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

In the Matter of Personnel Security)
Filing Date: October 24, 2011)
) Case No. PSH-11-0007
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Issued: March 2, 2012

Decision and Order

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ 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 discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual has held a DOE security clearance for a number of years. During a background investigation, the local DOE security office discovered some derogatory information that created a security concern. DOE asked the individual to participate in a Personnel Security Interview (PSI) in order to resolve the information. The PSI did not resolve the security concerns.

On August 16, 2011, the local DOE security office (LSO) sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt

1/ / 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.

regarding her eligibility to hold an access authorization. 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 in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L). ^{2/}

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented her own testimony and that of one other witness. The DOE counsel did not present any witnesses. The individual and the DOE submitted a number of written exhibits prior to and after the hearing.

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*, 484 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 denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th 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 her 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 her 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 Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a

^{2/} Criterion L relates, in relevant part, to information that a person 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. § 710.8 (l).

Decision that reflects my comprehensive, common-sense judgment, made after 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 in favor of the national security. *Id.*

III. Finding of Fact

The LSO became aware of the individual's failure to file her income taxes during a routine background investigation conducted in June 2011. Exhibit (Ex.) 4. At that time, the individual revealed that she had not filed her Federal and State taxes for tax years 2004 through 2010. *Id.* The background investigation also revealed that the individual had an unpaid 2006 tax debt totaling \$2,045.51 and that she had obtained a home equity loan in the amount of \$67,000 which she chose to use for purposes other than outstanding tax debt. *Id.* It further revealed that the individual was 90 days delinquent on a \$452 medical debt that had been turned over to collections.

The LSO conducted a PSI with the individual in July 2011 to inquire further about the individual's tax delinquencies and her financial situation. Ex. 5. The individual told the LSO during the PSI that she still had not filed her 2004 through 2010 Federal and State income taxes as of that date and acknowledged that she was aware it was against the law not to file Federal and State income taxes. During the PSI, the individual admitted that she purposely failed to file her 2004 income taxes because she was aware she owed money. *Id.* She further admitted that she has failed to file all subsequent Federal and State tax returns because she was scared of the amount she would owe. *Id.* The individual also confirmed, during the PSI, that in late 2006, she obtained a home equity loan in the amount of \$67,000. Despite being aware of the requirement to file her income tax returns and being aware that she had outstanding tax debts, she chose to use the funds for other purposes including loaning her brother \$18,000 so that he could retain his home. *Id.* Accordingly, the LSO suspended the individual's security clearance in August 2011.

IV. Analysis

I have thoroughly considered the record in 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). 3/ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding her conduct, to include knowledgeable participation, the frequency and recency of her conduct, the age and maturity at the time of the conduct, the voluntariness of her participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for her conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites one potentially disqualifying criterion as the basis for suspending the individual's security clearance, i.e., Criterion L. The conduct underlying the Criterion L concerns is the individual's failure to file annual Federal and State income tax returns as required by the law and her inability or unwillingness to satisfy her debts. The security concerns associated with this conduct are the following. First, the individual's failure to fulfill her filing requirements under the relevant tax laws raises questions about her reliability, trustworthiness and ability to protect classified information. Second, the individual's failure to meet her financial obligations in a timely basis may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all which also call into question the individual's reliability, trustworthiness and ability to protect classified information. *See Guideline F of the 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.

B. Mitigating Evidence

At the hearing, the individual offered several explanations for her failure to file her Federal and State income taxes. She first testified that, in 2003, she began working for a new employer and took a "rollover" out as direct cash from her previous employer. Tr. at 30. The individual testified that her former employer did not withhold a sufficient amount of taxes, and as a result she owed about \$5,000 in taxes in 2004. *Id.* at 31. She stated that she did not have the money to pay the taxes which contributed to her not filing her taxes in 2004. *Id.* at 16. From that time, the individual testified that other issues arose, including her declining health and significant medical bills, which caused her tax problem to spiral out of control. The individual stated that, in 2007, she contacted the IRS's Taxpayer Help Line and was informed that she needed to submit all of her tax returns at once, and then a payment plan would be negotiated for the total of any taxes owing. Ind. Response.

According to the individual, she followed the IRS's instruction and immediately contacted a tax accountant to assist her in completing her returns. She testified that although her tax accountant completed her 2004 through 2006 returns, she did not file the returns until December 2011, shortly before the hearing, because she erroneously believed she had to pay her taxes in order to file. *Id.* at 63. She acknowledged during the hearing that this was a bad judgment call on her part and testified that she should not have assumed that she could not file her taxes without paying. *Id.* She testified that she has not yet filed her 2007 through 2010 tax returns. *Id.* at 20. She stated that she intends to contact the IRS state office to assist her in filing these returns. The individual testified that she believes her behavior was irresponsible and now understands that she is legally obligated to file taxes every tax year regardless of whether or not she has the ability to

pay her tax liability. *Id.* at 89.

With respect to the individual's admission that she obtained a home equity loan in the amount of \$67,000 and used the funds for purposes other than her tax debt, the individual testified that she used the money to pay off a number of her bills and to assist her brother who was in danger of losing his home. According to the individual, at the time she used this money to assist her brother and to pay off her bills, she did not know her tax liability. She testified that she received the loan in late 2006 and did not contact her tax accountant until 2007. With respect to her 90-day delinquency on a \$452 medical debt, the individual testified and provided documentary evidence that the debt has been paid off and resolved. *Id.* at 28. She explained that she received a bill after a hospital visit in 2010 which she paid, but did not realize a portion of the bill had to be paid to a separate hospital entity. According to the individual, by the time she called to resolve the issue, the unpaid bill had been referred to collection. *Id.* at 29.

C. Hearing Officer Evaluation of Evidence

After considering all of the documentary and testimonial evidence before me, I find that the individual has not presented sufficient evidence to mitigate the security concerns at issue in this case. During the hearing, the individual readily acknowledged that she failed to file her 2004 through 2010 Federal and State income taxes. Although she explained that she believed that she could not file her taxes without paying her tax liability, she acknowledged during the hearing that her failure to file her returns was irresponsible and demonstrated bad judgment on her part. Based on the individual's testimony and her level of maturity at the time of the conduct, I am not convinced that the individual did not understand her obligation to file her returns regardless of whether or not she had the ability to pay her tax debt. Rather, as the individual testified, a number of factors including the individual's health, her medical debt and the fear of the amount of taxes owed, contributing to her delinquent filing.

In the individual's favor, I find that the individual has made significant progress in changing her life and in becoming more responsible regarding her duty to file tax returns and to resolve her debt. As of the date of the hearing, the individual has resolved her medical debt and has filed her returns for 2004 through 2006. In addition, after the hearing, she provided documentation that she is receiving assistance from her local IRS Taxpayer Assistance office, as well as another local office, in filing her remaining 2007 through 2010 returns. Ind. Exh. J and K. Nonetheless, the individual has not resolved all of the delinquent filings. Moreover, the individual's total tax liability and her ability to pay her tax debt is uncertain. 4/ As of the date of the hearing, the individual has not resolved the concerns raised by her failure to file her returns. *See Personnel Security Hearing*, Case No. TSO-0916 (2010) (recent filing of tax returns and efforts to resolve tax obligations insufficient to resolve concerns arising from past failure to meet obligations;

4/ During the hearing, the individual testified that so far her tax liability is about \$7,000 plus penalties. She further testified that she has not yet made arrangements with the IRS to pay this tax debt. The individual submitted a monthly budget of her current expenses. Indiv. Exh. L. Again, it is uncertain whether the individual will have the ability to pay her tax debt.

Adjudicative Guidelines, Guideline F, ¶ 20.

VI. 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 find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criterion L. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find 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.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: March 2, 2012