



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



In the matter of:)
)
) ISCR Case No. 12-11328
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

02/11/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Clearance is denied.

Statement of the Case

On March 8, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not find under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On April 24, 2013, Applicant answered the SOR and requested a hearing. The case was originally assigned to another administrative judge and was reassigned to me on August 27, 2013. The Defense Office of Hearings and Appeals issued a Notice of

Hearing on November 22, 2013. The hearing was held as scheduled on December 18, 2013. At the hearing, Department Counsel offered exhibits (GE) 1 through 5, and Applicant offered exhibits (AE) A through O. Applicant's list of exhibits was marked as Hearing Exhibit (HE) 1. The record of the proceeding was left open until February 3, 2014, for Applicant to submit additional matters. Applicant timely submitted AE P through T. All exhibits were admitted into evidence without objection. Department Counsel's email indicating he had no objections to Applicant's post-hearing exhibits was marked as HE 2. DOHA received the transcript (Tr.) of the hearing on January 2, 2014.

Findings of Fact

Background Information

Applicant is a 49-year-old partner in a business that provides services as a defense contractor. He has held that position since June 2002. He earned a bachelor's degree in 1986 and a master's degree in 1998. He served on active duty in the U.S. Army from July 1982 to September 1996 and in the Army Reserve from September 1996 to July 1997. He received honorable discharges for his military service. He is divorced and has three children, ages 17, 21, and 24. He has held a security clearance since 1983 without incident.¹

The SOR contained three Guideline F allegations. First, the SOR alleged that Applicant owed the Internal Revenue Service (IRS) approximately \$75,842 in unpaid income taxes for 2011 (SOR ¶ 1.a). Next, it alleged that he failed to file state income tax returns for 2006 through 2011 until February 15, 2013 (SOR ¶ 1.b). Finally, it alleged that he owed unpaid state income taxes in the following approximate amounts: \$15,659 for 2006; \$13,648 for 2007; \$25,343 for 2008; \$23,898 for 2009; \$21,652 for 2010; and \$15,980 for 2011 (SOR ¶ 1.c). The total of alleged unpaid state income taxes is \$116,180. In his Answer to the SOR, Applicant neither admitted nor denied the allegations. He acknowledged, however, that he would pay the unpaid Federal income taxes in SOR ¶ 1.a and stated that he submitted a payment plan for the unpaid state income taxes in SOR ¶ 1.c. His Answer did not specifically address the allegation in SOR ¶ 1.b.²

Reasons for Financial Problems

Applicant attributed his financial problems to various causes. He described these causes as coming together to form the perfect storm.³

¹ Tr. at 10-12, 59-63, 103-107; GE 1.

² SOR and Applicant's Answer to the SOR.

³ Tr. at 96, 108; GE 2.

Applicant first indicated that business difficulties created some of his financial problems. His business difficulties included the Federal Government allegedly renegeing on a portion of a contract in which his business served as a subcontractor. Under this cost-plus-fixed-fee contract, Applicant's business should have been allowed to fill a number of employment positions. The Government, however, refused to let Applicant's business fill those positions, but instead directed that individuals who were already filling those positions be retained in them. As a result of not being able to fill those positions with its employees, Applicant's business made far less money than originally expected under that contract. Due to this change in circumstances, Applicant estimated that his business lost as much \$500,000 in the first year of the contract, \$1,000,000 in the second year, and more in out-years.⁴

Additionally, Applicant's partnership encountered financial problems when the prime contractor on another contract began making late travel payments to his business. Because of those late payments, Applicant was forced to use his personal funds to reimburse his employees' travel expenses and to pay other business expenses. For example, his business went almost the entire year of 2009 without receiving travel reimbursements from the prime contractor. Specifically, he indicated the prime contractor fell behind \$75,000 in travel payments for 2009 and \$40,000 in another. Applicant stated these late payments caused him to "hoard cash" so that he could continue meeting his business obligations. His business, however, would eventually receive the late payments.⁵

Furthermore, the Federal Government's sequestration of funds and its recent shutdown have negatively impacted Applicant's business. In September 2012, he was informed that the Federal Government would lay off subcontractors due to budget shortfalls. Because his and his partners' jobs were placed in jeopardy, he renegotiated a contract to cut his company's labor and travel costs in order to avoid having that contract terminated. These funding constraints also caused his business to shut down for periods. In the year before the hearing, his business had 51 days of unexpected work outages, with the majority of those occurring in August 2013.⁶

Applicant's tumultuous relationship with his ex-wife also has negatively impacted his financial situation. They first married in 1990, then divorced, remarried in 1993, separated in 2000, and divorced again in 2005. In 2010, they began on-again/off-again periods of reconciliation that ended in January 2013. In the past, his ex-wife has contacted law-enforcement authorities accusing him of domestic violence and has instituted a number of civil actions against him. With the exception of Applicant entering an *Alford* plea to a disorderly conduct charge arising from his ex-wife's accusations in November 2010, her accusations and legal actions against him have been resolved in

⁴ Tr. at 24-36, 39-41, 48-55, 66-81, 96-107, 144-149; GE 2; AE B, C, J, O.

⁵ Tr. at 24-36, 39-41, 48-55, 66-81, 96-107, 144-149; GE 2; AE B, C, J, O.

⁶ Tr. at 24-36, 39-41, 48-55, 66-81, 96-107, 144-149; GE 2; AE B, C, J, O.

his favor. He attributed his ex-wife's behavior to her epilepsy. At the hearing, Department Counsel conceded that Applicant's ex-wife acted "in an irrational manner over the years" Nevertheless, her institution of legal actions against him has caused him to expend money on legal fees.⁷

Applicant described his divorce decree as "unconscionable." Under that divorce decree, he was required each month to pay \$2,500 in alimony and \$2,300 in child support. He was also required to maintain life insurance on himself and medical insurance on his children. He indicated that his ex-wife took medications for her epilepsy before they were pulled off the market that may have caused her to suffer personality disorders. His ex-wife was required to obtain health insurance, while he was required to pay for her health insurance. He was further required to pay any medical expenses not covered by her insurance. Additionally, he was obligated to pay his children's college expenses and to provide each of them a car and spending money. As he was paying their college expenses, he was still paying his ex-wife child support, which she pocketed. He calculated that he paid \$681,400 in alimony and child support payments from January 2005 to August 2013. In January 2013, he was awarded custody of his remaining minor child, his child support payments were suspended, his alimony payments were reduced to \$1,300, and his ex-wife had a restraining order issued against her.⁸

Applicant testified that his ex-wife never obtained health insurance. He indicated that she applied for health insurance, but was apparently unable to obtain it due to her pre-existing conditions. He also stated that she refused to sign up for a Pre-Existing Condition Insurance Plan when she became eligible. Consequently, he paid her medical expenses over the years. He produced a document estimating he paid \$21,585 in 2011, \$32,316 in 2012, and \$12,159 in 2013 for her medical expenses. He described those figures as conservative estimates and stated that he probably paid more than the indicated amounts. He stated that his ex-wife was now applying for medical insurance under the Affordable Care Act.⁹

Applicant's business partner testified that Applicant's ex-wife would do whatever she could to cause him to spend money. For example, the partner discussed an incident when she was not feeling well and Applicant urged her to go to the doctor's office. She instead called an ambulance and went to the emergency room, which resulted in more expensive bills for him to pay. The partner also indicated that Applicant's ex-wife would intentionally fail to take her epilepsy medication so that she would have seizures.¹⁰

⁷ Tr. at 12, 61-63, 81-93, 96-102, 157; GE 1, 2; AE D, E, F, G, H, I, N.

⁸ Tr. at 61-63, 81-93, 104-105, 132-133; GE 2; AE D, E, F, G, H, I; AE D, L, Q.

⁹ Tr. at 81-90; GE 2; AE F, G, L. In GE 2, Applicant estimated that his total medical cost in a given year could easily exceed \$75,000 to \$100,000, but did not provide proof to substantiate those figures.

¹⁰ Tr. at 36-37, 88; AE F.

Applicant also provided his elderly parents with financial assistance. In 2006, his father was diagnosed with dementia that progressed rapidly, while his mother suffered from high blood pressure and diabetes for decades. He started sending them a couple hundred dollars a month in late 2006, but those monthly payments eventually ballooned to \$1,250. Those payments stopped in late 2011 when his parents became eligible for state assistance, and his father was placed into a nursing home.¹¹

Federal and State Income Tax Issues

Applicant has been the principle partner in his business since 2002. Each year he filed partnership tax returns with the IRS and the state as required. Because his partnership was a pass-through entity for tax purposes, his partnership's profits were not subject to business taxes, but instead were treated as personal income and taxed accordingly.¹²

In his Electronic Questionnaire for Investigations Processing (e-QIP) dated June 6, 2012, Applicant disclosed that he did not file state income tax returns from 2006 to 2010 and estimated that he owed \$75,000 to the state in back taxes. He further stated:

I have prepared all of the necessary returns and saved the funds to pay the back taxes. I am hiring an accountant to file the returns and work with the state to resolve the issue. An upturn in my business has resulted in a substantial increase in income to preclude the problem from recurring. Additionally, my ex-spouse has applied for health insurance under the Pre-Existing Condition Health Insurance program which will help significantly reduce medical costs.

The e-QIP also asked whether there were any other instances in the past seven years in which he failed to file or pay Federal, state, or other taxes when required. He responded "No" to that latter question and did not disclose, as noted below, that he failed to file a number of Federal income tax returns as required or that he had a state tax lien filed against him in November 2011. During his Office of Personnel Management (OPM) interview in August 2012, he reportedly stated that he did not list the state tax lien on his e-QIP due to an oversight and that he contacted his state taxing authority in July 2012 to inform them that he would pay in full his 2006 to 2010 state income taxes in September 2012.¹³

¹¹ Tr. at 92-94; GE 2.

¹² Tr. at 64-65, 107-109; GE 2.

¹³ Tr. at 63, 110-112; GE 1, 2, 3, 5; AE K. Applicant's state requires calendar-year taxpayers to file their state income tax returns on or before April 15 (which may vary if it falls on a weekend) of the following year. Fiscal-year taxpayers must file on or before the 15th day of the fourth month after the close of their taxable year. During his OPM interview, Applicant stated that he became aware of the state tax lien when he obtained his credit report in June 2012 before submitting his e-QIP. It should be noted that conduct not alleged in the SOR will not be considered in applying the disqualifying conditions, but "may be considered (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of

On January 26, 2013, Applicant received DOD's second set of interrogatories that requested information about his income taxes. He testified that he never received the first set of interrogatories. After receiving the second set of interrogatories, Applicant consulted with an accountant to check his income tax returns. At the hearing, he indicated that he consulted with the accountant at that time because his financial issues had seemed to stabilize.¹⁴

In responding to those interrogatories on February 22, 2013, Applicant provided his Federal and state income tax returns for 2006 through 2011. His state income tax returns for 2006 and 2008 through 2011 were dated February 15, 2013; his state income tax return for 2007 was not dated. His Federal income tax returns were not dated. Information in the following table was derived from IRS Account Transcripts and Applicant's Federal and state income tax returns.

| Tax Year | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|--|-----------|-----------|-----------|-----------|-----------|--|
| Date IRS Received Form 1040 ¹⁵ | 1/2/08 | 10/6/09 | 10/20/10 | 9/6/11 | 11/23/12 | Unknown; IRS had not received that form by 2/11/13 |
| Adjusted Gross Income ¹⁶ | \$301,132 | \$313,655 | \$343,594 | \$346,659 | \$341,785 | \$291,255 |
| Amount of state and local income taxes reported as paid on IRS Form 1040 | 0 | \$15,659 | \$13,648 | \$14,483 | \$14,716 | \$14,454 |
| Amount of state income taxes actually paid at the time the IRS Form 1040 was filed | 0 | 0 | 0 | 0 | 0 | 0 |
| Amount of state income taxes reported on state income tax returns filed on 2/15/13 | \$15,659 | \$13,648 | \$14,483 | \$14,716 | \$14,454 | \$11,647 |

extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular adjudicative guideline is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3 . . . ISCR Case No. 00-0633 at 3 (App. Bd. Oct 24, 2003)." ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006).

¹⁴ Tr. at 113-122; GE 2, 3; AE Q.

¹⁵ See GE 2. Applicant stated that he filed his 2011 Federal income tax return on February 15, 2013.

¹⁶ Applicant's alimony payments, which were \$30,600 per year for 2006 through 2011, were first subtracted from his gross income to calculate his adjusted gross income. See also Tr. at 108-110.

Each tax year, Applicant was granted an extension for filing his Federal income tax returns so that he was required to file each return on October 15th of the following calendar year. Line 5a on Schedule A (Itemized Deductions) of Form 1040 falls under the category of "Taxes You Paid" and provides for the reporting of state and local taxes actually paid, including state income taxes withheld during the tax year, those paid in the tax year for a prior tax year, or those paid in the tax year by estimated payments.¹⁷

From 2006 to 2011, Applicant neither had state income taxes withheld from his pay nor made periodic estimated tax payments to the state. He testified that, when he prepared his Federal income tax return each year, he also prepared his state income tax return for that year, but did not file the state return at that time. Before filing the state income tax returns, he had planned to hire an accountant to review them because of the back tax issues. Upon questioning at the hearing about why he was reporting on his Federal income tax returns that he had paid state income tax when he had not made those payments, Applicant initially testified that he checked with an accountant who told him that reporting his state income taxes in that manner "was true as long as you eventually filed it and paid it, even if you haven't paid it yet." When questioned about his earlier statement that the accountant reviewed the state income tax returns before he filed them in February 2013, Applicant then indicated that he prepared the tax returns using tax software and stated, "And as far as checking with the accountant, the accountant reviewed all of these this year and he didn't have -- he didn't have any problem with that."¹⁸

In his testimony, Applicant indicated that he had saved the money to pay the back state taxes as he had reported on his e-QIP. He testified, however, that funding concerns arose again because of prime contractor late payments in July 2012, which caused him to hold off on filing the state income tax returns or paying the back taxes. He stated that he believed, if he filed his state income tax returns on time, the state would have immediately come back and demanded payment of those taxes putting him at risk of not being able to make payments to his ex-wife or continue making payments to keep his business running.¹⁹

¹⁷ Tr. 133-134; GE 2. See e.g. <http://www.irs.gov/pub/irs-prior/p17--2009.pdf> for information on Federal income tax filing deadlines. See e.g. IRS 2009 Instructions Schedule A (Form 1040), which may be found at <http://www.irs.gov/pub/irs-prior/i1040sca--2009.pdf> for instruction on reporting state and local taxes. See also, IRS Publication 17 for information on reporting of state and local taxes.

¹⁸ Tr. at 111-119, 133-142; AE Q. At the hearing, the issue arose about whether Applicant was accurately reporting the amount of his state income taxes on Federal income tax returns, because those amounts did not match the amounts reported on the state income tax return for the same year. The above table, however, reflects that he reported his state income taxes for a particular year on his following year's Federal income tax return. Given that he had no state income taxes withheld from his pay and did not make any estimated tax payments during the tax year, this system of reporting his state income taxes would have been proper if he actually paid the reported taxes in those years.

¹⁹ Tr. at 111-119; GE 1.

Applicant's Federal income tax return for 2011 reflected that he owed \$75,482 in taxes. His IRS Account Transcript for Tax Year 2011 dated February 11, 2013, reflected that he had not paid any income taxes for that tax year. In his post-hearing submission, Applicant provided processed checks showing he paid \$50,000 on April 25, 2013, and \$51,600 on February 2, 2014, to the U.S. Treasury for his 2011 past-due income taxes. He testified that work outages at his business held up the payment of those past-due taxes.²⁰

At the hearing, Applicant provided an Installment Payment Plan dated May 13, 2013, from his state in which he agreed to pay his past-due state income taxes. Under that plan, he will pay \$4,731 per month for 36 months. The plan reflected that he owed a balance of \$153,619, which most likely included past-due taxes, interest, and penalties. Interest and penalties will continue to accrue while he is making payments under that plan. The payments are automatically withdrawn from his bank account. Applicant provided a bank statement that reflected he has made the \$4,731 payments each month from May 2013 to January 2014.²¹

Other Financial Matters

Following his divorce, Applicant obtained a \$920,000 construction-to-permanent loan to build a 4,400 square foot single-family home in 2006. After construction of the home in 2007, the loan converted into a 30-year conventional mortgage. His monthly payment on that mortgage is \$6,477. At the time of the hearing, Applicant owed about \$830,000 on that mortgage. Before obtaining that loan, he sought the assistance of a professional mortgage broker to determine whether he could afford to build the home. In 2007, he also obtained a \$150,000 line-of-credit loan on which he is making monthly payments of \$648.²²

During the OPM interview, Applicant indicated that he has never sought financial counseling. He provided a credit report from August 2013 that showed his only delinquent debt was a state tax lien of \$33,498 filed in November 2011. The lien was filed against one of his former residences. He stated that it has been almost 10 years since he has had a late payment on any bill other than his taxes. He also indicated that he never missed any alimony or child support payments and retired \$250,000 of tax debt between December 2012 and September 2013. He further claimed that he has not attempted to reduce the interest and penalties arising from his past-due taxes, even though taxing authorities suggested he do so.²³

²⁰ Tr. at 63, 133-144, 149-155; GE 2; AE A, R, S, Q.

²¹ Tr. at 63-66, 149; AE A, M, T, Q.

²² Tr. at 122-133, 141-142; GE 4, 5; AE J, K.

²³ Tr. at 65-66, 95-102, 118-119, 135-136, 143-144, 155-156; GE 2, 4, 5; AE D, E, J, K, L, Q.

Character Evidence

During his military service, Applicant was awarded six Army Commendation Medals, an Overseas Service Ribbon, a Parachutist Badge, and an Air Assault Badge.²⁴

Credibility Assessment

Record evidence raises concerns about Applicant's credibility. This evidence includes:

a. Applicant reported on his 2007 through 2011 Federal income tax returns that he paid state income taxes in each of those years. Despite what an accountant may have told him, Applicant knew that he had not paid state income taxes when he filed those Federal income tax returns and reported untrue information. The Federal tax implications of inaccurately reporting that he paid \$72,661 in state income taxes over that five-year period are unknown, but presumably decreased his Federal tax liability. It is also unknown whether the IRS currently knows he did not pay those state income taxes as reported.

b. When he submitted his e-QIP in June 2012, Applicant did not disclose that he had failed to file his 2006 through 2009 Federal income tax returns before the required deadlines or that he had not yet filed his 2010 Federal income tax return. He also failed to report that a state tax lien was filed against him in November 2011.

c. In his e-QIP, Applicant stated that he had prepared the past-due state income returns and had saved the funds to pay the back taxes. He indicated that he was hiring an accountant to file the returns and would work with the state to resolve this issue. By those statements, he created the impression that his state income tax issues would soon be resolved. In his OPM interview of August 2012, he stated he had contacted the state taxing authorities in July 2012 to inform them that he would file and pay in full his 2006 through 2010 state income taxes in September 2012. When he responded to the interrogatories in February 2013, he had just filed his state returns and still had not paid the back taxes. In that response, he claimed he did not pay the state income taxes in September 2012 because of Federal Government cutbacks impacting his business. He further indicated that he was "fully committed to correcting his tax situation in months, not years." In AE A dated August 12, 2013, he stated that his past-due Federal income taxes would be paid by September 13, 2013, but those taxes were not fully paid until January 27, 2014. By the time he submitted his post-hearing matters, which was almost a year after he submitted his response to the interrogatories, the majority of his past-due state income taxes remain unpaid.

²⁴ Tr. at 144.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline lists several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant paid his 2011 Federal income taxes more than two years after they were due. He failed to file his 2006 through 2011 state income tax returns as required or pay those state income taxes when they were due. The majority of his state income tax liability for 2006 through 2011 remains unpaid. AG ¶¶ 19(a), 19(c), and 19(g) apply.

Four financial considerations 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant experienced a number of financial setbacks. His business was negatively impacted by Federal Government's funding constraints and cutbacks. His separation and divorce from his ex-wife have strained him financially. He also assisted his aging parents until they qualified for state assistance. Each of those events was a condition beyond his control that contributed to his financial problems. Additionally, he has filed his past-due state income tax returns and paid his past-due Federal income taxes.²⁵ He entered into an installment plan to pay his past-due state income taxes and has been making regular payments under that plan. All of that evidence tends to mitigate the security concerns. AG ¶¶ 20(b), 20(c), and 20(d) partially apply.

Although Applicant paid his past-due Federal income taxes and filed his past-due state income tax returns, security concerns arising from those allegations remain. In this regard, Applicant's tax issues must be considered as a whole and not be analyzed in a piecemeal fashion. None of the SOR allegations are mitigated when his tax problems are viewed in their entirety. Additionally, Applicant's false reporting of the payment of state income taxes on his Federal income tax returns, his omission of required information from his e-QIP, and his unfulfilled representations about when he would resolve his income tax issues have caused me to give his testimony less weight.

Applicant filed his 2006 through 2011 state income tax returns on February 15, 2013. This resulted in his 2006 state income tax return being filed almost five and half years late. His filing of those returns did not occur until after he received DOD's second set of interrogatories. The evidence further shows that he filed his 2006 through 2011 Federal income tax returns late; four were filed about a year late.

In the past, the Appeal Board has stated:

. . . Applicant's failure to file federal and state income tax returns reflect both an overall pattern of Applicant failing to live up to his lawful obligations as a citizen, and his selective compliance with laws. Such a

²⁵ Applicant may still owe Federal income taxes because he did not report his payment of state income taxes accurately on his Federal income tax returns for 2007 through 2011.

pattern has negative security implications because the industrial security program relies heavily on the full and voluntary compliance of applicants with security regulations, practices and procedures. Persons who are unwilling or unable to fulfill all their lawful obligations in a conscientious manner do not inspire trust and confidence in their willingness or ability to properly handle and safeguard classified information.²⁶

Likewise here, Applicant's delinquency in filing his income tax returns reflects a longstanding pattern of not complying with his legal obligations. While conditions beyond his control may have excused a short-term failure to file or pay his taxes in a timely manner, they do not provide mitigation for a continuing disregard of the law over a period of six years.

Applicant's tax problems went on far too long and were far too extensive to be view as an aberration or a minor problem. His tax problems were not isolated, short-term events, but were sustained over a period of years. This conduct is recent and continues to impugn his trustworthiness and good judgment.

Applicant's state tax liability, while being resolved, remains outstanding. Based on the evidence presented, he has failed to show that similar tax problems are unlikely to recur. Of note, he did not provide evidence to show that his 2012 Federal and state income taxes were filed and paid as required. It is still too soon to safely discount or dismiss the security concerns raised in this case.

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 relevant circumstances. The 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.

²⁶ ISCR Case No. 94-0964 at 4-6 (App. Bd. Jul .3 1996).

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has served in the military and has operated a successful business for a number of years. A court has awarded him custody of his minor child. He is a responsible parent and has diligently paid his alimony and child support obligations. Besides his past-due taxes, he has no other delinquent debts. Nonetheless, his recent efforts to mitigate the alleged security concerns have fallen short of establishing that he has reformed himself and will comply with income tax return filing and payment requirements in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

Formal Findings

Formal findings 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.c: | Against Applicant |

Decision

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

James F. Duffy
Administrative Judge