



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07505
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

February 26, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Between July 2002 and October 2006, the Internal Revenue Service (IRS) filed liens totaling \$88,698 against Applicant for nonpayment of taxes. The most recent lien of about \$53,154 covers tax years 2003 and 2004, when Applicant was gambling heavily, and it has not been released. In 2007, he defaulted on two mortgage loans. While he averted foreclosure of his home by modifying or refinancing his primary mortgage, the lender of his second mortgage wrote off its loan. Applicant continues to ignore some consumer credit delinquencies, and he was not fully candid about his financial problems when he applied for his security clearance. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 14, 2008. On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, that provided the basis for its preliminary decision to deny him a security clearance and to 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) effective within the Department of Defense as of September 1, 2006.

On March 26, 2009, Applicant answered the SOR and requested a hearing. On May 12, 2009, Applicant resubmitted his Answer, apparently clarifying his response to one or more allegations at DOHA's request (Tr. 10). The case was assigned to me on June 30, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 11, 2009, I scheduled a hearing for September 16, 2009.

I convened the hearing as scheduled. Six government exhibits (Exs. 1-6) were admitted into evidence without any objections. Applicant testified and submitted one exhibit (Ex. A) that was entered into the record without any objections, as reflected in a transcript (Tr.) received on September 25, 2009.

At Applicant's request, I held the record open for one week for additional documentation. On September 22, 2009, Applicant forwarded a written statement (Ex. B) and financial records (Exs. C-G), which were admitted without any objections. On September 28, 2009, the government moved in rebuttal for the admission of four IRS publications. Applicant filed no objections by the October 9, 2009, due date, and the documents were admitted as government exhibits (Exs. 7-10).

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that two federal tax liens were filed against Applicant in 2005 for federal tax debts of \$28,437.45 (SOR 1.a) and \$24,717.36 (SOR 1.b), which had not been paid as of October 2008; that he owed delinquent consumer debts totaling \$2,177.44 (SOR 1.c-1.f) and mortgage loan debt totaling \$449,000 (SOR 1.g-1.h); that he had \$56,125 in gambling losses during tax year 2004 (SOR 1.i); and that he was granted a Chapter 7 bankruptcy discharge in about November 2000 (SOR 1.j). Applicant's gambling loss was cross-alleged under Guideline E, personal conduct (SOR 2.a). Also under Guideline E, DOHA alleged that Applicant falsified his April 2008 security clearance application by failing to report the tax liens (SOR 2.b) and delinquent mortgage loans (SOR 2.c-2.d). Applicant submitted a response in which he indicated that he filed amended tax returns to the IRS, owed the creditor in SOR 1.c \$300 rather than \$597.44, received a release from the mortgage debt in SOR 1.g, had been in forbearance and not foreclosure of the mortgage loan in SOR 1.h, and he won money gambling in 2004. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 39-year-old structural draftsman apprentice, who has been employed by a defense contractor since April 2008 (Exs. 1, A, Tr. 51-52). From January 2000 to April 2008, he had been self-employed as a subcontractor mortgage

broker for a couple of mortgage companies, including one firm owned by his first cousin (Ex. 1, Tr. 49, 55).

In August 2000, Applicant filed for Chapter 7 bankruptcy to relieve himself of the legal responsibility to repay between \$8,000 and \$9,000 in medical debt following a commercial construction accident (Tr. 65). He was granted a discharge in November 2000 (SOR 1.j) (Exs. 5, 6).

Whether due to inaccurate calculation of taxes owed due to his independent contracting, failure to file required returns, or some other cause, Applicant had a history of underpayment of federal income taxes that led the IRS to file liens against him.¹ In July 2002, the IRS filed a tax lien against him in the amount of \$5,891, for unpaid taxes of \$3,806 for 1998 and \$2,085 for 2000 (Tr. 60), which he satisfied in July 2004 (Ex. 4). In February 2004, the IRS filed a tax lien against him in the amount of \$29,655, for unpaid taxes of \$8,968 for 2001 and \$20,687 for 2002, which he satisfied in July 2006 (Ex. 4, Tr. 59, 61).

In October 2006, the IRS filed a tax lien against him in the amount of \$53,154 (Exs. 4, 5), for unpaid federal income tax debts of \$28,437.45 for tax year 2003 (SOR 1.a) and \$24,717.36 for tax year 2004 (SOR 1.b) (Exs. 4, 5, 6, Tr. 62).² The company for which Applicant worked as an independent contractor in 2004 reported to the IRS that Applicant had nonemployee compensation of \$95,695.36 for 2004 (Ex. C), and W-2 earnings totaling \$7,615.41 (Ex. E). After the lien was filed, Applicant sought the assistance of his father, who expressed concern that Applicant was paying too much in taxes (Tr. 59). In about March 2008, Applicant's father prepared an amended return for him for tax year 2004 (Ex. 2). On his amended state and federal returns, Applicant reported previously undisclosed gambling losses of \$56,125, on adjusted gross income of \$56,125 (SOR 1.i), leaving him with no taxable income.³ Based on these amended figures, Applicant calculated that he owed state taxes of \$2,096 but was entitled to a \$432 federal tax refund for tax year 2004 (Ex. 2).

In October 2005, Applicant bought his home, taking out a primary mortgage loan of \$280,000 (SOR 1.h) and a second mortgage loan of \$170,000 (SOR 1.g). In 2007, Applicant stopped paying his mortgage loans (Tr. 67), and they fell into default. In April 2007, the servicer for the second mortgage issued a 1099-C, indicating \$0 of the debt

¹Applicant has a history of failing to file timely returns, including for 2004 and 2007, and perhaps 2005 and 2006 as well (Tr. 26, 41, 43-44, 59), that could have led the IRS to file substitute returns and assess penalties.

²DOHA alleged that federal tax liens were filed in July 2005 (SOR 1.a) and May 2005 (SOR 1.b). Applicant's credit reports (Exs. 4, 5, 6) show a \$53,154 lien filed in October 2006, which would correspond to the total tax debt alleged in SOR 1.a and 1.b.

³It is unclear how Applicant arrived at these figures. Applicant submits that due to \$56,125 in gambling losses, he had zero adjusted gross wages for 2004 and therefore does not owe the IRS \$53,154. Neither the win/loss statement from the casino reporting losses of \$92,947 for 2004 (Ex. D), nor the form 1099-MISC showing \$600 in income for that same year (Ex. F), substantiates his claim that his losses cancelled out his income for federal tax purposes for 2004.

had been cancelled (Ex. 3). The lender did not actively pursue the debt, but continued to report past due balances on Applicant's credit reports (Exs. 4, 5, 6). Foreclosure proceedings were initiated on his primary mortgage. With his mortgage \$18,410.01 in arrears, Applicant entered into a forbearance agreement with the servicer of his primary mortgage in February 2008. Applicant agreed to pay \$28,956.73 to rehabilitate the loan as follows: \$3,402 on or before February 11, 2008, \$2,161.88 on or before March 11, 2008, \$2,161.88 on April 11, 2008, and \$27,733.93 on May 11, 2008 (Ex. 2). Applicant made some payments, but he was behind \$15,309 on his loan as of April 2008 (Ex. 4).⁴

By December 2007, Applicant was seriously behind in his \$694 monthly car payment on a loan taken out in February 2004 for \$32,707 (Ex. 5). His car was repossessed (Ex. 1), but he redeemed the vehicle within a few weeks by paying \$3,200 (Tr. 78, 80-81). His loan was current for only a short time. As of April 2008, he was 60 days past due in his car payment (Ex. 5).

In April 2008, Applicant began a five-year apprenticeship program to become a structural draftsman at this present place of employment (Exs. 1, A, Tr. 92). His starting hourly wage was \$13.33 (Tr. 51). On April 14, 2008, he completed an e-QIP for a secret-level security clearance (Tr. 93). He listed only the vehicle repossession in December 2007 in response to inquiries into his financial record. He responded negatively to question 27.c, concerning whether a lien had been placed against his property in the last seven years for failing to pay taxes or other debts. He also answered "No" to questions 28.a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28.b, "Are you currently over 90 days delinquent on any debt(s)?" (Ex. 1). Applicant testified at his hearing that he did not disclose the IRS tax liens or tax debts because he did not believe he owed delinquent federal taxes based on his recently prepared amended return (Tr. 78), and because he had satisfied past tax debts to release earlier tax liens (Tr. 79). When asked about his failure to report any financial delinquencies, Applicant cited the forbearance agreement, which was to bring the primary mortgage current, and he indicated he had been unaware of any credit card delinquency (Tr. 79-80).

As of April 2008, Applicant had not satisfied or resolved the \$53,154 federal tax lien. In addition to being late in his car payments, he owed past due balances of about \$1,000 on a MasterCard account charged off in December 2006 and in collection (SOR 1.f), \$426 on a closed checking account (SOR 1.e), and \$124 on a credit card account inactive since April 2002 (SOR 1.d) (Ex. 4). In about January 2008, a plumber filed a mechanic's lien of almost \$600 against Applicant for nonpayment of services provided in July and August 2007. On May 19, 2008, Applicant paid the plumber \$300, reducing the past due balance to \$322.39 (Ex. G, Tr. 73-75). Applicant disputes the lien because of his payment in May 2008, but he has not attempted to resolve the issue (Tr. 75).

⁴Applicant testified that he made payments on a monthly basis, but that he could have been "a little late here and there" (Tr. 73). His credit report of October 14, 2008, shows a past due balance of \$18,711 on the loan. He presented no documentation showing that he made the \$27,733.93 payment in May 2008 required by the forbearance agreement, although he subsequently managed to avert foreclosure by actions taken in 2009.

On June 5, 2008, Applicant was interviewed by a government investigator about his delinquent financial accounts and the federal tax lien. Applicant disputed the lien and claimed that as a self-employed broker from 2000 to January 2008, he filed yearly income tax returns and paid taxes on his income. Yet, he acknowledged that he had been notified by the IRS in 2006 about \$83,000 in delinquent federal income tax debt covering a four-year span. Applicant claimed that amended returns showed no money owed. Applicant acknowledged one delinquent credit card debt (SOR 1.f) on which he owed at least \$1,000 due to interest. He indicated he would contact the lender and resolve the matter. As for his delinquent mortgages, Applicant explained that his second mortgage had been placed for collection due to him not earning enough to make the payments, but his account had been closed and the balance written off.⁵ Applicant indicated that he was in the process of modifying his primary mortgage (Ex. 3).

By October 2008, Applicant had brought his car loan current, but his primary mortgage was \$18,711 past due and again in the process of foreclosure (Ex. 5). Applicant subsequently refinanced his primary mortgage in late spring 2009, taking out a conventional 30-year mortgage loan of \$322,000, to be repaid at \$2,400 monthly (Ex. 6, Tr. 69-72), but he made no effort to address his other known debts or to verify the debt in SOR 1.d that he was unsure about (Tr. 31). As of June 2009, he owed \$1,197 on the delinquent credit card account in SOR 1.f, was reportedly \$59,000 past due on the defaulted second mortgage, owed a collection balance of \$546 on another account (likely SOR 1.e), was \$1,000 past due in his car payment, and had not yet resolved his IRS debts covered by the October 2006 lien (Ex. 6). In August 2009, the IRS began garnishing his wages at \$130 per week to repay a \$6,000 federal tax debt for a tax year that Applicant claimed to not recall (Tr. 27, 56-57, 64). As of his hearing in mid-September 2009, Applicant had not filed his federal or state income tax returns for tax year 2007 (Tr.41), and he provided no reason for his failure to do so (Tr. 43). He was not sure whether he had filed returns for tax years 2005 (Tr. 44) or 2006 (Tr. 43). Applicant filed his returns for 2008. He owes federal taxes for that year as well (Tr. 42).⁶

Applicant has gambled (slots, video poker) once at a casino in the last couple of years, likely in early 2009. He took \$100 or \$200 with him and came home with \$300 on that occasion (Tr. 40-41).

As of September 2009, Applicant's hourly wage in the apprenticeship program was \$15.95 (Tr. 51). Available monthly performance reviews indicate he was doing good work and his attendance was within company guidelines (Ex. A). Since April or May 2008, he has also worked a second job as a bartender at a local restaurant (Tr. 53-54). His compensation there is largely dependent on tips, although he is paid a small hourly wage (Tr. 54).

⁵Applicant considers the debt to be resolved since the lender wrote it off (Tr. 29).

⁶Applicant testified that he filed an extension for payment of income taxes for 2008, but he cannot recall the amount owed (Tr. 42).

Applicant has been married since September 2008. As of September 2009, Applicant's spouse was handling the bills. He did not maintain an open checking account or a savings account (Tr. 83), and his pay was being deposited into his spouse's account. Applicant did not know whether they had any funds remaining after their monthly bills were paid (Tr. 85), or whether his spouse had delinquent debt of her own on which she was making payments (Tr. 94). No evidence was presented to indicate the extent of her financial contributions to the household.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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. 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 about finances 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 has a record of income tax delinquency and of repeated failure to file timely tax returns when he was a self-employed broker. Federal tax liens were filed against him in July 2002 for \$5,890, in February 2004 for \$29,654, and in October 2006 for \$53,154. As of September 2009, his wages were being garnished to repay \$6,000 in delinquent federal taxes for a tax year that he cannot now recall, and he owes back taxes for 2008 that he had not yet started to repay. Applicant also defaulted on his mortgage loans in 2007, and he fell seriously delinquent on a few consumer credit debts (SOR 1.c-1.f). His inability to remain current on his financial obligations, especially after he had been afforded a fresh start through a Chapter 7 bankruptcy discharge in 2000, raises serious doubts about his financial judgment. AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(a), “inability or unwillingness to satisfy debts,” clearly apply.

There is credible evidence that would implicate casino gambling as a negative influence on Applicant’s financial situation in 2004. The win/loss record of the local casino indicates a loss of \$92,647.00 from slot machines alone. Applicant reported on his amended income tax return for 2004 that he had gambling losses of \$56,125.⁷ Whether or not he could cover his gambling losses with his job income and winnings, it was financially irresponsible of him to gamble to such an extent when he owed delinquent federal taxes. He did not pay his \$29,654 tax debt for 2001 and 2002 until July 2006, despite a federal tax lien. AG ¶ 19(f), “financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern,” applies.

⁷Applicant reported gambling winnings (Form W-2G) of \$56,125 equal to reported losses of \$56,125 (Ex. 2). According to IRS Topic 419 on gambling income and losses, a payer is required to issue a Form W-2G for certain gambling winnings or if any gambling winnings are subject to federal income tax withholding. Gambling losses may be an itemized deduction, but the amount of loss deducted may not be more than the amount of gambling income reported on the return (Exs. 7-10). Based on the casino win/loss statement, Applicant’s gambling losses exceeded his winnings at that casino, but he is not entitled to claim the entire loss.

Furthermore, although not alleged as raising a separate concern under Guideline F, Applicant had not filed his federal or state returns for tax year 2007 (Tr. 41). He is uncertain whether he filed for 2005 or 2006. Even assuming those returns were filed, AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” still applies, given his failure to file his 2007 returns and his admitted failure to report his gambling wins and losses on his 2004 return.⁸

Concerning potential factors in mitigation, 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,” cannot reasonably apply in light of the extent and recency of his financial problems. 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,” applies in that medical debt led Applicant to file for bankruptcy in 2000. But AG ¶ 20(b) does not mitigate the poor financial decisions that led to his present financial situation. He gambled beyond what he could reasonably afford and failed to comply with the laws concerning the timely filing of tax returns and payment of taxes owed.

AG ¶ 20(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,” applies in only limited part. Applicant has a credible dispute about the balance of the mechanic’s lien (SOR 1.c) in that he paid \$300 to reduce the balance on his account to \$322.39 as of mid-May 2008. Applicant’s challenge to any current liability for his defaulted second mortgage (SOR 1.g) is based on a 1099-C form for tax year 2007 issued by the lender around the time that the primary mortgagee initiated foreclosure proceedings. The amount of the cancelled debt was listed as \$0 on the 1099-C, and the creditor continues to report the account as delinquent on Applicant’s credit reports. Yet, there is no evidence that the creditor has attempted to collect the debt, which it wrote off in April 2007. While Applicant may not be required to repay the debt, it does not fall squarely into AG ¶ 20(e) since it was a legitimate obligation that he allowed to fall into default. Applicant still does not recognize the debt in SOR 1.d, which was listed on his credit record, but he did not provide any documentation to substantiate his dispute. Furthermore, Applicant’s amended return for tax year 2004 is insufficient in and of itself to prove that he owes no back taxes for 2003 and 2004. Even if the IRS eventually reduces his federal tax liability for 2004 because of his gambling losses, Applicant provided no credible evidence to rebut the IRS assessment of \$28,437.45 in delinquent taxes for tax year 2003.

Although his mortgage defaults reflect adversely on his judgment and reliability, Applicant is credited with working with his primary mortgage lender to avert foreclosure. He also satisfied tax liens filed against him in 2002 and 2004 for nonpayment of federal

⁸Gambling winnings are fully taxable and must be reported on one’s tax return (Ex. 8).

taxes in 1998, 2000, 2001, and 2002. But it would be premature to apply 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,” or AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” He has not resolved the federal tax lien for nonpayment of taxes alleged in SOR 1.a and 1.b. He has taken no action to arrange for repayment of his consumer credit delinquencies. Since his marriage in September 2008, he has continued to have difficulty meeting some of his financial obligations on time. He was behind in his primary mortgage as recently as March 2009, although he subsequently refinanced or modified the loan. As of June 2009, he had again fallen behind in his car payments. In August 2009, the IRS began garnishing his wages to recover back taxes of about \$6,000. Concerns persist that he may not be able to fully cover his ongoing monthly expenses, including \$130 per week to the IRS, \$694 per month for his car, and \$2,400 per month for his mortgage. He has not begun repaying federal taxes owed for 2008. The financial concerns are not fully mitigated, even though he deserves credit for limiting his casino gambling to only once in the last couple of years.

Guideline E, Personal Conduct

The security concern about 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.

Applicant exercised poor judgment within the context of AG ¶ 15 when he gambled heavily while ignoring his obligation to pay delinquent federal taxes. AG ¶ 16(e), “personal conduct or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing,” must be considered. Applicant’s casino losses for 2004 amounted to \$92,947 when he had a \$29,654 federal tax lien against him.

The government also alleged deliberate falsification of his security clearance application in April 2008 because Applicant did not disclose the latest tax lien (SOR 2.b) and his mortgage defaults (SOR 2.c-2.d). When he was interviewed in June 2008, Applicant denied knowing of the tax lien, although he admitted he had been notified by the IRS in 2006 that he owed four years of back taxes. He claimed that he had filed amended returns showing he owed no taxes (Ex. 3). At his hearing, Applicant attributed his negative response to the lien inquiry (27.c, “In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?”), to his belief that he did not owe any taxes based on the amended return (Tr. 78). He had satisfied the taxes to release the earlier tax liens (Tr. 79). Applicant did not indicate at his hearing

that he had been unaware of the October 2006 lien, but the evidence falls short of establishing that he acted to conceal that tax lien when he completed his e-QIP.

On the other hand, he knew that he had paid more than \$30,000 to the IRS within the last seven years to satisfy delinquent taxes. An affirmative response to question 28.a (“In the last 7 years, have you been over 180 days delinquent on any debt(s)?”) was clearly required. Applicant’s amended return showing he was entitled to a refund of federal taxes could extenuate his failure to list any tax debt for 2004 in response to question 28.b (“Are you currently over 90 days delinquent on any debt(s)?”). But it could not reasonably justify his omission of the tax delinquency for 2003 from 28.a and 28.b. Applicant’s overall credibility suffers because of his failure to disclose his tax delinquencies on his e-QIP.

Furthermore, the facts support a finding of knowing concealment of his defaulted mortgage loans. Applicant explained that the forbearance agreement was supposed to bring his primary mortgage current, and he was taking care of the situation (Tr. 79-80). Under the terms of the February 2008 forbearance agreement, which covered only his primary mortgage, the loan servicer agreed to forbear from pursuing the foreclosure proceedings and give Applicant time to cure the default by making payments totaling \$28,956.73. Applicant has not shown that his loan was out of default status as of his e-QIP in April 2008. Also, whether or not the holder of his second mortgage had written off the balance of its loan in April 2007, Applicant knew he had been behind more than 180 days on that debt within the last seven years. 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,” is implicated. A person reviewing Applicant’s e-QIP would have no reason to know that he had financial problems beyond a car repossession in 2007.

Applicant was not completely forthcoming about his tax situation when he was interviewed in June 2008. He claimed that he had filed yearly income tax returns and paid taxes on income earned. Concerning the notification of tax delinquency from the IRS in 2006, Applicant averred that he filed amended returns and owed no taxes. Yet, he admitted at his hearing that he has not filed for tax year 2007 and perhaps 2005 and 2006 as well. He did not volunteer to the government investigator any information about previous tax liens or his satisfaction of delinquent tax debts in 2004 and 2006. Although Applicant discussed his mortgage loan defaults with the investigator, I am unable to apply 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,” because of his lack of full candor about his tax situation.

AG ¶ 17(c), “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” and AG ¶ 17(d), “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur,” are not pertinent in light of Applicant’s failure to appreciate the importance of providing true and complete information during the security clearance process. Applicant has curtailed his gaming activities in the past couple of years, so AG ¶ 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” must be considered, but it does not fully mitigate the personal conduct concerns generated by his excessive gambling when he had not complied with his federal income tax obligations.

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 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.

Between July 2002 and October 2006, the IRS filed liens totaling \$88,698 against him for nonpayment of taxes. The most recent lien of about \$53,154 covers tax years 2003 and 2004, when Applicant was gambling heavily, and it has not been released. In 2007, he defaulted on two mortgage loans. While he averted foreclosure of his home by modifying or refinancing his primary mortgage, he took no steps to cure the default of his second mortgage. He continues to ignore some consumer credit delinquencies of which he has had notice since June 2008, if not before. Applicant listed no current financial delinquencies on his security clearance application. His work for the defense contractor has been satisfactory. However, concerns about his financial situation, and whether he can be counted on to comply with his tax obligations and those expected of persons granted a security clearance, preclude me from finding that it is clearly consistent with the national interest to grant him a security clearance 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: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
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:	For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant

Conclusion

In light of 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.

Elizabeth M. Matchinski
Administrative Judge