

Upon receipt of the Notification Letter, the Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). On December 9, 2019, the Director of OHA appointed me as the Administrative Judge in this matter. At the hearing, the Individual presented the testimony of one witness and testified on her own behalf. The LSO submitted six exhibits, marked as Exhibits 1 through 6 (cited as "Ex."). The Individual submitted 12 exhibits, marked as Exhibits A through L.²

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. The LSO cited Guideline F as the basis for denying the Individual a security clearance. 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 LSO alleges that the Individual failed to file her federal income tax returns and her state income tax returns for tax years 2013 through 2017.³ Ex. 1 at 1–2. The Individual's failure to file annual federal and state tax returns justify the LSO's security concerns under 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 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) (strong presumption against the issuance of a security clearance).

² After the hearing, the Individual submitted additional exhibits (various tax returns and payments) without objection from the DOE Counsel. For privacy reasons, the tax documents for each specific state are anonymized. The exhibits are: 2018 State 1 tax return and payment receipt (Ex. G); 2018 State 2 tax return and payment receipt (Ex. H); money order payment to Comptroller of State 3 (Ex. I); money order payment to State 2 Taxation & Revenue Department (Ex. J); money order payment to State 4 Department of Treasury (Ex. K); and U.S. Postal Service certified mail receipt (Ex. L).

³ The LSO specifically cited the Individual's failure to file state taxes only in the state in which she claimed residence during the cited years. Ex. 1 at 1.

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

At the hearing, the Individual presented the testimony of her tax preparer, and the Individual testified on her own behalf.

The tax preparer testified that she is a professional tax preparer with a “PTIN” (Preparer Tax Identification Number) issued by the Internal Revenue Service (IRS). Tr. at 11. She testified that she prepared the Individual’s federal tax returns and state tax returns for years 2013 through 2017, which she filed for the Individual in November 2019. Tr. at 12, 14. The record contains copies of the Individual’s federal tax returns for the above years and an Account Transcript from the IRS; both reflect that the Individual filed her federal taxes for the years cited in the Summary of Security Concerns. Ex. A at 54–57, 65–68, 97–107; Ex. B at 2–6. The tax preparer testified that the Individual did not presently owe any federal tax balance. Tr. at 12–13.

Regarding the Individual’s state tax obligation, the tax preparer testified that she also prepared and filed the Individual’s state tax returns for 2013–2017 in November 2019. Tr. at 14. The tax preparer explained that while State 1 was the Individual’s state of residence during the relevant years, the Individual was working in other states during that period, as reflected in her W-2 forms. Tr. at 13; Ex. A at 6–49. The tax preparer testified that in her professional opinion, the Individual was only required to file a state tax return for each state in which she earned income. Tr. at 13. Thus, the tax preparer testified that she advised the Individual that she did not need to file returns for State 1 during the relevant period because she had not been employed in State 1. Tr. at 21–22. The tax preparer also stated that it is typical that people who are not professional tax preparers misunderstand their filing obligations regarding out-of-state earned income. Tr. at 22–23. The tax preparer testified that she prepared and filed a tax return by mail for each state where the Individual had been employed for the above years. Tr. at 14. The tax preparer also testified that she told the Individual, “[i]f you want to just be on the safe side, I can prepare [State 1 tax returns] . . .” Tr. at 22.

The tax preparer stated that the Individual filed tax returns for State 1, and the record contains copies of the Individual’s state tax returns for 2013–2017. Tr. at 22; Ex. A at 50–53, 58–64, 69–96, 108–118. The record also contains a document from the Department of Revenue for State 1, dated February 13, 2020, that shows a zero income tax balance. Ex. F.⁴ When asked if the

⁴ Exhibit F is the same as page 1 of Exhibit C, resubmitted.

Individual owed a balance to state tax authorities, the tax preparer initially testified that the Individual did not owe any balance for the missing years. Tr. at 12. However, when questioned about an apparent balance owed to one of the states for tax year 2014 (as reflected on the return), the tax preparer confirmed that the Individual did owe the balance but that she did not know whether the Individual fulfilled her duty to remit payment. Tr. at 23.

The tax preparer also provided testimony regarding the Individual's efforts to obtain W-2 forms from her past employers which the Individual did not have in her possession as she began the process of filing her back tax returns. The tax preparer explained that despite the Individual's efforts, the Individual was not able to obtain some of her missing W-2s. Tr. at 12. The tax preparer stated that circumstances, such as a business ending its operations, prevented the Individual from obtaining her W-2 forms. Tr. at 12, 17. The tax preparer testified that when she provided the Individual with contact information for helpful resources regarding obtaining W-2s, the Individual contacted the resources promptly. Tr. at 12, 17. The Individual followed the tax preparer's instruction to contact the IRS to obtain a transcript of her previous wages reported to the IRS by her employers, which could help her determine whether she needed to attempt to locate additional outstanding W-2 forms. Tr. at 19.⁵ The tax preparer also stated that the Individual was very responsive during the process. Tr. at 17. For example, the Individual followed the tax preparer's instruction to try to obtain written documentation to record any company's failure to provide requested W-2 forms. Tr. at 17–18. The record contains one such instance: email correspondence between the Individual and one of her former employer's payroll provider. Ex. C at 3–13; *see also* Ex. D.

The tax preparer opined that the Individual has done all that is required in order to satisfy the IRS concerning her failure to file taxes for 2013-2017. Tr. at 19. She further testified that she advised the Individual that, in the event that the Individual obtains additional W-2 forms, they can file an amended return as necessary. Tr. at 12, 19–20. As to the Individual's future plans regarding her tax filing obligations, the tax preparer testified that she and the Individual have discussed the matter, and the Individual's plan is to have the tax preparer file the Individual's tax returns for all future tax years, including 2019. Tr. at 15–16.

Finally, the tax preparer testified as to the Individual's character, describing her as an honest and trustworthy person who has earned the tax preparer's complete trust because of her demonstrated actions, including her responsiveness to the tax preparer's requests to obtain tax related documentation. Tr. at 16–17.

The Individual did not dispute the allegations stated in the Summary of Security Concerns. *See* Tr. at 28; Ex. 1 at 1. By way of explanation, she testified that due to the transient nature of her employment, she worked in several different states throughout the country during 2013-2017. Tr. at 29–30. She stated that she communicated with and relied on her mother to manage and file her taxes, and thought they had "probably" been filed. Tr. at 29. This adds to her prior QNSP

⁵ The tax preparer explained that some employers do not report wages to the IRS, despite the existence of tax laws concerning wage reporting obligations. Tr. at 21. She also explained that if the IRS had documentation reflecting that the Individual had earned income but had not reported it in her tax returns (potentially due to a missing W-2 form), then the IRS would send the Individual a letter regarding that issue, and the Individual would be penalized. Tr. at 20.

explanation that she “missed the deadline.” Ex. 5 at 68. The Individual further testified that her home address was in State 1 throughout the relevant period. Tr. at 30–31. The Individual confirmed that she has filed her federal and state tax returns for the above years with the assistance of the tax preparer. Tr. at 28; *see also* Tr. at 41. She testified that the processes of addressing her failure to file tax returns has “been a big lesson for [her].” Tr. at 32–33. Furthermore, she intended to seek the assistance of her tax preparer to prepare and file her taxes in the future. Tr. at 32–33.

The Individual also detailed the efforts she put forth in working with the tax preparer. She identified all of her past employers and attempted to obtain W-2 forms from those companies. Tr. at 45. Accordingly, she reviewed her resume and did online research, sometimes with the assistance of a friend, to obtain contact information from her past employers—including one that had since changed its business name. Tr. at 45. She then made several efforts to contact the different companies. Tr. at 45. She stated that she was ultimately able to obtain all of her W-2 forms except two. Tr. at 42–43. She estimated that she spent a total of eight to nine months completing the process of identifying each of her former employers and obtaining the necessary information to file her federal and state tax returns. Tr. at 45–46.

Finally, the Individual testified that she filed her 2018 federal and state tax returns with the assistance of a different tax preparer. Tr. at 36–37. The Individual submitted copies of her 2018 state tax returns after the hearing, and receipts for balances paid, and she submitted a copy of her IRS Account Transcript for 2018, which verified that she had timely filed her 2018 federal taxes. Exhibits G; H; B at 1.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and her witness. 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 should not be granted access authorization. I do not find that granting the Individual a security clearance will not endanger the common defense and security, and that it is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this Decision are discussed below.

A. Guideline F: Financial Considerations

As previously stated, the Individual’s failure to file annual federal and state income tax returns for tax years 2013 through 2017 establish a security concern under Guideline F. The conditions that can mitigate financial concerns include a finding that “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(g).⁶

I conclude the Individual has not put forth sufficient evidence to fully satisfy the above condition. I first recognize that the Individual has exerted effort to belatedly file her federal and state tax

⁶ The Adjudicative Guidelines list several other conditions that may mitigate financial concerns, but the above condition most closely matches the factual circumstances in this case.

returns, even beyond what her tax preparer advised was necessary. At the time of her response to the June 2019 LOI, the Individual had already hired a tax preparer to prepare her state and federal tax returns and had started obtaining the documentation she needed in order to file. The evidence reflects that she filed her federal and state tax returns for all states in which she earned income for the tax years 2013-2017 by November 2019. Both the Individual and her tax preparer testified to the same, and the record contains copies of federal and state tax returns for 2013-2017 and an IRS Account Transcript for the same period.⁷

Nonetheless, I must conclude that there is still significant doubt regarding the Individual's future reliability with respect to her legal responsibilities regarding taxes. This conclusion is based upon two factors. First, the Individual's delay in addressing her tax obligations until she was forced to address the issue in the QNSP and the LOI. Second, her inadequate justification for the delay. As to the first factor, the record is clear that the Individual did not begin addressing her failure to file her tax returns until after it became apparent that her failure would be an impediment to obtaining a security clearance. Undoubtedly, the impending nature of this administrative process further compelled her to action. I remain unconvinced that, absent similar pressure, she is likely to meet her obligations going forward. Her recent activity does not abate her half-decade of inaction. My concern is exemplified by the fact that although she filed her state tax returns by the hearing date, she was not aware that she continued to have a balance due to some states. While she paid those balances after being made aware of that fact at the hearing, it leaves me with significant doubt regarding her ability or willingness to meet her obligations into the future, even with the benefit of a tax preparer.

As to the second factor, I do not find credible the Individual's explanations for why she failed to file her tax returns. The Individual stated that she "missed the deadline." She further stated that she relied upon her mother to file her returns, and thought they had "probably" been filed. These excuses show a longstanding pattern of a lack of concern regarding her legal obligations, and they are inadequate to demonstrate that the Individual has taken full responsibility for the part that she played, year after year, in her failure to file her tax returns. Consequently, I do not place much weight on her testimony that working to file her back tax returns made a "big impact" on her understanding of her tax obligations. Her failure to provide a credible explanation for not filing her tax returns undermines her credibility regarding her future willingness or ability to meet her obligations if she were to obtain a security clearance.

While the Individual may have, by the date of the hearing, "made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements," that mitigating condition is outweighed by the above factors and thus my persisting concern regarding her future unwillingness to meet her tax obligations or abide by rules and regulations. Accordingly, I find the Individual failed to present sufficient evidence to mitigate the Department's concern based on her failure to file federal and state taxes.

VI. CONCLUSION

⁷ Notably, the exhibits do not include filing receipts for several state returns, including State 1, but rather copies of the returns.

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 resolving those concerns, and I cannot conclude that granting the Individual 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). Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals