



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
 ---) ADP Case No. 18-01875
)
 Applicant for Public Trust Position)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

05/17/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is denied.

Statement of the Case

On November 3, 2017, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 5, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest

to grant Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on September 11, 2018. In a sworn statement, dated November 2, 2018, supplemented by an e-mail, dated November 9, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 20, 2018. The case was assigned to me on January 10, 2019. A Notice of Hearing was issued on March 13, 2019. I convened the hearing as scheduled on April 2, 2019.

During the hearing, Government exhibits (GE) 1 through GE 4, and Applicant exhibits (AE) A through AE I were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on April 11, 2019. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents which were marked and admitted into evidence as AE J through AE V without objection. The record closed on May 2, 2019.

Procedural Issues

During the hearing, Department Counsel moved to amend the SOR to conform to the evidence presented. The motion was to amend SOR by adding two new allegations: "1.c. – You failed to timely file, as required, your federal income tax returns for tax years 2012 and 2013; and 1.d. – You failed to timely file, as required, your federal income tax returns for tax years 2016 and 2017." The motion was granted without objection.¹

Findings of Fact

In his Answer to the SOR and the amended SOR, Applicant admitted with comments three, and a portion of a fourth, of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.c., and a portion of SOR ¶ 1.d.).² Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 52-year-old employee of a defense contractor. He has been serving as a field service technician with his current employer since April 2010. A 1985 high school graduate, he received an associate's degree in 1989. Applicant has never served with the U.S. military. He has never held a security clearance, and it is unclear if he ever held a position of public trust. Applicant was married in 1987, and divorced in 1988. He was remarried in 1991, and divorced in 1994. He married again in 2002. He has four children, born in 1987, 1993, 2003, and 2007.

¹ Tr. at 35-37.

² Applicant's Answer to the SOR, dated November 2, 2018; AE P (E-mail, dated May 1, 2019).

Financial Considerations³

Applicant's financial difficulties first arose in 2000, and they continued over a multi-year period, essentially because he was withholding too little from his federal and state income for tax purposes. As a result, over the years, a substantial number of federal and state tax liens were filed against him for various amounts, with some as small as \$50, and one as large as \$34,501.⁴ It took Applicant approximately one decade to resolve the state income tax issues, and a number of them were released in 2014, 2015, and 2016. He had a repayment plan with the state, and by paying the state approximately \$9,800, the state tax liens were eventually released. During the intervening period, a son was born in 2003 with temporary health issues, and then he developed other conditions, including Attention Deficit Disorder, Learning Disability, Hyperactivity, Autism, and Epilepsy.⁵ The medical expenses caused by those issues were approximately \$8,000 per year.

Because Applicant also had similar issues with respect to his federal income taxes involving the payment of insufficient income taxes, and the imposition of increasing interest, essentially during the period 2000 through 2009, in January 2009, he sought the assistance of a company specializing in obtaining tax relief, and agreed to pay them \$344.44 for the draft modification request form, plus a \$25 fee. Based on the figures presented to the company, an offer in compromise analysis was prepared.⁶ It is unclear if it was rejected by the IRS or even submitted to the IRS. Nevertheless, federal tax liens

³ General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 2 (e-QIP, dated November 3, 2017); GE 3 (Enhanced Subject Interview, dated March 18, 2018); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 2, 2017); AE A (Internal Revenue Service (IRS) Account Transcript – 2009, dated March 21, 2019); AE B (IRS Account Transcript – 2010, dated March 21, 2019); AE C (IRS Account Transcript – 2011, dated March 21, 2019); AE D (IRS Account Transcript – 2012, dated March 21, 2019); AE E (IRS Account Transcript – 2013, dated March 21, 2019); AE F (IRS Account Transcript – 2014, dated March 21, 2019); AE G (IRS Account Transcript – 2015, dated March 21, 2019); AE N (Amended Individual Income Tax Return – 2016 (Form 1040X), dated April 1, 2019); AE N (Individual Income Tax Return – 2016 (Form 1040), dated April 1, 2019); AE U (Individual Income Tax Return – 2017 (Form 1040), dated April 1, 2019); AE R (IRS Account Transcript – 2002, dated April 24, 2019); and Applicant's Answer to the SOR, *supra* note 2; and AE P, *supra* note 2.

⁴ Tr. at 22; GE 4, *supra* note 3, at 5-6. Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged state income tax issues, as well as other federal income tax issues described further below, will be considered only for the five purposes listed above.

⁵ AE K (Individual Psychoeducational Report, dated June 12, 2003); AE J (E-mail, dated May 1, 2019).

⁶ AE I (Tax Relief File, various dates); Tr. at 26.

were filed against Applicant in February 2009, in the amount of \$34,501 (SOR ¶ 1.a.), and in June 2009, in the amount of \$7,533 (SOR ¶ 1.b.).⁷ In November 2018, Applicant acknowledged that “a significant balance remains unpaid. I have paid some toward the original debt though not much due to household (sic) bills and obligations.”⁸ While there are some tax very recent post-SOR and post-Notice of Hearing payments to the IRS: \$611.87 and \$131.77 of the unpaid 2011 tax balance of \$744.28 on March 21, 2019, and April 10, 2019, when a total of \$611.87 was paid, or tax refunds applied by the IRS, and Applicant contends that the federal tax liens are no longer listed on his credit report,⁹ there is no evidence that those federal tax liens have been released.

Applicant’s federal income tax issues were not limited to simply failing to pay his income taxes over the years. He also had a substantial history of failing to timely file his federal income tax returns over a multi-year period, something he referred to as “a mistake.”¹⁰ For example, while it was not alleged in the SOR, Applicant failed to timely file his federal income tax return for the tax year 2002, and as of April 24, 2019, only a substitute tax return was prepared by the IRS.¹¹ Applicant also failed to timely file his federal income tax returns for: the tax year 2012, until August 3, 2015;¹² the tax year 2013, until May 25, 2015;¹³ the tax year 2016, until April 1, 2019,¹⁴ although Applicant

⁷ GE 4, *supra* note 3, at 6.

⁸ Applicant’s Answer to the SOR, *supra* note 2.

⁹ Tr. at 16, 28; AE T (Recent Payments, undated); AE H (Extract of Experian Credit Report, dated April 2, 2019); AE C, *supra* note 3.

¹⁰ Tr. at 29. The legal requirement to file a federal income tax return is based upon an individual’s gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax.*

¹¹ AE R (IRS Account Transcript – 2002, dated April 24, 2019).

¹² AE D (IRS Account Transcript – 2012, dated May 21, 2019); AE P, *supra* note 2.

¹³ AE E (IRS Account Transcript – 2013, dated March 21, 2019); AE P, *supra* note 2.

claimed it was initially filed timely, but not properly recorded;¹⁵ and the tax year 2017, until April 1, 2019.¹⁶

Applicant's reported adjusted gross income in 2014 was \$70,227; in 2015, \$79,180; in 2016, \$78,332; and in 2017, \$75,979. Applicant submitted two slightly different Personal Financial Statements, both dated May 1, 2019, to reflect his \$3,459.97 (versus \$3,173.71) net monthly income; \$1,644 (versus \$1,814) in monthly expenses; and a purported \$1,082.64 (versus \$1,082.64), not including any payments to satisfy federal tax liens or for unpaid income taxes; leaving a remainder of \$733.33 (versus \$197.07) that might be available for discretionary spending or savings.¹⁷ Both of Applicant's Personal Financial Statements reflect that he has stocks and pensions worth \$100,000, a mobile home, a boat, a truck, and a luxury automobile.

Applicant's only effort of obtain financial counseling appears to be his post-hearing acquisition of a book, *Total Money Makeover*, by Dave Ramsey, a national radio host dealing primarily with financial issues.¹⁸ Applicant did not explain what corrective actions he has taken over an extensive period to avoid the pitfalls or other factors that he identified as the ones that caused him financial difficulties. He offered only generalized explanations for his failures to routinely timely file his federal income tax returns; to make more timely efforts to pay his unpaid federal income taxes; and to resolve his federal tax liens. While he apparently has a monthly remainder of either \$733.33 or \$197.07, depending on which version of his Personal Financial Statement is accurate, there is a paucity of evidence to indicate that Applicant's financial situation is now under control.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a [position of public trust]."¹⁹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.²⁰

¹⁴ AE N (U.S. Individual Income Tax Return (Form 1040) – 2016, dated April 1, 2019); AE P, *supra* note 2.

¹⁵ AE P, *supra* note 2.

¹⁶ AE U (Form 1040 2017, dated April 1, 2019); AE P, *supra* note 2.

¹⁷ AE L (Personal Financial Statement, dated May 1, 2019); AE Q (Personal Financial Statement, dated May 1, 2019).

¹⁸ AE V (E-mail, dated May 9, 2019).

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁰ It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, Adjudication of Trustworthiness Cases, dated November 19, 2004,

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."²¹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²²

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.²³ In reaching this decision, I have drawn only those conclusions that

covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

²¹ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²³ *Egan*, 484 U.S. at 531.

are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely file his federal income tax returns for a multi-year period (tax years 2012, 2013, 2016, and 2017, as well as the unalleged 2002); failed to pay annual federal income taxes as required for a multi-year period; had \$42,034 in federal tax liens filed against him in 2009; and he may still owe the IRS unpaid federal income taxes, interest, and penalties. The failure to timely file income tax returns has trustworthiness implications because:²⁴

²⁴ ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance [and by inference, a trustworthiness] adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified [and by inference, sensitive] information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness [or trustworthiness] in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns.²⁵ Furthermore, since a public trust position represents an obligation to the federal government for the protection of sensitive information, a failure to honor other obligations to the government has a direct bearing on an applicant’s reliability, trustworthiness, and ability to protect sensitive information.²⁶ In this instance, while Applicant may have eventually filed his late federal income tax returns, and he may now be properly motivated, he generally waited for extensive periods after the due dates for the filings, and, with respect to the federal tax returns for the tax years 2016 and 2017, until April 2019, approximately six months after the SOR was issued. AG ¶¶ 19(a), 19(c), and 19(f) have been established. As there is no evidence that Applicant was unwilling to satisfy his unpaid federal income taxes or federal tax liens regardless of the ability to do so, AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties under AG ¶ 20:

²⁵ See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information, and by inference sensitive information, with focus on timing of filing of tax returns after receipt of the SOR).

²⁶ See ISCR Case No. 14-03358 at 3-4 (App. Bd. Oct. 9, 2015).

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;²⁷

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;²⁸

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶¶ 20(b), 20(c), and 20(d) minimally apply, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial issues make it difficult to conclude that it "was so infrequent," or that it is "unlikely to recur."

²⁷ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

²⁸ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant's SOR-related financial difficulties first arose in 2000 and continued through 2009 when he failed to withhold sufficient income for his federal income taxes. That led to two federal tax liens being filed against him in 2009. However, that was only one aspect of his federal income tax problems, for he also failed to timely file his federal income tax returns for a multi-year period. While Applicant generally attributed his financial difficulties to health issues and the failure to withhold the necessary income, in the absence of more complete explanations and some documentation to support his contentions, neither of those factors was due to conditions that were largely beyond his control. Federal (and state) personal income taxes went unpaid, and while the state issues were apparently resolved in 2009, Applicant never obtained an installment agreement with respect to his delinquent federal income taxes, and he offered no documentation to indicate that the federal tax liens have been released.

It is difficult to conclude that Applicant made substantial timely good-faith efforts to resolve his unpaid federal income taxes, despite periods of having reasonably good income. Furthermore, Applicant's failure to timely file his federal income tax returns over a multi-year period is of considerable concern, because while an individual may have insufficient funds to pay his or her taxes, that is not an acceptable justification for not timely filing federal income tax returns.

The Appeal Board previously observed that:²⁹

[t]he mere filing of delinquent tax returns or the existence of a payment arrangement with an appropriate tax authority does not compel a Judge to issue a favorable decision. As with the application of any mitigating condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of [pertinent mitigating conditions].

An applicant who begins to resolve his financial problems only after being placed on notice that his trustworthiness eligibility is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.³⁰ Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.³¹

Trustworthiness decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the

²⁹ ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018) (quoting ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018)).

³⁰ See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

³¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

Mere promises to pay debts and timely file income tax returns in the future, especially after multi-year delays in taking timely actions, without further confirmed actions, are insufficient. In this instance, Applicant's evidence of self-reformation and self-rehabilitation to voluntarily comply with the tax filing requirements in the future fail to remove the lingering doubts that remain whether he has demonstrated the judgment, reliability, and willingness to abide by well-established rules and regulations that is required for granting eligibility for a position of public trust.³²

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³³

There is some evidence mitigating Applicant's conduct. Applicant is a 52-year-old employee of a defense contractor. He has been serving as a field service technician with his current employer since April 2010. A 1985 high school graduate, he received an associate's degree in 1989. Although Applicant failed to pay sufficient state income taxes over a multi-year period from 2000 until 2009, and state tax liens were filed against him,

³² See ISCR Case No. 17-01256, *supra* note 29, at 5.

³³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

he took decisive action with respect to his state income tax issues, and by 2009 or 2010, he paid off his delinquent state income taxes.

The disqualifying evidence under the whole-person concept is more substantial. Applicant also has had a long-standing problem with his federal income taxes, having failed to withhold sufficient funds to cover his federal income taxes over a multi-year period. Those failures resulted in the IRS filing two federal tax liens against him in 2009, totaling \$42,034. While there are some very recent post-SOR and post-Notice of Hearing payments to the IRS on March 21, 2019, and April 10, 2019, and Applicant contends that the federal tax liens are no longer listed on his credit report, there is no evidence that those federal tax liens have been released. Accordingly, he may still owe the IRS unpaid federal income taxes, interest, and penalties. However, of greater significance is Applicant's seemingly routine practice of failing to timely file his federal income tax returns. While Applicant offered some explanations for his untimely actions, those explanations do not adequately justify the lengthy delays in completing the required actions. Considering all of the above, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a position of public trust.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁴

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a fair track record of debt reduction and elimination efforts, taking a decade to reduce or eliminate most of his unpaid income taxes. As for his routine history of failing to timely file his federal income tax returns, he has demonstrated a poor track record. Overall, the evidence leaves me with substantial

³⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

