

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing

Filing Date: April 4, 2024

Case No.: PSH-24-0092

Issued: July 26, 2024

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and 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 should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. During the investigation into his eligibility to possess a security clearance, the Individual disclosed to the DOE Local Security Office (LSO) that he failed to file federal and state income tax returns for the years 2019, 2020, 2021, and 2022. The LSO also discovered that the Individual had two accounts in collection, which totaled \$483. Consequently, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

hearing. At the hearing, the Individual testified on his own behalf. The LSO did not call any witnesses. The Individual submitted seventeen exhibits, marked Exhibits A through Q.² The LSO submitted seven exhibits, marked Exhibits 1 through 7.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1. Guideline F provides that that an individual's "[f]ailure 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." Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern include an individual's "inability to satisfy debts"; "[u]nwillingness to satisfy debts regardless of the ability to do so"; and "[f]ailure to file . . . annual Federal, state, or local income tax returns . . . as required" *Id.* at ¶ 19(a), (b), (f). In the SSC, the LSO cites that the Individual has not filed his federal income tax returns for tax years 2019 through 2022; has not filed his state income tax returns for 2019, 2020, and 2022;⁴ and has two accounts in collection that total \$483. Ex. 1 at 5. The cited information justifies the LSO's invocation of Guideline F.

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 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

² Exhibits M, N, O, P, and Q were submitted after the hearing as an email. The body of the email, which provides context for the other exhibits, is Exhibit M. The remaining exhibits have been lettered based on their list order as attachments.

³ References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

⁴ There is no explanation in the record for why the LSO failed to cite the Individual's failure to file a state income tax return for 2021 in the SSC. A Case Evaluation Sheet the LSO submitted as an exhibit demonstrates that the LSO determined this particular issue was not mitigated prior to sending the Notification Letter to the Individual. Ex. 3 at 12. However, given it was not specifically cited in the SSC, it will not be considered as a basis for concern that must be mitigated under Guideline F.

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 or her 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. *Id.* at § 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 did not dispute the allegations contained in the SSC. Instead, he presented testimony and exhibit evidence intended to provide additional context for his actions and to demonstrate that he had resolved all of the financial concerns raised by the LSO.

The Individual testified that he had filed his delinquent federal and state tax returns prior to the hearing date. He testified that he received assistance from a tax preparation firm to file all of his delinquent tax returns. Hearing Transcript, OHA Case No. PSH-24-0092 (Tr.) at 19. Regarding his federal returns, the Individual confirmed that he had filed one for each year cited in the SSC: 2019, 2020, 2021, and 2022. *Id.* at 10. Transcripts from the U.S. Internal Revenue Service (IRS) submitted by the Individual for tax years 2019, 2021, and 2022 confirm that he submitted returns for those years. Ex. D (2019); Ex. H (2021); Ex. J (2022). However, the IRS transcript for 2020 indicates “[n]o tax return filed.” Ex. F. The Individual submitted copies of his bank statements to corroborate his testimony that he actually filed the returns that were prepared for him, and the bank statements reflect the IRS deposited sums that match the amount due to be refunded in his 2021 and 2022 IRS transcripts. *Compare* Ex. J (2022 IRS transcript) *with* Ex. N (March 2024 bank statement) at 3 *and* Ex. H (2021 IRS transcript) *with* Ex. O at 2 (April 2024 bank statement).

Regarding the state tax returns cited in the SSC for 2019, 2020, and 2022, the Individual testified that he had filed the returns prior to the hearing date. *Id.* at 10. The hearing record includes a copy of his 2019 tax return for State 1, bearing the firm name and signature of a “paid preparer.”⁵ Ex. C. The 2019 tax return also includes the Individual’s signature, dated April 10, 2024. *Id.* The Individual obtained a copy of his filed return from State 1’s tax authority web portal. Tr. at 14. The Individual received a refund from State 1 for \$447. *Id.* The remaining delinquent state returns were filed in State 2, and the Individual provided copies of the returns that he obtained from State 2’s tax authority web portal. *Id.* at 19. The Individual testified that he filed the State 2 returns in March 2024. *Id.* at 20. The Individual testified that he received a refund for the “majority” of the state returns he filed. *Id.* at 23. However, his state return for 2021 indicates that he owed \$629. Ex. G at 2. While the Individual’s failure to file his 2021 state return was not cited in the SSC, it is addressed in a Letter of Interrogatory (LOI) the Individual provided to the LSO in January 2024 where he disclosed that he had not filed his state return for 2021. Ex. 5 at 22; *see also* Ex. 6 at 75 (reporting in a Questionnaire for National Security Positions that he failed to file a state tax return for 2021). The Individual confirmed that State 2 mailed him a letter a week before the hearing that

⁵ The Individual lived in State 1 until January 2020. Tr. at 14.

indicated he owed \$350. *Id.* at 28, 53. He also testified that he learned about the debt “a few weeks” before the hearing when reviewing the information on State 2’s tax authority website. *Id.* at 50. He also confirmed, by logging into the State 2 web portal during the hearing, that it showed he owed “a balance of [\$]342.98.” *Id.* at 29. The Individual testified that he did not expect to owe any money based on his conversations with his tax preparer. *Id.* at 28, 52. He testified he will pay the balance due if it turns out to be correct. *Id.* at 29, 53.

Finally, the Individual demonstrated that he had resolved the two collection accounts cited in the SSC. He testified that he paid \$375 to satisfy the first collection account after contacting the company to arrange payment. *Id.* at 11–12. That debt arose in August 2023, which he discovered by reviewing his credit report. Ex. 5 at 27. Exhibit A, a letter from this first creditor, states that the Individual had paid the debt as of April 8, 2024. Ex. A at 1. The Individual also testified that he had resolved the second collection account by paying the amount owed, which totaled \$108. Tr. at 11, 13. As evidence of the same, he provided a screenshot of a message from that creditor that stated the debt had been paid. *Id.* at 13; Ex. B. The Individual further testified that he now monitors his credit reporting through his bank so he can address any issues that may arise. Tr. at 50.

Regarding the debt for \$108, it originated in 2018 because the Individual failed to return electronic equipment. *Id.* at 45. The hearing record includes an investigator’s report from a September 2023 interview of the Individual. Ex. 7 at 137. The investigator questioned the Individual about this debt, and the report indicates that the Individual responded that he was “in the process of resolving it.” *Id.* The record also includes the Individual’s 2024 written response to a LOI that requested additional information regarding the \$108 debt approximately four months after the interview. Ex. 5 at 27, 29. Therein, the Individual wrote that he “did not know” about the debt until he ran a credit report, and he intended to pay the balance. *Id.* at 27. At the hearing, however, the Individual clarified that he recalled discussing the debt with the investigator, and he did not resolve the debt after speaking with the investigator because he “must have forgotten about it.” Tr. at 49.

Lastly, the Individual explained that he failed to timely file his tax returns because of the isolation that resulted from the COVID-19 pandemic. *Id.* at 30–31. The Individual “wasn’t taking care of a lot of things in [his] life.” *Id.* In 2020, he had just moved to State 2 after losing a job, and he found full-time work again in 2020 before being reduced to part time and then being furloughed in a matter of months due to the pandemic. *Id.* at 32–33. He became depressed and let his tax obligations “slide” even though he was likely going to receive a refund if he filed. *Id.* He explained that he addressed his “major depression” after obtaining medical insurance and seeing a therapist in 2022. *Id.* at 34, 45. He is much better presently, and still benefits from therapy. *Id.* He testified that his current employment allows him to meet his financial obligations. *Id.* at 37. He testified that he would not run into the same issues again because he is focused on maintaining his mental health. *Id.* at 42–43.

V. ANALYSIS

Under Guideline F, the following conditions could mitigate security concerns based on financial considerations:

- (a) 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;
- (b) The conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment, . . . divorce or separation . . .), and the individual acted responsibly under the circumstances;
- (c) 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;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;
- (f) The affluence resulted from a legal source of income; and
- (g) 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.

I find that none of the above conditions apply to resolve the Guideline F concerns. Regarding ¶ 20(a), the Individual's several-year failure to file state and federal income tax returns occurred as recently as 2022, he only belatedly filed most of his outstanding returns a few months before the hearing, and the Individual had not provided sufficient evidence to demonstrate that he filed his 2020 federal tax return. In concluding that he has not filed his 2020 federal return, I considered his testimony in combination with the IRS transcripts. The IRS transcripts clearly reflect that returns have been filed for 2019, 2021, and 2022. There is no explanation for why the 2020 transcript would be inaccurate in reporting the absence of his 2020 tax return when the IRS transcripts for the other tax years reflect the IRS's receipt of the Individual's tax returns. Therefore, the Individual did not carry his burden to establish that he has filed his delinquent 2020 federal return. Consequently, I do not conclude that his conduct occurred so long ago that it no longer poses a security concern. Furthermore, the Individual's failure to file state and federal income tax returns occurred over several consecutive years, so the Individual's behavior was not infrequent. Finally, the Individual's assertion that he failed to file his state and federal income tax returns because of his own negligence and being depressed as a result of the pandemic does not resolve the concern. Although he asserts that he has resolved his depression through therapy, and thus the circumstances at present are different, the fact that his 2020 federal tax return remains outstanding prevents me from finding that behavior is unlikely to recur.

Regarding the Individual's failure to pay debts, his behavior did not happen long ago nor was it infrequent. While his testimony that he paid both debts cited in the SSC combined with the written communications from creditors clearly demonstrate that he resolved those debts, one had remained outstanding for a significant period of time prior to his decision to pay it off a few months before the hearing. The \$108 debt, while a relatively modest sum, dated back to 2018, six years prior to the hearing. The Individual knew the debt was outstanding at least on the date of his interview with an investigator in September 2023, when he stated he was working to resolve it. However, four months later he reported in the LOI that he "did not know" about it and had still not resolved it. The record evinces a tendency of the Individual to delay resolving outstanding debts. Then, on the hearing date, the Individual disclosed that he has a new debt with State 2, and he had not yet addressed or otherwise investigated it despite knowing that his past failure to address unresolved debts presented a security concern. He also indicated a lack of awareness regarding the basis for the debt despite the paperwork he received that indicated it resulted from his 2021 state tax liability and his own tax filing indicating that he owed a balance for that year. Considering the above, I conclude that ¶ 20(a) does not apply to resolve the security concerns.

As for ¶ 20(b), the Individual did not present evidence that his failure to file his state and federal income tax returns or satisfy his debts was due to circumstances largely outside of his control. On the contrary, the Individual blamed his own negligence. While I have considered the Individual's testimony regarding his depression, there is no corroborating or expert testimony from which to conclude that his failure to file his federal and state tax returns were due to circumstances outside of his control. Therefore, I find the Individual has not mitigated the remaining security concerns under ¶ 20(b).

As for ¶ 20(c), the Individual did not present evidence to demonstrate he has received financial counseling. Therefore, I find that ¶ 20(c) is not applicable to this case.

As for ¶ 20(d) and ¶ 20(e), I find they do not apply to resolve the security concerns. The tax-related concerns are not derived from the Individual's failure to repay creditors or resolve debt, and these conditions are therefore not applicable. Paragraph 20(d) and ¶ 20(e) also do not apply to resolve the security concerns derived from his failure to resolve debts with creditors. Paragraph 20(d) does not apply for the same reasons provided under the above analysis of ¶ 20(a). Regarding ¶ 20(e), while the Individual may question the legitimacy of the debt to State 2 based on his tax preparer's alleged instruction, his own tax filing demonstrates that he owes a tax payment to State 2 for 2021. I conclude that he has not provided proof to substantiate the basis of a dispute nor has he provided evidence of actions to resolve the issue.

Paragraph 20(f) is not applicable because the security concerns do not involve unexplained affluence.

Finally, I find that ¶ 20(g) does not apply to resolve the security concerns because, while the Individual provided corroborating evidence from the IRS that he filed most of his delinquent federal tax returns, the IRS transcript for 2020 states that he did not file a return for that year. I thus conclude that the Individual has not sufficiently made arrangements with the appropriate tax authorities to file his delinquent returns.

Accordingly, I conclude that the Individual has not resolved the Guideline F security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals