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

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| In the Matter of: | Personnel Security Hearing |) | |
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| Filing Date: | March 4, 2014 |) | Case No. PSH-14-0018 |
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Issued: June 6, 2014

Administrative Judge Decision

Diane DeMoura, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold an access authorization under the Department of Energy (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.”¹ For the reasons detailed below, after carefully considering the record before me in light of the applicable regulations and the Adjudicative Guidelines, I find that the Individual’s suspended DOE access authorization should be restored.

I. BACKGROUND

The Individual is a DOE contractor employee who currently holds a suspended DOE access authorization. DOE Exhibit (“Ex.”) 3. In March 2013, the Individual completed a Questionnaire for National Security Positions (QNSP) in connection with a routine reinvestigation of his security clearance. DOE Ex. 5. In November 2013, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in order to discuss certain information, gathered during the reinvestigation. In January 2014, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8(l)

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

(Criterion L).² See DOE Ex. 1 (Summary of Security Concerns). The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge³ in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual, represented by counsel, offered his own testimony as well as the testimony of his wife. In addition, the Individual submitted four exhibits into the record (Indiv. Exs. A-D). The DOE counsel presented no witnesses, and tendered seven exhibits (DOE Exs. 1-7). See Transcript of Hearing, Case No. PSH-14-0018 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including “the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge

² Criterion L concerns conduct tending to show that the Individual was “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. § 710.8(l).

³ Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1 n.1 (2014).

must find that “the grant or restoration of 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. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter informing the Individual that the DOE possessed certain derogatory information which raised doubts regarding his eligibility to hold DOE access authorization. According to the Notification Letter, this information raises a security concern under Criterion L of the Part 710 regulations. DOE Ex. 1. As a basis for its Criterion L concern, the LSO cited the Individual’s purported failure to file his Federal income tax returns for tax years 2010 and 2012. *Id.*

It is well-settled that the 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,” which, in turn, may call into question an individual’s reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F, ¶¶ 18, 19. Among the behaviors which may give rise to security concerns related to an individual’s financial irresponsibility is a “failure to file annual Federal, state, or local income tax returns” *Id.* at ¶ 19(g). In light of the information cited which indicated that the Individual did not file required Federal income tax returns for tax years 2010 and 2012, I find that the LSO properly invoked Criterion L.⁴

IV. FINDINGS OF FACT

The facts of this case are essentially undisputed. The Individual, currently 41 years of age, has filed personal income tax returns since age 18. Tr. at 9. He and his wife married approximately nine years ago. Tr. at 25. During the course of their marriage, the Individual has generally been solely responsible for managing the couple’s finances and handling their tax matters. *Id.*

The Individual revealed on his March 2013 QNSP that he did not file his 2010 Federal income tax return as required by law. DOE Ex. 5; *see also* DOE Ex. 6 at 37-40. During his November 2013 PSI, the Individual further disclosed that he had yet to file a Federal income tax return for the 2012 tax year. DOE Ex. 6 at 41.

The Individual has since completed the delinquent 2010 and 2012 returns, filing them in February 2014. *See* Indiv. Exs. A-B.

IV. ANALYSIS

In making a determination regarding the Individual’s eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and

⁴ The state in which the Individual resides does not require the filing of state income tax returns.

the documentary evidence. For the reasons set forth below, I conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

A. The Individual's Mitigating Evidence

As indicated above, the Individual did not dispute the facts cited in the Notification Letter. Rather, he attempted to demonstrate that the cited security concern has been resolved.

At the hearing, he explained the circumstances which led to his failure to file his 2010 and 2012 tax returns as required. According to the Individual, his wife started a home-based business in 2010 and he did not know how to account for the business on their 2010 Federal personal income tax return. Tr. at 10; DOE Ex. 6 at 37-40. His efforts to complete the 2010 return were complicated by the fact that he and his wife were unable to locate certain documentation and receipts from the business that he needed to accurately complete the tax return. *Id.* The Individual sought help from a neighbor, who was experienced in tax preparation and agreed to prepare the Individual's 2010 return. However, the neighbor passed away suddenly, and the tax return remained uncompleted. Tr. at 10. As more time passed, the Individual became increasingly overwhelmed by the process of completing his delinquent return and, ultimately, ignored the problem because he did not know how to resolve it. Tr. at 11; DOE Ex. 6 at 37-40, 49-50.

The Individual timely filed his 2011 Federal tax return using TurboTax, a tax preparation computer program. Tr. at 23; DOE Ex. 6 at 40. However, he testified that, although he managed to complete the 2011 tax return, he struggled with the computer program. Tr. at 29. He again attempted to use TurboTax the following year to prepare his 2012 Federal tax return, but he remained uncomfortable with the computer program due to his experience from the previous year, and consequently he procrastinated over completing the return. Tr. at 22-23. In November 2013, the Individual and his wife ultimately decided to have a professional complete both the 2010 and 2012 tax returns. Tr. at 11-12. The Individual acknowledged that, although they found someone to prepare the returns in November 2013, another several months passed before he filed the 2010 and 2012 returns in February 2014. He attributed this delay to the unexpected illness in late 2013 of a close relative, whose care became primarily the responsibility of the Individual and his wife. The relative passed away in January 2014. Tr. at 17-18.

The Individual stated that, with the exception of the 2010 and 2012 tax returns, he has consistently and timely filed his taxes for over 20 years. Tr. at 9. Both at the hearing and during his PSI, the Individual readily admitted that his failure to file his required tax returns was an unacceptable lapse and he expressed remorse for his conduct. Tr. at 13-14, 22; DOE Ex. 6 at 50. He stated that it was not his intent to willfully ignore the requirement to file his taxes. Tr. at 28. In addition, the Individual testified that such a lapse will not recur in the future. Tr. at 13. He stated that his wife now has a more active role in managing their family's finances and household affairs. Tr. at 25. They also now communicate more openly and frequently about their obligations and general financial affairs. Moreover, he indicated that he and his wife have become much more organized, and have a new filing system for maintaining important documents and receipts. Tr. at 26. Finally, and perhaps most importantly, the Individual stated

that they also now have an ongoing relationship with an accountant who prepares all of their tax documents for them. Tr. at 28-29. He noted that, with the accountant's assistance, they timely filed their 2013 Federal income tax return. Tr. at 12-13; *see also* Indiv. Ex. C (the 2013 Federal income tax return).

The Individual's wife largely corroborated the Individual's testimony regarding the circumstances that led to his failure to file the 2010 and 2012 tax returns. Tr. at 34-55. She stated that the Individual's failure to file their tax returns in 2010 and 2012 was a mistake that will not happen again. Tr. at 41. To that end, she stated that she is now "more proactive" in helping to manage their finances, and that she and the Individual are "more of a team" in handling such matters. Tr. at 36, 51. In addition, they are more organized in maintaining necessary documentation. Tr. at 55. Moreover, the Individual's wife is confident in their relationship with their accountant, who not only prepares their taxes, but also is regularly available to assist with any questions or issues that may arise. Tr. at 55; *see also* Indiv. Ex. D (two letters from the accountant). More generally, the Individual's wife testified that the Individual is reliable and trustworthy, and is "very structured" in complying with laws and rules. Tr. at 46-47. She concluded that the Individual "has learned a huge lesson" and has "been humbled a bit" by the consequences of failing to file the tax returns, and she was adamant that such a lapse will not recur in the future. Tr. at 53.

B. Administrative Judge's Evaluation of Evidence

Among the factors that may serve to mitigate security concerns raised by an individual's failure to file tax returns financial problems is that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," Adjudicative Guidelines, Guideline F, ¶ 20.

In this case, upon consideration of the entire record of this proceeding, including the hearing testimony and documentary evidence submitted by the parties, I find that the Individual has presented sufficient evidence to fully resolve the Criterion L concern cited in the Notification Letter. The Individual readily admitted that he failed to file 2010 and 2012 tax returns. In fact, he himself disclosed his mistakes to the DOE without first being confronted with the information, and demonstrated considerable remorse for his conduct. He has since filed the delinquent returns, and filed his most recent return, for tax year 2013, in a timely manner. He convincingly demonstrated that he learned from his prior mistake, and has taken steps to prevent such conduct from recurring in the future. Those steps include developing better communication with his wife, establishing an ongoing relationship with an experienced accountant, and maintaining a more organized filing system at home. Finally, the record establishes that the Individual has been responsible in handling his tax matters in the past, and his recent failure to file his tax returns was atypical and attributable to factors which are no longer applicable. These facts convince me that the Individual's conduct in this proceeding was a lapse in otherwise good judgment that is unlikely to recur in the future and does not cast doubt on his current reliability, trustworthiness, or good judgment.

V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. 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 find that the Individual has presented sufficient information to fully resolve the Criterion L concern. Therefore, I conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore the Individual's suspended DOE access authorization.

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

Diane DeMoura
Administrative Judge
Office of Hearings and Appeals

Date: June 6, 2014