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**United States Department of Energy
Office of Hearings and Appeals**

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| In the Matter of: Personnel Security Hearing |) | |
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| Filing Date: February 12, 2025 |) | Case No.: PSH-25-0082 |
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Issued: August 5, 2025

Administrative Judge Decision

Diane L. Miles, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 or Eligibility to Hold a Sensitive Position."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

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In September 2024, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 4. In the section titled "Financial Record," the Individual answered "yes" when asked whether, in the last seven years, she failed file or pay federal, state, or other taxes when required by law. *Id.* at 47.² The Individual reported that she failed to file her federal and state personal income tax returns for years 2020 through 2024. *Id.* at 47–49. On January 10, 2025, 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 6–8. In a Summary of Security Concerns (SSC) attachment to the letter, the

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, 163-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.

LSO explained that the derogatory information raised security concerns under Guideline F of the Adjudicative Guidelines. *Id.* at 5.

On January 30, 2025, 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. In July 2025, I convened a hearing, pursuant to 10 C.F.R. § 710.25(d), (e), and (g), at which I took testimony from three witnesses: the Individual, the Individual's husband, and the Individual's tax preparer. *See* Transcript of Hearing, OHA Case No. PSH-25-0082 (Tr.). Counsel for the DOE submitted five exhibits, marked as Exhibits 1 through 5. The Individual submitted four exhibits, marked as Exhibits A through D.

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 September 2024 QNSP that she had not filed her state or federal personal income tax returns for tax years 2020 through 2024. 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 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 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 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.* § 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 the September 2024 QNSP, the Individual reported that she had not filed her federal and state personal income tax returns for years 2020 through 2024 because her tax preparer doubled his fee, and that other “delays” contributed to her failure to file. Ex. 3 at 47. She reported that her husband was in the process of completing the tax returns and that she did not anticipate owing any federal or state taxes because she prepays her taxes in an amount higher than the estimated amounts she expected she would owe for each year. *Id.*

During the hearing, the Individual explained that she has been married since 2007. Tr. at 24–25, 27, 77–78. The Individual files her federal and state income tax returns jointly, with her husband, to take advantage of certain tax benefits. *Id.* at 25. Since 2012, the Individual has used a tax preparer to prepare and file her and her husband’s joint state and federal income tax returns. *Id.* at 11–12, 26, 53; Ex. A (tax preparer’s résumé summarizing his experience in accounting). The Individual’s involvement in preparing and filing the tax returns was limited to gathering records the tax preparer needed, such as property tax records, income statements, and other documents. Tr. at 61. She knew the tax returns were filed because she had to sign the returns before they were mailed. *Id.* at 74–75.

In July 2021, the tax preparer moved out of the state where the Individual lived and “significantly raised his fees.” Tr. at 26, 43. The Individual’s husband did not want to pay the tax preparer’s new fees, so the Individual’s husband decided that he would prepare and file the couple’s state and federal income tax returns on his own, starting with tax year 2020. *Id.* at 26–27. Before 2012, the Individual’s husband would prepare the couple’s tax returns because he had a background in accounting, so the Individual did not have any concerns with her husband’s choice to prepare the tax returns himself. *Id.* at 24–25, 53.

In October 2021, after missing the deadline to file his and the Individual’s 2020 state and federal income tax returns, the Individual’s husband contacted the tax preparer to inquire about the amount of tax penalty he could be expected to pay. Tr. at 12, 18. The tax preparer told the Individual and her husband that as long as they submitted enough estimated tax payments to cover 90 percent of their tax liability for that year, they would not incur any tax penalty for missing the filing deadline. *Id.* at 12, 55. The tax preparer also told the Individual’s husband that, if he and the Individual were entitled to a tax refund, they would not incur any tax penalties for missing the filing deadline. *Id.* at 12, 26–27, 55. Based on that advice, the Individual’s husband “overpaid” their estimated tax payments to the Internal Revenue Service (IRS) and their state tax agency every year, and he did not believe it was urgent that he timely file their federal and state income tax returns. *Id.* at 27. The

Individual knew her husband started preparing the 2020 tax returns, but he was “having some issues” completing them. *Id.* at 55.

In late 2021, the Individual became worried about how her failure to file her federal and state income tax returns would impact her ability to retain a security clearance for her job. Tr. at 28, 69–70. She knew that she was required to pay her taxes, but she underestimated the consequences of her failure to file her tax returns on time. *Id.* at 55–56. The Individual repeatedly pressured her husband to file their tax returns. *Id.* at 41, 54–55. In early 2024, the Individual told her husband that she was considering filing separate tax returns for years 2020 through 2024, so she could fulfill her obligations. *Id.* at 28, 41.

In January 2025, after reading the LSO’s Notification Letter, the Individual became “extremely involved” in ensuring the tax returns were prepared and filed. *Id.* at 61. She contacted the tax preparer to help her, and her husband, use TurboTax, a tax filing software, to prepare the delinquent returns. *Id.* at 30, 58. She took time off from work so she and her husband could “go line by line” on each tax return and get them prepared. *Id.* at 56, 61. After the state and federal income tax returns for years 2020 through 2023 were complete, the Individual mailed the returns to the IRS and to her state tax agency, via certified mail, so she could track delivery of the returns. *Id.* at 62. She monitored the IRS website to track the processing of her federal income tax returns, and she spent hours on the phone with her state tax agency to get updates on the processing of the state tax returns. *Id.* at 62. The Individual testified that now she is more familiar with the process of preparing tax returns and she knows how to use the secure portals for the IRS and her state tax agency to view her tax information. *Id.* at 61, 76. The Individual’s 2024 federal and state income tax returns were prepared and filed by her tax preparer. *Id.* at 14; Ex. D.

The Individual submitted documentation to support her testimony that she filed her state and federal income tax returns for years 2020 through 2024. As for the 2020 through 2024 federal income tax returns, she submitted copies of IRS account transcripts, showing that the IRS received and processed the income tax returns for years 2020 through 2024. Ex. B³; Tr. at 14, 33, 36. As for the Individual’s 2020–2024 state income tax returns, the Individual submitted copies of tax year summaries from her state tax agency, showing that her state income tax returns for years 2020 through 2024 were filed. Ex. C.⁴ The Individual also submitted a chart showing the dates the Individual received tax refunds and the amount of each refund she received. Ex. D; Tr. at 36–37.

The Individual further testified that she understands that she must timely file her tax returns, even if she knows she will not incur any tax penalties. Tr. at 60–61, 65. She also explained that although she and her husband file joint tax returns, it is her responsibility to ensure that her returns are filed, regardless of her husband’s intentions or actions, and regardless of the tax consequences that may

³ The IRS account transcripts indicated that the 2020 and 2023 federal tax returns were filed on March 3, 2025, the 2021 and 2022 federal tax returns were filed on February 24, 2025, and the 2024 federal tax returns were filed on March 17, 2025. Ex. B.

⁴ The Individual’s tax year summaries indicate that the state income tax return for year 2020 was filed on March 1, 2025, the 2021 and 2022 state income tax returns were filed on March 15, 2025, the 2023 state income tax return was filed on January 15, 2025, and the 2024 state income tax return was filed on February 18, 2025. Ex. C.

result from her filing separately from her husband. *Id.* at 66, 76. She wished that she had reached out to her tax preparer sooner to get the tax returns filed. *Id.* at 60. The Individual will use a tax preparer to prepare and file all her state and federal income tax returns moving forward to ensure they are filed timely. *Id.* at 38. If the tax preparer's fees become unaffordable, or if the tax preparer is not available, the Individual had contact information for another tax professional she could use to assist with preparing and filing her state and federal income tax returns. *Id.* at 44. Finally, during the hearing, the Individual testified that if she has any questions about her tax obligations, or any of her responsibilities as a clearance -holder, she knows she can contact a security liaison at her place of employment to obtain information. *Id.* at 68–69.

V. ANALYSIS

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.

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. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns raised by her failure to file her state and federal income tax returns for tax years 2020 through 2024 under ¶ 20(g) of the Adjudicative Guidelines.

The Individual's failure to file her state and federal tax returns for tax years 2020 through 2024 stemmed from her choice to file joint tax returns with her husband, and her initial reliance on him to prepare and file their returns. The Individual credibly testified that because of her husband's background in accounting, she trusted him to take the lead in preparing the returns, and that her involvement was limited to gathering the necessary tax records and signing the returns.

I am convinced that now, the Individual fully appreciates the consequences of her failure to timely file her state and federal tax returns and she has changed her behavior to ensure that her failure to file will not recur. She credibly testified to her understanding that she must timely file her state and federal tax returns, every year, regardless of her husband's actions, and that she will be responsible for any tax consequences that may result from her filing separately. She has begun taking a more active role in preparing the returns: she contacted the tax preparer and worked with her husband to use tax preparation software to prepare the returns, she has learned more about the filing process, and she knows how to use the secure portals for the IRS and her state tax agency to view her tax information and track delivery and processing of her state and federal returns. The Individual will use a tax preparer to prepare and file her tax returns in the future, and she will find a new tax preparer if the cost of her current tax preparation services becomes unaffordable. Finally, the Individual confirmed during the hearing that she understands she can self-report any misunderstanding she has related to her obligations as a clearance holder to her employer, and she can get her questions answered.

The Individual submitted documentation sufficient to establish that she filed her state and federal income tax returns for years 2020 through 2024 without the need to enter into a payment arrangement with her state tax agency or the IRS. The evidence she submitted shows that she has complied with her obligations to file her state and federal taxes. Therefore, I find that she has mitigated the security concerns related to her failure to file her state and federal tax returns for years 2020 through 2024, under ¶ 20(g) of the Adjudicative Guidelines.

For the reasons cited above, I find that the Individual has mitigated the Guideline F security concerns raised by her failure to timely file her state and federal tax returns for years 2020 through 2024.

VI. 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 mitigate the concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. 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