

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 23 exhibits into the record of this proceeding. The individual introduced eight exhibits, and presented the testimony of four witnesses, 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 dictates 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 (1) 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 Criterion L, the LSO cited the following: (1) the individual owed \$62,117.96 to the Internal Revenue Service (IRS) for income tax years 2002, 2004, 2005, and 2007 through 2011; (2) the individual owed the state \$12,179.03 in delinquent income taxes and \$1,852.59 in delinquent gross receipt taxes for the years 2004, 2006, and 2008 through 2011; (3) the individual admitted that on January 17, 2013, the IRS placed a levy and froze his bank account for failure to establish a payment plan on his delinquent taxes; (4) the individual admitted that he did not have a payment plan established with the IRS nor the state; and (5) during three previous personnel security interviews (PSIs) in 2002, 2003 and 2011, the individual was made aware of DOE’s concerns regarding his financial responsibility, yet had not resolved his financial problems. Exhibit 1.

³ Paragraph (1) 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(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 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 (December 19, 2005) at Guideline F. 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 established a pattern of financial responsibility that would resolve the risk of a recurrence of his past financial irresponsibility.

A. Failure to File Income Taxes

The individual has demonstrated, and DOE has stipulated, that he paid his state income taxes from 2002 through 2011, and is therefore current on those payments. Exhibit 2A; Tr. at 6. As a result, DOE's concerns regarding the individual's state tax payments, as outlined in Paragraph A.2 of the Summary of Security Concerns, are sufficiently mitigated.

Regarding his federal taxes, the individual stated that he filed his taxes jointly with his wife every year since they married in 1987, and that it was not until 2002 that he and his wife faced issues with the filing of their taxes, which is also the year they started filing their taxes electronically through TurboTax. Tr. at 45, 71, 105. While they eventually discovered that their federal taxes for a number of years had not been accepted for filing, at the time they filed their income taxes electronically, TurboTax allegedly sent them a confirmation of their filings. Tr. at 70. Moreover, the individual and his wife contend that there were no issues with the filings of their state taxes, which they also filed through TurboTax. Tr. at 107. However, sometime in 2005 or 2006, the IRS notified the individual that they had to pay penalties and interest because there was an issue with the 2002 filing. Tr. at 102-103. Subsequently, the individual contacted the IRS to request to enter into a payment plan, and the representative informed him that he could not enter into a payment plan until his previous tax filings have been received and processed. Tr. at 103.

The individual and his wife later discovered that the issue with the filing of their taxes arose because his wife's name on her social security card differed from the name she used in filing their taxes. He claimed that after filing electronically with TurboTax, the IRS must have rejected their filing because of the discrepancy in the wife's last name on her social security card, which had her birth name, not her married name. Tr. at 106. When they were notified about this issue, his wife changed her name on her social security card sometime in 2004 or 2005 to reflect her married name. Tr. at 107. Apparently, after they re-filed their tax returns with his wife's name as written on her corrected social security card, they were held liable for the taxes owed on each of the two returns they filed for

each year. Tr. at 104. At the time of the hearing, the individual was still unclear as to whether the amount they owe to the IRS is based on his wife being double-taxed and accordingly, whether the IRS's estimate as to their tax debt is accurate. Tr. at 105.

The individual stated that he and his wife attempted for the last two years to enter into a payment plan with the IRS without much success, and that they only recently entered into an installment agreement, for which they pay \$297 a month towards their federal income taxes. Tr. at 7. The DOE stipulated as much at the hearing. Tr. at 7. Moreover, the individual provided a letter from a case advocate at the IRS's Taxpayer Advocate Service, who indicated that the individual has "been working with the IRS since 2011," and that as of the date of the letter, April 5, 2013, the individual was in compliance with the filing of his tax returns. Exhibit B. The individual further explained that in the past, there were difficulties in working with the IRS to resolve the errors with their tax returns. For example, when he spoke to an IRS representative, he was advised to call the IRS back to get more information about their filings, only to find that when they called the IRS again, they had to start the process of investigating their tax issues all over again. Tr. at 56.

Given that the individual is current on the filing of his taxes, and that he made a good faith effort to work with the IRS and its Taxpayer Advocate Service to resolve the problems with his filings, which was stipulated by the DOE, I am confident that the concerns raised by the individual's failure to file tax returns have been resolved. However, as further explained, this does not end my inquiry regarding the DOE's concerns with the individual's financial responsibility.

B. Financial Irresponsibility and Unwillingness or Inability to Satisfy Debts

In the Notification Letter, the LSO characterized the individual's outstanding income tax liability as evidence of his "irresponsibility, including an established pattern of an unwillingness or inability to satisfy his delinquent taxes." Exhibit 1.

The individual and his wife testified that it was not until 2002 that they faced financial difficulties, and that before 2002, they were able to make their payments on their taxes. Tr. at 72-74. In 2002 and the following years, they had three children in parochial school, and were having difficulty in finding employment with sufficient income to cover their costs. Tr. at 72. While the individual and his wife were working multiple jobs, they were still not able to make the payments on their taxes. Tr. at 73-74. The individual also acknowledged that when he filed his taxes through TurboTax, including in 2002, he knew that he owed taxes to the federal government. Tr. at 63, 71. They owed payments because the five exemptions they claimed to support their three children resulted in underwithholding, and consequent tax liability at year end. Tr. at 85. Consequently, the individual and his wife could not afford to make the payments. Accordingly, he and his wife paid a portion of what they owed to the IRS and requested to enter into a payment plan. Tr. at 72. Subsequently, the IRS put them on a payment plan, for which they paid \$105 each month. Tr. at 63, 75. However, the individual eventually stopped making payments as they were once again financially struggling. Tr. at 75, 80. In late 2004, they entered into a new payment plan in late 2004, but then again stopped making payments in 2007. Tr. at 80.

Currently, the individual and his wife owe \$94,362.27 to the IRS, for the years 2002 to 2011. Ex. G. They owe the following amounts, which includes penalties and interest, for each year: \$9,509.41 for

2002, \$8,853.09 for 2004, \$9,418.24 for 2005, \$32,181.26 for 2006, \$1,589.46 for 2007, \$16,697.26 for 2008, \$1,113.42 for 2009, \$4,389.72 for 2010 and \$10,610.41 for 2011.

The individual and his wife have hired an attorney to represent them before the IRS regarding their tax problems. Tr. at 109; Ex. E. In a letter, their attorney informed them that he reviewed the information that they provided and believes “that there may be a possibility of reducing the tax liability by either amending [their] previously filed 1040 income tax returns or filing claims for refunds.” Ex. E. Based on the attorney’s assistance, the individual and his wife have started making payments on their federal taxes. Tr. at 57. Finally, the individual stated that he and his wife have paid off their 2012 taxes because they had very little to owe, and were able to satisfy that payment. Tr. at 114. Since 2011, they claimed zero dependents so that they would not owe additional taxes after they file their returns. Tr. at 99-100.

Furthermore, the individual submitted a budget, indicating that their monthly expenses are approximately \$7,573.00 and their income is at least \$9,328.00 a month. Tr. at 153; Ex. H. Their expenses have decreased as they no longer pay for their only daughter still in college to live in a dormitory, and their entire family has made cost-saving adjustments. Tr. at 93. However, the income the individual reported for himself and his wife is based on gross earnings; it does not reflect their net income. Tr. at 153-55. Thus, the individual and his wife have overstated their earnings, and have substantially less available funds than what they reported.

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 established, particularly given the fact that the individual has only recently entered into a payment plan to pay off his federal tax debt. 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)*. Thus, while the individual has entered into an installment agreement with the IRS and recently made a payment of \$297 towards his federal taxes, there simply has not been enough time for me to conclude that the individual will remain financially responsible. Moreover, the individual has twice previously entered into similar payment plans in 2002 and 2004, but eventually discontinued making payments because of his financial difficulties. Therefore, while I commend him for seeking assistance of counsel and for entering into a new payment plan, despite his efforts, the individual has not yet demonstrated a pattern of financial responsibility to satisfy the concerns raised by DOE.

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 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.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: July 16, 2013