–92. He intended to continue using his CPA in the years to come. *Id.* at 92. After meeting with the CPA firm, the Individual was able to get the information he needed to file his taxes. *Id.* at 93. The CPA firm advised the Individual that his business had become small enough that it was considered a hobby and, therefore, did not need to be included on his taxes anymore. *Id.* at 95–96.

The Individual testified that the difference between this administrative review process and his last administrative review process was that he now knows that he needs to keep track of his tax documentation and keep it in a designated place in his home. *Id.* at 97. In 2012, when his last administrative review took place, the Individual did not see a therapist, nor did he seek help in organizing his home. *Id.* at 99. In contrast, this time around, his organizational coach, to whom he speaks weekly, was teaching him methodologies for cleaning his home and disposing of excess papers. *Id.* at 106–09, 131. He intended to continue working with her until his home was clear. *Id.* at 119. The Individual also expressed a desire to stick with therapy for longer than six months if that’s what it takes to clear his home. *Id.* at 131.

The Individual testified that he did not begin resolving his taxes until six weeks prior to the hearing, despite his August 2018 PSI promises to resolve his tax situation, because that was when “the threat level went higher.” Tr. at 125. He had known for a long time that he struggled with organization, but felt that getting help was stigmatized. *Id.* at 129. He testified that therapy was recommended after his 2012 Administrative Review, but he did not see a therapist until quite recently. *Id.* at 132. His intent was to continue with his recovery from hoarding. *Id.* at 139–40. Between his new filing system and his decreased tax documentation burden, he believed he would not have any issues filing his taxes in the future. *Id.* at 133–34.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common-sense manner. “Any doubt concerning personnel being considered

for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Failure fulfill state or federal obligations can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F provides that the following conditions, in relevant part, may mitigate security concerns:

- (1) 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 (*Id.* at ¶ 20(a));
- (2) 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances (*Id.* at ¶ 20(b));
- (3) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control (*Id.* at ¶ 20(c));
- (4) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements. (*Id.* at ¶ 20(g)).

The Individual has filed his delinquent taxes and intends to file his taxes on time in the future. Unfortunately, the Individual’s broken promises to that effect are significant evidence against his ability to follow through on his commitments for the future. The Individual’s hoarding may indeed be a factor in his failure to file taxes, however, he only sought diagnosis and help at his attorney’s advice. It is too soon to tell whether the Individual’s new organizational skills are sufficient for him to follow through on his commitment to file his taxes on time in all future years, rather than for only two or three years, as happened the last time the Individual went through the Administrative Review process.

Though the Individual has filed his required taxes, his previous broken promises in his last Administrative Review and in the PSI prevent me from finding that the Individual is unlikely to forego filing his taxes in the future. Significantly, the Individual reported taking similar mitigating actions in 2012. *See* OHA Case No. TSO-1116 at 5 (2012) (“He now consults with a financial counselor and has a file cabinet dedicated to his business records. All of his records are now in one location and he will go to an accountant if he is overwhelmed by the task of doing his taxes. He has also started to meet with a financial planner. His daughter maintains a duplicate copy of the electronic records of his business.”) (internal citations omitted).

The Individual created the conditions that made it difficult for him to file his taxes and waited years before seeking help in correcting them. The Individual's hoarding is still not fully under control and as such he has not yet been able to demonstrate that he will be able to maintain organized paperwork in the future. For these reasons, I find that the Individual has not resolved the DOE's Guideline F concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline F of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual 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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals