



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03095  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 19, 2008

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 11, 2007. On May 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F and Guideline E that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant answered the SOR allegations in writing on June 18, 2008, and he requested a hearing before a DOHA administrative judge. On July 9, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest

to grant or continue a security clearance for him. On July 15, 2008, I scheduled a hearing for August 14, 2008.

The parties appeared as scheduled. Five government exhibits (Ex. 1-5) and five Applicant exhibits (Ex. A-E) were admitted, and Applicant testified, as reflected in a transcript (Tr.) received on August 26, 2008. Based on a review of the pleadings, exhibits, and hearing testimony, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

#### **Motion to Amend SOR**

Under ¶ E3.1.17 of the Directive, Department Counsel moved before closing argument to amend the SOR to conform to the evidence. Specifically, the government moved to amend SOR ¶ 1.d by substituting the following allegation of an IRS tax lien, and to add a new allegation under SOR ¶ 1.i for failure to file timely federal and state income tax returns:

1.d. An IRS tax lien in the amount of approximately \$22,593 was entered against you on July 4, 2008. As of August 14, 2008, this debt had not been paid.

1.i. You have failed to file either federal or state tax returns for the tax years 2002 to 2006.

Applicant did not object and the motions were granted.

### **Findings of Fact**

In the amended SOR, DOHA alleged under Guideline F (financial considerations) that the state had issued three tax liens against him for failure to pay delinquent state taxes totaling \$21,647 (SOR ¶¶ 1.a, 1.b, and 1.c), and that he owed delinquent federal taxes of about \$22,593 (SOR ¶ 1.d), three medical debts totaling an additional \$1,647 (SOR ¶¶ 1.e, 1.f, and 1.g) in collection, a \$50 debt in collection (SOR ¶ 1.h), charged off balances totaling \$5,388 on two credit card accounts with the same lender (SOR ¶¶ 1.i and 1.k), and a deficiency balance of about \$10,574 following the repossession of his automobile (SOR ¶ 1.j), and that he had failed to file his federal or state income tax returns for tax years 2002 through 2006 (SOR ¶ 1.l).

DOHA alleged under Guideline E (personal conduct) that Applicant falsified his e-QIP by denying any financial delinquencies over 180 days in the last seven years (SOR ¶ 2.a) and any property repossessions in the last seven years (SOR ¶ 2.b). Applicant admitted all the allegations but SOR ¶¶ 1.h and 2.b. After considering the evidence of record, I make the following findings of fact.

Applicant is a 53-year-old mechanical designer who has been employed by a business and professional services agency (“job shop”) since September 2007. He

requires a security clearance for his duties at a defense contractor facility. He had previously been self-employed as a designer/design engineer (Ex. 1).

In about March 1998, Applicant began working as a consultant design engineer for a local company (Ex. 1). Originally placed there through a "job shop" at an hourly wage of about \$46, he contracted directly with the company as a self-employed consultant at about \$51 per hour. His wage rate gradually increased to about \$53 hourly for a 40-hour work week (Tr. 36, 39-40).

Starting in tax year 1999, Applicant did not set aside the funds to pay his quarterly income taxes (Tr. 49). In about 2000, he and his spouse separated. Applicant paid his spouse an amount needed to maintain the household and provide for their two children (Tr. 50-51). Applicant stopped filing his federal and state income tax returns because he did not have the funds to pay the taxes owed.<sup>1</sup> In about early 2002, he entered into agreements with the state and the IRS to make payments on his back taxes, but paid for less than one year (Tr. 51-53). He and his spouse divorced in April 2002 (Ex. 1). He no longer had to cover her mortgage (Tr. 91), but starting in September 2002, Applicant was under court order to pay child support for his two daughters (Ex. 3). Applicant made child support for his two daughters until the elder, who is now 16, came to live with him. His child support obligation was eventually eliminated (Tr. 44).

In 2002, Appellant incurred three medical debts of \$50, \$1016, and \$581 (SOR ¶¶ 1.e, 1.f, and 1.g) that were subsequently referred for collection. As of April 2008, the debts were still unpaid (Ex. 4).

Applicant made no payments after April 2003 on two revolving charge accounts (one joint, the other individual) with a bank (SOR ¶¶ 1.i and 1.k). In December 2004, a past due balance of \$1,728 was charged off on the joint account. In January 2005, the debt was placed for collection (SOR ¶ 1.k). In October 2007, a \$3,400 past due balance on his individual account was referred for collection (SOR ¶ 1.i) (Ex. 3, Tr. 69).

In May 2003, the state filed a notice of a tax lien against him for failing to pay delinquent income taxes owed for tax years 1999, 2000, and 2001 totaling \$8,064.77. In August 2006, the state filed a notice of a tax lien against him for a past due balance of \$5,056.86 for tax year 2002. In March 2006, the state filed yet another lien against him

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<sup>1</sup>Applicant initially testified that his last income tax filing before tax year 2007 was for tax year 2000 (Tr. 47). He later corrected it to indicate that he had not filed for tax years 2002 to 2006 (Tr. 48). Yet, under the terms of the retainer agreement with a tax resolution firm, the company was to prepare his federal and state income tax returns for tax years 2001 through 2006 (Ex. 2). There is some indication that he may have filed for 2001 and 2002, in that the state and federal government filed liens against him for failure to pay delinquent taxes. There is no evidence that the IRS or the state filed any substitute returns (Tr. 60).

in the amount of \$8,527.15 for failure to pay income withholding for the third quarter of 2001 and the second quarter of 2002 (Ex. 3, Ex. 5).<sup>2</sup>

In November 2006, a \$10,574 deficiency balance on his auto loan, remaining after a repossession of his vehicle, was referred for collection (Ex. 3). Applicant had fallen behind two months in his \$600 monthly payments (Tr. 72-73) so he voluntarily surrendered it. As of April 2008, the debt had not been paid (Ex. 4).

Applicant was steadily employed as an independent consultant on a full-time basis from March 1998 until April 2007 (Ex. 1), when the company he serviced was acquired by a larger firm that had a different policy on contractors. Applicant's employment contract was terminated. Over the next few months, he took whatever work he was offered. Some weeks he had earned income, other weeks none (Tr. 37-39).

In mid-August 2007, Applicant contacted a tax resolution firm for assistance in resolving his delinquent federal and state tax issues. Under the terms of the proposed retainer agreement, in return for a flat fee of \$7,000, the company was to prepare his federal and state individual income tax returns for tax years 2001 through 2006, to attempt to prevent future seizure of assets, and to attempt to negotiate on his behalf with the IRS and the state tax authority. In return Applicant was to make prompt payments and file returns as required, to stay current on all future tax liabilities as they become due, and to respond timely to taxing agencies' requests for information and documents (Ex. 2). Following an initial payment of \$1,000, Applicant was to make monthly payments of \$750. Applicant paid about \$2,500, but he did not follow through with the agreement due to the cost (Tr. 55-56). He borrowed the \$1,000 for the initial retainer from his sister, and two payments of \$750 were automatically withdrawn from his bank account (Tr. 56).

In September 2007, Applicant became a W-2 employee and was placed at a defense contractor facility. On October 11, 2007, he executed an e-QIP on which he responded "Yes" to question 27.c. "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" and indicated that the state filed a lien against him in March 2006 for a \$6,000 tax debt. He added that he was working with a debt resolution firm to reach a settlement and payment plan. Applicant responded "No" to any repossessions with the past seven years (27.b), to any debts over 180 days delinquent in the last seven years (28.a), and to any debts currently over 90 days delinquent (28.b) (Ex. 1). A check of Applicant's credit on October 18, 2007,

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<sup>2</sup>DOHA alleged and Applicant admitted the imposition of three state tax liens for unpaid taxes totaling \$21,647 (SOR ¶¶ 1.a-1.c). The March 2006 tax lien of \$8,527.15 was filed for unpaid "WITH INC" (withholding income) for the periods ending September 30, 2001, and June 30, 2002, as assessed on December 2005. It is not clear whether it represents an additional \$8,527.15 in income tax debt, or whether it was an updated balance assessment for 2001 and 2002. Available records indicate that as of May 2003, he owed back state income taxes of \$1,658.65 for 1999, \$3,356.41 for 2000, and \$3,049.71 for 2001. As of August 2006, he owed an additional \$5,056.86 for 2002. Applicant's May 2008 credit report lists the two tax liens in SOR ¶¶ 1.b and 1.c plus a tax debt of \$3,124 in collection (Ex. 4).

revealed that the tax liens and several other collection debts (SOR ¶¶ 1-e-1.k) had not been satisfied (Ex. 3).<sup>3</sup>

On March 18, 2008, DOHA forwarded financial interrogatories to Applicant, asking him about the status of the state tax liens (SOR ¶¶ 1.a-1.c), the \$1,728 credit card delinquency (SOR ¶ 1.k), and three medical debts (SOR ¶¶ 1.e-1.g). On May 12, 2008, he indicated in response that he was working with the debt resolution company to resolve his state and federal tax issues, and that he would pay off the \$50 medical bill (SOR ¶ 1.e) in June 2008. Applicant explained that the deficiency balance was from a car loan following voluntary repossession, and that he could not repay the \$1,728 credit card past due balance until his other debts were cleared up. Applicant denied any knowledge of the medical debts in SOR ¶¶ 1.f and 1.g. Applicant provided the retainer agreement with the debt resolution firm, a current earnings statement showing an hourly wage of \$46 and weekly net pay of \$1,256.01, and a personal financial statement in which he estimated a net monthly remainder of \$2,934 (Ex. 2).

A check of Applicant's credit on May 21, 2008, revealed a \$3,124 tax balance in collection,<sup>4</sup> as well as the unpaid tax liens in SOR ¶¶ 1.a and 1.b. It showed no progress toward resolving the delinquent consumer credit accounts. With his brother-in-law's assistance (Tr. 57), he filed both his federal and state income tax returns for tax year 2007, and was entitled to a federal refund. He had underpaid his state taxes by about \$500 (Tr. 53-54). The Internal Revenue Service (IRS) intercepted \$738 of his income tax refund for tax year 2007 to satisfy delinquent taxes for tax year 2000 (Ex. C). On May 19, 2008, an overpayment of \$659.87 was intercepted and applied toward his back taxes for 2001 (Ex. D). The economic stimulus payment of \$900 that he was to receive by June 13, 2008, was also taken by the IRS and applied to reduce the amount owed for tax year 2001 (Ex. A, Ex. B). On July 4, 2008, the IRS filed a lien against him because of unpaid taxes of \$5,376.60 for tax year 2001 and \$17,217.32 for tax year 2002 (Ex. E).

As of August 2008, Applicant had not filed his federal or state income tax returns for tax years 2002 through 2006 (Tr. 48). He was working on filing them with his brother-in-law, who is an accountant (Tr. 57). Applicant intends on "moving in a forward, positive direction of slowing getting rid of [his tax] debt" (Tr. 64). He plans to obtain financial counseling but has not yet done so (Tr. 64). He disputes the \$50 collection debt in SOR ¶ 1.h because he does not recognize it. He plans to inquire about that debt, which appears on his credit report (Tr. 69), but has not yet contacted the credit bureaus or creditor. As of December 2007, Applicant had no intent of repaying the deficiency

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<sup>3</sup>It also reported that Applicant owed back child support of \$4,145 as of September 2007. That debt does not appear on his May 2008 credit report (Ex. 4) and Applicant explained that he had made the payments and proved it in court (Tr. 87-88). The government did not allege that Applicant was in arrears in child support.

<sup>4</sup>This entry in the credit report likely provided the basis for the government's original SOR ¶ 1.d. It is unclear whether the credit bureau was reporting a federal or a state tax debt. The IRS records provided by Applicant show his federal tax debt is a much greater \$22,593.92 as of July 2008, and this does not include whatever Applicant may owe for the years where he has yet to file his returns.

balance of his car loan because it had been charged off by the creditor. He changed his mind and plans to pay it off (Tr. 74).

Between May 2006 and October 2007, Applicant opened four credit card accounts with limits ranging from \$300 to \$500 (Ex. 4, Tr. 71). As of April/May 2008, the four accounts had an aggregate balance of \$1,397, and were rated as current (Ex. 4), although he had fallen behind “a month or two here and there” (Tr. 93).

Applicant does not own a car. He lives with his fiancée and he uses her vehicle when needed. For almost the last two years, they have pooled their money to pay their joint expenses. She was paid \$10 an hour but recently was promoted to a managerial job at \$17 an hour (Tr. 75). Applicant’s fiancée has a daughter that lives with them (Tr. 76). As of August 2008, Applicant was paying all his bills by money order (Tr. 77). He opened a passbook savings account in which the balance has never exceeded \$80 (Tr. 78). Applicant anticipates that better budgeting will give him the funds to resolve his debts (Tr. 89).

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. 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 as to obtaining a favorable security decision.

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

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

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is 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 worked full-time for one employer for about nine years, from March 1998 until April 2007, for most of that time as an independent contractor. He failed to set aside sufficient income to pay his federal and/or state income tax obligations starting in tax year 1999, and as a consequence owes more than \$13,000 in delinquent state taxes,<sup>5</sup> as well as \$22,593 in delinquent federal taxes for tax years 2001 and 2002, excluding any assessments for tax years 2003 through 2006. He failed to file his federal or state income tax returns for those tax years (SOR ¶ 1.i), and there is no indication that he paid any taxes on his income for those years when he was working full-time at an hourly wage of at least \$46.

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<sup>5</sup>In March 2006, the state filed a lien for \$8,527.15 (SOR ¶ 1.c) for taxes reportedly owed for 2001 and 2002. The May 2003 tax lien (SOR ¶ 1.a) was filed because of unpaid state income taxes for 1999, 2000, and 2001. It is unclear whether the \$8,567 is an updated balance of his state income tax delinquency for 2001 and 2002, or even whether it was filed for failure to withhold income for the child support arrearage that he successfully disputed. His May 2008 credit report includes only the March and August 2006 tax liens (SOR ¶¶ 1.b and 1.c), and neither party offered any clarification. It can be inferred that he owes more than \$13,000 in delinquent state taxes as of August 2008.

In addition, Applicant owes three medical debts in collection totaling \$1,647 (SOR ¶¶ 1.e-1.g), a \$10,547 deficiency balance on an auto loan (SOR ¶ 1.j), and \$5,388 in delinquent credit card debt (SOR ¶¶ 1.i and 1.k). Significant security concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)), by “a history of not meeting financial obligations” (AG ¶ 19(c)), and “failure to file annual Federal, state, or local income tax returns as required” (AG ¶ 19(g)). Although the \$50 collection debt alleged in SOR ¶ 1.h is listed on Applicant’s credit reports, it is insufficient to prove Applicant’s liability where he disputes the debt and the credit information is from June 2003.

The burden is on Applicant to mitigate the other debts and his failure to timely file federal and state income tax returns. 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”) clearly does not apply. He has not yet filed his delinquent returns or made any payments on his consumer credit debts. While he entered into an agreement with a tax resolution firm to assist him in resolving his federal and state income tax issues, AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) cannot be fully applied where he did not keep up with the payments required. 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 pertinent only to the April 2007 to September 2007 time frame. Following the termination of his employment contract in April 2007, he found work when he could over the next few months. Lack of a steady income during that time extenuates his failure to make any payments on his debt during that period. However, the debts at issue in this case became delinquent when Applicant had earned income from full-time (40 hours per week) employment. AG ¶ 20(b) does not apply when the delinquencies are due to poor budgeting and then years of disregard. Even with his child support payments, he earned sufficient income to make some payments on his delinquencies. As recently as December 2007, Applicant did not intend to repay the credit card balances or the car loan deficiency.

While he filed his 2007 federal and state income tax returns on time, and now intends to repay his delinquent taxes and consumer credit accounts, it is too soon to safely conclude that “there are clear indications that the problem is being resolved or is under control” (see AG ¶ 20(d)). He has made no payments on his consumer credit debts. Payments have been applied toward his federal tax debt through IRS interception of refunds, including of the \$900 due to him under the economic stimulus plan. He remains under a significant debt burden that is only likely to grow in the near future, as back taxes are assessed for the tax years 2003 through 2006. Despite an estimated net monthly remainder of \$2,934 as of May 2008, he has little to no cash in reserve with which to make payments on his debts. He had to borrow \$1,000 from his sister to pay the tax resolution firm’s retainer fee. When asked at his hearing about possible sources of funding for debt repayment, Applicant responded, “I think it can be done by getting financial advice, and learning how to budget and just cutting back on anything that is,



you know, might be able to be cut back on.” (Tr. 89). He has yet to obtain the financial counseling that he recognizes he needs. Promises, however sincere, are not entitled to the same weight in mitigation as concrete actions taken in reform.

### **Guideline E, Personal Conduct**

The security concern related to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

When Applicant applied for his security clearance in October 2007, he listed a state tax lien of \$6,000 in response to question 27.c, but as alleged by the government, he responded “No” to question 27.b, any property repossessed in the last 7 years, and to question 28.a, any debts over 180 days delinquent in the last 7 years. The knowing and willful omission/concealment of information required to be reported on an SF 86 falls within AG ¶ 16(a) (“deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities”).

Applicant’s credit reports show a delinquent debt of \$10,574 owed to an automobile lender. Applicant has not denied that the debt represents a deficiency balance but maintains that he voluntarily brought the car to the dealer when he determined he could not afford the payment. He explained that he did not think the repossession question applied to him because he initiated the surrender of the vehicle (Tr. 82). His October 2007 credit report shows the debt as a deficiency but not as an involuntary repossession. Under the facts presented, I accept Applicant’s explanation and conclude he did not intentionally conceal the surrender of his vehicle.

Applicant has a more difficult burden to overcome the reasonable inference of knowing falsification that can be drawn from his negative response to question 28.a, however. The IRS had not yet issued its tax lien as of October 2007 when Applicant completed his security clearance application. On the other hand, he also knew that he had unresolved federal tax issues because he had retained the tax resolution firm to deal with the IRS as well as the state tax authority (Tr. 87). Furthermore, two or three months after he voluntarily surrendered his vehicle, he was informed he would be responsible for any deficiency balance on the loan (“Yeah, they told me that. I didn’t know it would be \$10,000 though.” Tr. 74). He does not dispute owing the two credit card delinquencies (SOR ¶¶ 1.i and 1.k) since 2003 (Tr. 70).

When he answered the SOR, Applicant admitted SOR ¶ 2.a regarding falsification of question 28.a on his e-QIP. When asked at his hearing to explain, he provided no reason for his negative response to 28.a (“I don’t know.” Tr. 84). He later added that he could not see himself deliberately lying, that he “was not thinking about them at all, not trying to hide anything or thinking that, you know, you would never find out about it.” (Tr. 85). Applicant had an obligation of full candor independent of whether the government could learn of his debts through other means. Had Applicant simply failed to recollect the debts, he likely would have indicated so and/or denied SOR ¶ 2.a when he answered the SOR, as he denied ¶ 2.b. Under the facts presented, I find AG ¶ 16(a) applies.

Applicant was candid about his debts when he answered the SOR and at his hearing. No report or statement from his December 2007 interview with a government investigator was made available for my review, but Applicant confirmed he discussed his tax liens, the credit card debts, and the vehicle repossession with the investigator (Tr. 94). A good-faith attempt to correct the record in December 2007 would be sufficiently prompt to fall within mitigating condition AG ¶17(a) (“the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”). When asked why he took no action to obtain financial counseling in June or July 2008 after he received the SOR, Applicant responded, “Well, I guess I, until I had to, you know, read my credit report and see all of this mess that I’m in, I guess I was denying it or ignoring it, or just hoping it would go away somehow. . . .” (Tr. 90). Disclosure prompted by review of a credit report does not fully satisfy AG ¶ 17(a), which requires correction before confrontation with the adverse information. None of the other potentially mitigating conditions under Guideline E are pertinent.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances in light of 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant did not pay federal or state income taxes for tax years 1999 through 2006. He did not file timely returns for at least tax years 2003 through 2006. As a consequence of his knowing and repeated failure to comply with his legal obligation to file returns and pay taxes, he owes at least \$35,000 in back taxes. His irresponsibility extended to his handling of consumer credit accounts as well, and he owes an additional \$17,609 in past due balances. He exhibited good faith in seeking the services of a tax resolution firm in August 2007 (AG ¶ 2(a)(6)), but did not follow through with the agreement. Over the past two years, he has shared his household expenses with his fiancée. From a reported net monthly remainder of \$2,934, only about \$80 gets deposited into savings, but even that is spent. There is little to guarantee that he will be able to resolve his considerable debt in the near future where he has yet to show a favorable change in his financial habits. He has not obtained the financial counseling that he acknowledges he needs. The concerns about Applicant's judgment are compounded by his failure to disclose his delinquent consumer debt on his e-QIP. Under the facts presented, it is not clearly consistent with the national interest to grant Applicant access to classified information.

### Formal Findings

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

|                           |                                |
|---------------------------|--------------------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT              |
| Subparagraph 1.a:         | Against Applicant              |
| Subparagraph 1.b:         | Against Applicant              |
| Subparagraph 1.c:         | Against Applicant <sup>6</sup> |
| Subparagraph 1.d:         | Against Applicant              |
| Subparagraph 1.e:         | Against Applicant              |
| Subparagraph 1.f:         | Against Applicant              |
| Subparagraph 1.g:         | Against Applicant              |
| Subparagraph 1.h:         | For Applicant                  |
| Subparagraph 1.i:         | Against Applicant              |
| Subparagraph 1.j:         | Against Applicant              |
| Subparagraph 1.k :        | Against Applicant              |
| Subparagraph 1.l:         | Against Applicant              |
| Paragraph 2, Guideline E: | AGAINST APPLICANT              |
| Subparagraph 2.a:         | Against Applicant              |
| Subparagraph 2.b:         | For Applicant                  |

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<sup>6</sup>A finding is warranted against Applicant on the basis of the documented tax lien (Ex. 5). Whether or not he owes all or a portion of the amount alleged, the government established that the state filed a tax lien against him for failure to pay taxes when they were owed. Applicant failed to prove that the lien was filed in error.

## **Conclusion**

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

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ELIZABETH M. MATCHINSKI  
Administrative Judge