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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: January 25, 2019 ) Case No.: PSH-19-0003  
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Issued: April 16, 2019

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position that requires her to hold a security clearance. The Local Security Office (LSO) obtained derogatory information regarding the Individual’s finances and conducted a Personnel Security Interview (PSI) of the Individual. In the PSI, the Individual disclosed further derogatory information regarding her state and federal taxes.

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual testified on her own behalf. *See* Transcript of Hearing, Case No. PSH-19-0003 (hereinafter cited as “Tr.”). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted six exhibits, marked as Exhibits A through F.

<sup>1</sup> Under the regulations, “Access 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 her 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.

Guideline F (Financial Considerations) addresses “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations.” Adjudicative Guidelines at ¶ 18. It is well established that failure or inability 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 information. *Id.* The conditions set forth in that guideline that could raise a disqualifying security concern are inability to satisfy debts or unwillingness to satisfy debts; a history of not meeting financial obligations; deceptive or illegal financial practice; consistent spending beyond one’s means or frivolous or irresponsible spending; 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; unexplained affluence; borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and concealing gambling losses, family conflict, or other problems caused by gambling. Adjudicative Guidelines at ¶ 19. The LSO alleges that the Individual failed to file her 2017 state or federal income taxes; owes the Internal Revenue Service \$129,852.68, and is not on a payment plan nor is she able to pay this debt; and owes over \$6,500.00 to a state tax entity. Accordingly, the LSO’s security concerns under Guideline F are justified.

## 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), cert. denied, 499 U.S. 905 (1991) (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. 10 C.F.R. § 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 filed her 2017 taxes in August 2018. Tr. at 12–13, 15; Ex. A at 5. She testified that she owes the IRS about \$10,000.00 for that tax year and had been trying to put together a payment plan. *Id.* She was paying her state tax debt through a garnishment of \$160.00 per paycheck. *Id.* at 15, 40. The Individual had changed her tax withholding allowance to zero to ensure that she would owe as little as possible next year. *Id.* at 17. Previously, she had set her allowance at two and three. Tr. at 38.

The Individual testified that she was not making payments on her previous outstanding balance to the IRS of nearly \$130,000.00. Tr. at 19. The tax debt accrued in 2011 when her then-husband accepted a payout from a previous employer, though the amount he accepted remains in dispute. *Id.* at 20–21. The Individual testified that she disputed the amount owed and that she had hired a CPA and an attorney to help her fix the problem. *Id.* at 21–22. She intended to file an Innocent Spouse form to have her name removed from the debt, however, she was struggling to come up with the funds to pay for the professional help she needed to properly file the form. *Id.* at 22–23. She also sent the IRS an Offer of Compromise to pay \$300.00 per month toward the debt. *Id.* at 23. As of her hearing, the Individual did not provide any evidence that the IRS had accepted her proposed payment plan, but during January 2019 she had an extra \$50.00 withheld from her paycheck to go toward the debt. *Id.* at 28. She testified that because she believes that the IRS will contact her, she had not followed up on the Offer of Compromise in the last three months. *Id.* at 30. The Individual’s attempts to make payments toward her IRS debt had caused her to fall behind on her regular bills. *Id.* at 31–32. She testified that she had not contacted the IRS during this time because she was attempting to pay all of her bills in order to afford an IRS payment plan. *Id.* at 32.

The Individual planned to use an upcoming bonus to pay the attorney to file the Innocent Spouse form. *Id.* at 52. After the hearing, the Individual provided a receipt as proof that she had made the payment to the attorney who then filed the Innocent Spouse form. Ex. D. However, there is nothing in the record to show that the form has been accepted by the IRS.

#### **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 common sense 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 restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Failure to live within one’s means, satisfy debts, and fulfill state and federal obligations can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 18. Guideline F provides that the following relevant conditions may mitigate security concerns:

- (1) 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;
- (2) the individual initiated and is adhering to a good-faith effort to repay overdue creditors; and
- (3) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

*Id.* at ¶ 20(b), (d), (g). The Individual may not have had control over the circumstances of her ex-husband’s payout, however in the eight years since the tax debt accrued, the Individual took few steps to resolve it. She did not file an Innocent Spouse form until 2019 and did not make regular payments on the debt. As of her hearing date, the Individual was not on an IRS accepted payment plan. At that time, she owed nearly \$150,000.00 between her federal and state tax debt and had no means to pay the balances in the near future. Though the Individual did begin taking steps to address these issues after the PSI, very little has changed about the circumstances of the Individual’s debt since the date of the Notification Letter. I find that none of the mitigating factors referenced with regard to Guideline F are applicable in this case. Accordingly, I cannot find at this time that the Individual has resolved the DOE’s Guideline F security concerns.

## 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 a security clearance 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 restoring 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 restore access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals