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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: December 16, 2019) Case No.: PSH-20-0021
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Issued: February 28, 2020

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 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 restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. As part of a reinvestigation for his security clearance, the Individual completed a Questionnaire for National Security Positions (QNSP) in March 2017. Ex. 10. In response to one of the financial questions, the Individual indicated that he had failed to file his taxes for a number of years. *Id.* at 57. Subsequently, the Local Security Office (LSO) asked him to complete a Letter of Interrogatory (LOI). Ex. 7. The LSO also referred him for a psychological evaluation. Ex. 8. Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated August 27, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) and Guideline I (Psychological Conditions) Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of

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.

Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eleven numbered exhibits (Exhibits 1–11) into the record. The Individual tendered ten exhibits (Exhibits A–J) and testified on his own behalf. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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 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. 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.

III. Notification Letter and Associated Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cited Guideline F of the Adjudicative Guidelines. Guideline F addresses one’s “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations.” Guideline F 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.* Among the conditions set forth in that guideline that could raise a disqualifying security concern are the inability to satisfy debts and an unwillingness to satisfy debts regardless of the ability to do so. Guideline F at ¶ 19(a), (b). In citing Guideline F, the LSO relied upon the Individual’s admissions the in LOI that he has not filed Federal or State income tax for the tax years 2010-2015. Ex. 1.

The Notification Letter additionally cited Guideline I. Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual

has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b). As support for citing Guideline I, the LSO references the Individual's psychological report, in which a DOE consultant psychologist (Psychologist) determined that the Individual has an emotional, mental, or personality condition that can impair his judgment, reliability, stability, or trustworthiness. Ex. 1.

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below. As noted previously, the LSO referred the Individual to the Psychologist for an evaluation, which was conducted in June 2019. Ex. 8. The Psychologist noted that the Individual has a "life-long tendency to seriously procrastinate" that he seemed to have incorporated into a "special sense of himself." *Id.* at 3-4. He opined that the Individual's acceptance of his procrastination as a part of his identity "leads to the expectation that others should accept it." *Id.* at 4. In discussing the Individual's failure to file tax returns, the Psychologist wrote that the Individual "did not admit or appear to feel any embarrassment or remorse about not filing because he believes that he is overpaying his withholding," and therefore, paying his taxes. *Id.* The Psychologist reported that "[w]hen 'reliability' is understood as denoting that a person will consistently do what he is supposed to do," then the Individual's procrastination makes it difficult to consider him reliable. *Id.* He further noted that when the definition of reliability is whether the Individual can be trusted to abide by safety and security rules and regulations, then the implication of the evaluation is that when the rules and regulations appeal to the Individual and he agrees with them, "then he is apt to be reliable, but otherwise, he is unlikely to be reliable." *Id.*

Ultimately, the Psychologist determined that the Individual has an emotional, mental, or personality condition that can impair his judgment reliability, stability, or trustworthiness. *Id.* at 5. He noted that although procrastination is not a mental condition associated with a formal diagnosis, it is, nevertheless, an engrained mental condition. *Id.* With regard to a prognosis, the Psychologist reported that it is unlike that the Individual will change; however, "one indication of possible change would be in his successfully filing all past tax returns and presenting evidence that all tax issues are no longer a concern to state and federal tax agencies."² *Id.*

At the hearing, the Individual testified on his own behalf and presented the testimony of four character witnesses: three co-workers and a friend from church. His co-workers testified that, although he may initially present as "odd" or "weird," he is reliable in his work and abides by his employer's rules and regulations. Tr. at 16, 23, 25, 31, 40-41. His friend testified that the Individual served as a counselor in his church, and he felt that the Individual was trustworthy and "very reliable." *Id.* at 56, 58.

The Individual testified that at the time of the hearing, all of his tax returns have been filed, and he has no outstanding issues with the IRS. *Id.* at 89. He stated that prior to 2010, he filed his taxes in a timely manner; however, he often needed to file for an extension, and he "would usually get [his

² The Individual submitted a written objection to the Psychologist's evaluation, stating that the Psychologist engaged in a pattern of repeatedly taking "available information [and] present[ing] it in a negative form, even when mitigating evidence is also at hand." Ex. I.

taxes] in by the extended period of time.”³ *Id.* 80-81. When questioned about the details of each tax year listed in the Summary of Security Concerns, the Individual thought his tax returns for 2010 were filed within the extension provided by the IRS; however, he clarified that he was not certain if tax years 2010-2012 were filed within the extended timeframe or if the IRS filed the taxes automatically. *Id.* at 85-89. With regard to the remaining tax years at issue, 2013-2015, the Individual stated that the suspension of his security clearance finally gave him the impetus to begin the process of rectifying the issues with his unfiled taxes. *Id.* at 92. He contacted the IRS via telephone, on January 21, 2020, to obtain information about when his tax returns were processed and learned the IRS processed his 2013-2015 taxes in December 2019. *Id.* at 84-85, 92; Ex. A.

Although most of the Individual’s testimony was focused on his Federal taxes, he submitted a screenshot from his State tax authority’s website, indicating that all of his tax returns have been filed. Ex. G. However, the document also demonstrates that, since 1999, with the exception of four years, all of his tax returns were submitted to the State tax authority past the allotted timeframe. *Id.*

The Individual explained that he became overdue in filing his taxes because, during “one year,” the IRS detected a problem with his taxes and additional tax work was required. Tr. at 82-83. The Individual stated, “once I got past one year, two years behind, the feeling was always well, I’ve got to go back and get started with the first one and then do them in order...and with my busy life...it didn’t get done.” *Id.* at 83. He clarified that he understood that he had an obligation to file his taxes and felt he would eventually complete the process. *Id.* at 80. He further noted that there was “no reason [he] couldn’t have filed [his] taxes on time with better prioritization, time management, and focus.” *Id.* at 82.

Since tax year 2015, the Individual disclosed that he has received extensions for tax years 2016-2018. *Id.* at 96; Ex. A. Although tax year 2016 was filed outside the deadline, tax years 2017 and 2019 were filed within the time allowed by the extension. *Id.* The Individual anticipates that his 2019 tax return will be filed on time as he has already begun preparations. Tr. at 96. He further disclosed that he began working with a counselor (Counselor) for his “procrastination problem.” *Id.* at 91. The Counselor referred him to a book to help him understand why he procrastinates and to provide suggestions, and he believes that he avoided filing his taxes as they were too overwhelming and because it seemed too hard.⁴ *Id.* at 98-99, 104. Once the Individual filed all of his tax returns, he and the Counselor agreed that they could discontinue working with one another. *Id.* at 104, 107. The Individual felt that he has “been getting better.” *Id.* at 108.

After hearing all of the testimony, the Psychologist testified, and opined that the Individual still has an emotional, mental, or personality condition that impairs his judgment, reliability, stability, or trustworthiness. *Id.* at 147. Specifically, he concluded that the Individual has a “personality character issue” and a “lifelong tendency” that is “extremely difficult to change.” *Id.* at 122, 125. The Psychologist noted that the Individual’s counseling has been helpful and has provided him with “some awareness” as to why he may procrastinate. *Id.* 127-128. Ultimately, however, the

³ The Individual was unsure as to when he first failed to file his income tax returns and which tax years were filed in a timely manner. The Individual noted that finding out more information in this regard was on his list of things to do for the hearing; however, he was unable to complete the task. Tr. at 83, 88.

⁴ The Individual stated that he wanted to review the section of the book containing the suggestions prior to the hearing, but due to time constraints, “couldn’t get to it.” Tr. at 99.

Psychologist concluded that it is “likely” that the Individual’s procrastination “will happen again in bills or in taxes.” *Id.* at 130. He elaborated stating that he “could not bet very much that [the Individual] would be reliable.” *Id.* at 148.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual 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 noted by the LSO with regard to Guideline F or Guideline I. I cannot find that restoring the Individual’s DOE security clearance will not endanger the common defense and security, and is clearly 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 restored. The specific findings that I make in support of this decision are discussed below. Therefore, I have determined that the Individual’s security clearance should not be restored. The specific findings that I make in support of this decision are discussed below. Due to the interconnected nature of the Guideline F and Guideline I security concerns, I will analyze them together.

An inability to satisfy one’s debts or an individual’s unwillingness to do so regardless of his or her ability may raise a security concern that could serve as a disqualifier to receiving a security clearance. Guideline F at ¶ 19(a)(b). An individual may be able to mitigate the security concerns by demonstrating that 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. *Id.* at ¶ 20(a). Additionally, an individual may be able to mitigate the security concerns if he has made arrangements with the appropriate tax authorities to file the taxes and is in compliance with that arrangement. See *id.* at ¶ 20(g).

Certain personality conditions can impair judgment, reliability, or trustworthiness. See Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, or trustworthiness can serve as a disqualifying condition for a security clearance. *Id.* at ¶ 28(b). The individual may be able to mitigate security concerns under Guideline I if the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; the individual has voluntarily entered a counseling program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional; or the individual obtains a recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government than an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation. *Id.* at ¶ 29 (a), (b), (c).

Here, the Individual has begun to take steps to mitigate the security concerns related to his taxes and personality condition. He has filed all of his overdue tax returns and enrolled in counseling to learn more about and find help for his procrastination. However, I cannot find that these actions, in and of themselves, are enough to mitigate the security concerns at issue.

Although the Individual has managed to file all of his overdue tax returns, he did not begin taking significant action to rectify the situation until his security clearance was suspended and his life was significantly impacted. The Individual has a decade-long history of failing to file his taxes in a timely manner and has not yet demonstrated that he can reliably file them within the established timeframes. *See* Ex. G; *Contra* Guideline F, ¶ 20(a). Furthermore, although the Individual was seeking treatment for his procrastination, his Counselor did not provide any indication that his condition has been effectively treated, and he has since discontinued counseling. *See* Ex. E; *Contra* Guideline I, ¶ 29(a), (b). Similarly, the Psychologist opined that it was likely that the Individual would revert to his procrastinating behaviors. *Contra* Guideline I, ¶ 29(c).

The Individual's actions throughout this hearing process have demonstrated that the Individual continues to struggle with procrastination and following rules, an indication of a current problem. *Id.* at ¶ 29(e). The Individual arrived 40 minutes late for his hearing, submitted a request to subpoena a witness two weeks after the hearing and on the final day to submit exhibits, and proceeded to submit an exhibit after the deadline for submission had already past. *See* Tr. at 1; Ex. J; Email Communication, RE: PSH-20-0021: Delay in Statement, February 12, 2020. The Individual noted, throughout the hearing, that there were tasks he wanted to complete in preparation for the hearing, but was unable to do so. Tr. at 83, 88, 89. Furthermore, the Individual noted on multiple exhibits that he did not have sufficient time to complete his exhibits. *See* Ex. I, J. However, the Individual had approximately two months to submit all documentation, including a two week allowance following the hearing.⁵ These actions demonstrate that the Individual's challenges with procrastination have not been resolved, and indicate that he is unable to follow established rules and regulations.

For the foregoing reasons, I cannot find that the Individual has mitigated the DOE's security concerns under Guideline F or Guideline I.

VI. CONCLUSION

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline F and Guideline I. Accordingly, I have determined that the Individual's access authorization should not be restored.

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

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

⁵ The Individual received an acknowledgement of his request for a hearing on December 16, 2019, and the deadline to submit all exhibits was February 13, 2020.