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

In the Matter of:	Personnel Security Hearing)	
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Filing Date:	May 5, 2014)	Case No. PSH-14-0046
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)	

Issued: July 25, 2014

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“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 DOE should not grant access authorization to this individual at this time.

I. BACKGROUND

The individual is a DOE contractor employee who has applied for DOE access authorization. In December 2013, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in order to discuss certain information gathered in the course of reviewing her application. In March 2014, the LSO sent a letter (Notification Letter) to the individual advising her that it possessed reliable information that created substantial doubt regarding her 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

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.

disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (1) (Criterion L).² *See* DOE Ex. 1 (Summary of Security Concerns). The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the security concerns. *Id.*

The individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the individual represented herself and offered her own testimony. The DOE counsel presented no witnesses, and tendered 11 numbered exhibits into the record.

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 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").

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).

III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter informing the individual that the DOE possessed derogatory information that raises doubts under Criterion L regarding her eligibility to hold a DOE access authorization. DOE Ex. 1. As the sole basis in support of its Criterion L concern, the LSO cited the individual's purported failure to file her Federal and state income tax returns for tax years 2008 through 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 at ¶ 18. Among the behaviors that 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 and state income tax returns for a period of five years, I find that the LSO properly invoked Criterion L.

IV. FINDINGS OF FACT

For 15 years of marriage, the individual did not work outside of her home. Ex. 10 (Transcript of December 6, 2013, PSI) at 146. The individual and her husband received a discharge in bankruptcy in 2008, which eliminated virtually all of their debt except for her student loans. Exhibit (Ex.) 7 (Discharge of Debtor); Transcript of Hearing (Tr.) at 21-22. In September 2009, she separated from her husband and was later divorced. Tr. at 21. In 2009 and 2010, she had only cash income, as her sole source of income was tips. *Id.* at 15. In 2011, she began working in her current position, for which she receives a conventional paycheck and also receives appropriate tax forms, such as the W-2, annually. *Id.* at 34.

At the hearing, the individual testified that she and her husband did in fact file a tax return with the Internal Revenue Service (IRS) for the tax year 2008. Although she did not know that fact when she was interviewed by the LSO, she learned about it in a telephone conversation with an IRS staff member while she was preparing for this hearing. *Id.* at 10.³ The individual admits that she has not filed any tax returns with either the IRS or her state taxation authority for the tax years 2009, 2010, 2011, or 2012. *Id.* at 17-19. She has, however, filed her tax returns for 2013, with the assistance of the commercial tax preparation service that she and her husband employed during their marriage. *Id.* at 20, 25-26.

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

³ Because the individual was awaiting written verification from the IRS regarding this fact, I left the record open, until the date I received the hearing transcript, to accept a copy of any correspondence on this matter. *Id.* at 49. I have received no submission from the individual.

the documentary evidence. For the reasons set forth below, I cannot conclude that granting the DOE access authorization to the individual “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

With one exception, the individual did not dispute the facts cited in the Notification Letter. At the hearing, she testified that, contrary to the statement in the Notification Letter, she and her husband did file a tax return for 2008, though she could not recall whether they had done so at the time of her PSI. Ex. 10 at 134. She is awaiting written confirmation from the IRS that they did in fact file a return for 2008.

The individual admits that she has not filed tax returns for the years 2009 through 2012. She testified that she believed her annual income was around \$10,000 in 2009 and 2010, and may have earned less than the minimum filing threshold. Tr. at 20, 36. The greatest difficulty she faces in filing tax returns for these years is the lack of documentation; because she earned only tips, she did not receive annual income information from her employers. She has attempted to obtain records of her cash income from her employers, but reported that they keep no such records beyond one year. *Id.* at 16. She also asked her bank for records of account deposits for those years, but they were insufficiently detailed to provide her with the data she needed. *Id.* She only recently learned that the IRS might accept an estimate of her income to permit her to file returns. *Id.* at 37.

As for the tax years 2011 and 2012, the individual received the necessary documentation for filing her tax returns, and admits that she should have done so. *Id.* at 19, 38. She feels, however, that she lacks the necessary skills to file her taxes, and is hesitant to use a tax preparation service because of the cost. *Id.* at 14, 19, 34. She attempted to complete her 2012 Federal tax return, but did not file it because she felt she was unable to fill it out correctly. *Id.* at 18-19; Ex. 9 (2012 Form 1040). She hesitated to talk with the tax authorities about her filing issues, because she was nervous about the amount she might owe. Ex. 10 at 133. She has recently, however, inquired about installment plans for paying her 2011 and 2012 taxes. Tr. at 24. In contrast, she filed her tax returns for 2013, using a commercial tax preparation service. *Id.* at 25.

Finally, the individual testified that her taxes are the only debts on which she is delinquent, and the Notification Letter, focusing only on her failure to file tax returns, mirrors that fact. She explained that after her divorce, she fell into debt in her efforts to support her children and herself without any contribution from her ex-husband. *Id.* at 22. She admitted that she paid less attention to her bills than she should have due to the stress of the divorce and her struggles at the time to make ends meet. *Id.* at 23. She has since taken care of her bills, and is current with her student loan. *Id.* at 24, 28.

B. Administrative Judge’s Evaluation of Evidence

The individual has clearly faced trying circumstances in recent years. Her divorce left her as the sole supporter of her household, and she had difficulty making ends meet. She also had to face responsibilities that she had once shared with her husband, such as paying bills and filing taxes.

Since she has begun earning a steady salary, she has worked diligently to pay her outstanding debts. For that reason, the sole security concern of the LSO in this case is the individual's failure to file tax returns.

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 at ¶ 20(a). Although the individual did file her tax returns for the most recent year, 2013, she has not yet filed for a number of earlier years. Even if I accept the individual's assertion that she did in fact file a Federal tax return for 2008, and I have no reason to question her credibility, the fact remains that she has not filed tax returns for four recent years. I understand that filing returns for 2009 and 2010 will not be a simple process, because she lacks documentation supporting her income, but the individual has made little progress toward resolving that concern. Moreover, she has not filed for 2011 and 2012, years for which she admits she has the necessary documentation. She states she has discussed installment plans with the IRS and her state for those years. She has not, however, committed to filing returns for those years, whether for fear of tax liability, or lack of expertise, or lack of money to obtain help from a filing service. Until she does so, I cannot find that her behavior happened so long ago, or so infrequently, or under circumstances that are unlikely to recur or do not cast doubt on her judgment.

Nor can I find other conditions that might mitigate the LSO's concern with respect to the individual's failure to file her tax returns. Although her financial hardship arose as the result of a divorce, and she has acted responsibly in resolving other outstanding debts, I cannot find that she has taken sufficient action with regard to filing her taxes. Adjudicative Guidelines, Guideline F at ¶ 20(b). She has been earning a steady salary since 2011, and though that income has enabled her to satisfy her debts, she has not yet made inroads into the area of the LSO's concern. Nor does the record reflect that she had received counseling for the problem or that there are clear indications that the problem is being resolved or under control. Adjudicative Guidelines, Guideline F at ¶ 20(c).

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 not presented sufficient evidence to fully resolve the Criterion L concern cited in the Notification Letter. In a number of recent cases, Administrative Judges found individuals eligible for access authorization despite their failure to file tax returns for two recent years. In each case, however, the individual had not only recognized the need to file, as the individual has done here, but has also filed the overdue returns before the hearing took place. *See, e.g., Personnel Security Hearing*, Case No. PSH-14-0018 (2014). Despite the individual's best intentions, however, she has not yet taken sufficient steps to convince me that the security concerns associated with failing to pay her income taxes have been mitigated. I cannot find that four years of unfiled tax returns is a small lapse in otherwise good judgment, is unlikely to recur in the future, and does not cast doubt on her current reliability.

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 not presented sufficient information to fully resolve the Criterion L concern. Therefore, I cannot conclude that granting a security clearance to the individual "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 not grant DOE access authorization to the individual at this time.

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

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: July 25, 2014