



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 13-01328

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: John Berry, Esq.

07/16/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant failed to mitigate security concerns based on his finances and his personal conduct.

Statement of the Case

On August 14, 2013, 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 February 28, 2014, detailing security concerns for financial considerations under Guideline F, and for personal conduct under Guideline E. 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 April 7, 2014. He admitted the 11 allegations under Guideline F, but denied the one allegation under Guideline E. He provided a detailed explanation for his response and included nine enclosures with the response. Department Counsel was prepared to proceed on April 28, 2014, and the case was assigned to me on May 5, 2014. DOD issued a notice of hearing on May 9, 2014, scheduling a hearing for June 3, 2014. An amended notice of hearing was issued on May 22, 2014, changing the hour of the hearing. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant testified and offered eight exhibits that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through H. I left the record open for Applicant to submit additional documents. Applicant timely submitted five documents, I marked and admitted into the record without objection as App. Ex. I through M. Department Counsel did not object to consideration of the additional documents. However, she did challenge Applicant's counsel's statement in App. Ex. I, that Applicant had routinely made payments on his Internal Revenue Service (IRS) debts since 2008. (Gov. Ex. 4, e-mail, dated June 19, 2014). Applicant's counsel provided additional information on the payments made to the IRS. (App. Ex. N, e-mail, dated June 23, 2014; App. Ex. O, IRS Release of Levy, dated November 12, 2009). Department Counsel had no objection to consideration of this additional e-mail. I received the transcript of the hearing (Tr.) on June 11, 2014.

Findings of Fact

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

Applicant is 37 years old and has been employed as a configuration manager for a defense contractor since 2012. Prior to this employment, he worked in various positions for defense contractors for ten years. He had been granted eligibility for access to classified information during his employment with these defense contractors. He has been married for eight years and has one child. He was previously married from March 2001 until July 2005. He has not served in the military. He has a part time position with a home improvement supply company. His current annual income is \$75,000 and his wife's annual income is \$97,000. They have joint monthly income of approximately \$9,475, monthly expenses of approximately \$8,800, leaving monthly discretionary funds of approximately \$600. His wife has a 401(k) account with a balance of \$15,048.36. He opened his own 401(k) account in February 2014, and it has a balance of \$787.17. Applicant prepared a recent budget plan showing anticipated income in June 2014 of \$9,400.66, expenses of \$8968.07, leaving discretionary funds of \$432.59. (Tr. 23-24, 44-46, 78-79, 82-84; Gov. Ex. 1, e-QIP, dated August 14, 2013; App. Ex. D, Investment Documents; App. Ex M, budget, June 2014)

The SOR alleges that Applicant failed to file federal tax returns for 2004 (SOR allegation 1.a), 2005 (SOR allegation 1.b), and 2006 (SOR allegation 1.c), until 2008.

After filing the tax returns, he owed a federal tax debt of \$16,213.78 for tax year 2004, and \$18,137.43 for tax year 2006. He did not owe any federal taxes for 2005. The SOR also alleges that Applicant is indebted to the Internal Revenue Service (IRS) for approximately \$3,285.62 for tax year 2008 (SOR allegation 1.d), \$10,904.70 for tax year 2009 (SOR allegation 1.e), \$13,976.70 for tax year 2010 (SOR allegation 1.f), and \$9,131.37 for tax year 2012 (SOR allegation 1.g). His total federal tax indebtedness is approximately \$71,600. The SOR alleges that Applicant is indebted to a state for state income taxes of approximately \$8,500 for tax years 2008, 2009, and 2010. (Tr. 12; SOR allegations 1.h to 1.j) The SOR alleges that Applicant was terminated by his employer in 2007 for failing to pay his company travel credit card (SOR 1.k). The SOR alleges that Applicant's previous debts were discharged by a Chapter 7 bankruptcy in 2007 (SOR 1.l). Applicant admitted with detailed explanations all of the SOR financial allegations.

Under guideline E, the SOR alleges that Applicant answered "no"; to a question on his security clearance application asking if he failed to file state or federal tax returns and pay any taxes owed in the past seven years (SOR 2.a). As noted above, it is alleged that he failed to file federal tax returns for at least three years and that he owed federal and state income taxes. He denied the SOR allegation with explanation that there was not an intentional falsification.

Applicant states that a co-worker told him in 2004 that taxpayers did not have to file their federal tax returns until three years after the end of a tax year. In his testimony at the hearing, Applicant was unclear if he was told he did not have to file if he was going to receive a refund, or if he just did not have to file for three years. He thought he may get a refund since he received refunds in the past. His co-worker was not an accountant but he helped others at work prepare their tax returns. His co-worker was older and seemed to have tax knowledge. He did not research the accuracy of the information on his own, or question anyone concerning the advice. He was 27-years-old in 2004 when he was advised that he did not have to file his federal tax returns for three years. In late 2007, he saw an advertisement on television that prompted him to call the IRS to determine a requirement to file tax returns each year. He did not file his federal tax returns for 2004, 2005, and 2006 until 2008. It was determined that he owed \$16,213.78 in federal taxes for 2004, and \$18,137.43 for tax year 2006. Applicant admitted that he also has a federal tax debt for tax years 2008, 2009, 2010, and 2012. He does not owe any federal taxes for tax years 2005, 2007, and 2011. He received a refund for tax year 2013 that was applied to his tax debt. He was audited in 2011, and believes his total federal tax debt is approximately \$60,000. (Tr. 23-28, 56-58, 64-65, 84-85; Response to SOR, Enclosure 2, tax transcripts)

After he filed his tax returns, he contacted the IRS to make an offer and compromise which was declined by the IRS. He claimed to have made a payment plan with the IRS and started payments in 2008. Tax transcripts do not show any payments for 2008, 2009, and 2010. Applicant believes that he may not have made an initial plan and payments until 2011. He told his employer's finance office in 2011 to take money from each paycheck for payment to the IRS. He did not believe he missed any payment. When he changed employers, the money was no longer taken from his pay. The IRS terminated the initial payment agreement in March 2012 when payments stopped. He subsequently negotiated a payment agreement of \$300 monthly on June 19, 2013. He

changed his procedure and made the payments himself from his checking account. Applicant claims he is current with his payment plan. However, his bank account does not show a payment for December 2013 and February 2014. Applicant believes the payments were made but the payments overlapped into different months because of the electronic payment method used. Some of his tax debt has been paid. Because of payments made and some adjustment, he believes his federal tax debt is now \$49,000 to \$50,000. Applicant plans to increase his payments to the IRS. He believes his salary will increase in the coming years. (Tr. 34-36, 88-90; Response to SOR, Enclosure 2, tax transcripts; Enclosure 3, Bank Transactions, dated April 1, 2014; App. Ex. I, letter, dated June 19, 2014; App. Ex. J, Bank Statements, dated June 10, 2014; App. Ex. K, Updated Tax Transcripts, dated June 16, 2014)

Applicant admits he has a state income tax debt for tax years 2008 to 2010. He stated that he filed his state income tax returns on time. His state was notified in 2011 of an IRS audit of his federal taxes resulting in a state tax debt of \$9,402.11. He contacted the state tax office and established a state tax payment plan. He made some payments in 2011, 2012, and 2013. He has made payments under the payment plan, and he believes his state tax debt is now approximately \$7,962. (Tr. 36-38, 66-73, Response to SOR, "Enclosure 2, State Tax Payments, date January 14, 2014; Enclosure 4, State Tax Payment Agreement, dated August 26, 2013; App. Ex. L, Updated State Tax Statement and payments, dated June 4, 2014)

Applicant admits that his tax debts were incurred because he was immature and did not research and check the tax advice he received. He took one person's word on tax matters. He understands that his taxes are his responsibility. (Tr. 40-41)

Applicant admits he was terminated by his defense contractor employer in 2007 for failing to pay his company travel credit card. He used the credit card to make business and personal purchases. At the time, he was pending a divorce and his pay was garnished to pay for furniture and a vehicle he and his former wife had purchased. He did not make timely payments on the credit card after being reimbursed for his business-related expenses by his employer. He is unsure if some of the debt has been paid. Since he was terminated in 2007, he has had other company credit cards, and has paid the debt on these credit cards on time. (Tr. 38-40, 73-75)

Applicant admits that he filed a Chapter 7 bankruptcy in 2006 and his debts were discharged in 2007. He filed for bankruptcy because he needed a fresh start. He and his wife accrued joint debts during their marriage. The debts were mainly for furniture and a car and totaled approximately \$14,000. When they divorced, he did not receive any assistance from his wife to pay the debts and his pay was being garnished. His wife kept the furniture and car in the divorce, and it was her responsibility to pay the debts associated with the items. When she did not pay the debts, the creditors garnished his pay as the joint debtor. (Tr. 41-43, 73-77)

Applicant received financial counseling as part of his bankruptcy requirements. He learned to manage his funds better and not spend money beyond his means. He claims he has been current with all of his debts since his debts were discharged in 2007. He is more mature now and has learned from his past financial mistakes. He has

rebuilt his credit since then. He purchased a house in July 2010, and is current with his mortgage payments. (Tr. 43-48: App. Ex. F, Deed, dated July 2010; App. Ex. G; House Value Public Record, dated May 22, 2014) Applicant's current credit report shows all debts are paid-as-agreed with no collection accounts. A state tax lien listed in the report was satisfied in June 2005. (Tr. 48-50; App. Ex. H, Credit Report, dated April 24, 2014)

Applicant responded "no" to a question on his security clearance application asking if in the past seven years he failed to file required tax returns. Applicant stated he did not completely understand the question. He did not believe he was delinquent on any taxes due since he had a payment plan for his back taxes and he was current with the payments under the plan. He now understands since he has a balance due on his taxes, he still has a tax debt. He fully disclosed the tax debt to the security investigator during his security interview. He made a mistake in not filing his tax returns in a timely manner but would not make the same mistake in the future. (Tr. 50-53)

Applicant presented character evidence. Applicant's wife wrote that she married Applicant in June 2006 and they have two young children. They are both employed with good salaries. They are committed to paying their financial obligations and living within their means. They own a house and pay their bills on time. They are also committed to growing their long term savings. Applicant is a hard worker and committed father. (Tr. 53-56; App. Ex. A, Affidavit, dated May 28, 2014)

One of Applicant's employees that he supervises testified that he has access to classified information and has known Applicant for over six years. Applicant is efficient, detail-oriented, an absolute rule follower, a good steward of taxpayer money, and an excellent teacher of others how to do an efficient job. He is so honest he would trust Applicant with his children. He believes Applicant has good judgment, is reliable, and trustworthy. He recommends that Applicant be granted eligibility for access to classified information. (Tr. 91-99)

Applicant's former government supervisor, an active duty Army officer, wrote that Applicant worked for him in 2012 and 2013. Applicant is a professional and selfless worker with impeccable character and integrity. He is among the most trustworthy and dedicated persons he has worked with in his 20 years of active duty. He recommends Applicant for eligibility for access to classified information. (App. Ex. B, Affidavit, dated May 27, 2014; Response to SOR, Enclosure 9)

Applicant's current supervisor wrote that he supervised Applicant for the last four years. He has known Applicant for over eight years. Applicant is a hard-working, dedicated, and dependable employee. Applicant is loyal to the organization and the United States. He performs his duties excellently with little to no supervision. Applicant is well regarded within the organization. He recommends that Applicant retain his access to classified information. (App. Ex. C, Letter, dated May 22, 2014)

Applicant included commendation information in his Response to the SOR. He presented a letter from the leaders of the House of Representatives concerning his efforts with others to assist the United States Capital Police during a ricin response. He

also presented numerous Certificates of Training for completing different courses in managing and handling hazardous materials. (Response to SOR, Enclosure 7)

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 admits that he failed to timely file federal tax returns for tax years 2004, 2005, and 2006. He did file his tax returns for these years in 2008 resulting in a tax debt for 2004 and 2006. Applicant admits he has federal tax debts for tax years 2008, 2009, 2010, and 2012. He admits that his federal taxes were audited in 2011 resulting in state income taxes owed for 2008, 2009, and 2010. He also admitted to being terminated in 2007 for failure to pay his employer-provided credit card. Applicant's federal and state income tax debts and his failure to pay the company issued credit card raises 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. Applicant's failure to timely file required federal tax returns raises Financial Consideration Disqualifying Condition AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same).

Applicant did not timely file the returns because a co-worker told him that he did not have to file the returns for three years. He testified that he learned the advice was not right and he filed the returns in 2008. When Applicant did file his returns, he owed over \$34,000 for tax years 2004 and 2006. Applicant's testimony at the hearing was evasive as to whether he believed that he had three years to file under any circumstance or that he did not have to file for three years because he anticipated a refund. Applicant's reliance on the advice that he did not have to file annual tax returns but could wait three years is not credible. Applicant had filed tax returns in the past. The IRS publishes volumes of information concerning tax filings each year. In fact, what prompted him to question the advice he received was an IRS television ad on annual filing of tax returns. It is inconceivable that even though he was only 27 years old, he thought he did not have to file annual tax returns. He did not check this advice with others or research the matter. His reliance on clearly erroneous advice and his failure to verify the advice shows poor judgment and lack of self-responsibility. It is more credible

that Applicant did not deliberately file his tax returns timely because he was aware that he owed substantial taxes.

Applicant's failure to pay the debt he incurred on his company issued credit card is not mitigated. Applicant received reimbursement from his company to pay his credit card debt. His company terminated him after giving him an opportunity to make the payment. His failure under the circumstances to pay the debt after reimbursement shows lack of self-control, lack of judgment, and an unwillingness to abide by rules and regulations. This conduct raises questions as to Applicant's reliability, trustworthiness, and ability to protect classified information.

Applicant filed a Chapter 7 bankruptcy and his debts were discharged in 2007. Bankruptcy is a legal and permissible means of resolving debt. Even though Applicant incurred tax debt after the bankruptcy discharge, his filing a bankruptcy in 2007 does not rise to the level of a financial security concern. I find for Applicant as to SOR allegation 1.I.

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); 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 did not file his 2004, 2005, and 2006 federal tax returns until 2008. He did not timely file three years of tax returns making his failure to timely file frequent. His failure to timely file tax returns was a deliberate decision and did not happen under unusual circumstances or circumstances beyond his control. His failure to timely file his tax returns could recur and his actions cast doubt on his reliability, trustworthiness, and good judgment. He has acted responsibly in that he has a payment plan with the IRS to pay his federal taxes. I find that Applicant deliberately did not timely file his federal tax returns for tax years 2004, 2005, and 2006. He also deliberately did not pay his company issued credit card debt after receiving reimbursement funds from his company to pay the bill.

I considered 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). This mitigating condition does not apply. Applicant received financial counseling in 2007 when he filed for Chapter 7 bankruptcy. However, his tax filing problem, his tax debts, and his misuse of his employer issued credit card were incurred after he received financial counseling. Even though he has a payment plan for or the taxes he owes, there are no clear indications his financial problems are resolved.

I also considered mitigating condition 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 honesty 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. This mitigating condition applies to the federal and state tax debts alleged in SOR 1.a to 1.j.

Applicant knew he owed federal taxes as early as 2008. He did not negotiate a tax payment plan with the IRS until 2011, and did not make consistent payments until 2011. He now has a payment plan with the IRS for his federal income taxes. He is paying \$300 monthly on this plan which is sent by him from his checking account. The IRS account transcripts show his payments are timely even though there are some monthly gaps in recording of the payments. The months that show no payments appear to be caused by the posting of the payments and not from lack of payment. It should be noted that the IRS terminates payment plans if there is not timely payments. Applicant also has a plan with the state for payment of state income taxes. He is current with his plan. In addition, Applicant purchased a home in 2010 and qualified for a mortgage. If he was not making timely payments, he would not be able to qualify for the mortgage.

Applicant took time after knowing of the tax debt to establish a payment plan. Since 2011, he has shown a good-faith effort to pay his federal and state taxes. The IRS tax transcripts established a "meaningful track record" of debt payments. Even though he started his payment plan late, I find for Applicant as to the part of the allegations that he owes federal and state income taxes based on his good-faith effort to pay the tax debts. However, Applicant did not manage his financial obligations reasonably and responsibly because he deliberately failed to timely file federal income tax returns for 2004, 2005, and 2006. There is ample evidence that his failure shows irresponsible behavior, poor judgment, and unreliability. Accordingly, Applicant has failed to provide adequate information to mitigate the financial considerations security concerns raised by his failure to timely file federal tax returns. His past management of his federal tax return obligation raises adverse concerns about 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 of not timely filing federal income tax returns.

Personal Conduct

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 United States Government.

On his e-QIP, Appellant answered “no” to a question asking if in the last seven years, he failed to file or pay federal, state, or other taxes as required by law. Applicant failed to timely file federal tax returns and owed state and federal taxes. His failure to note that he did not timely file his federal tax returns and that he owed federal and state income taxes raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 security eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentional falsification for failing to note he did not timely file federal tax returns and that he had federal and state tax debt. Applicant stated he answered “no” because he had payment plans to pay his past taxes and he was current with payments under the plan. At the time he completed his security clearance application in August 2013, Applicant he knew he had not timely filed his tax returns for 2004, 2005, and 2006, and that he owed federal and state income taxes. He had a payment plan with the IRS and the state and he was making timely payments. While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant knew in August 2013 that he had not timely filed his federal tax returns and he owed federal and state income taxes. The question on the security clearance application is clear and straight forward. He knew he failed to timely file his federal tax returns resulting in federal and state tax debts and he failed to provide accurate and correct information to alert the Government to those financial issues. I find Applicant deliberately failed to provide correct and accurate financial information on the security clearance application. I find against Applicant as to 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's job performance is excellent and he has a reputation for good character. However, Applicant has not presented sufficient information to establish that he acted reasonably and responsibly towards his finances. He deliberately did not timely file federal income tax returns. It is noted that he is now current under the agreements with the state and federal authorities to pay the taxes he owes. He deliberately did not provide accurate and correct information on his security clearance application concerning his failure to timely file federal tax returns and that he owed state and federal taxes. This past financial track record does not establish confidence in the responsible management of his financial obligations. His failure to provide accurate and correct information on a security clearance application shows questionable judgment, untrustworthiness, and unreliability. This indicates he may not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and 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.c:	Against Applicant (concerning failure to timely file federal tax returns.)
Subparagraphs 1.a – 1.c:	For Applicant (Concerning indebted to the IRS and state.)
Subparagraphs 1.d- 1.j:	For Applicant
Subparagraph 1. k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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