



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 12-11097

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On January 3, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated September 27, 2012, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 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 in the DOD on September 1, 2006. Applicant

answered the SOR on October 12, 2012. He denied two and admitted three of the five allegations.

On December 11, 2012, DOD issued an addendum to the SOR adding two allegations under Guideline F, and five allegations for personal conduct under Guideline E. Applicant responded to the additional allegations on January 2, 2013. He denied the two allegations under Guideline F, and admitted two and denied three allegations under Guideline E. Department Counsel was prepared to proceed on December 12, 2012, and the case was assigned to me on December 20, 2012. DOD issued a Notice of Hearing on January 15, 2013, scheduling a hearing for February 5, 2013. I convened the hearing as scheduled. The Government offered 17 exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 17. Applicant testified and offered seven exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through F. I kept the record open for Applicant to submit additional documents. Applicant requested an extension of time to submit documents which I granted. Applicant submitted ten exhibits that I marked and admitted into the record as Applicant Exhibits G through P. Department Counsel had no objection to admission of the documents. (Gov. Ex. 18, Memorandum, dated March 20, 2013) The record was closed on March 20, 2013. I received the transcript of the hearing (Tr.) on February 12, 2013.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 42-year-old senior information systems security engineer. He owns his own company and is sub-contracted to a defense contractor. He started his own company in 2000 and worked part-time in the business until 2006 when the business had been established so he could work full time. He is a college graduate with a bachelor's degree in computer science awarded in 1996. He is married to a cardiologist and they have two children. He has held a security clearance since at least 1996. Applicant's personal financial statement completed in August 2012 shows a combined monthly income for him and his wife of \$23,085, with monthly expenses of \$6,725, and monthly loan payment of \$12,680, leaving a monthly remainder of approximately \$3,680. Applicant lists combined assets with his wife of \$166,944. Applicant notes that the majority of the assets are from his wife's 401(k) fund. He also notes that he and his wife file separate tax returns. Applicant uses some of the discretionary income to make additional payments on delinquent debts. His wife's income may decrease due to lower payments of medical bills because of pending legislation. (Tr. 20-27, 65-67, 78-79; Gov. Ex. 1, e-QIP, dated January 2, 2012; Gov. Ex. 2, Response to interrogatories, dated September 4, 2012, at 225)

Credit reports (Gov. Ex. 4, dated September 24, 2012; Gov. Ex. 5, dated July 12, 2012; Gov. Ex. 6, dated January 14, 2012; Gov. Ex. 7, dated May 14, 2003; Gov. Ex. 8, dated January 8, 2003; and Gov. Ex. 9, dated January 18, 2002) combined with a tax lien notice (Gov. Ex. 11, dated May 15, 2003), and Applicant's admissions (Response to SOR, dated October 12, 2012) establish the following delinquent debts for Applicant: a

federal tax lien for \$16,623 (SOR 1.a); a past-due mortgage for \$13,885 (SOR 1.b); a federal tax debt for tax year 2010 of \$24,723 (SOR 1.c); a state tax debt for tax year 2010 of \$4,060; a federal tax debt for tax year 2011 for \$7,099; a state tax lien for \$692 (SOR 1.f); and a debt of \$825 for unpaid city traffic violations (SOR 1.g). Applicant denied he owed the tax of \$16,623 subject to the lien. He denied he owes a past-due mortgage of \$13,885, but admits he owes late fees of \$5,823.35. He also denies the state tax lien of \$695, and the \$825 for city traffic violations. He admitted that he owes federal taxes for 2010 and 2011, and state taxes for 2010.

The federal tax lien for \$16,623 alleged in SOR 1.a is for tax years 2004 and 2005. Applicant's accountant prepared Applicant's tax returns for both years and gave the completed returns to Applicant to mail. Applicant believed that he mailed the returns each year to the Internal Revenue Service (IRS). However, the IRS informed him in 2010 that they had not received his tax returns for tax years 2004 and 2005. Instead, the IRS filed a standard return for Applicant not showing any deductions. The result was that Applicant owed federal taxes. Applicant believed that on the tax returns completed by his accountant, he was due a refund of approximately \$1,000 for 2004, and owed approximately \$761 for 2005. He did not send a payment with the 2005 return because he anticipated that the refund for 2004 would be applied against this debt. In 2010, the IRS sent Applicant a tax lien letter informing him that they never received his tax returns for 2004 and 2005. Applicant hired an attorney in 2010 to assist him in resolving the matter. Unfortunately, the attorney passed away before he could complete the action with the IRS. Applicant did not receive further correspondence from the IRS until September 2012. (Tr. 27-32)

In September 2012, Applicant met with the IRS concerning his 2004 and 2005 taxes. Applicant was able to provide the IRS with copies of his returns. At the time of the hearing, Applicant had not received a response from the IRS and they have not removed the tax lien. In addition to providing copies of the returns, Applicant made a good-faith tax payment towards the 2005 taxes of \$200 on September 18, 2012. He does not believe he owes any additional taxes for 2004 or 2005. However, the post-hearing documents provided by Applicant show that the IRS placed a tax levy on Applicant for tax year 2005 of \$1,316.46 in February 2013. Applicant has no tax liability for tax year 2004, but his tax year 2005 federal taxes are \$1,316.46. (Tr. 32-48, Gov. Ex. 3, Fax, dated September 18, 2012, at 139-143; App. Ex. K, Notice of Levy, dated February 19, 2013)

The delinquent debt list at SOR 1.b is for the mortgage loans on Applicant's house. Applicant contracted to build a house in late 2007 to early 2008 for approximately \$1,300,000. He had a primary mortgage loan of approximately \$1,000,000, and a second mortgage loan from the builder of \$196,000. The monthly payment on the primary mortgage was \$6,900, and the monthly payment on the second mortgage was initially \$1,900, but reduced to \$1,153 after refinancing in 2012. In 2007, prior to the house being completed, his wife had to stop work because their son was born early, thereby losing income. Applicant also lost income because he was going through a contract renegotiation. Applicant and his wife used their savings and retirement accounts to pay their everyday expenses. They were initially able to make the mortgage payments, but by late 2009 to early 2010, they were delinquent on their

primary mortgage loan payments. They were delinquent on their second mortgage by June 2012. Applicant believes he is delinquent about \$8,000 on his primary mortgage, and about \$2,300 on his second mortgage. He stated he recently made a \$12,500 payment on his primary mortgage. (Tr. 49-58)

After the hearing, Applicant presented documentation that he has an agreement with the primary mortgage loan holder to bring his mortgage current with a down payment of \$19,442.85, and continued monthly payments of \$10,731 for six months. (App. Ex. H, Letter. Dated March 11, 2013) Applicant included a copy of an official bank check of \$19,442.85 to the mortgage loan holder on March 15, 2013. (App. Ex. I, dated March 15, 2013) He also made a payment of \$6,813.36 on the second mortgage loan. This amount did not include payments towards a late fee of \$631.30. (App. Ex. G, Letter, dated March 18, 2013; App. Ex. J, Official Bank Check, dated March 15, 2013)

SOR allegations 1.c and 1.e pertain to Applicant's delinquent federal taxes. As noted above, Applicant and his wife file separate tax returns. Applicant filed his federal tax returns for tax years 2006 to 2011 on September 18, 2012. He provided no reason for not previously filing the returns. (Tr. 58-59; App. Ex. F, Tax Returns, Form 1040, various dates)¹ At the time of the hearing, Applicant had not received an accounting from the IRS of the taxes he owed. He believed it was approximately \$80,000. He had not made any payments towards this tax debt. Applicant's tax returns also show that there was no withholding from his income for tax purposes. Applicant also admits that he did not pay estimated income tax for these years. (Tr. 59-61, 75-81)

After the hearing, Applicant employed a tax consulting firm to assist him in determining his tax liability and working with the IRS. (App. Ex. G, Cover Letter, dated March 18, 2013; App. Ex. M, Agreement, dated March 1, 2013) Applicant received a Notice of Levy from the IRS calculating his taxes for tax years 2005 through 2011 for a total of \$142,730.27. (App. Ex. K, Notice of Levy, dated February 19, 2013) Applicant's bank account was garnished by the IRS for \$10,698.52 on February 28, 2013. (App. Ex. L, Account Notice, dated February 28, 2013)

SOR allegation 1.d pertains to Applicant's state taxes for tax year 2010. Applicant admits he owes this debt and has not made any payments on his state taxes. The tax consulting firm is also advising him concerning his state tax liability.

SOR allegation 1.f pertains to a tax lien of \$692 filed by the same state for tax year 2005. Applicant presented documentation that he paid the lien in full on January 3, 2013. (Tr. 60-61; App. Ex. E1 and App. Ex. P, Payment Confirmation, dated January 3, 2013)

¹ The failure to timely file tax returns was not alleged as a security concern. The Appeal Board listed five circumstances in which 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 Section 6.3. Consideration of non-SOR allegation of failing to timely file tax returns in this decision is strictly limited to these five circumstances.

Applicant also presented copies of tax returns for tax years 2006 to 2011 he provided to the state on March 13, 2013. These documents show a total state tax liability for these years of \$11,601.25. (App. Ex. N, state tax returns, various dates; App. Ex. O, State tax Calculations)

SOR allegation 1.g pertains to traffic fines owed to a city government. Applicant paid all fees owed for traffic offenses. (Tr. 61-65; App. Ex. D, payment, dated February 4, 2013)

Applicant admits that he was charged with driving while intoxicated in March 2007. He completed his sentence, which was to attend a safe driving course. (SOR 2.a) This is the only criminal incident Applicant had in his life. Applicant admits he was charged with driving with a revoked or suspended license in July 2009. (SOR 2.b) At some time, Applicant's driver's license was revoked for failing to pay a traffic ticket. When he was stopped in July 2009, he did not know his license was revoked or suspended. He paid the fine and his license was reinstated. (Tr. 67-71)

Applicant did not list these convictions on the security clearance application he completed on January 3, 2012. (SOR 2.c) He stated that he believed the driving while intoxicated offense was not within the seven years required to be listed on the form. He claims to have forgotten the 2009 driving on a suspended license offense. He checked with the motor vehicle office before completing the security clearance application and the offenses were not listed. His wife is not aware of his driving while intoxicated offense. (Tr. 71-72)

Applicant admits that in May 2012, he was again charged and convicted of driving without a license. (SOR 2.d) He was released on a summons and had the driver's license renewed. Applicant also admitted that when questioned by a security investigator in September 2012 concerning whether he had been involved with police since the 2007 driving while intoxicated offense he responded that he had not. (SOR 2.e) He stated that he did not remember the 2009 or the May 2012 offenses for driving without a license. (Tr. 72-75)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 access to classified information will be resolved in favor of 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.

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

Analysis

Financial Considerations

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, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s self-responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk and inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is

required to manage his finances in such a way as to meet his financial obligations. Applicant accrued significant mortgage loan delinquent debt that he just recently started to address. He has not paid federal income taxes for the last few years and has a large federal tax debt. He also did not file state tax returns with the state tax authority until recently, and he now has a significant state tax liability. These facts raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence shows a history of both an inability and an unwillingness to satisfy debt.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(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); and AG ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances). These mitigating conditions do not apply. Applicant and his wife have significant income between them. However, it is noted that Applicant and his wife file separate tax returns. Applicant only recently filed his federal and state tax returns and has incurred significant taxes owed to both entities. There is no indication that his wife failed to timely file her tax returns. The failure to file timely returns and the resulting tax debt is Applicant's alone. Applicant and his wife are both on the mortgage loans, and there was a failure to timely pay both the primary and second mortgage loans. Applicant notes that he could not pay the mortgage loans or the taxes because his wife's and his incomes were cut due to the birth of their child and his contract renewal. However, some of these events happened before they obtained the mortgage loan. They used their savings to maintain their lifestyle and make payments on some of their debts including their mortgage loans. There is no indication of an effort to change their lifestyle to ameliorate these debts and live within their means. Applicant provided no reasons for failing to file his tax returns and pay his taxes. There were no unusual circumstances raised and his finances were well within his control. Applicant just did not manage his financial obligations reasonably and responsibly, and this irresponsible financial conduct is likely to recur.

I also considered Financial Consideration Mitigating Condition AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control). Applicant presented no information to indicate he sought or received financial counseling. He has started working with a tax adviser to assist him with his tax liability, but there is no indication that they are providing him with financial counseling.

I also considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, and honest adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts.

Applicant has made some payments on some of the delinquent debts listed in the SOR. He did not owe federal taxes for 2004, and he made a token payment towards his 2005 federal taxes. He paid his state taxes for 2005. He paid the fines he owed a city for traffic tickets. He recently initiated a plan to bring his mortgage loan current. His personal financial statement shows that with he and his wife have the financial means to pay the debts. However, good faith requires acting in a reasonable, prudent, honest adherence to financial duty and obligations. Applicant only took the steps to pay some of the delinquent debts shortly before and shortly after the SOR was initiated. He did not present any prudent and honest reasons for not filing his tax returns for tax years 2006 to 2011 until September 2012. He now has a significant federal tax liability based on the returns he filed and IRS calculations. The IRS had to levy his bank account to start paying this tax debt. His state taxes have also been calculated and he owes significant state taxes. He has not started to pay the newly calculated and verified state taxes. His monthly mortgage debt is large. He has made one large payment on the mortgage loan in an attempt to bring it current. He has six more large monthly payments to make before the loan is considered current. These actions and circumstances do not establish a "meaningful track record" of paying either the mortgage loan or the federal and state taxes. Applicant's actions are not a reasonable, prudent, and honest adherence to financial obligations. His present and past management of his finances reflect adversely on his trustworthiness, honesty, and good judgment. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Personal Conduct

A security concern is raised for personal conduct based on Applicant's driving while intoxicated and without a license, and his response to police record questions on his e-QIP and to a security investigator. Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the U.S. Government.

Applicant was arrested for driving while intoxicated in 2007, driving on a suspended driver's license in 2009, and driving on a suspended driver's license in 2012. His wife is not aware of these offenses. He did not list the 2007 driving while intoxicated and the 2009 suspended license incidents in response to questions concerning his police record on the security clearance application he submitted on January 3, 2012. He also did not mention the 2009 and May 2012 suspended license offenses to a security investigator on September 9, 2012. His failure to list the criminal charges on the security

clearance application and in response to questions from the security investigator raises a security concern under Personal Conduct Disqualifying Conditions AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities); and AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative).

The incidents themselves as well as the circumstances resulting from them also raise Personal Conduct Disqualifying Condition AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information); AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicting that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations); and AG ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing).

The Government produced sufficient evidence to establish the disqualifying conditions as required in AG ¶¶ 16(a) through 16(e). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government. Applicant raised conditions that may mitigate the security concern.

In regard to the failure to list the offenses on the security clearance application or to the security investigator, I considered personal conduct mitigating conditions AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts); AG ¶ 17(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully); and AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast

doubt on the individual's reliability, trustworthiness, or good judgment). None of these mitigating conditions apply.

Applicant denied that he intentionally falsified the responses on the security clearance application and to the security investigator. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Deliberately wrong responses to security clearance questions are not minor issues, and may happen again. I do not find credible Applicant's explanation that he did not believe the offenses were within the application's time limit requirement or that he did not remember the offenses. Applicant only had one criminal incident in his life. A simple arithmetic calculation would show it was well within the seven-year timeline. Likewise, the driving on suspended license offenses were only three years or a few months before he completed the security application or talked to the security investigator. They happened only recently and would be prominent in his mind. He said he checked the police records and there was no listing of the offenses. I find that Applicant deliberately failed to list the offenses because he did not believe the offenses would be on his record.

Concerning the driving while intoxicated offense and the two offenses for driving without a license, I also considered AG ¶ 17(c) as noted above; AG ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur); AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress); and AG ¶ 17(f) (the information was unsubstantiated or from a source of questionable reliability). These mitigating conditions do not apply. Applicant admitted the offenses but presented no information to show a change of behavior. Applicant has failed to present sufficient information to mitigate the security concerns based on his personal conduct.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 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 considered that Applicant has successfully held a security clearance for many years. However, Applicant has not presented sufficient information to establish that he acted reasonably and responsibly towards his finances. He did not timely file federal and state tax returns, did not have money withheld from his income to pay his taxes, and did not pay quarterly estimated tax. So he now has large federal and state tax debts that are being collected involuntarily from him by the state and federal tax authorities. He has a large mortgage debt that he only recently reached agreement to bring current. This will require large monthly payments. His past financial track record does not provide confidence that he will continue to make these payments. Overall, 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 that Applicant has not mitigated security concerns arising under the financial considerations and personal conduct guidelines. Eligibility for access to classified information is denied.

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 – 1.e:	Against Applicant
Subparagraphs 1.f – 1.g:	For Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraphs 2.a – 2.e:	Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge