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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 27, 2021)	Case No.: PSH-22-0003
)	
_____)	

Issued: February 25, 2022

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Procedures for Determining Eligibility for Access to Classified Matter of Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold access authorization. As part of the security clearance process to maintain his clearance, the Individual completed and signed a Questionnaire for National Security Positions on November 16, 2020, in which he indicated that he had failed to file his federal income taxes for tax years 2017 and 2018. Ex. 10 at 54-55. Later, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel Management (OPM) investigator on December 7, 2020. Ex. 10. Based on the information provided, the LSO asked the Individual to complete three separate Letters of Interrogatory (LOI), which he submitted on March 12, 2021, March 31, 2021, and May 24, 2021. Exs. 7, 8, 9. Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The Notification Letter informed the

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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 to authorization or security clearance

Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold 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 presented his own testimony as well as the testimony of one other witness, and submitted nine exhibits, marked as Exhibits A through I (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-22-0003 (hereinafter cited as "Tr."). The DOE Counsel submitted ten exhibits, marked as Exhibits 1 through 10.

II. 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 (Financial Considerations).

Guideline F provides that an individual's failure 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 or sensitive information." Guideline F at ¶ 18. With respect to Guideline F, the LSO alleged that the Individual failed to file state tax returns for tax years 2017, 2018, and 2019. Ex. 1 at 1. Guideline F specifically states that a "failure to file . . . state, or local income tax returns or failure to pay [them] as required" are all potentially disqualifying conditions. Guideline F at ¶ 19(f). 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) (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 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.

IV. Findings of Fact

During the ESI, the Individual indicated that his failure to file his 2017 and 2018 state income taxes was not the result of any “financial delinquency” or “criminal conduct.” Ex. 10 at 67. After combining his finances with that of his new wife, the Individual failed to file his 2017 and 2018 state income taxes but stated that these were isolated incidents. Ex. 10 at 67.

In the March 12, 2021, LOI, the Individual stated that he filed his federal income taxes for tax years 2017 through 2019 but also stated that he failed to do the same for his state income taxes. Ex. 9 at 1-3. Although his federal income taxes for tax years 2017 had previously been filed and rejected by the Internal Revenue Service (IRS), they were refiled in 2020. Ex. 9 at 3.²

In his May 24, 2021, LOI, the Individual asserted that he had completed his state taxes for tax years 2017 through 2019, but that these forms had been misplaced, and as a result, he had failed to mail them. Ex. 7 at 1. However, the Individual provided assurances that he would send the returns as soon as possible. Ex. 7 at 1. He also confirmed that he was “current with all other federal and state taxes before 2020.” Ex. 7 at 1.

V. Individual’s Exhibits

The Individual submitted copies of state tax refund checks he received for tax years 2017, 2018, and 2019. Ex. 2 at 2-4; Ex. D; Ex. E; Ex. F. All of the tax refund checks were issued in 2021. Ex. 2 at 2-4. The Individual also submitted copies of his state income tax returns for tax years 2017 through 2021, as well as federal income tax returns for tax years 2020 and 2021. Ex. 2 at 5-16; Ex. A; Ex. C; Ex. H; Ex. I. The Individual provided confirmation of payment for the outstanding amount owed to the IRS for tax years 2020 and 2021. Ex. B; Ex. G.

² The Individual and his wife attempted to determine why their federal income tax return had been rejected, as they were concerned their state income taxes would be rejected. Tr. at 23. They were not able to determine why their federal filing had been rejected by the IRS. Tr. at 22.

VI. Hearing Testimony

The Individual's wife testified that when they got married, she took on the responsibility of filing the couple's income taxes. Tr. at 12. Because she had difficulty with the tax filing software while filing taxes for tax year 2017, she "kind of gave up[.]" Tr. at 12-14, 16. The Individual's wife had completed and submitted their federal income tax return for 2017 using the filing software but was subsequently notified by the IRS that the federal filing had been rejected. Tr. at 17. She did not believe the matter was urgent, as they were "owed a refund[.]" Tr. at 12, 19. Regarding the subsequent tax years, the Individual's wife indicated that she believed they could not file their income taxes for tax years 2018 and 2019 if their 2017 income taxes remained outstanding. Tr. 18-19.

The Individual's wife acknowledged that both she and the Individual were responsible for filing income taxes and confirmed her awareness of the fact that their state income taxes had gone unfiled for the tax years outlined in the Notification Letter. Tr. at 12-13. However, she was not aware of the fact that their state income taxes had to be filed in a timely manner, irrespective of whether they were receiving a refund. Tr. at 13.³ She confirmed that once the Individual became aware of the fact that his failure to file state income taxes was a security concern, the Individual took responsibility for filing the couple's income taxes. Tr. at 13. The Individual's wife described the Individual as "trustworthy[.]" "responsible[.]" and "a good guy." Tr. at 15. She also denied any other financial difficulties or debts. Tr. at 14-15.

The Individual confirmed that in 2020, he had filed federal income taxes for tax years 2017 through 2019, and that he had delayed filing his state income taxes, as he was preoccupied with ensuring that he had all necessary items to file. Tr. at 22, 24, 30. The Individual elaborated on his wife's testimony, stating that in 2017, the IRS had rejected their federal tax filing, and as a result, they had delayed filing their state income taxes. Tr. at 23. The Individual did not file the couple's delinquent state income taxes until 2021. Tr. at 24-25, 31. The Individual also confirmed that although untimely, he did file his 2020 income taxes in 2021 but did not apply for an extension on that occasion. Tr. at 25-26. At the time of the hearing, the Individual had not yet filed federal income taxes for tax year 2021, although he did satisfy the outstanding amount owed to the IRS even though taxes for the 2021 tax year was not yet due. Tr. at 26-27. The Individual also stated that he had not filed state income taxes for tax year 2021 because the necessary form was not yet available on the tax board's website. Tr. at 27-28.

Although the Individual knew that his outstanding taxes were a security concern in March 2021, he did not file his state income taxes until approximately three months later, as he found the task overwhelming. Tr. at 28. The Individual stated that he now understands why his failure to file income taxes was a security concern, and that he intends to file in a timely manner in the future. Tr. at 29, 38. The Individual testified that he did not previously understand the gravity of his failure

³ The Individual's wife clarified that the couple believed that the only repercussion for filing their income taxes in an untimely manner was the forfeiture of their refund. Tr. at 15. She also indicated that they did not petition for an extension. Tr. at 19.

to file income taxes, believing that the obligation to file existed only when he owed money. Tr. at 32, 34-35. He now understands that he has an ongoing duty to file his federal and state income taxes, regardless of whether he expects to receive a refund. Tr. at 33.

VII. Analysis

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline F if “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).⁴ In the present matter, although the Individual initially misunderstood his ongoing obligation to file state and federal income taxes in a timely manner, he has mitigated the stated Guideline F concerns. The Individual has provided credible testimony and evidence indicating that he has discharged his federal and state income tax obligations for tax years 2017 through 2021, in both filing them and paying any outstanding amounts owed. The credible testimony also indicates that the Individual understands he must file state and federal income taxes in a timely manner regardless of whether he is entitled to a refund, and further, he understands the importance in his duty to file. Accordingly, I find that the Individual has mitigated the Guideline F concerns pursuant to mitigating factor 20(g).

VIII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals

⁴ The remainder of the mitigating factors under Guideline F are not applicable to this matter. *See* Guideline F at ¶ (a)-(f).