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

In the Matter of: Personnel Security Hearing)

Filing Date: November 25, 2014)

Case No.: PSH-15-0004

Issued: April 2, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s request for a security clearance should be denied.²

I. BACKGROUND

During an initial background investigation of the Individual, a Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO conducted three Personnel Security Interviews (PSI) of the Individual on March 27, 2014, June 11, 2014, and June 18, 2014, respectively. Because the PSIs did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10

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 also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on February 24, 2015.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual. *See* Transcript of Hearing, Case No. PSH-15-0004 (hereinafter cited as "Tr."). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14. The Individual submitted four exhibits, marked as Exhibits A through D.

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 his eligibility for a security clearance. That information pertains to paragraph (l)³ of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L).

To justify its reliance on Criterion L, the LSO alleged that the Individual owes the Internal Revenue Service (IRS) \$76,222.07, in unpaid back taxes, owes his state government \$2,923.43, in unpaid back taxes, and has three outstanding collection accounts totaling \$415, and had not contacted any of his creditors regarding these delinquent accounts.

The Individual's pattern of financial irresponsibility, as alleged, adequately justifies the LSO's invocation of Criterion L, and raises significant security concerns. The Adjudicative Guidelines state in pertinent part:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (d) deceptive or illegal financial practices such as . . . income tax evasion, . . . ; (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis: . . . and (g) failure to file annual

³ Criterion L refers to information indicating that the Individual has "engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) at ¶¶ 18, 19. The Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of human nature, Administrative Judges apply the guidelines in conjunction with the information available in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). 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

On October 23, 2013, the LSO obtained a credit report for the Individual which showed that the Individual had three outstanding collection accounts totaling \$415. Exhibit 10 at 4-6.

On March 27, 2014, the LSO conducted a PSI of the Individual. During this PSI, the Individual was questioned about his three outstanding collection accounts. The Individual claimed that he was unaware of each of these three collection accounts. Exhibit 13 at 17-20. The Individual stated that he planned to contact each of these creditors and attempt to resolve these debts. Exhibit 13 at 26. The Individual also admitted that he owed federal and state taxes, and that his wages had been garnished by the IRS and state tax authorities. Exhibit 13 at 9-10. The Individual stated that he planned to take money out of his 401(k) plan to pay his delinquent taxes, but could not do so until May 2015, because he had already borrowed from the 401(k) to pay his children's college expenses. Exhibit 13 at 12. The Individual reported that he was paying \$550 a month towards his daughter's student loan. Exhibit 13 at 27. The Individual claimed that his 1999 divorce had cost him “over \$45,000.” Exhibit 13 at 30. He also claimed that he had filed his 2009 taxes on time. Exhibit 13 at 14.

The LSO obtained another credit report for the Individual on June 11, 2014, which showed that the Individual had not resolved two of his three outstanding collection debts. Exhibit 9 at 1. The credit report also showed that the Individual had a federal tax lien placed against him for \$30,316. Exhibit 9 at 1.

On June 17, 2014, the LSO conducted another PSI of the Individual. During this PSI, the Individual again stated that he planned to take money out of his 401(k) plan to pay his delinquent taxes, but could not do so until May 2015, because he had already borrowed from the 401(k). Exhibit 12 at 8, 14. The Individual reported that he had taken a \$23,000 loan from his 401(k) in order to pay his children's college expenses and to pay his parents back for money they had loaned him during his divorce proceedings. Exhibit 12 at 45-46. The Individual blamed his tax issues on his divorce, which he claimed cost him \$45,000. Exhibit 12 at 11. The Individual further cited his two children's college expenses as a cause for his tax delinquencies. Exhibit 12 at 15, 39. The Individual indicated that he had claimed extra exemptions in order to help fund his two children's college education. Exhibit 12 at 44. He stated that he needed money to pay for his children's college and "the taxes were something that I could pay off in time." Exhibit 12 at 45. He further stated that he was "behaving the way I was raised being a good parent." Exhibit 12 at 46. He pays his daughter's \$500 a month student loan payment, even though he knows he is not legally required to do so. Exhibit 12 at 57, 63. The Individual stated that he had not addressed any of the three collection accounts that he had discussed during his previous PSI. Exhibit 12 at 49. He admitted that he did not always file his taxes on time. Exhibit 12 at 61. The Individual stated that he did not know how much he owed the state government. Exhibit 12 at 29. The Individual reported that he did not owe the IRS for tax years 2009 and 2010. Exhibit 12 at 8. The Individual reported that he owed the IRS about \$3,000, for tax year 2013. Exhibit 12 at 13. He further reported that he owed the IRS about \$50,000. Exhibit 12 at 10, 22-23. Despite the foregoing, he stated that he considers himself to be financially responsible. Exhibit 12 at 64.

The next day, on June 18, 2014, the Individual provided the LSO with records from the IRS. These records showed that the Individual filed his federal tax returns after the due date for each of the tax years from 2006 through 2013. Exhibit 7 at 2, 4, 6, 8, 10, 12, and 14. The IRS records further showed that the Individual owed the IRS a total of \$76,222.07.⁴ Exhibit 7. The state tax authority's records showed the Individual owed the state \$825.17 for tax year 2011, and \$2,098.26 for tax year 2013. Exhibit 8 at 1, 3.

The LSO conducted another PSI of the Individual on June 19, 2014. During this PSI, the Individual reported that he had reduced the number of exemptions he claimed in order to ensure that enough money was being withheld for taxes. Exhibit 11 at 2. He further reported that he expects to satisfy his state tax debt for tax year 2011, by the end of 2014. Exhibit 11 at 4. He reiterated his plan to borrow from his 401(k) account to pay his federal tax debt. Exhibit 11 at 6,9. The Individual admitted that he had filed his taxes late in some years, but could not recall

⁴ The records showed that the Individual owed the IRS \$5,045.14 for the tax year ending on December 31, 2013, \$7,841.64 for the tax year ending on December 31, 2012; \$8,166.77 for the tax year ending on December 31, 2011, \$9,299.03 for the tax year ending on December 31, 2010, \$9,685.75 for the tax year ending on December 31, 2009, \$9,400.47 for the tax year ending on December 31, 2008, \$15,263.36 for the tax year ending on December 31, 2007, and \$11,519.91 for the tax year ending on December 31, 2006. Exhibit 7 at 1, 3, 5, 7, 9, 11, and 13.

which years, or explain his late filings. Exhibit 11 at 15. The Individual stated that he did not try to enter into a settlement with the IRS because he would then be left with a “black mark on [his] record [for] not paying his taxes in full.” Exhibit 11 at 18.

V. ANALYSIS

At the hearing, the Individual attempted to resolve or mitigate the security concerns about his financial responsibility, judgment, reliability, and trustworthiness raised by the information set forth in the summary of security concerns by submitting copies of three cancelled checks showing that he had satisfied each of the three collection debts; contending that he failed to pay his taxes in order to fulfill his moral obligation to support and educate his two children, and has a realistic plan that will allow him to satisfy his debt to the IRS and the state government.

The Individual has submitted copies of two cancelled checks, and a third non-cancelled check showing that the Individual has satisfied the three outstanding collection accounts cited in the Summary of Security Concerns. Exhibit A.1 at 3-6. Accordingly, I find that the Individual has sufficiently mitigated all the security concerns arising from the three outstanding collection accounts.

During his PSIs and during the hearing, the Individual attempted to mitigate his failure to fully pay his federal incomes taxes in at least eight tax years by arguing that it was necessary for him to do so in order to support his two children, allow them to attend college, and to help his daughter repay her student loans. Tr. at 30, 33, 42, 44-45, 54-56. The Individual further testified that he was unwilling to enter into a payment plan with the IRS, because making the required payments would have prevented him from paying his “daughter \$500 a month so she could pay for her student bills.” Tr. at 46. He further claimed that he “was quickly educated in my research that the federal government considers it the parents’ responsibility to pay for their college, and due to my income, they didn’t qualify for much of the support that their friends did.” Tr. at 32. He testified that: “I have always tried to do my best to pay my bills, especially my taxes when they were due.” Tr. at 32. The Individual argued that his willingness to forgo paying his taxes in order to fulfill his moral obligation to care for his children and pay for their college educations demonstrates his integrity. Tr. at 50.

The Individual has obviously exhibited a profound lack of judgment, lack of trustworthiness, unwillingness to comply with laws, and unreliability, when he chose to evade his tax responsibilities in order to pay for his children’s education.⁵ This profound lack of judgment and trustworthiness has been magnified by the Individual’s lack of remorse, his inability or unwillingness to acknowledge the his previous errors in judgment, and his attempts to rationalize his actions, that have continued thought this proceeding and were exhibited in his hearing testimony. His previous behaviors and failure to acknowledge has past errors in judgment cast doubt on the Individual's current reliability, trustworthiness, and good judgment. Guideline F at ¶ 20(a). Accordingly, I find that the Individual has not resolved the security concerns, raised under Criterion L by his repeated and intentional failure to fully pay his tax obligations from 2006 to 2013.

⁵ There is no evidence in the record that corroborates the Individual’s repeated assertions that he paid his children’s educational expenses. Moreover, the Individual never attempted to quantify his alleged expenditures on his children’s behalf. The Individual has not provided supporting documentation for his assertion that he incurred \$45,000 in litigation costs associated with his 1999 divorce. I note also that the Individual never explained why he had to resort to evading the tax laws to support his children’s education despite maintaining a comfortable income.

The Individual contends that he has a realistic plan to address his outstanding tax obligations. He claims that he is currently making payments to the IRS (these payments resulted from a garnishment, Exhibit B at 4-9) and the state, through payroll deductions, and will borrow money from his 401(k) plan starting in May 2015, to make a lump sum payment. The Individual's debt to the IRS has been reduced to \$69,818.41. Exhibit B at 4. However, the Individual testified that the maximum loan he could receive from his 401(k) plan would be \$50,000. Tr. at 53. Moreover, the Individual has not shown that he would be able to afford to make payments on this hypothetical loan, which has not yet been approved by his 401(k) plan.⁶ Even if he were to receive a \$50,000 loan from his 401(k) plan, the Individual would still owe almost \$20,000 to the IRS, and \$14,441.64 to the state.⁷ Accordingly, I find that that Individual has not shown that his plan for resolving his financial issues is realistic and that his financial issues are resolved going forward.

For the reasons stated above, I find that the Individual has not provided sufficient mitigation to resolve the security concerns raised by his outstanding tax debts and evasion of tax responsibilities.⁸

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated all of the Criterion L security concerns. Accordingly, the Individual has not demonstrated that granting his request for a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should be not granted a security clearance at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: April 2, 2015

⁶ The Individual testified that his monthly take home pay is "roughly \$2,700, \$2,800," and that his monthly expenses total approximately \$2,600. Tr. at 57-60.

⁷ Exhibit C, a statement from the state tax authority, indicates that as of March 9, 2015, the Individual owed the state \$8,335.96 for tax year 2011, \$3,883.64 for tax year 2012, and \$2,222.04 for tax year 2013. Exhibit C at 4-6.

⁸ The Adjudicative Guidelines set forth a number of conditions that could mitigate security concerns arising from an individual's financial difficulties. *See* Adjudicative Guideline F at ¶ 20. However, none of these conditions are present in the instant case.