



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



In the matter of:)	
)	
)	ADP Case No. 14-00513
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file her federal or state income tax returns for tax years 2011 and 2012 until April 2014, partially because she assumed she owed taxes that she could not pay. Unemployment and medical costs have compromised her ability to repay her past-due debts, including approximately \$1,847 in federal tax debt for 2010 through 2012. With recent medical costs incurred in April 2014, Applicant's total debt is a manageable \$5,600. Applicant lives within her means, intends to resolve her past-due accounts, and understands that she should have filed her tax returns on time. Position of trust is granted.

Statement of the Case

On March 20, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F, Financial Considerations, as to why it could not grant her eligibility for a public trust position. The DOD CAF took action under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the

adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on April 13, 2014, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge if it could be held in her area. On May 16, 2014, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. On May 27, 2014, I scheduled a hearing for June 17, 2014. When Applicant failed to appear as scheduled due to illness, I granted a brief continuance to June 18, 2014.

At the hearing, four Government exhibits (GEs 1-4) were admitted into evidence without objection. A chart, prepared by Department Counsel as a supplement to his oral closing argument, was accepted into the record as a hearing exhibit (HE 1). Applicant testified, as reflected in a transcript (Tr.) received on July 1, 2014.

At Applicant's request, I held the record open until July 10, 2014, for her to submit documentary evidence. On July 8, 2014, Applicant submitted an email message containing representations about her contacts with her creditors (Applicant exhibit (AE) A) and 11 documents (AEs B-L). At Applicant's request, subject to any objections from Department Counsel, I extended the deadline for documentary submissions to July 25, 2014. On July 21, 2014, Department Counsel indicated that the Government had no objections to AEs A-L. The documents were admitted into evidence. No additional documents were received by the extended deadline, so the record closed on July 25, 2014.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of March 20, 2014, Applicant failed to file her federal and state income tax returns for tax years 2012 (SOR 1.a and 1.c) and 2011 (SOR 1.b and 1.d), and she owed the Internal Revenue Service (IRS) \$1,500 for tax year 2010 (SOR 1.e). In addition, Applicant is alleged to owe a \$753 credit card collection balance (SOR 1.f); a \$609 past-due electric utility balance (SOR 1.g); a \$361 wireless phone debt in collection (SOR 1.h); \$1,148 in collection debts owed a municipality (SOR 1.i-1.l); and a \$118 collection debt (SOR 1.m).

When Applicant answered the SOR allegations, she admitted that she did not file her federal and state income tax returns for tax year 2012 on time (SOR 1.a and 1.c), but they have since been filed. She denied the alleged failure to file her federal and state income tax returns for tax year 2011. Applicant also denied owing federal taxes of \$1,500 for 2010, contending that taxes were owed for 2011, but also that the taxes should no longer be owed. Applicant admitted the debts in SOR 1.f and 1.m. About the wireless phone debt in SOR 1.h, Applicant did not dispute the balance, but she indicated that it should have been paid by her ex-husband. Applicant contested the electric utility debt alleged in SOR 1.g in that her account was current. She disputed the debts in SOR 1.i-1.k, which she believed were for business taxes. Applicant expressed uncertainty about the validity of the debt in SOR 1.l.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 43-year-old high school graduate who works as a provider data load analyst for a medical services company under a DOD contract. (GE 1; Tr. 60.) She is divorced and has a 22-year-old daughter. (GE 1.)

Applicant and her ex-husband married in June 2001, when their daughter was nine years old. Around September 2004, Applicant, her then spouse, and their daughter moved into a two-family residence owned by Applicant's mother. (GEs 1, 4.)

From September 1999 to July 2010, Applicant worked full time for a health care services company, initially as a customer service representative. In 2005, she became a team leader in an account services unit. From 2008 to 2009, Applicant also held a part-time job as a retail sales representative. (GEs 1, 4.) Despite her full-time employment, Applicant stopped paying on two consumer credit card accounts in 2007. A credit card account with a \$200 limit was placed for collection in the amount of \$362 in May 2008 after no payment since October 2007. As of October 2013, the assignee was reporting a past-due balance of \$753 on the account (SOR 1.f). Another revolving charge account was charged off around April 2008. The account had a zero balance as of October 2013. (GEs 2, 3.)

Around January 2008, Applicant allowed her then spouse to open a business in her name. When she filed her income tax return in 2009, she discovered that she owed business taxes to the town. Applicant claims that she took her name off the business after she paid the taxes, but the town's records failed to show that the business had been dissolved. (Tr. 30-31.) In April 2011, the town referred a \$197 personal property tax debt from January 2008 for collection (SOR 1.j). In April 2012, the town referred a \$229 personal property tax debt from January 2009 for collection (SOR 1.i). In April 2013, the town referred a \$120 debt from January 2010 for collection (SOR 1.l). (GE 2.)

In July 2010, Applicant lost her job when her employer was acquired by another medical services company. (GE 1.) Applicant and her spouse divorced around that same time. Her ex-husband was ordered to pay child support of \$379 per month, but he made only one payment. (Tr. 36.) During her lengthy unemployment from July 2010 to November 2011, Applicant had multiple surgeries and was hospitalized for medical complications. (Tr. 24-35.) She supported herself and her daughter on her severance pay and unemployment compensation. (GE 4; Tr. 41.) Applicant became delinquent on some debts. Her car insurance had been paid through wage deduction (Tr. 32), so when she lost her job, the wage deduction stopped. In November 2011, a \$118 vehicle insurance debt was placed for collection (SOR 1.m). (GE 3; Tr. 32, 59.) Around March 2011, Applicant began falling behind in her \$508 monthly payments on a truck loan opened in August 2007 for \$20,321. Her truck was repossessed and sold for more than was owed in 2012 to resolve the debt.

(GE 1.) In August 2011, a \$361 wireless phone debt from June 2009 was placed for collection (SOR 1.h). (GE 3.)

When Applicant's unemployment ran out around November 2011, she began taking temporary jobs for income to address her medical bills, including the costs of ongoing medications. Applicant had no health insurance coverage at the time. (Tr. 35.) After her assignment ended in April 2012, Applicant was without work for a few months. Applicant's mother did not ask for rent, and Applicant's daughter began working part time to help with the electric bill. Applicant also received some assistance at local food pantries on occasion. (GE 4; Tr. 38-39.) In July 2012, Applicant began working part time as a home health aide. For the first month or so, she also worked part time as a field technician through a temporary agency. (GE 1.)

In September 2012, Applicant began a temporary assignment as a data load analyst at a medical services company. She continued to work part time as a home health aide until November 2012. She stopped the second job when her assignment at the medical services company became a permanent position. (GE 1.) Around October or November 2013, Applicant became a full-time employee of the medical services company. (Answer; GE 4.)

On October 10, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) for a public trust position. In response to the financial record inquiries, Applicant disclosed that she had failed to file and pay federal income tax returns for tax year 2010. She was required to file an amended return because she received short-term disability pay. Time passed while she was waiting for documentation and she then "actually forgot." Applicant added, "I am currently working with a Federal agent to pay 2010 after 2011 and 2012 taxes are filed as instructed." Applicant also indicated that her wages had been garnished until about September 2013 to satisfy \$837 in state income tax owed for 2010. About her delinquent federal and state returns for 2011, Applicant explained that she was unemployed at the time and thought she would file later. About her delinquent returns for 2012, Applicant explained that she misplaced her W-2 for 2011 and then "wasted time." She estimated that she owed federal taxes of \$800 for 2011 and \$500 for 2012 and state taxes of \$400 for 2011 and \$400 for 2012. Applicant expected to file her delinquent federal and state returns by the end of October 2013. Applicant disclosed on her e-QIP two routine delinquencies: a truck repossession and \$400 in checking account fees owed a bank after she closed her account. (GE 1.)

As of October 23, 2013, the credit bureaus were reporting additional delinquencies on Applicant's credit record: a \$753 credit card debt in collection (SOR 1.f); a \$609 past-due electric utility debt from September 2012 (SOR 1.g); a \$361 wireless telephone debt in collection since August 2011 (SOR 1.h); a \$118 collection debt from 2011 (SOR 1.m); and four personal property tax debts totaling \$1,148 that had been placed for collection between January 2010 and April 2012 (SOR 1.i-1.l).¹ (GE 3.)

¹ The debts in SOR 1.i (\$353), 1.j (\$340), and 1.l (\$163) were reported by all three credit bureaus, and Applicant affirmed that those debts are for business taxes. (Tr. 58.) Only Trans Union reported a \$292 debt

On November 5, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about her debts and her failure to file timely federal and state income tax returns. Applicant related that after she forgot to file an amended federal return for 2010 reporting her short-term disability income, she received a call from the IRS. The agent advised her to file her 2011 and 2012 returns before she paid about \$1,500 owed for 2010 because any tax refunds could resolve the debt. Applicant expressed her intent to enter into a payment plan with the IRS if necessary. She attributed her failure to file timely returns for tax year 2011 to her being unemployed and unable to afford to file. She indicated that she was still waiting for her W-2 form for tax year 2011. She had her W-2 information for tax year 2012 and intended to file her returns for both 2011 and 2012 by the end of November 2013. Applicant was confronted about the previously undisclosed delinquent debt balances shown on her credit record. Applicant did not recognize the debts. She expressed her intent to pay any verified debts in monthly installments. (GE 4.)

As of May 13, 2014, Equifax Information Services was reporting three unpaid personal property tax debts on Applicant's record (SOR 1.i, balance \$377; SOR 1.j, balance \$360; SOR 1.l, balance \$175) and a \$791 past-due balance on a credit card account in collection (SOR 1.f). Equifax did not report any unpaid electric utility, wireless telephone debts, or vehicle taxes on Applicant's record. (GE 2.)

In March 2014, Applicant contacted the assignee collecting the wireless phone debt in SOR 1.h, which was incurred by her daughter. (Tr. 57.) She is awaiting an updated statement of the account. (Tr. 58.) In mid-May 2014, Applicant received a settlement offer from the assignee handling the \$791 credit card debt (SOR 1.f). As of mid-June 2014, Applicant intended to accept one of the three settlement options, the details of which are not in evidence. (Tr. 55-56.) She disputed the balance of the electric utility debt in SOR 1.g, claiming that she owed only \$135 to the power company. (Tr. 56.) After her hearing, she provided documentation of a \$273.26 balance on her electricity account as of June 2014. (AE H.) Applicant intends to provide her tax returns to the town to show that she dissolved the business opened for her then spouse, and she did not file any business expenses for the years covered by the alleged unpaid business taxes (SOR 1.i, 1.j, 1.l). (Tr. 58-59, 63.) Applicant planned on paying the \$118 debt in SOR 1.m on June 20, 2014. (Tr. 59.) Applicant's post-hearing submissions (A-L) do not show that the debt has been resolved.

As of mid-June 2014, Applicant's take-home pay was around \$1,100 every two weeks. (Tr. 45.) Applicant was paying her mother rent of \$900 a month. She does not have cable television, but she pays \$50 a month for Internet service. Applicant pays \$140 per month for cell phone service. Her electric bill is about \$165 per month. She does not have a car of her own. She borrows her daughter's vehicle on occasion. Applicant relies on a "money card" (*i.e.*, prepaid debit card) for purchases. (Tr. 71-72.) Applicant pays her daughter's car insurance at \$151 a month. (Tr. 49.) Applicant's daughter is unable to contribute financially to the household other than paying her share of the cell phone bill.

(SOR 1.k). Trans Union showed no activity or assignment dates on that account. Applicant indicated at her hearing that the \$292 debt in SOR 1.k was a tax debt for her truck that was repossessed. (Tr. 58.)

She is expecting a child and does not have health insurance. Applicant cannot afford to cover her daughter on her health insurance because it would raise her deductible from \$2,500 to \$5,000. (Tr. 75-76.)

A large share of Applicant's disposable income goes toward her medical costs. By June 2014, she had already accumulated \$2,500 in medical bills for this year. (AEs C-D, F, I, L.) Applicant owes \$1,200 to a hospital for medical expenses incurred in April 2014. Payment of the balance was due on June 26, 2014. Applicant provided no evidence of any payments on that debt by July 25, 2014. (AE F; Tr. 46-49.) As of June 11, 2014, Applicant owed a past-due balance of \$156.62 to an endocrine practice. (AE C.) Applicant estimates that she has "at least \$400 extra" to put toward the undisputed debts in SOR 1.f, 1.h, 1.k, and 1.m. When asked why she had not yet made any payments toward those accounts, Applicant responded, "I hate [to] say when something is out of sight, it's out of mind." (Tr. 64.)

Applicant filed her delinquent federal and state income tax returns for tax years 2011 and 2012 with her 2013 returns in April 2014. (Tr. 50-53.) By letter dated June 20, 2014, the IRS notified Applicant that she owed \$605.08 in taxes for 2012 and that someone else had filed a return for 2012 using her social security number. (AE B.) Applicant estimates that she owes the IRS around \$200 for 2011. (Tr. 52.) Applicant still owes the IRS \$1,042 for 2010. Applicant received a tax refund from the state for 2010, which she was told went towards her federal tax liability. (Tr. 53.) Applicant did not file her delinquent tax returns earlier because she didn't think she had the funds to pay taxes owed.² (Tr. 65-66.) She assumed her debt was higher than it actually is. (Tr. 66.) She testified at her hearing that she owes the state \$160 total for 2011 and 2012. (Tr. 51.) However, Applicant received a tax refund of \$299 from the state for tax year 2013.³ (AE E.)

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with national security. (See Regulation ¶ C8.2.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November

² When asked about the delay in addressing her tax return filing delinquency, Applicant responded:

I didn't think I had the money, to be honest with you, to pay for it. And one, I forgot completely about it and like, just kept pushing it off. And I think I listened to other people because they said they didn't file theirs. But they put in an extension, which now I know about, that you can file yourself. And I think I just didn't have—I didn't have the money. I thought I owed a lot more than what it said because I had more dependents. But I ended up being wrong when I filed it and saw that I owed a lot less than what I thought. I was like, that was stupid, very stupid." (Tr. 65-66.)

³ It is unclear whether Applicant still owes state taxes. Presumably, the state would have intercepted any refund monies for 2013 and applied them to taxes owed for previous years.

19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an Applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). 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 overall 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 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 to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about Financial Considerations are set out in AG ¶ 18:

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.

Applicant neglected to file amended federal or state federal income tax returns for tax year 2010, knowing that she had not reported short-term disability income. She also did not file federal or state income tax returns for tax years 2011 and 2012 within the time legally allotted to file those returns. The evidence shows that Applicant was unemployed from July 2010 until November 2011. For tax year 2011, Applicant was required to file a federal return if filing as head of household, her gross income was at least \$12,200.⁴ Taxable unemployment is to be calculated in gross income. Although the evidence does not include details about her unemployment compensation in 2011, Applicant indicated on her e-QIP that she owed federal taxes around \$800 and state taxes of \$400 for 2011. In 2012, Applicant was out of work and without income, including unemployment compensation, only from April 2012 to July 2012. Recent IRS documentation shows that someone else filed a return under her social security number for tax year 2012, but also that she owes \$605.08 for that tax year. (AE B.) The evidence establishes that Applicant was required to file federal and state tax returns for 2011 and 2012. AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required for the fraudulent filing of the same,” is established because of Applicant’s failure to file timely tax returns for those tax years.

Applicant explained that one reason for her failure to file timely returns was her concern that she owed taxes which she could not pay. Applicant indicated on her October 2013 e-QIP that she owed past-due federal taxes of \$1,500 for 2010, \$800 for 2011, and \$500 for 2012. Applicant testified in June 2014, after she submitted her delinquent returns, she owes \$1,042 for 2010, \$200 for 2011, and \$461 for 2012. IRS records show a somewhat higher debt than expected, of \$605.08, for 2012. Applicant expects a refund of \$2,089 for 2013, which could be sufficient to satisfy her past-due federal tax debts. Even so, as of the date of the SOR, she owed delinquent federal income taxes of at least \$1,042 for 2010. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are also established.

Applicant does not now dispute the collection balances identified in SOR 1.g (\$791 as of April 2014 in credit card debt), 1.h (\$361 in wireless phone debt for her daughter), 1.k (\$292 in taxes for her repossessed truck), and 1.m (\$118 for vehicle insurance). AG ¶¶ 19(a) and 19(c) apply because of these debts.

Applicant disputes her liability for the property taxes alleged in SOR 1.i, 1.j, and 1.l for the business opened in her name for her then spouse. As of April 2014, Equifax was reporting balances of \$360 (SOR 1.j) for 2008, \$377 for 2009 (SOR 1.i), and \$175 (SOR 1.l) for 2010. (GE 2.) As noted by the DOHA Appeal Board, credit reports are ordinary business records which are routinely accepted in DOHA proceedings, and Department Counsel is entitled to rely on the evidence in credit reports. However, an applicant can contest the accuracy of the information in a credit report.⁵ See e.g., ISCR Case No. 08-

⁴ See IRS publication 501 for 2011 at www.irs.gov.

⁵ In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

12184 (App. Bd. Jan. 7, 2010); ISCR Case No. 07-08925 (App. Bd. Sep. 15, 2008). At her hearing, Applicant testified that she intends to prove to the town that the business had been dissolved within a year of its opening. On July 8, 2014, Applicant indicated the town was requiring more records from her on the issue. (AE A.) As of July 25, 2014, when the record for additional evidence closed, Applicant had not presented any documentation from the town showing that the tax assessments were erroneous, had been paid, or had otherwise been resolved. As to the property tax debts, Applicant did not meet her burden of establishing AG ¶ 20(e), which provides as follows:

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

AG ¶ 20(e) is satisfied regarding the balance of SOR 1.g. After the hearing, Applicant presented documentation (AE H) showing that she owes only \$273.26 to the electric company. The balance is not shown as delinquent on the utility's billing statement.

Concerning other potentially 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," is difficult to satisfy. While some of her debts (SOR 1.f, 1.h, and 1.j) were incurred more than five years ago, they have not been paid. Moreover, although the SOR did not allege her truck repossession or tax liabilities beyond 2010, the evidence shows that Applicant had a history of late payments on her truck loan and that she owes delinquent federal taxes for 2011 and 2012.⁶

AG ¶ 20(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," is partially implicated. Applicant was not in a position financially to pay her 2010 federal or state income tax debts when she filed her returns in 2011 due to her unemployment from July 2010 to November 2011 and her ongoing medical costs. Her unemployment compensation covered her and her daughter's living expenses and some

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

⁶ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006).

medical costs. She had four surgeries during her lengthy unemployment. Applicant had temporary work from November 2011 to April 2012, but she had no medical insurance to cover physician's visits and medication management for an ongoing medical issue. In September 2012, Applicant began working at her present job, for more than one year as a contractor paid by a temporary staffing agency. Applicant has had health insurance coverage, but she continues to incur medical debt in excess of her \$2,500 yearly deductible.⁷ Applicant should have been more proactive about addressing her debts after her OPM interview, but medical expenses mitigate some of the concerns in this regard. AG ¶ 20(b) does not fully mitigate the financial judgment concern raised by her delay in filing her federal and state income tax returns for tax years 2011 and 2012, although in her favor, her contacts with the IRS predate her e-QIP submission.

Applicant testified that she filed her delinquent federal and state income tax returns for tax years 2011 and 2012 with her 2013 returns. (Tr. 51.) Copies of her tax returns are not in the file. Yet, other evidence leads me to conclude that her returns have been filed. The IRS recently assessed Applicant's tax liability for 2012, and apparently discovered that another individual had filed a return for 2012 using her social security number. Applicant submitted the receipt for her state income tax refund for tax year 2013, which proves only that her state income tax return for that year has been filed, but her candor about her tax filing delinquency on her e-QIP bolsters her testimony that she filed her delinquent returns when she filed her 2013 returns in 2014. 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," mitigates Applicant's belated tax filings.

Concerning her tax debts, Applicant's state tax refund for 2013 raises doubts about whether she currently owes any delinquent state taxes. Applicant's federal tax debt for 2010 has been reduced to \$1,042, after a state tax overpayment was applied to her federal taxes. Interception of a tax refund does not fall within AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Furthermore, Applicant acknowledges that she has made no payments toward her credit card delinquency in SOR 1.f, which has accrued to \$791, the wireless phone debt in SOR 1.h, the insurance debt in SOR 1.m, or the truck taxes in SOR 1.k. So, even if she successfully challenges the business taxes in SOR 1.i, 1.j, and 1.l, AG ¶ 20(d) is only minimally established, if at all.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁸

⁷ Applicant testified that she had health insurance through the temporary agency in 2013 which had a lower deductible than the \$2,500 as a direct employee of the medical services company. (Tr. 68.)

⁸ The factors under AG ¶ 2(a) are as follows:

(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

Applicant admits that procrastination played a role in her failure to comply with her income tax filing obligations. The trustworthiness concerns have been addressed by her belated filings. Also indicative of her reform, Applicant understands that even unemployment was no excuse for her failure to file timely returns.

Applicant has not been fully responsible with respect to handling her personal financial affairs. Her credit card account has been in collection since May 2008. She has known since November 2013, if not before then, about a \$361 wireless phone debt in her name. Her ex-husband's failure to pay his child support should have given her reason to doubt whether he would pay their daughter's wireless phone charges. Applicant has not disproven her legal liability for local business taxes that have accrued to \$912. The \$118 insurance debt and \$292 vehicle tax debt are no longer on her credit report, but there is also no evidence showing they have been satisfied. Applicant apparently owes the IRS about \$1,847. While she anticipates that her refund for tax year 2013 will cover her federal taxes, the IRS is reporting \$605.08 due for 2012. No medical creditors were alleged in the SOR, but the evidence shows that she owes past-due debt of \$156.62 to a medical provider and \$1,200 to a local hospital.

In making the whole-person assessment required under the Directive, the DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has taken the first step toward addressing her income tax issues by filing her delinquent returns. She testified that she intends to accept one of the three settlements offered to her by the assignee collecting her delinquent credit card debt. A promise to pay is not a substitute for a track record of regular payments. Certainly, Applicant would have had a stronger case in reform had she been able to show a reduction of her debt balances through payments.

Even so, Applicant's \$5,600 in delinquent debt does not present an insurmountable burden, provided she has the income to resolve the debt. By mid-June 2014, she had already met her \$2,500 deductible on her health insurance. While medical needs are expected to continue, those costs are not discretionary and do not reflect irresponsibility. Applicant relies on a debit card for purchases, and she lives within her means. Candid from the start about her failure to comply with her tax filing obligations, Applicant apparently was unaware that she could have asked for an extension to file her returns. She acknowledges her "stupid" mistake in not filing her returns within the time allowed by law. She is not seen as likely to jeopardize her employment by ignoring her tax obligations in the future.⁹

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.

⁹ The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and additional interrogatories. Approval of public trust eligibility now does not bar the Government from

Trustworthiness decisions are not intended as punishment for past shortcomings. They demand sound judgment but not perfection. After considering all the facts and circumstances, I conclude that it is clearly consistent with national security to grant Applicant access to sensitive information at this time.

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: FOR APPLICANT

Subparagraph 1.a-1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Elizabeth M. Matchinski
Administrative Judge

subsequently revoking it, if warranted. See ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012), discussing the issue in the security clearance context.