

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of Personnel Security Hearing )  
 )  
Filing Date: March 15, 2016 ) Case No.: PSH-16-0017  
 )  
 )  
\_\_\_\_\_ )

Issued: July 11, 2016

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (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.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. During a background investigation, information surfaced about the individual’s failure to file federal and state income tax returns. When the Local Security Office (LSO) was unable to resolve the derogatory information during a personnel security interview (PSI), it requested and received permission to initiate an administrative review proceeding.

In January 2016, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth

<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting a hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, three witnesses testified. The individual presented his own testimony and that of two other witnesses; the DOE presented no witnesses. In addition to the testimonial evidence, the LSO submitted five exhibits into the record; the individual tendered 12 exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

### **A. Individual’s Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 494 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 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his 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 his 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.

### **B. Basis for the Administrative Judge’s Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after

---

<sup>2</sup> Criterion L refers to information indicating 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. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . 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).

consideration of all 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, there is only one criterion at issue in this proceeding, Criterion L. To support its charges, the LSO alleges that the individual failed to comply with the law by not filing his 2011 through 2014 federal and state income tax returns. In addition, the LSO alleges that the individual admitted in the PSI that he had not made any effort to file his delinquent tax returns since discussing them with an Office of Personnel Management (OPM) investigator in August 2015.

I find that the individual's failure to discharge his obligation to file his federal and state tax returns raises questions about his ability to comply with rules and regulations which, in turn, cast doubt on his reliability, trustworthiness and ability to protect classified information. *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 at Guideline F (Adjudicative Guidelines), ¶ 19(g).

### **IV. Findings of Fact and Analysis**

The individual admits that he discussed with the OPM investigator his failure to file his federal and state income tax returns for tax years 2011, 2012, 2013 and 2014. He further admits that he failed to file an extension to file a return with the Internal Revenue Service for these tax years. In addition, the individual admits that as of the date of the PSI, he had not made any effort to file his delinquent tax returns. Ex. 1. He claimed during the PSI and reiterated at the hearing that there were a couple of factors that contributed to his non-filing of his returns. According to the individual, in 2011, there was a strike at his employment that lasted for 41 days and during the strike, he was paid by the union because he was one of the members charged with negotiating the return to work settlement. Ex. 3, Transcript of Hearing (Tr.) at 20. The individual stated that he was supposed to be issued a 1099 for his wages from the union but did not receive one for a while and therefore he did not file his federal or state tax return for that tax year. *Id.* He acknowledged that he made no effort to get his return filed after he received his 1099 and admitted that he procrastinated. The individual stated that he did not file a return for the 2012 tax year because he could not file without the information from his 2011 return. He further stated that he did not file returns for tax years 2013 and 2014 for the same reason. He testified that his regular tax preparer retired in 2012 and passed away a year later which he asserts also contributed to his non-filing of his returns. *Id.* at 22.

The individual testified that he was unaware that it was illegal not to file income tax returns. Tr. at 21 and 23. He stated that he intended to file his returns and believed he would not be penalized because he would be receiving a refund for all of the tax years in question. *Id.* He also acknowledged that he could have filed for an extension to file, and admitted that he did not have any excuse for not doing so. *Id.* When the individual was questioned about why he did not simply

hire another tax preparer, he testified that he “kept putting it off.” *Id.* at 33. The individual reiterated that he had no good reason for the non-filing of his returns other than his procrastination and fear of the IRS. *Id.* at 29. Promptly after his November 2015 PSI, he contacted a new tax accountant and filed all of his delinquent federal and state tax returns, 2011 through 2014, in December 2015. He then timely filed his 2015 federal and state returns. *Id.* at 25 and 27; Exs. A-L. In addition, the individual received a refund for each year in question, with the exception of 2011. His 2011 refund was forfeited because he failed to file within the IRS’s three-year requirement to claim a refund. *Id.* at 21. Finally, the individual testified that he now fully understands his legal obligation to file income tax returns despite whether or not he would be receiving a refund, and stated that he will file his tax returns in a timely fashion in the future. *Id.* at 31 and 32. He reiterated that he took his obligation “too lightly” in the past because he knew he had refunds coming to him and now understands the importance of following rules and regulations. *Id.*<sup>3</sup> As of the date of the hearing, the individual had been current on all of his federal and state taxes for the past six months.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. 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’s access authorization should be restored. I find that restoring the individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The individual acknowledged that he was negligent when he failed to file his 2011 through 2014 federal and state income tax returns, and admitted that both the death of his tax preparer and an employment strike in 2011 were poor excuses for his failure to meet his tax filing obligation. He credibly maintained that he did not willfully disobey the law when he failed to file his tax returns. The individual has now filed his federal and state tax returns for the tax years 2011 through 2014, thereby fulfilling his obligation to file tax returns for those years. He has also submitted evidence that he filed his 2015 federal tax return, and testified credibly that he now completely understands his obligation to file federal tax returns in a timely fashion and will do so in the future. The individual convinced me that the conduct at issue happened under such unusual circumstances and is unlikely to recur. In the end, the record is clear that the individual’s failure to file his federal and state tax returns stemmed from procrastination, misinformation and negligence, not a willful disregard of the law. In the end, the individual has adequately resolved the Criterion L security concerns at issue in this proceeding. *See Personnel Security Hearing, Case No. PSH-14-0006 (2014).*

## 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

---

<sup>3</sup> The individual also offered the testimony of two of his co-workers. Both of these witnesses testified that the individual exercises good judgement and follows rules and procedures well at work. *Id.* at 12 and 15.

manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with that criterion. I therefore 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 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: July 11, 2016