

In the Matter of: Personnel Security Hearing )  
Filing Date: September 30, 2021 )  
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Issued: January 25, 2022

## Administrative Judge Decision

This Decision concerns the eligibility of XXXXX XXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. Derogatory information was discovered regarding the Individual's failure to file federal and state tax returns for 2016, 2017, 2018, and 2019. Ex. 6 at 95–96. The Local Security Office (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 to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

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 in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual testified on his own behalf. *See* Transcript of Hearing (hereinafter cited as "Tr."). The LSO submitted seven exhibits, marked as Exhibits 1 through 7 (hereinafter cited as "Ex.").<sup>2</sup> The Individual submitted one exhibit, marked as Exhibit A.

<sup>1</sup> 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.

<sup>2</sup> The LSO's exhibits, Ex. 1 through Ex.6, were combined and submitted in a single, 105-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

## 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 did not file his state or federal tax returns for tax years 2016 through 2019. Accordingly, the LSO's security concerns under Guideline F are justified.

## III. REGULATORY STANDARDS

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 testified that he had always received a refund when he filed his taxes and that he believed he had three years to file his taxes with the IRS if he was owed a refund. *Id.* at 10, 12. The Individual asserted that he was not trying to willfully avoid paying tax debts. *Id.* at 11–12.

The Individual testified that, in June 2021, he filed his tax returns with the Internal Revenue Service (IRS) and the state tax authority (the State) for tax years 2016 through 2020. Tr. at 12. In support of his testimony, he submitted copies of his federal and state tax returns for 2016 through 2020. Ex. 2 at 7–32.

The Individual's state tax returns for 2016, 2019, and 2020, showed that he was owed a refund for each of those years. *Id.* at 18, 26, 30. The Individual owed state tax for tax years 2017 and 2018. *Id.* at 14, 22. The Individual testified that he paid all outstanding balances owed for his state taxes. Tr. at 13–14. In support of his testimony, he submitted payment receipts reflecting that, in August 2021, he paid his outstanding state tax balances in full. Ex. 2 at 9–10.

The Individual testified that he filed his federal returns for tax years 2016 through 2020 in June 2021. Tr. at 12. The Individual was owed refunds for tax years 2016 and 2020. Ex. 2 at 16, 24. The Individual owed a combined total of \$12,264 in federal taxes for tax years 2017, 2018, and 2019. Ex. 2 at 12, 19, 28. The Individual testified that he had been surprised to learn that he owed taxes because he had typically received a refund in previous years. Tr. at 12–13. He testified that although he had filed his federal returns for tax years 2017 through 2019 in June 2021, he had not submitted his payments at that time because he wanted to wait until the IRS had processed his federal tax returns so that he could determine the amount of penalty fees assessed and include them with his payments. *Id.* at 13. He testified that since the date that he filed his federal tax returns in June 2021, he had checked the IRS website twice a day every day to see if his tax returns had been processed. *Id.* When the Individual realized his returns were not being processed quickly, he contacted the IRS and learned that return processing was badly delayed due to the COVID-19 pandemic. *Id.* at 14. He requested to pay off all of his federal tax balances and the IRS representative provided him with a website address where he could make online payments to pay off his outstanding tax balances. *Id.* The Individual submitted payment receipts from the IRS website which reflected that, on December 30, 2021, he paid all of his outstanding federal tax debts for tax years 2017, 2018, and 2019. Ex. A. The Individual testified that he would have paid sooner, but wanted to pay the full total with penalties included. Tr. at 14–15. He further testified that he used his savings to pay the tax owed and that he still had enough money in savings to pay the tax penalties that would likely be assessed once his returns were processed. Tr. at 17–19.

The Individual testified that he intended to file his taxes on time in the future. Tr. at 18. He expressed remorse for failing to timely file and asserted that he now understood his obligation to file on time every year. *Id.* at 16, 22–23. He testified that he had been claiming zero exemptions for the past year and a half to ensure that he will not owe taxes in the future. *Id.* at 19. He also testified that he plans to file his 2021 taxes “way before April 15.” *Id.* at 15.

The Individual provided examples illustrating his reliability and responsibility. He testified that he has assisted his daughter during difficult times, including providing her with funds, helping her move, and finding her new housing because she is a single mother with two children who lives in another state and has no other means of emergency support. *Id.* at 20. He testified that his daughter does not currently ask him for assistance because she does not want to bother him, however, she has been able to rely on him for financial assistance in emergencies and he is able to provide that assistance without financial strain. *Id.* The Individual’s testimony is consistent with and supported by his LOI response in which he stated that he has provided help to his daughter and her children with funds for basic necessities in their times of need. Ex. 5 at 42. In addition, the Individual testified that at work, he deals with classified information on a daily basis and has performed his work successfully while being reliable with all of his colleagues. *Id.* at 17, 20. He also asserted that he has never had any security incidents at his job. *Id.* at 21.

## 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 places 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 of the evidence, both favorable and unfavorable, in a commonsense 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 granting or restoring security clearances, I must deny access authorization 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 to live within one’s means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F states, in relevant part, that financial concerns may be mitigated when “the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.” Adjudicative Guidelines at ¶ 20(g).

The Individual has filed all of his tax returns, including those not included in the LSO's Summary of Security Concerns. By fulfilling his obligations beyond what the LSO described, the Individual demonstrated his willingness and commitment to fulfilling his tax obligations in the future. He has also paid all tax owed and has the means to pay late penalties once they are assessed. Accordingly, he has satisfied the mitigating criteria.

Additionally, the Individual testified credibly that he now completely understands his obligation to file Federal and state tax returns in a timely fashion, regardless of refund status, and committed to do so in the future. It is clear to me that the Individual now comprehends the ramifications of any future failure to timely file his taxes, and I find that this behavior is unlikely to recur. I base this determination on the fact that he acknowledged his mistake and took corrective action to pay off a large and unexpected tax debt in excess of \$12,000 promptly and without the need for financial assistance. The Individual maintains significant savings, allowing him to meet his financial obligations in the event that he incurs future tax debts. The Individual has also changed the number of withholding allowances he claims to decrease the likelihood of owing additional taxes when he files his tax returns in the future.

I note that the Individual's failure to file taxes for years at a time raises concerns about his reliability in particular. However, the tax issue appears to be an exception to the Individual's reliability, rather than the rule. The Individual was not well-informed about his tax obligations, but, while it is his duty to know the rules, he does not appear to have acted out of a desire to avoid those obligations. He paid his state tax as soon as the returns were processed and reasonably believed that he could do the same for his federal returns. Upon becoming aware of the processing delay, the Individual promptly paid his federal tax as well, with the understanding that he may still owe a balance once penalties are assessed. He is now aware of his obligations and has credibly testified that he has the ability to carry out his commitment to file his returns on time every year. After reviewing the testimony and evidence, I find that the Individual has resolved the doubts about his reliability.

For the foregoing reasons, I find that the Individual has mitigated the Guideline F security 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 succeeded in fully resolving those concerns. Therefore, I 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 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.

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals