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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: August 1, 2024 )  
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Case No.: PSH-24-0166

Issued: November 22, 2024

**Administrative Judge Decision**

Matthew Rotman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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."<sup>1</sup> 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 not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires the possession of a security clearance. Exhibit (Ex.) 1 at 7.<sup>2</sup> The Individual completed a Questionnaire for National Security Positions (QNSP) on August 28, 2023. Ex. 7. When asked, "*In the last seven (7) years, [have you] had your wages, benefits, or assets garnished or attached for any reason?*" the Individual responded "No." *Id.* at 70 (emphasis in original). In fact, the Individual's wages had been garnished by her state tax authority between December 14, 2021, and March 25, 2022, for the collection of unpaid taxes. Ex. 5 at 21–22. The Individual had not reported the wage garnishment to her DOE Local Security Office (LSO) within three working days, as required by DOE Order 472.2A, Attachment 5 at ¶ 6(b)(2). Ex. 4 at 17. When asked by the LSO why she had failed to report the wage garnishment within three days, the Individual responded, "I did not realize this was something I needed to report." Ex. 6 at 24 (response to Letter of Interrogatory (LOI) dated April

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<sup>1</sup> 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.

<sup>2</sup> The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

22, 2024). When asked why she failed to report the wage garnishment on the QNSP, the Individual responded, “I went by my previous QNSP [and] I filled it out without thinking about my garnishment. Also, I recently came back from [a] leave of absence when my QNSP was due. So, I rushed through it.” *Id.*

The QNSP also asked, “*In the last seven (7) years* have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” Ex. 7 at 68 (emphasis in original). The Individual responded “Yes” and disclosed that she had failed to file her state tax returns for tax years 2016 and 2017 and that she had failed to pay her federal taxes for tax year 2021. *Id.* at 68–69. Then, when asked, “Are there any other instances *in the last seven (7) years* where you failed to file or pay Federal, state or other taxes when required by law or ordinance?” the Individual responded “No.” *Id.* at 69 (emphasis in original). In fact, the Individual had also not filed her tax returns for tax years 2018 and 2019, as she disclosed to the LSO in the LOI dated April 22, 2024. Ex. 6 at 29. The Individual had omitted this information not only from her QNSP, but also during two investigatory interviews conducted as part of her security clearance investigation on December 14, 2023, and February 23, 2024. Ex. 8 at 129–32.

On June 27, 2024, the LSO issued the Individual a letter in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. Ex. 1 at 7. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of the Adjudicative Guidelines. *Id.* at 5–6.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 10. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eight exhibits (Ex. 1–8). The Individual submitted three exhibits (Ex. A–C).<sup>3</sup> At the hearing, the Individual testified on her own behalf, and the LSO did not call any witnesses. Transcript of Hearing, OHA Case No. PSH-24-0166 (Tr.).

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 5. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about the individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. According to the LSO, the factors that gave rise to the Guideline E concern were the Individual’s failure to report within three working days that her wages were garnished by her state tax authority; her failure to disclose the garnishment on her August 28, 2023, QNSP; and her failure to disclose that she did not file taxes for tax years 2018 and 2019 on her QNSP and during two subsequent investigatory interviews. Ex. 1 at 5. These

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<sup>3</sup> The Individual did not submit any exhibits prior to the hearing. During the hearing, I stated that I would hold open the record, up until my receipt of the hearing transcript, for the submission of post-hearing exhibits. Tr. at 46. The Individual submitted three post-hearing exhibits, and as DOE counsel did not object to their admission, I accepted them as part of the hearing record.

allegations justify the LSO's invocation of Guideline E. *See* Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline F as the second basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 5–6. “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.” Adjudicative Guidelines at ¶ 18. According to the LSO, the factor that gave rise to the Guideline F concern was her failure to file her federal income taxes for tax years 2018 and 2019. Ex. 1 at 6. This allegation justifies the LSO's invocation of Guideline F. *See* Adjudicative Guidelines at ¶ 19(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 Dep’t 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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### IV. HEARING TESTIMONY

The Individual testified that in 2021, her wages were garnished by her state tax authority because she did not pay her state taxes. Tr. at 14. When asked why she failed to report the wage garnishment within three days, as required by DOE Order 472.2A, she testified that she didn’t realize she was required to report it. *Id.* at 12–13, 28. When asked why she did not disclose the wage garnishment on the August 28, 2023, QNSP, she responded, “I honestly did not remember that” because “it did not happen recently. It was a couple years ago.” *Id.* at 13.

With regard to her failure to file tax returns for tax years 2018 and 2019, the Individual was asked to explain why she omitted that information from her 2023 QNSP, even though she did disclose her failure to file her 2016 and 2017 taxes, and her failure to pay her 2021 taxes. *Id.* at 19. The

Individual responded, “I don’t remember leaving that off on my QSP [sic].” *Id.* When pressed, she speculated that perhaps she omitted those two years because she hadn’t filed those tax returns yet, whereas she had filed all the others prior to completing the QNSP. *Id.* at 24; *see* Ex. A (IRS tax transcripts retrieved in November 2024 showing that the Individual filed her 2015, 2016, and 2017 tax returns in August 2018, had filed her 2020–2023 tax returns on or near their respective deadlines, but had not yet filed her 2018 and 2019 tax returns). “That’s my mistake,” she testified. “And obviously I have not . . . making [sic] very good decisions on that stuff . . .” Tr. at 24. The Individual also testified that she was “rushed” when she filled out her QNSP in August 2023. *Id.* at 26–27. She had recently been on a leave of absence from work, during which she was caring for an ill family member and received the paperwork “like maybe two days” after she returned to work. *Id.* at 26. The Individual stated that most of the information on the QNSP was “prefilled out” from her last time completing it, and she did not review it carefully prior to submitting it. *Id.* at 27.

As to the investigatory interviews in December 2023 and February 2024, when asked why she did not disclose her failure to file her 2018 and 2019 taxes to the investigator, she responded, “I don’t remember [the investigator] asking me about that, and maybe that’s why I didn’t bring it up. Maybe I was thinking that [the investigator] already had that information, is my guess.” *Id.* at 26.

In August 2023, because she knew her taxes would “come up” in connection with her QNSP, the Individual set up a payment plan with the IRS to start paying the amount she owed for tax years 2015, 2016, 2017, 2021, and 2022. *Id.* at 44; *see* Ex. A. Pursuant to that plan, she pays \$144 monthly toward her tax debt. Tr. at 44; Ex. 6 at 40–41 (screenshot of webpage confirming the Individual made monthly payments of \$144 to the IRS beginning October 6, 2023, preceded by one payment of \$115 on September 25, 2023). According to the Individual, at the time she entered into the payment plan, she owed approximately \$10,000 in federal tax debt, but by the time of the hearing, she owed approximately \$5,000. Tr. at 20; *see* Ex. A at 1 (screenshot of “Payoff Calculator” indicating a total balance of \$4,055.42 as of November 12, 2024). The payment plan does not include taxes owed for the 2018 and 2019 tax years, because the Individual has not yet filed those tax returns. Tr. at 21.

The Individual did not file her federal or state tax returns for tax years 2018 and 2019, she testified, because at the time they were due, she did not have the funds to afford what she would owe. *Id.* at 43. She was the primary earner in her household, she testified, with an income of approximately \$28/hour, and had two children to support.<sup>4</sup> *Id.* at 14–16. Since then, her financial situation has improved. *Id.* at 24. Her children have finished school, so she is no longer financially responsible for them. *Id.* at 14–15, 25. In addition, her husband no longer has a truck payment, and she has been “more careful” with her finances, so she has been able to “pay[] off some bills” and “relieve[] some of [her] debt.” *Id.* at 25, 31. Currently, she testified, she is up-to-date on all her credit card and other payments. *Id.* at 33. She has approximately \$285,000 in a retirement account, and a savings account with “not a whole lot in there.” *Id.* at 17, 39–40; Ex. B (screenshot showing a savings account balance of \$606).

In August 2024, she called her state tax authority for help with completing her tax returns for tax years 2018 and 2019, but she was informed they were “not taking any new clients” until the beginning of January 2025. *Id.* at 21. She hasn’t tried to file her own taxes online because she is

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<sup>4</sup> Her spouse was employed seasonally, she testified, at a job that earns him about \$15,000 a year. Tr. at 14, 18.

“just afraid that [she’s] not filling out everything properly.” *Id.* at 22. And she has not contacted any tax preparation services, like H&R Block, for help because she “was just trusting” the state tax authority. *Id.* at 29. As of the hearing date, the Individual had still not filed her 2018 and 2019 federal and state tax returns. *Id.* at 42. She believes she owes \$500 or \$800 for each of those tax years. *Id.* at 29–30.

## V. ANALYSIS

### A. Guideline E

Conditions that could mitigate security concerns under Guideline E include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

As an initial matter, the mitigating factors at paragraph (b), (e), (f), and (g) are inapplicable to the facts of this case. The LSO has not alleged any vulnerability to exploitation, manipulation, or duress, nor do the LSO’s concerns involve the association with persons involved in criminal activities. Moreover, the Individual has acknowledged her omissions and has not claimed that she acted on the advice of legal counsel or other professional.

Turning to the remaining mitigating factors, the Individual has not demonstrated mitigation under the conditions set forth in paragraph (a). As to her failure to report the wage garnishment within three days or to disclose it on her QNSP, the Individual did not correct this omission prior to being confronted with the facts on the April 2024 LOI. As to her failure to disclose her unfiled 2018 and 2019 taxes, the Individual did correct the omission in her response to the April 2024 LOI, before being confronted with the facts. But her correction was not prompt, coming eight months after she submitted the QNSP, and after failing to correct the omission during two investigatory interviews. As such, the Individual did not make prompt, good-faith efforts to correct her omissions before being confronted with the facts.

The Individual has also not demonstrated mitigation under the conditions set forth in paragraph (c). The Individual's omissions were not minor, as they concealed derogatory information about the Individual's financial record, and they were not infrequent or so long ago, as they continued uncorrected up until seven months prior to the hearing. Moreover, the Individual did not show that her omissions were the result of any unique circumstances. The only excuses she offered were her faulty memory, her lack of diligence in completing the QNSP, and her ignorance of the reporting requirements. The Individual claimed she felt rushed at the time she completed her QNSP, immediately after returning from a leave of absence. Even if I take this circumstance into account, however, it does not explain her failure to correct her omissions during the subsequent investigatory interviews or her failure to report her wage garnishment at the time it occurred. As such, I am not persuaded that her behavior is unlikely to recur and does not cast doubt on her reliability, trustworthiness, or good judgment.

Finally, the Individual has not demonstrated mitigation under the conditions set forth in paragraph (d). At the hearing, the Individual acknowledged her omissions to be a "mistake," but only after denying she remembered them at all. Moreover, she did not present any evidence of counseling or other positive steps taken to change her unreliable behavior.

For the foregoing reasons, I cannot find that the Individual has resolved the LSO's Guideline E concerns based on any of the applicable mitigating factors.

## **B. Guideline F**

Conditions that could mitigate security concerns under Guideline F include:

- (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, 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;
- (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.

The mitigating factors at paragraphs (d), (e), and (f) are inapplicable to the facts of this case, as the LSO's security concerns do not involve overdue debts or unexplained affluence. The Individual has also failed to satisfy the mitigating factor at paragraph (c), as she presented no evidence of receiving financial counseling.

The conduct giving rise to the LSO's concerns is the Individual's failure to file her 2018 and 2019 tax returns. At the hearing, the Individual admitted she had still not filed her tax returns for these two years. As such, I cannot find the Individual has made arrangement to file her taxes, nor can I find her behavior happened so long ago or infrequently that it is unlikely to recur. On the contrary, the behavior continued up until the day of the hearing, which demonstrates that the circumstances giving rise to her delinquency remain ongoing. The Individual has thus not resolved the Guideline F concerns under the conditions set forth in paragraphs (a) or (g).

With regard to mitigating condition (b), the Individual presented some evidence that her failure to file her 2018 and 2019 taxes resulted from difficult financial circumstances. She could not afford to pay her growing tax debt, she testified, while supporting her family on a single income. Since that time period, her situation has improved, as she is no longer supporting her two grown children, and she has been able to pay off outstanding debts. Nonetheless, the Individual has made no demonstrable progress in filing her outstanding tax returns during the last four years. Even in the last five months, while knowing that her security clearance was in jeopardy, she has done nothing more than call her state tax authority for help with filing, to no avail. As such, I cannot find that the Individual has acted responsibly under the circumstances.

For the foregoing reasons, I cannot find that the Individual has resolved the LSO's Guideline F concerns based on any of the applicable mitigating factors.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E and F of the Adjudicative Guidelines. 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

find that the Individual has not brought forth sufficient evidence to resolve the Guideline E or Guideline F security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Matthew Rotman  
Administrative Judge  
Office of Hearings and Appeals