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

In the matter of Personnel Security Hearing)

Filing Date: March 7, 2013)

Case No.: PSH-13-0027)

Issued: June 5, 2013

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the DOE should not restore the individual’s access authorization at this time.²

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. A Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on December 13, 2012, Exhibit 5, in order to address issues raised by information that he had failed to meet his income tax obligations. Exhibit 4. After the PSI, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced five exhibits into the record of this proceeding. The individual introduced 9 exhibits, and presented the testimony of one witness in addition to his own testimony.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a hearing officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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 regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Exhibit 1.³ Under this criterion, the LSO cited the following: (1) the individual’s failure to pay federal and state income taxes owed for 2008-2010; (2) his admission that he owed \$30,000 in federal income taxes; (3) records indicating that he owed over \$6,000 in state income taxes; (4) his admission that he did not file his 2011 federal or state income taxes returns; and (5) his admission that he did not file his 2009 state income tax returns. Exhibit 1.

The above information adequately justifies the DOE’s invocation of criterion (l), and raises significant security concerns. The failure or inability to live within one’s means, satisfy debts, and meet financial obligations, including the failure to file tax returns as required, may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can

³ Paragraph (l) defines as derogatory information 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. § 708.8(l).

raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House, Guideline F (December 19, 2005) [hereinafter *Adjudicative Guidelines*]. Further, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

IV. FINDINGS OF FACT AND ANALYSIS

The individual has not disputed the allegations set forth in the Notification Letter. Exhibit 2. He has, however, offered some evidence of progress toward resolving the concerns raised by the allegations. Nonetheless, as discussed below, I cannot find that the individual has resolved the concerns raised by his failure to file income tax returns, nor has he established a pattern of financial responsibility that would resolve the risk of a recurrence of his past financial irresponsibility.

A. Failure to File Income Tax Returns

From approximately 1995 to 2010, the individual filed his income taxes with H&R Block. Tr. at 19; 69. The individual stated that, for tax years 2008 and 2009, H&R Block prepared joint tax returns, which he signed, but that he did not realize until later that his estranged wife never signed the returns, preventing them from being filed. Tr. at 19- 22. While the individual acknowledged that he never received any documentation confirming the timely filing of his 2008 and 2009 tax returns and he did not make any payments for 2008 and 2009, he “assumed that [the tax returns] had got filed.” Tr. at 61, 63.

However, the individual’s claim that he was not aware that his wife failed to sign the income tax return forms does not mitigate the concern raised by his failure to timely file his state and federal income tax returns for 2008 and 2009. First, the individual acknowledges that he is legally required to file his income tax returns, and accordingly, he is ultimately responsible, by law, to ensure that his taxes are properly filed. Ex. 5 at 32. He also admitted that he knew he would owe money for those years. Tr. at 59. Yet, the individual never followed up with H&R Block to check on the status of his tax returns. Tr. at 63.

Second, while he returned to H&R Block in 2010 to file his 2009 taxes, he stated that H&R Block never informed him that his 2008 income tax returns were not filed. Tr. at 64. However, I do not find it credible that H&R Block would fail to notify him of any issues regarding the proper filing of his taxes, specifically his wife’s failure to sign the 2008 and 2009 joint tax returns. Third, the individual provided inconsistent testimony regarding when he discovered that his wife failed to sign the tax return forms.⁴ Considering this testimony, I cannot conclude that the individual mitigated the concerns by waiting until 2013 to file his 2008 and 2009 income tax returns, when his testimony suggests that he may have discovered his wife’s failure to sign those forms as early as 2010.

⁴ At one point, he stated that it was not until October 2012, when he received a letter from the IRS informing him of his failure to file his income taxes for 2008 and 2009,⁴ that he found out that his wife did not sign the forms. Tr. at 60-61. Yet, the individual also stated that he realized his wife did not sign the 2008 and 2009 tax return forms as early as 2010. Tr. at 62 (“I believe it was in 2010 when I found that out.”); Tr. 66 (“I believe when I finally switched to filing my 2010 taxes, I knew she hadn’t signed them.”). Nonetheless, he represented that he was not sure when he discovered that his wife did not sign the 2008 and 2009 tax return forms. Tr. 68 (“I can’t recall if it was the H&R Block guy who told me when I did my 2010 taxes that she didn’t file – she didn’t sign my 2008. I can’t – I can’t recall.”).

Regarding his failure to file his 2011 federal and state income tax returns, the individual admitted that he “procrastinated on them, because I knew I was going to owe money, but I wasn’t going to be able to enroll in a payment plan due to the financial situation I was in at the time.” Tr. at 45. While the individual intended to request an extension, he failed to do so. Tr. at 71. He also admitted knowing that he would have to pay interest and penalties for failing to pay the taxes on time. Tr. at 72. Ultimately, the individual waited until March 2013 to file his 2011 income tax returns. Exhibit H.

The individual’s explanation for not timely filing his 2011 income tax returns further exacerbates the concerns regarding his unwillingness to abide by rules and regulations, which in turn raises questions generally about his reliability and trustworthiness. While he admitted knowing that he would owe the federal and state taxes for 2011 and that he was legally obligated to timely file his 2011 tax returns or seek an extension, he intentionally “procrastinated on them,” because he knew that he was going to owe money. Tr. at 45. Thus, he deliberately violated the law in order to evade his obligation to pay 2011 taxes.

Despite the individual’s statement that he has taken responsibility for his actions, I find, considering the various explanations for his failure to follow the law, and inconsistencies regarding his discovery of when the 2008 and 2009 income tax returns were not filed, that he has not mitigated the concerns associated with his failure to timely file his income tax returns. Based upon my evaluation of the record, I conclude that the individual knew that he was required to file and pay his taxes on time, but made a conscious decision to not do so. That he has now filed his delinquent tax returns is certainly a good thing. But, given that he has done so only recently, and without a more unqualified acceptance of responsibility for his past actions, I am not confident that the concerns raised by the individual’s failure to file tax returns have yet been resolved. *See* 10 C.F.R. § 710.7(c) (relevant factors include “recency of the conduct”).

B. Financial Irresponsibility and Unwillingness or Inability to Satisfy Debts

In the Notification Letter, the LSO characterized the individual’s outstanding state and federal income tax liability as evidence of his “financial irresponsibility an established pattern of unwillingness or inability to satisfy debt.” Exhibit 1. In his written response to the Notification Letter, he stated that he is “currently in the process of getting a loan to pay off the majority of all [his] tax bills both federal and state.” Exhibit 2. On April 30, 2013, ZipTax issued a letter stating that the individual filed his 2009 state income tax return and that it was being processed, and that he was up to date on his federal income tax return filings. Exhibit E.

At the hearing, the individual presented a copy of a portion of a bank statement, indicating that on April 15, 2013, he paid \$20,000 to the IRS for his federal taxes to pay off the taxes due for 2008. Exhibit C; Tr. at 49. He also provided a copy of a letter from the IRS, dated April 22, 2013, confirming that he requested to enter into an installment agreement to pay off his taxes owed for 2009, 2010 and 2011, which total \$24,390.82, and include penalties and interest accrued through April 22, 2013. Exhibit D. His monthly payments will be \$240, due the 28th day of each month, beginning on May 28, 2013. *Id.* After the hearing, the individual submitted a letter from ZipTax, explaining the current status of his accounts with the state and IRS. That letter confirms that the individual’s balance for 2008 is \$0 and that he is “currently making payments to the Internal

Revenue Service under the terms of the installment agreement.” Exhibit I (Letter from ZipTax, May 6, 2013). Regarding his state taxes, ZipTax stated that it is anticipated that the individual “will make a lump sum payment of \$4,000.00 to the [state] as soon as his 2009 return is processed, at which time he will arrange to pay the remaining balance on a monthly plan.” *Id.* Currently, the balance due on his state taxes is \$11,646.00. *Id.*

In prior cases involving financial considerations, Hearing Officers have held that “[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” *See, e.g., Personnel Security Hearing, Case No. TSO-1078 (2011); Personnel Security Hearing, Case No. TSO-0878 (2010); Personnel Security Hearing, Case No. TSO-0746 (2009).*

The fact that the individual recently made arrangements to pay off his federal tax debts may mark the beginning of a sustained pattern of financial responsibility. Such a pattern, however, has clearly not yet been fully established, particularly given the fact that the individual has not yet made arrangements to pay his state tax debt. In the meantime, there are reasons to remain cautious as to the risk of a recurrence of the individual’s past pattern of irresponsibility. Specifically, the individual acknowledged that he owes the federal and state taxes in part because he claimed nine exemptions on his Form W-2, in order to reduce the amount withheld from his pay. Tr. at 74. However, he asserts that he cannot claim fewer exemptions until his clearance is restored, which would allow him to have a higher income. Accordingly, the individual has to the present continued to claim nine exemptions. Tr. at 74. Thus, he will owe money for his 2012 filings, in addition to what he already owes for the previous years.

Moreover, the individual cannot state when he anticipates claiming fewer exemptions on his taxes. He admitted that he claimed nine exemptions for the most recent pay period, and that he will not lower the number of claimed exemptions because his salary has been reduced since he was placed on restricted duty due to the suspension of his security clearance. Tr. at 75. The fact that he relies on restoring his security clearance is troubling, as I first need to ensure that he can demonstrate financial responsibility *before* I can determine whether his clearance may be reinstated.

Finally, in regards to his budget and savings, the individual submitted a budget, indicating that his monthly expenses are approximately \$2,382 and his income is approximately \$3,200 a month. Thus, based on my calculations of his reported monthly expenses and income, even at the individual’s currently reduced income, the individual should save approximately \$818 a month. However, if the estimate of income and expenses submitted by the individual is accurate, one would have expected the individual to have accumulated a commensurate amount in savings each month. But, as of the time of the May 2012 hearing, the individual estimated that he had a *total* of a “couple thousand” in savings. Tr. at 79.

In sum, the individual has not yet fully established a pattern of financial responsibility, and there are reasons to doubt that he will be able to sustain such a pattern in the long term. Therefore, I cannot find that the individual has resolved the concerns raised regarding his past financial irresponsibility.

V. CONCLUSION

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns at issue. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. 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.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: June 5, 2013