



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



In the matter of:)	
)	
)	ISCR Case No. 19-03096
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: Joseph Goff, Jr., Esq.

03/14/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. He mitigated the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On November 22, 2021, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 4, 2022, and he requested a hearing before an administrative judge. This case was assigned to me on December 14, 2022. The notice of hearing was issued on January 11, 2023, scheduling the hearing for February 6, 2023.

I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through M. There were no objections to any exhibits and all were admitted in evidence. The record was held open until March 1, 2023, to permit Applicant an opportunity to provide additional documents, which he did, and they were marked AE N through U. There were no objections, and they were admitted in evidence. The transcript (Tr.) was received on February 16, 2023.

Procedural Matter

The Government moved to amend SOR ¶¶ 2.b and 2.c by deleting the date “February 23, 2017” and substituting the date “February 18, 2020.” There was no objection and the motion was granted.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.d through 1.n. He denied the SOR allegations in ¶¶ 1.a through 1.c and 2.a through 2.c. Applicant’s admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. He holds two associate degrees earned in 2000 and a bachelor’s degree earned in 2014. He also holds numerous computer certifications. He never married. He has five minor children. He began working as a government contractor in 2004, and in 2010 he started his own company, which has been successful. He has held a security clearance since at least 2005. (Tr. 22, 26-32, 35)

In 2010, Applicant started his business under a government program where his business was provided with government contracts, and he was mentored for the first five years. Each subsequent year after the fifth year, the business was required to incrementally increase obtaining government contracts on its own. In year six, the program required the business to obtain 20% of its own contracts, year seven 30%, year eight 40%, year nine 50% and then the company would graduate from the program and be solely responsible for obtaining its own contracts. The business had reporting requirements to the government. (Tr. 22, 35-36, 56-57; Answer to the SOR)

Applicant testified that he is the sole owner of the company and is its president and chief executive officer. He receives an annual salary from the business of \$170,000. It is a Subchapter S corporation. He has a contracted facility security officer (FSO). He explained that under a Subchapter S corporation, he files his business tax returns first then his personal income tax returns. He receives an IRS Form K-1 from the company, which reflects the profit from his business, for which he is the recipient as the sole owner. It was requested that Applicant provide copies of IRS Form K-1 for the past five years. He did not provide the documents. In 2022, his company grossed approximately \$6 million. Applicant testified that since 2011 he has not had a good grasp on understanding his taxable income. At the time of hearing, he said he had not had any financial counseling. He is responsible for monitoring all financial matters of his company. He now

understands that he needs a dedicated person to handle his finances who is more than a bookkeeper. (Tr. 92-103)

Applicant testified that when he started his business, he had a woman in the neighborhood prepare his tax returns. He said everyone in the area had her complete their returns. Although she worked for H & R Block, she completed people's tax returns outside of her employment. Sometime after he filed his 2011 tax return, the IRS contacted Applicant and asked him if he had a barn that burned down. He learned that this woman was making fraudulent claims on his tax returns. He credibly testified that he never intentionally meant to mislead the IRS. He said that the IRS told him to hire a certified public accountant to prepare his tax returns. This woman had filed his 2009, 2010, and 2011 income tax returns. (Tr. 48-53)

In 2012, Applicant hired accounting firm KK who completed his tax returns for tax years 2012, 2013, 2014 and 2015. He stopped using them after tax year 2015 when they advised him that his company was getting too big for their expertise with all of the government reporting requirements and financial aspects of the business. Applicant said that his business and personal income tax returns were combined. (Tr. 53, 57)

Applicant testified that in 2015 he hired another certified public accounting firm, IA, to handle his tax returns and the government reporting requirements for the business. He received tax advice from Mr. H of IA. Applicant testified that in 2017, he became aware that previous tax years' returns were filed late and penalties and interest were incurred that Applicant was responsible to pay. He said he was unaware why this happened because his accountant had the documents he needed to timely file. Mr. H was working with the IRS to potentially have the penalties for his late filings waived. Applicant testified he never saw a waiver request that was sent to the IRS. He said he was making periodic lump-sum payments to reduce his tax liabilities. (Tr. 57-73, 85-86)

Applicant's IRS tax transcript for tax year 2016 shows that someone was communicating with the IRS on Applicant's behalf. Applicant testified that he and Mr. H met with the IRS representative a couple of times in 2017 and multiple times after 2017. Applicant's 2016 income tax return was filed in August 2019. Applicant testified that he did not know the return was filed late because Mr. H had all of the documents to timely file. Applicant said he asked Mr. H how to resolve his tax problems, and he was advised to make lump-sum payments towards his delinquent taxes. His tax transcript from tax year 2020 shows he had \$95,457 withheld for taxes during the year, which was then applied to tax debts for years 2008, 2009, and 2010. Applicant testified that IA had access to all his financial information that was stored on a software program, and they had their own bookkeeper who was responsible for Applicant's account. Tax transcripts show he did make periodic lump-sum payments to the IRS. (Tr. 62-73; AE D, G, H, I)

Applicant stated that when he completed his security clearance application (SCA) in February 2017, he asked his FSO and Mr. H whether he needed to disclose his failure to timely file and pay his past income taxes and whether he was currently delinquent on any federal debt. He said he was told by Mr. H that he did not need to disclose he was

delinquent because he was making payments to the IRS and was under an installment agreement. Applicant testified that he terminated IA accounting services in 2019. He hired another accounting firm to complete his tax returns. (Tr. 75, 83-86)

Applicant testified that he then hired a tax accountant to file his 2020 and 2021 income tax returns. He also had his own bookkeeper, who managed the corporate books, provide the financial information to the tax accountant. In December 2022, Applicant hired a new accounting firm who is now responsible for all of Applicant's tax returns. He has signed a power of attorney for the firm to help him resolve his tax issues with the IRS. He meets with his accountant quarterly to ensure he is ahead of any potential issues. The firm also does his bookkeeping. (Tr. 38-39, 81-90)

Tax transcripts reflect Applicant's adjusted gross income was as follows:

Tax year 2013-\$63,358
Tax year 2014-\$211,444
Tax year 2015-\$309,233
Tax year 2016-\$313,758
Tax year 2017-\$383,017
Tax year 2018-\$403,031
Tax year 2019-\$397,785
Tax year 2020-negative \$650,447
Tax year 2021-\$170,258
(AE A through I)

The SOR alleged Applicant was indebted to the IRS for delinquent taxes from years 2008 through 2011 and 2014 through 2017. (SOR ¶¶ 1.a-1.h) Specifically as follows:

Tax year 2008-\$17,393
Tax year 2009-\$76,426
Tax year 2010-\$64,219
Tax year 2011-\$24,494
Tax year 2014-\$20,590
Tax year 2015-\$52,237
Tax year 2016-\$11,202
Tax year 2017-\$124,233

The SOR alleged Applicant failed to timely file federal income tax returns for tax years 2011, 2014, 2015, 2016, 2017 and as of the date of the SOR, he had not filed his 2018 federal income tax return. (SOR ¶¶ 1.a-1.i) Documents support that his 2014, 2015, 2016, and 2017 returns were filed late. I was not provided a tax transcript for tax year 2011. Applicant admitted he failed to timely file his 2011 federal income tax return, but disputed the amount he owed. Applicant filed his 2018 federal income tax return in March 2020. He had an adjusted gross income of \$403,031 and owed a balance of \$117,659 for taxes for that year. (GE 2; AE B, C, D, E, F)

In September 2019, Applicant was interviewed by a government investigator. He discussed his federal tax liens and explained that the IRS conducted an audit on his 2008 through 2011 income tax returns. He said he agreed to make \$200 monthly payments and had been making the payments since June 2012. He expected the liens to be resolved in 2020. His November 2019 tax transcript for tax year 2008 reports an installment agreement was established in May 2013 and payments of \$200 were made until September 2017 and applied to his 2008 delinquent taxes. An offer-in-compromise was made to the IRS in September 2017 and withdrawn in January 2018. (Tr. 132-133; GE 2)

A letter from his accountant dated November 11, 2019, was provided that stated that Applicant's 2018 federal income tax had not been filed because the current accountant was waiting for documents from his previous accountant; a balance of \$317,970 was owed at that time to the IRS; they were in the process of requesting information and waiting for the IRS to appoint a revenue agent to provide them documents regarding a fraud determination on Applicant's 2009 and 2010 returns; and that an installment agreement was not in place, but his account was flagged to show an installment agreement was being discussed and waiting for the assignment of a revenue agent. (AE U)

Applicant provided a copy of an installment agreement with the IRS from January 2022, which notes he owes \$266,548. It provides for him to pay \$500 a month towards his balance that includes tax years 2009, 2011, 2016, 2017, 2018, and 2019. He has been making payments that have been applied to his delinquent tax debts. Tax transcripts show he made other payments towards his tax debt in the past, sometimes lump-sum payments. Applicant's November 2019 tax transcript for tax year 2008 reflected Applicant owed \$17,393. In his answer to the SOR, Applicant stated that he paid his 2008 delinquent federal taxes. I do not have a current 2008 tax transcript, but based on the installment agreement, it is likely any outstanding debt from 2008 would have been included. The most current tax transcript I have for tax year 2010 is from November 2019 and it shows an outstanding balance owed of \$64,219. However, using the same logic as the 2008 balance owed, this tax year would also likely have been included in the installment agreement if it was still owed. (Tr. 39; GE 2; AE D, J)

Applicant provided tax transcripts from February 2023 with current balances for tax years below. I did not receive updated tax transcripts for tax years 2009 through 2011. (AE A, B, C, D, E, F, G)

Tax year 2013-zero
Tax year-2014-zero
Tax year-2015-zero
Tax year-2016- \$11,794
Tax year-2017-\$71,743
Tax year-2018-\$117,659
Tax year-2019-\$1,313

Federal tax liens were filed in December 2010 (\$5,453), May 2013 (\$131,684) for tax years 2008, 2009, and 2010; and July 2016 (\$17,298) for tax year 2011. No evidence was presented to show they have been released. (SOR ¶¶ 1.j through 1.l) (GE 2)

The SOR also alleged state tax liens filed against Applicant in May 2014, August 2014, and July 2018, which were resolved with payments (SOR ¶ 1.m). Documents were provided to show these state tax liens were released. SOR ¶ 1.n alleges he was indebted to his state for \$1,394 and state tax lien was filed in August 2019 for that amount. Applicant testified that his state taxes were paid, and the liens were released. No documents were provided to substantiate the 2019 state taxes were paid or the lien was released. (Tr. 74; GE 2)

Applicant's May 2017 credit report shows that there was an additional federal tax lien that was filed in May 2013 (\$13,200) and was paid and released the same month. There were also tax liens filed in May 2014 (\$725) that was paid and released in June 2014 and August 2014 (\$1,434) that was paid and released the same month. (GE 4)

SOR ¶ 2.a alleged that Applicant committed fraud in the preparation of his federal income tax returns for tax years 2008, 2009, and 2010. (SOR ¶ 2.a) As part of his response to Interrogatories, Applicant included a tax transcript from November 2019 for tax year 2008. An entry from October 2012 shows a "penalty for fraud" was assessed for \$12,644 along with other accuracy penalties, which appear to be for underreporting income. No other evidence was provided regarding the fraud allegations. (GE 2)

SOR ¶ 2.b alleged Applicant intentionally failed to disclose on his February 2020 security clearance application that he failed to file or pay his federal and state income tax returns by answering "no" to the inquiry and did not disclose his 2008 through 2011 and 2014 through 2017 tax debts or his 2011 through 2018 failure to timely file his federal income tax returns. SOR ¶ 2.b alleged that he also failed to disclose that he was delinquent on any federal debt. A 2020 SCA was not offered or admitted into evidence.

Applicant maintains a three-bedroom apartment in a large city, and he also owns a residence in his home state. He testified that he pays approximately \$4,000 a month for child support. However, in his personal financial statement from February 2022 that he provided in his answer to the SOR, he reported his child support as \$2,500. He testified that he had \$120,000 of student loans that are deferred due to the pandemic. He said he was making \$200 monthly payments on the loans until the pandemic. He stated that his salary is approximately \$170,000 annually. However, tax transcripts show his taxable income in some years to be much higher and some years lower because of his business. (Tr. 41-48, 103-107; Answer to the SOR; AE N, P)

In 2017, Applicant purchased a 2016 truck and owes about \$20,000 on it with monthly payments of \$586. In late 2020, he purchased a 2020 luxury sports car. The purchase price of the car was \$90,000. Applicant stated that he helped a person obtain a contract and the friend paid the car dealership \$40,000 toward Applicant's purchase price of the vehicle and Applicant paid the remaining \$50,000 cash towards the purchase. In

Applicant's budget, he does not list this car as one of his assets. He stated that he told his accountant that he purchased a car and \$40,000 of the purchase price was paid by someone else. His company also purchased a larger vehicle for business travel that he uses. (Tr. 107-119)

Any derogatory information that was not alleged will not be considered for disqualifying purposes, but may be considered when applying mitigating conditions, in making a credibility determination, and in a whole-person analysis.

Applicant stated that he is a good person who is devoted to public service and helping his community. He provided documents to show his participation and support for his son's basketball team; serving as a judge for a competition in support for a local high school; his nomination for small business person of the year in 2014; his recognition as an entrepreneur; and his 2012 sponsorship for a school rally and other civic activities. (Tr. 125-131; Answer to the SOR).

Post-hearing, Applicant provided a copy of a budget; an email that showed how to obtain a free credit report; a document explaining rights under the Fair Credit Reporting Act; a certificate from February 2023 to show he attended credit counseling through the Internet as approved by the bankruptcy court; and emails from his accountant from 2019 and 2021 regarding Applicant's attempts to resolve his tax issues. (AE P, Q, R, S, U, V)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing 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 commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified 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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(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 was indebted to the IRS for failing to timely pay his 2008, 2009, 2010, 2011, 2014, 2015, 2016, and 2017 federal income taxes. He failed to timely file his 2011, 2014, 2015, 2016, 2017, and 2018 federal income tax returns. He has three unresolved federal tax liens. He had four state tax liens. Three were resolved, one remains. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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; 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.

Applicant has a long history of tax problems. Some of his tax problems could be attributed to being inexperienced in his business pursuits. Applicant testified that in 2011 he was told by the IRS that there was questionable information reported on his tax returns and he needed to hire a professional. He hired accountants to complete his tax returns. There is insufficient evidence that he actively confirmed that his taxes were being filed on time. This was his personal responsibility regardless of who he relied on to prepare his tax returns. Through his testimony, it was clear that Applicant did not and perhaps still does not know what his tax obligations are regarding his business. To some extent he can blame his accountants, but he is ultimately responsible to file on time and pay what is owed. Clearly, he was aware he had tax issues because he told the government

investigator that in 2012 he made an agreement with the IRS to resolve federal tax liens by paying \$200 a month, which he did. He did not provide a copy of the agreement, but did provide proof he was making payments. I have considered that at different times he has made large lump-sums payments to reduce his delinquent tax debts. I have considered that he was making consistent small monthly payments towards his 2008 tax debt. I have also considered that for many years he clearly was aware that he had tax issues and failed to timely file and pay his taxes. In January 2022 he established an installment agreement with the IRS to pay \$500 a month on his large tax debt. AG ¶ 20(g) applies to resolving his tax debt for 2008 and 2010. (SOR ¶¶ 1.a and 1.b). His tax returns for tax years 2011, 2014, 2015, 2016, 2017 and 2018 have been filed and taxes paid for 2014 and 2015. (SOR ¶¶ 1.d, 1.e, 1.f, 1.g, 1.h, 1.i). AG ¶ 20(g) applies to those years filed and paid.

Applicant's 2008 taxes appear to be paid. Based on his January 2022 installment agreement with the IRS he is still paying his 2009, 2011, 2016, 2017, 2018, and 2019 federal income taxes that are part of his installment agreement. His delinquent debts are ongoing. I am not confident at this juncture that Applicant has a handle on his finances and that future problems are unlikely to recur. AG ¶ 20(a) does not apply

Evidence supports that Applicant relied on his accountants to file his federal income tax returns. He claimed he was unaware they were not being timely filed. However, as early as 2012 he was aware he had tax liens and was attempting to resolve them. Accountants prepare tax returns, but it is the taxpayer's responsibility to sign the return, file it, and pay what may be owed. It was Applicant's responsibility to ensure that each year the tax returns were filed. Perhaps initially he could attribute the failure to timely file to being unaware, but the evidence shows he was on notice and had a responsibility if he did not receive the required tax returns from his accountant, to contact them. Each year he failed to act timely and responsibly, which then exacerbated his tax situation. Although some of Applicant's tax issues may have been beyond his control early on when he was just starting in his business, it is also clear that later he did not address the problems and act responsibly to resolve them. Making lump-sum payments without figuring out his obligations may have lessened his tax burden, but it did not prevent the problems from recurring. Arranging an installment agreement with the IRS in 2012 and then failing to timely file his tax returns and pay his taxes show he did not act responsibly. AG ¶ 20(b) has some application.

Applicant provided a document post-hearing to show he completed the financial counseling provided through the bankruptcy court. Although this shows that post-hearing, Applicant is making an effort to understand his finances, it is insufficient to conclude that there are clear indications that his financial problems are under control. AG ¶ 20(c) has minimal application.

The SOR alleged Applicant had federal and state tax liens. Liens are an enforcement mechanism. The actual tax debts are alleged separately in the SOR. Therefore, the lien allegations are duplicitous, and I find for Applicant regarding these

allegations. (SOR ¶¶ 1.J, 1.k, 1.l, 1.m.) SOR ¶ 1.m alleges both the state tax debt and unreleased lien. He has not mitigated that allegation.

Applicant is participating in an IRS installment agreement and making monthly payments towards his federal tax debt. Throughout the years he has made some lump-sum payments to decrease his tax debts. AG ¶ 20(d) has some application.

There is some mitigation under the financial considerations guideline, but due to the many years that Applicant failed to timely file and pay his federal taxes, his outstanding federal and state tax liens, his large delinquent tax debt, and the fact that he was on notice early that he had tax issues, but failed to take corrective actions and purchased a luxury vehicle in 2020, show his lack of judgment and unreliability in being financially responsible, I cannot conclude he has mitigated the financial considerations security concerns.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The SOR alleged that the IRS determined Applicant committed fraud in the preparation of his federal income tax returns for tax years 2008, 2009, and 2010. The

only evidence presented was a tax transcript showing that the IRS levied a penalty for fraud for Applicant's 2008 tax return. There was no other evidence provided regarding the fraud allegations. Although, there may be some evidence of tax fraud for 2008, it is insufficient to show Applicant's intent. I conclude for Applicant for SOR ¶ 2.a.

Applicant completed an SCA in February 2017. The SOR was amended to reflect allegations of falsification on a 2020 SCA, which was not offered or admitted into evidence. I find for Applicant for SOR ¶¶ 2.b and 2.c.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 AG ¶ 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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to timely file and pay his federal income taxes for many years. He continues to have a significant delinquent tax debt, federal tax liens and a state tax lien. Despite the amount he owes the IRS, he recently purchased a luxury vehicle. Applicant has not met his burden of persuasion.

The DOHA Appeal Board also has held that:

Someone 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 information. *See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 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).¹

Applicant's non-compliance with a fundamental legal obligation to timely file his income tax returns and pay his federal income taxes raises serious concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. There was insufficient evidence provided regarding Guideline E, personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1. d-1.i:	Against Applicant
Subparagraphs 1.j-1.m	For Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge

¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).