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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: February 14, 2025 )  
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Case No.: PSH-25-0084

Issued: July 9, 2025

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**Administrative Judge Decision**

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Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 and Special Nuclear Material or Eligibility to Hold a Sensitive Position.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be granted.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position which requires him to hold a security clearance. Derogatory information was discovered regarding the Individual’s finances. 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 in order 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 testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-25-0084 (hereinafter cited as “Tr.”). The LSO submitted twelve exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual did not submit any exhibits.

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<sup>1</sup> Under the regulations, “[a]ccess 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.

## 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. 10 C.F.R. § 710.7.

Guideline F states that:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

Adjudicative Guidelines at ¶ 18. Conditions that could raise a security concern and may be disqualifying include:

- (a) Inability to satisfy debts;
- (b) Unwillingness to satisfy debts regardless of the ability to do so;
- (c) A history of not meeting financial obligations;
- (d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) Consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) 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;

- (g) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;
- (h) Borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) Concealing gambling losses, family conflict, or other problems caused by gambling.

*Id.* at ¶ 19.

The LSO alleges that the Individual:

- Failed to file his state and federal income taxes for tax years 2021–2023;
- Failed to pay his federal payroll taxes for tax year 2015, resulting in a \$9,000.00 lien being placed on his property;
- Failed to pay his federal payroll taxes for tax years 2016 and 2017;
- Currently owes the Internal Revenue Service \$90,000.00; and
- Currently owes his state of residence \$20,000.00 in regard to delinquent state payroll taxes.

Ex. 1 at 1. Accordingly, the LSO’s security concerns under Guideline F are justified. 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 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 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

The Individual ran his own business for several years prior to working for the DOE Contractor. Tr. at 13; Ex. 12 at 166–67.<sup>2</sup> The Individual initially fell behind on payroll taxes in 2015 when the person he had hired to do accounting failed to pay the taxes every payday as she had been instructed to do. Tr. at 20–21. The Individual testified that she had told him the payroll taxes were paid, but failed to actually pay them due to incompetence. *Id.* at 21. He testified that he had no idea what happened to the money designated for the 2015 payroll taxes. *Id.* The Individual testified that he did not pursue a lawsuit to recover the money because an attorney told him the payroll person did not have money to pay a judgment even if he won the lawsuit. *Id.* At some point, the Individual fired the payroll person and hired his sister to do the payroll. *Id.* at 23. Eventually, his sister confessed to him that she had been stealing the payroll money to fund her gambling habit. *Id.* at 20, 27. The Individual testified that he did not go to the authorities because it was a family matter and he wanted to resolve it internally. *Id.* at 27. Before they could resolve the issue, the Individual's sister died, at which point, the Individual lost access to many of his financial records because his sister had the passwords for access. *Id.* at 15–16, 28.

The Individual testified that the payroll taxes for tax years 2021 through 2023 were paid, but he had not yet filed taxes for those years so the tax authorities' records may not show it. Tr. at 12. The Individual testified that he could not file his personal taxes until the business taxes were complete. *Id.* at 11–12, 15. He owed \$90,000.00 for previous years and was making payments on a payment plan until his business began to slow down; the IRS put him in a “cannot collect” status at that time. *Id.* at 12–13, 32–33. The Individual testified that his friend, an accountant whose firm used to do his business's taxes, suggested that he file his 2021 and 2022 taxes before filing his 2023 taxes. *Id.* at 16. Eventually, she advised him to seek assistance from a firm better equipped to handle complex tax matters, which he testified that he did. *Id.* at 16–17, 28.

The Individual testified that he was still working with the new firm and that filing was taking a long time because they were having to rebuild years of business records from scratch. Tr. at 29–32. He testified that they initially told him that they would resolve the issues in three months, but later they realized that the issues were more complicated than they originally anticipated. *Id.* at 29–30. The company had to recreate two years of business records, but the Individual had difficulty putting together the documentation for them. *Id.* at 30–32. The company checked in with the Individual every other week. *Id.* at 35.

The Individual testified that the original tax debt for the 2015 to 2017 payroll tax deficiencies was about \$300,000.00 and that he had paid it down to \$90,000.00. Tr. at 19. He was not sure what the

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<sup>2</sup> DOE Exhibits will be cited using the Bates stamp page number.

full balance would be after the delinquent taxes were filed, but he had received \$30,000 in a payout from his sister's life insurance policy that he would use to pay the eventual balance of his state taxes, and he thought he would likely be able to pay most of the \$90,000.00 existing federal debt as well. *Id.* at 36–37, 40, 51. The Individual testified that he had not yet paid the tax debt because he was hoping his tax firm could negotiate the balances down once his delinquent taxes were filed. *Id.* at 51–52.

The Individual testified that he was behind on his student loans and a few hundred dollars of medical bills. *Tr.* at 50. He testified that he had not used the \$30,000.00 to pay off the medical bills because he was “more scared” of the state than of the medical bill creditors. *Id.* at 39.

## 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 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 granting the Individual's clearance is not an unacceptable risk to national security.

Conditions that could mitigate Guideline F security concerns 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. None of the mitigating factors apply.

Regarding conditions (a) and (c), the Individual's taxes are still not filed and he has not paid his past due tax debt, so his situation is current, not long ago, and is not under control.

Regarding condition (b), the Individual's decision not to try to recover funds from either payroll person who did not pay the payroll taxes was not responsible under the circumstances. While it is understandable that a person may not *want* to file a criminal complaint against a sibling, it is the proper avenue for dealing with theft and fraud. Further, it is unclear why the Individual did not pursue criminal charges against the non-family member who failed to pay the payroll taxes. According to his testimony, he is not able to locate the funds, and it is not clear how the funds could disappear without being taken. The Individual's inaction in the face of fraud and theft casts doubt on his judgment and, to some extent, his trustworthiness.

Condition (d) is inapplicable because the LSO did not raise concerns about debts owed to creditors. However, I note, in the whole person context, that the Individual admitted that he has unpaid debts owed to creditors which he has the ability to pay but has left delinquent.

Conditions (e) and (f) are not applicable to this case because the Individual does not dispute the validity of his debts and unexplained affluence is not alleged.

Condition (g) does not apply because the Individual has not filed his delinquent taxes, has an unresolved lien on his property, and is not currently making payments on his tax debts. He does not know what he will eventually owe and does not have sufficient funds to guarantee that he can satisfy the final balance. Moreover, he has sufficient funds to satisfy, at minimum, his state tax debt, but has chosen not to do so at this time.

The Individual is taking steps to resolve his financial difficulties. However, at this time, the situation that gave rise to the security concerns under Guideline F has not changed and the Individual's explanation is not sufficient to show that there is no doubt about his judgment, trustworthiness, and reliability. Therefore, I cannot find that the security concerns have been mitigated.

## **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 access authorization under Guideline F of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting 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 not grant access authorization to the Individual.

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

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals