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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 17, 2016) Case No.: PSH-16-0079
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Issued: January 7, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me, I have determined that the DOE should restore the Individual’s access authorization.

I. Background

The Individual is employed at a DOE facility as a contractor employee. This position requires the Individual to possess a DOE security clearance. The LSO discovered, during a background investigation, that the Individual had failed to file Federal or State income tax returns for the period 2011 to 2015. Exhibit (Ex.) 3 at 1. In June 2016, the LSO conducted a personnel security interview (PSI) with the Individual. Ex. 5. The PSI did not resolve the security concerns regarding the Individual’s failure to file Federal and State tax returns. Consequently, in a September 2016 letter

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

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(Notification Letter), the LSO informed the Individual that it had reliable information that created a substantial doubt regarding her eligibility to hold a security clearance and that her security clearance was suspended. Ex. 1. Specifically, the Notification Letter stated that the LSO possessed information falling within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (Criterion L).²

Upon her receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The LSO submitted five exhibits (Exs. 1-5) into the record and the Individual submitted five exhibits (Exs. A-E). At the hearing, the Individual presented her own testimony along with the testimony of her accountant (Accountant), her manager (Manager), a friend (Friend), and a facility Division Leader (Division Leader).

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 (1998) (“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), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward with evidence to convince the DOE that restoring her 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 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. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

² Criterion L refers to information that suggests that an individual has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

In personnel security cases arising under Part 710, it is my role 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.* In considering these factors, the Administrative Judge also consults Adjudicative Guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).

III. The Notification Letter and the Security Concerns at Issue

The LSO cites the Individual's admissions in the PSI that she failed to file Federal and State income tax returns during the period 2011 to 2015 as Criterion L derogatory information. Given these admissions, the LSO had sufficient ground to invoke Criterion L. Conduct involving unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

IV. Findings of Fact

The Individual testified that her mother came to live with her in November 2009. Tr. at 63. The Individual moved her mother into her house because of her mother's medical issues. Tr. at 63. Typically, the Individual would go to work and then come home and relieve the professionals she hired to care for her mother. Tr. at 65. After a period of time, the Individual became "overwhelmed" between working and then caring for her mother. Tr. at 65. The Individual described her feelings during this period as "It was something that I couldn't do any more than I was doing. So it's really clear to me I was just overwhelmed." Tr. at 65. The Individual then suffered another sudden and unexpected loss when her brother suddenly and unexpectedly passed away. Tr. at 68, 72.

The Individual had regularly filed her income tax returns until 2011. Tr. at 65. As she cared for her mother, the Individual gave filing her taxes a low priority. Tr. at 66. She did not know that she was violating federal law by not filing a return. Tr. at 65-66, 68. She did not discover that she had violated federal law until she underwent the PSI. Tr. at 66. Since the PSI, the Individual has been working with an accountant to file her delinquent tax returns Tr. at 68-69. Regardless of the outcome of the hearing, the Individual believes that the recent events regarding her security clearance have been positive influence since they had forced her "clear up and complete things" and to go forward with her life. Tr. at 69, 71.

The Individual's Friend has known the Individual for eight years. Tr. at 36. The Friend testified that the Individual's mother moved into the Individual's house. Tr. at 37-38. The Individual

attempted to obtain the best medical care possible for her mother. Tr. at 40. The Individual's mother was suffering from serious health problems that required dialysis treatment. Tr. at 40. When the Individual's mother died, the Individual was "totally traumatized." Tr. at 38. The Individual had difficulty in doing ordinary tasks. Tr. at 38. Within a year of the Individual's death, the Individual brother passed away unexpectedly. Tr. at 40-41. The Friend believed that this loss shocked the Individual and the Individual became overwhelmed again with grief. Tr. at 38-39. The Individual curtailed a number of her outside activities because of her grief. Tr. at 39. The Friend believed that the Individual felt "alone in the world." Tr. at 39. Despite her personal losses, the Individual constantly demonstrated a constant commitment to her job at the facility. Tr. at 42-43.

The Individual's Accountant testified that she has filed all of the Individual's outstanding Federal and State tax returns for the years 2011 through 2015 and that the Individual is current with regard to all of her tax returns. Tr. at 52, 55, 59. She is also assisting the Individual in preparing the tax return for her mother's estate. Tr. at 60-61.

The Individual has worked for the Division Leader since 2010 and has worked closely with her in the past year. Tr. at 11. The Manager has supervised the Individual for the past year and has worked with the Individual for the prior 10 years. Tr. at 24. Both testified as to the Individual's excellent work performance. Tr. at 15, 26. Both also testified as to the Individual's excellent judgment and reliability. Tr. at 18-19, 27, 30-32. The Division Leader believes that the Individual has integrity and is trustworthy. Tr. at 19-20. The Manager testified that the Individual always tries to do "the right thing" and has never given her any reason for concern. Tr. at 26-27.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses 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's security clearance should be restored.

The Criterion L concerns center on the Individual's failure to file Federal and State income tax returns for the period 2011 to 2015. The Individual does not dispute the facts outlined in the Notification Letter's Summary of Security Concerns. In mitigation, the Individual has presented testimony detailing her exhaustion in caring for her mother at home and the emotional trauma she experienced with the loss of her mother and later her brother.

I found the testimony of the Individual's friend convincing regarding the Individual's significant emotional trauma resulting from the loss of her mother and brother. Given the record before me, I find as a mitigating factor that the Individual's failure to file 2011 to 2015 Federal and State tax returns was an event triggered by extraordinary circumstances not likely to be repeated. *See* Adjudicative Guidelines, Guideline E, ¶ 17(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); *see Personnel Security Hearing*, Case No. PSH-0029 (2016) (Individual's failure to file Federal and State tax return mitigated in part by daughter's medical problems).

My determination is also supported by the testimony of the Individual's Division Leader and Manager which indicates that the Individual has a consistent record of reliability, judgment and trustworthiness with regard to her duties at the facility. The Individual has also filed all back tax returns and none of the returns indicate that she owed additional taxes for any of the years in question. Exs. A-E (Federal and State tax returns for 2011 to 2015). In sum, I find that the Individual has resolved the security concerns arising from the Criterion L derogatory information contained in the Notification Letter.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. 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 presented sufficient information to resolve the security concerns raised by the Criterion L derogatory information recorded in the Notification Letter. Thus, I conclude that restoring the Individual's suspended DOE access authorization will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should be restored.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: January 7, 2017