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August 15, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: January 14, 2002
Case Number: VSO-0538

This Decision addresses the eligibility of XXXXX (the Individual) for access authorization. The regulations governing the Individual's eligibility are found at 10 C.F.R. Part 710. As explained below, I find that the Individual's access authorization should not be restored.

The Individual has worked at a Department of Energy (DOE) facility for a number of years, and was previously granted access authorization. Recently, however, the DOE obtained reliable information that cast doubt on his eligibility for continued access authorization. That information indicated that the Individual had engaged in unusual conduct or is subject to circumstances that tends to show he is not honest, reliable, or trustworthy. See 10 C.F.R. § 710.8(1). 1/

1/ 10 C.F.R. § 710.8(1) defines as derogatory information any information that indicates an 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."

BACKGROUND

In 2001, the Individual was the subject of a routine background reinvestigation by the Office of Personnel Management (OPM) into his eligibility for continued access authorization. 2/ The investigation revealed that the Individual had a history of failing to file state and federal income tax returns. Records from the regional office of the Internal Revenue Service showed that the Individual had failed to file federal income tax returns for tax years 1992 through 1998. 3/ In addition, court records showed that the Individual had failed to file state income tax returns for tax years 1986, 1991-94, and 1996-99. 4/ At the time of the reinvestigation, the total delinquent tax liability was approximately \$26,000, including interest and penalties.

The Individual spoke with an OPM investigator about his failure to file tax returns. He admitted that he had not filed federal income tax returns for 1992-98 and state income tax returns for 1991-94 and 1996-98. He told the investigator that "he and his wife's parents had been ill and that due to medical and support costs for his mother-in-law he and his wife did not have the money to pay the taxes so they did not file their yearly tax returns." 5/

The Individual was also given a Personnel Security Interview (PSI) by a DOE personnel security specialist. During the PSI, the Individual stated that his wife prepared and filed the family's income tax returns. 6/ As a result, he was unclear on the details about the dates and amounts of his tax delinquencies. 7/ Nevertheless, he acknowledged that he was responsible for paying his taxes. 8/ The Individual told the security specialist that he

2/ Exhibit (Exh.) 3-13, Report of Investigation by the Office of Personnel Management.

3/ Exh. 3-13, at 33-35.

4/ Exh. 3-13, at 24-27.

5/ Exh. 3-13, at 15.

6/ Exh. 4-1, Transcript of Personnel Security Interview, at 16, 21.

7/ Exh. 4-1, at 32-33.

8/ Exh. 4-1, at 20.

and his wife did not pay their taxes when due because they could not afford to. 9/

The Individual also said that in 1999 he paid off his state income tax delinquency through an amnesty program, whereby he paid the overdue principal but not interest and penalties. 10/ In addition, he said he had submitted a compromise offer to the IRS concerning his unpaid federal income taxes, but had not received a response to his offer. He said he decided to settle his federal tax delinquency because he could now afford to do so. 11/

HEARING TESTIMONY

At the hearing, the Individual presented the testimony of his wife, his supervisor, and his accountant, and testified in his own behalf. He also submitted his income tax records for the previous eleven years, and documentation concerning a bankruptcy filing he made in late 2001. The DOE presented the testimony of a personnel security specialist.

The Individual's supervisor described the Individual as a highly valued and trustworthy employee. 12/ He testified that the Individual had told him about his problem with delinquent taxes, and explained that the problems were associated with deaths in his family, tax consequences arising from the sale of a house, and the ineptness of his former accountant. 13/

The Individual's current accountant is a certified professional accountant (CPA) who, before entering private practice, had worked for the IRS for more than twenty years. 14/ He described how he is attempting to reach a compromise with the IRS, under which the IRS would accept the Individual's payment of \$14,000 to cover the delinquent principal taxes and abate \$12,000 in interest and

9/ Exh. 4-1, at 17.

10/ Exh. 4-1, at 21.

11/ Exh. 4-1, at 34-35.

12/ Transcript of Hearing (Tr.), at 7.

13/ Tr., at 11.

14/ Tr., at 15, 16.

penalties. 15/ The accountant had received paperwork showing that the Individual's previous accountant had attempted to settle with the IRS for \$8,000 in late 1999, but had apparently failed to file the proper documents and the offer had been rejected. 16/

The Individual's wife testified about the difficulties the family has faced since 1991. During that time, the Individual was diagnosed with two serious illnesses and had to reduce his hours of work. 17/ Soon after that, the wife's mother became seriously ill and moved into the Individual's house. 18/ The wife reduced her working hours to help care for her mother. As a result the family income decreased. The Individual's wife had no explanation for the tax liens filed by the state before 1992, which were noted in the OPM Report. 19/

The Individual's wife also stated that the Individual had a severe reading disability and that, as a result, she took responsibility for all of the family's financial matters, including preparing and filing income tax forms. 20/ She stated that she did not tell the Individual that she had not filed tax returns until 1999, when the IRS threatened to file a lien against their property. 21/ She attributed her failure to file tax returns to a lack of money. 22/ She acknowledged, however, that she was compensated for most of the medical expenses she incurred. 23/ She also stated that the psychological stress of dealing with family illnesses was a factor in her failure to file returns, and that filing returns was not a priority with her. 24/

15/ Tr., at 19.

16/ Tr., at 16-17.

17/ Tr., at 52-5.

18/ Tr., at 56-58.

19/ Tr., at 97-101.

20/ Tr., at 50-51; 59-60.

21/ Tr., at 60-62.

22/ Tr., at 52.

23/ Tr., at 86-88.

24/ Tr., at 114-16.

The Individual's testimony corroborated his wife's testimony about his reading difficulties, and about his and his mother-in-law's illnesses. 25/ In addition, the Individual testified that he was unaware that his wife had failed to file tax returns until 1999. 26/ He stated that he left all financial and tax matters to his wife because of his problems with reading. 27/ He admitted that he did not question his wife about whether the tax returns had been filed. 28/ Nevertheless, he acknowledged that he was responsible for ensuring that his tax returns were filed and taxes paid. 29/

ANALYSIS

A DOE administrative review proceeding under Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In a Part 710 case, the standard is designed to protect national security interests. Once the DOE has made a showing of derogatory information, the burden is on the individual to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the interests of national security" standard for the granting of security clearances indicates that determinations should err, if they must, on the side of denials); *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).

In this case, there is no dispute that the Individual failed to file his state and federal income tax returns from 1992 to 1998

25/ Tr., at 150-53.

26/ Tr., at 143.

27/ Tr., at 143.

28/ Tr., at 150; 161-62; 165; see corroborating statement of wife, Tr., at 94.

29/ Tr., at 146; 156-57.

until late 1999. ^{30/} Such conduct shows untrustworthiness, unreliability, and unwillingness to follow rules and regulations, which could indicate that the Individual would not properly safeguard classified information or materials.

In light of this evidence, the Individual has failed to meet his burden of showing eligibility for access authorization. The explanations for nonpayment offered by the Individual and his wife are unconvincing and uncorroborated by evidence in the record.

First, the Individual is responsible for seeing that his taxes are paid, as he himself acknowledged. The fact that his wife filled out the forms does not absolve him from his responsibility for ensuring that the forms were submitted.

Second, I find no support for the claim, advanced by the Individual's wife, that the psychological stress of family illnesses prevented her from preparing the tax forms. Despite the serious illnesses that the Individual and his mother-in-law suffered, both he and his wife continued to work and raise their children. There is no evidence that illnesses rendered the Individual and his wife unable to file a tax return.

Third, the Individual's claim that he did not have enough money to pay his taxes is also unsupported. The basis for this claim is the Individual's assertion that the illnesses of his mother-in-law and himself forced him and his wife to reduce their working hours. The Individual did not present any evidence, however, that his financial resources were so limited that he could not afford to pay his taxes. For example, the Individual's wife acknowledged that most of the family's medical costs were covered by insurance, and that the family incurred no catastrophic medical costs during the period that they did not file tax returns. In fact, financial records in the OPM report indicate that the Individual was able to pay his mortgage and other obligations.

Fourth, the Individual's claim that his failure to file tax returns was related in some way to family illnesses is contradicted by the record. The Individual's state of residence filed a tax lien against his property for tax years 1986, 1990, and 1991. These filings show that tax avoidance was the Individual's practice before the onset of illness.

^{30/} The Individual apparently filed a state, but not federal, income tax return in 1995.

Finally, I note that the Individual presented a substantial amount of evidence concerning the incompetence of his first accountant, apparently in the belief that this evidence mitigates concern about his own failure to file tax returns. While the record indicates that the resolution of the Individual's tax delinquencies was delayed to some extent by the mistakes or inaction of the first accountant, the fact remains that the Individual did nothing to deal with his delinquent taxes until the IRS threatened to file a lien against his property. The issue in this case is not that the Individual took too much time to deal with his tax delinquencies, but that he failed to file timely returns for at least six years. I find, therefore, that this evidence does not mitigate the security concern raised by his failure to file his tax returns on time.

Ultimately, the Individual is responsible for filing his income tax returns. The explanations offered by the Individual and his wife, even if true, do not absolve him of that responsibility. For at least seven years the Individual made no effort to correct his tax delinquencies, and his inaction shows a defect in reliability and trustworthiness. Consequently, his lack of interest and effort, over a lengthy period, in dealing with his taxes is incompatible with the standards required of those who hold access authorization.

CONCLUSION

I conclude that the Individual has failed to resolve the security concerns identified by the DOE under 10 C.F.R. § 710.8(1). He has been unable to provide a coherent and credible explanation of why he failed to file income tax returns between 1992 and 1998. His failure to abide by the requirement to file federal and state income tax returns raises questions about his trustworthiness and reliability. Therefore, in view of the record before me, I am not persuaded that granting the individual access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." Accordingly, I find that the Individual's access authorization should not be restored.

Warren M. Gray
Hearing Officer
Office of Hearings and Appeals

Date: August 15, 2002