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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 11, 2024)	Case No.: PSH-25-0008
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_____)	

Issued: February 10, 2025

Administrative Judge Decision

Diane L. Miles, 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."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 not be granted.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In May 2023, as part of the security clearance application process, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 6. In the section titled "Financial Record," the Individual answered "yes" when asked whether, in the last seven years, she failed to pay federal, state, or other taxes. *Id.* at 67.² The Individual reported that "due to unforeseen circumstances," she had not filed or paid her state or federal income taxes since 2013. *Id.* Subsequently, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual, which the Individual completed on June 6, 2024. Ex. 5. In the LOI, the Individual reported that she had not filed her state or federal income taxes for tax years 2013 through 2023, and she did not know the amount of state or federal taxes she owed. *Id.* at 23–24.

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."

² The DOE's exhibits were combined and submitted in a single, 161-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 DOE's exhibits by reference to the exhibit and page number within the combined workbook regardless of any internal pagination.

Due to the security concerns stemming from the Individual's disclosures, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. Ex. 1 at 5. In a Summary of Security Concerns (SSC) attachment to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines. *Id.*

In September 2024, the Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 review hearing. The LSO submitted seven numbered exhibits (Exs. 1–7) into the record and did not call any witnesses at the hearing. The Individual submitted one lettered exhibit (Ex. A) into the record and testified on her own behalf. *See* Transcript of Hearing, Case No. PSH-25-0008 (hereinafter cited as “Tr.”).

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 substantial doubt concerning her eligibility for a security clearance. The LSO cited Guideline F (Financial Considerations) of the Adjudicative Guidelines as the basis for suspending the Individual's security clearance. Ex. 1. Guideline F states that a “[f]ailure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or [an] 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.” Adjudicative Guidelines at ¶ 18. Among the conditions set forth under Guideline F that could raise a disqualifying security concern is the failure to file or pay annual federal, state or local income taxes as required. *Id.* at ¶ 19(f).

In citing Guideline F, the LSO relied upon the Individual's admissions, in her May 2023 QNSP and June 2024 LOI, that she had not filed her state or federal personal income tax returns for tax years 2013 through 2023. 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 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 her 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.

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

In her June 2024 LOI, the Individual reported that, as to her federal income tax returns for tax years 2013 through 2023, she had “no real valid reason” for not filing, and she was working on getting them filed. Ex. 5 at 23. She did not know whether she owed any federal taxes because she had not filed, but reported that if she did owe federal taxes, she would make all necessary payments. *Id.* As to her state income tax returns, the Individual reported that she did not file her state income tax returns for tax years 2013 through 2023 and does not know how much she owes, but in February 2023, she received notices from her state tax authority indicating she owed state taxes for tax years 2014 through 2019. *Id.* She reported that on March 30, 2023, she paid the amount of taxes that was shown on each notice, via cashier’s checks, for tax years 2014 through 2019. *Id.* at 23, 31–36. The Individual did not indicate why she did not file her state income tax returns. *Id.* at 23–24.

At the hearing, the Individual testified that “there [was] really no excuse” for her failure to file her state and federal income tax returns for tax years 2013 through 2023. Tr. at 16. She explained that over the past ten years, a series of family events contributed to her failure to file: the foreclosure of her home in 2013; the deaths of several family members between 2015 and 2021; and having to care for sick parents. *Id.* at 16–18, 29. She maintained that despite these circumstances, she was “not trying to make excuses” for her failure to file her tax returns; she kept telling herself that she would “get to it next year,” and she never did. *Id.* at 17–18, 29.

Regarding her state income tax returns, the Individual testified that the six notices she received from her state tax authority showed amounts due for tax years 2014 through 2019. Tr. at 21–22. She did not remember if the notices provided a breakdown of how the amounts shown as due were calculated, and she did not remember if the notices mentioned a requirement to file her state income tax returns. *Id.* at 31. She recalled speaking to a customer service representative at the state tax authority, who told her the money she mailed to the state may need to be adjusted once she files her state income tax returns. *Id.* at 23. She stated she still needs to file her delinquent state income tax returns, and she is not sure if the payments she mailed in March 2023 will resolve her

state tax obligations. *Id.* at 23–24. She stated it is also possible she owes more taxes than the amounts shown on the notices. *Id.* at 31–32.

As of October 2024, the Individual was working with an accountant to file all her state and federal income tax returns. Tr. at 15, 23. The Individual stated the accountant will file the 2023 state and federal income tax returns first, then work on filing the state and federal tax returns for 2024, and then work backwards and file her state and federal income tax returns for years 2013 through 2022. *Id.* at 11–12, 26; Ex. A (Letter from the Individual’s accountant indicating the Individual’s 2023 income tax returns are being prepared). She stated that once the accountant completes the filings for 2023, she will provide the accountant with the documentation necessary to file the income tax returns for the remaining years. *Id.* at 26–27.

As of the hearing, the Individual had not filed her federal or state income tax returns for tax years 2013 through 2023. Tr. at 11. She explained that she is married, and she and her husband always file their state and federal tax returns jointly, which requires that she and her husband submit documents to an accountant at the same time. *Id.* at 13, 30. She was still waiting for her husband to provide additional documentation, related to his business, to their accountant. *Id.* at 13–14. As of the date of the hearing, she submitted all the documentation necessary to file her 2023 taxes to the accountant, and she believes her husband must provide more documentation to the accountant before they can file the federal and state income tax returns. *Id.* at 25–26. When asked if she ever considered filing her state and federal income tax returns individually, she replied that she never thought that was something she could do because she had always filed jointly with her husband since she got married. *Id.* at 30. She was unable to estimate when her state and federal income tax returns for 2013 through 2023 would be filed. *Id.* at 15. She stated that her failure to file her state and federal income tax returns for the past ten years has been a dark cloud that has followed her. *Id.* at 33. She intends to never let herself get into this position again. *Id.* at 33–34. She stated that, in the future, she will always make sure that her and her husband’s tax documentation are in order, and that she and her husband are considering hiring a part-time accountant to assist with her husband’s business, so they can timely file in the future. *Id.* at 34.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns raised by her failure to file her state and federal income tax returns for tax years 2013 to 2023. I cannot find that granting the Individual a DOE security clearance will not endanger the common defense and security and is consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security clearance should not be granted. The specific findings that I make in support of this Decision are discussed below.

The Adjudicative Guidelines provide that conditions that could mitigate a security concern 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 judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . 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 . . . ; 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;
- (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.

As to factor ¶ 20(a), the Individual's failure to file her state and federal income tax returns occurred as recently as 2023, two years before the hearing, and as of the date of the hearing, the Individual still had not filed the returns for tax years 2013 through 2023. So, the Individual's behavior cannot be said to have occurred so long ago that it no longer poses a security concern. Also, the Individual failed to file her state and federal income tax returns for ten consecutive years, so the Individual's behavior was frequent. Finally, although the Individual testified that several events within her family contributed to her failure to file her state and federal income tax returns, she admitted she had no excuse for her failure to file. Besides her stated commitment to being more diligent with compiling her tax documentation in the future, there is insufficient evidence upon which I can conclude that the Individual's failure to file her state and federal income tax returns is unlikely to recur. Accordingly, the Individual has not mitigated the security concerns related to her failure to file her state and federal tax returns under factor ¶ 20(a) of the Adjudicative Guidelines.

As to factor ¶ 20(b), although the Individual testified to experiencing several family events that were outside of her control, including the foreclosure of her home and deaths within her family, she did not provide any evidence of how these events rendered her unable to file her state and federal income tax returns for tax years 2013 to 2023. The Individual admitted there was no excuse for her failure to file her income tax returns for ten years. Therefore, I find the Individual has not

mitigated the security concerns related to her failure to file her state and federal income tax returns under factor ¶ 20(b) of the Adjudicative Guidelines.

As to factor ¶ 20(c), the Individual did not present evidence to support that her failure to file her state and federal income tax returns from 2013 to 2023 was due to circumstances from which she would have benefitted from financial counseling. Therefore, I find that mitigating factor ¶ 20(c) of the Adjudicative Guidelines is not applicable to this case.

As to factor ¶ 20(d), the Individual admitted that she did not file her state or federal income tax returns for tax years 2013 to 2023. It is not known whether she has any tax liability for those years. Although the Individual sent checks to her state tax authority in response to notices she received related to tax years 2014 through 2019, it is not known whether those payments will resolve her tax liability for those years because she still has not filed her income tax returns for those years. Therefore, I cannot conclude the Individual is making a good-faith effort to resolve any debts she may have from her failure to file her state and federal income tax returns under factor ¶ 20(d) of the Adjudicative Guidelines.

As to factor ¶ 20(e), although the LSO did not allege the Individual has past-due debts related to her failure to file her state and federal income tax returns for years 2013 through 2023, the Individual did not dispute that she failed to file her income tax returns for the years in question. The LSO did not allege the Individual had any other past due debts that need to be resolved. Therefore, I find that mitigating factor ¶ 20(e) of the Adjudicative Guidelines is not applicable to this case.

As to factor ¶ 20(f), the security concerns raised by the LSO do not involve unexplained affluence. Therefore, I find that mitigating factor ¶ 20(f) of the Adjudicative Guidelines is not applicable to this case.

As to factor ¶ 20(g), I cannot conclude that the Individual has made arrangements with the appropriate tax authorities to file her state and federal income tax returns. Regarding the federal income tax returns, as of the date of the hearing, the Individual had not filed her federal income tax returns for years 2013 through 2023. The Individual submitted evidence that in October 2024, she contacted an accountant to prepare her 2023 federal income tax return, but she could not estimate when the 2023 federal income tax return, or tax returns for 2013 through 2022, would be filed. Regarding the state income tax returns, as of the hearing, the Individual had not filed her state income tax returns for years 2013 through 2023. The Individual submitted evidence she sent payments to her state tax authority for years 2014 through 2019, but she admitted that since she has not filed her state income tax returns for years 2013 through 2023, more action may be needed to resolve any state taxes she may owe. Therefore, I find that the Individual has not mitigated the security concerns related to her failure to file her state and federal income tax returns under factor ¶ 20(g) of the Adjudicative Guidelines.

For the reasons cited above, I find that the Individual has not mitigated the Guideline F security concerns raised by her failure to file her state and federal income tax returns for years 2013 through 2023.

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 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 Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be granted.

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

Diane L. Miles
Administrative Judge
Office of Hearings and Appeals