



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



In the matter of:)
)
) ISCR Case No. 09-00058
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: James O. Roberson, Jr., Personal Representative

June 25, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, Personal Conduct and Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On March 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F and Guideline E. 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 Adjudicative Guidelines (AG) and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 29, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2010. DOHA issued a Notice of Hearing on May 19, 2010. I convened the hearing as

scheduled on June 8, 2010. The Government offered Exhibits (GE) 1 through 14. Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through I, which were admitted without objection. Applicant also offered a "Memorandum in Support" which was marked as Hearing Exhibit I. The record was held open until June 15, 2010, to allow Applicant to submit additional documents, which he did, and they were marked as AE J through N. The Government provided a written response, which was marking as Hearing Exhibit II. He had no objections to the exhibits and the documents were admitted. DOHA received the hearing transcript (Tr.) on June 15, 2010.

Procedural Issues

The Government amended the SOR adding ¶ 1.e stating: "You failed to file your federal income tax returns for 2006 through 2009 and your state income tax returns for 2008 and 2009." Applicant did not object and the motion was granted. Applicant was afforded an opportunity to continue the hearing to permit him proper notice and opportunity to prepare his response. He elected to proceed with the hearing.¹ Department Counsel submitted copies of relevant state statutes. I have marked them as Hearing Exhibit III and taken administrative notice of them.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.c and 1.d and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 63 years old. He is married and has four grown children. He has been divorced three times. He has been married to his current wife since 1996.² She is a nurse and works on a military installation. He served in the Air Force from 1964 to 1968. Applicant graduated from college with an engineering degree. He also has earned a master's degree. He had a security clearance when he was on active duty and again was granted a Secret clearance some time around 1990.³

Applicant completed his latest security clearance application (SCA) on December 12, 2006, and swore to its accuracy. In it he disclosed he lived in State A from December 1999 to the present and listed a local address. While living in State A he worked for the same company from December 1999 to the present. He disclosed he

¹ Tr. 110-113, 150-153.

² Applicant testified he was married four times. He only lists one marriage ending in divorce on his security clearance application dated December 12, 2006. He does not list that he is currently married. In addition, he only lists one daughter and none of his three other children.

³ Tr. 12, 27-35, 58, 139-143.

lived from January 1996 to December 1999, at two different residences, in State B. He worked for the same company in State B, from January 1996 until December 1999.⁴

Applicant indicated in his response to SCA Question 27(c) that he had a lien placed against his property for failing to pay taxes and other debts. In the comment section he wrote:

Pending case and previous cases against the fraud of the IRS. Private investigation revealed that this private agency was unconstitutionally given control of tax collection and assessment through a shady deal over the Christmas holiday period in 1913-1914 time era. Those who [challenge] the constitutionality of this act have tax liens placed on their property. Case histories are contained in my file. Current cases are: U.S. Tax Court, Washington D.C. Docket Number [xxxx-05 and xxxxx-04].⁵

Applicant lost his tax cases and his wages were garnished. Applicant provided a document from the IRS dated May 25, 2004, showing a release of levy against his wages.⁶

Applicant completed a Questionnaire for National Security Positions (NSP) on May 1, 1996, and swore to its accuracy.⁷ He disclosed that he lived and worked in State C from April 1989 to August 1990 and April 1993 to April 1996. He disclosed in the questionnaire that he lived in State D from August 1990 to April 1993, and that he lived and worked in State B from April 1996 to present, which was May 1, 1996. At his hearing, Applicant stated he left State C and moved to State B around 1996. He then stated: “[I] moved to [State A] in, I think it was like 2000, 1999, or 2000.”⁸

As part of his answer to the SOR, Applicant provided an affidavit and swore to its accuracy. In the affidavit he stated he lived in State D prior to 1988. He moved to State C in the mid-summer of 1988 and became a resident of State C. He surrendered his driver’s license from State D and obtained a driver’s license from State C. He returned to State D in February 1989 and packed his belongings and had his mail forwarded. He stated: “From that point forward, I never lived or worked in [State D]. From early February 1989 to the present, I ceased having any and all nexus with [State D].” At his hearing Applicant stated he moved to State C in the beginning of 1989 and became a resident. He obtained a driver’s license, a business license, and registered to vote in

⁴ GE 1.

⁵ *Id.*

⁶ Tr. 90-91.

⁷ GE 2.

⁸ Tr. 36, 60-61. In GE 2 above the date “8/90” on the application there is a small question mark next to the month.

State C.⁹ He further stated that from 1990 to 1993 he worked in State D on occasion. He would periodically go to State D for jobs, but was working under contracts from employers located in State C, where he lived. He stated State D was not his residence when he listed it in GE 2, but rather this was where he lived when he visited State D. He estimated he visited State D four or five times a year for approximately one week each time. In a statement provided on September 6, 1996, Applicant stated: "In February 92, I lost my job with the [Y] laboratory due to cut back[s] in the project I was involved with. From Feb 92 until April 96, I worked as a self employed software engineer in [State C]."¹⁰ Applicant listed on his NSP questionnaire that [Y] laboratory was located in State D and he worked there from August 1990 until April 1993.¹¹ Applicant's sworn statements and testimony are inconsistent. Applicant's testimony that he had no contact with State D after 1988 is not credible.¹²

Applicant is indebted to State D for tax liens entered against him in 1998 and 1994, in the approximate amounts of \$8,012 and \$6,491, respectively. Applicant disputes he owes these debts because he claims he did not live in State D. Applicant did not provide evidence to show he has formally disputed the liens with State D, has resolved them, or they have been released. He provided a copy of a certified letter he sent to State D claiming the liens do not belong to him because he did not live in State D in 1991, 1992 or 1993.¹³ He stated in the letter the following:

I moved out of [State D] in the 1st quarter of the year 1989 and became a resident of another state. I called the telephone number xxx-xxx-xxxx in your "notice" and received a phone announcement that the number was disconnected or not in service. I contacted my attorney and my accountant. They both advised me of scams by Israeli scam artists posing as Nigerians trying to steal money from U.S.A. citizens with various tax and inherited money scams. I understand that THE STATE OF [D] is financially bankrupt and is desperate in trying to raise funds. Please, move on to someone else who really owes you money and stop this shakedown process. Please update your records to reflect that I am not responsible for this debt and that I am not a resident of THE STATE OF [D].

P.S. Some questions which should be answered in order for [State D] to recover and survive the coming crisis. When is THE STATE OF [D] going to return the land stolen from Indian [People]. When is THE STATE OF [D] going to compensate the Indian Peoples for the years they were denied access to all of their land? The Indian Peoples (sic) may accept the

⁹ AE B, C.

¹⁰ GE 6 at 1.

¹¹ GE 2.

¹² Tr. 28, 61-79, 113-122.

¹³ Tr. 45-57; AE I.

“improvements” and return of their land as compensation for the years of denial of access to their land. Only God knows.

My understanding is that God does not like lying, stealing, and cheating murderers. That the One God is patient and does allow people free will, but God is also JUST and destroys those who are unjust. A word to the wise is sufficient to get them onto the correct path.¹⁴

In a statement made to a Government investigator on September 6, 1996, Applicant stated the following:

State Tax Lien from [county] Recorder Office in Oct 94 for \$6,400. I was unaware of any [State D] tax lien against me. I do not recall that [State D] claimed I owed taxes the details of which I do not recall. I thought that it had all had been paid. (sic) I was told that [State D] requires a release and a copy of my driver’s license to check [State C] state tax records.¹⁵

It is unclear if this is one of the tax liens alleged or a different one. In any event, it is clear that Applicant was aware there was a tax issue from State D that was unresolved. Applicant’s position is he was unaware until 2009 that there were existing tax liens against him from State D. Applicant’s 2006 SCA and 1996 NSP questionnaire list the dates he lived in State D and is consistent with State D’s tax liens. Applicant did not provide evidence that he has resolved the tax liens.¹⁶

Applicant provided copies of two checks issued from State D to Applicant. In 2007, he discovered an unclaimed property fund in State D. He learned his name was listed and he submitted a claim. He then received the two checks. It appears the amounts are distributions from investment funds. The dates of the checks are June 19, 2007 and August 8, 2007. Applicant’s position was that he would not have received these checks if he owed State D money. No evidence was provided to show that the fund that issued the checks was aware that State D’s tax board had a lien against Applicant. Applicant did not provide evidence to show what the appropriate rules are for the tax board to confiscate the checks.¹⁷

Applicant moved to State A in December 1999 as is reflected in his SCA.¹⁸ His testimony is that he has been living in State A since 2000. He never obtained a driver’s license from State A, as is required. He is required to file state income taxes in State A

¹⁴ *Id.*

¹⁵ GE 6 at 4.

¹⁶ Tr. 47-57, 94-107.

¹⁷ Tr. 47; AE E, F.

¹⁸ GE 1.

because of his continued presence in the state more than 183 days.¹⁹ He stated he is in State A temporarily. He has lived in State A temporarily for the past 10 years. Applicant's testimony is not believable. Applicant claims he continues to be a resident of State C and travels there about three days a year. State C does not have a state income tax. He maintains a driver's license in State C. He is registered to vote in State C, and voted by mail in State C's local election in the past year. When he purchased a car, State A required him to register it in the state. The residential address he provided to his employer is located in State A. He registers two other vehicles in State C.²⁰

State A required Applicant to file state income returns due to his presence in the state, and his employment in the state. He did not file his 1999 to 2005 state tax returns on time. He did not file his state income tax returns for 2006 to 2009. Applicant contested in court that he owed State A income taxes. He lost the case and State A garnished his wages. Applicant did not provide evidence that he filed his 2006 to 2009 state income tax returns. Applicant provided a "Notification of Overpayment" letter from State A for tax year 2001 in the amount of \$1,223.38. In addition, he provided a letters showing that \$96 in interest was owed to him for tax year 2001. These documents show he was due a refund in 2001. He did not provide evidence that his State A tax liens have been released.²¹

In May 2006, Applicant contacted a Certified Public Accounting firm (CPA) for tax and financial advice. He stated: "after I had the consultation with [CPA firm], they suggested that I, you know, start paying, paying taxes."²² They recommended that he file the open year's tax returns (2006) in the future. The CPA firm assisted in the preparation of Federal and State A income tax return filings for 2000 through 2005. At that time no federal or state income taxes were being withheld from Applicant's paycheck. The CPA firm recommended that Applicant have the current year's income taxes withheld from his paycheck, and that he should implement a budget, if he did not already have one. The CPA firm was made aware that Applicant's wages were being garnished for prior tax obligations, but they were not involved in that process.²³

The CPA firm did not advise Applicant or assist him in preparing his income tax returns for 2006, 2007, or 2008. In 2009, Applicant contacted the CPA firm regarding a tax claim from State D. The firm advised him to handle the matter himself, because their involvement would be cost prohibitive. The CPA firm noted it was their understanding the matter was resolved in Applicant's favor. No evidence was provided to support that position. The CPA firm also noted that it is not uncommon when a taxpayer moves from

¹⁹ HE III.

²⁰ Tr. 37, 79-84, 122-123, 131-132.

²¹ Tr. 36-38, 43-45; AE L, M.

²² Tr. 85-86.

²³ Tr. 42, 84-89; AE G.

one state to another that the former state of residence issues a tax bill. There is additional confusion if the new state does not have an income tax, which is a way to prove there is a new state of residence.²⁴

Applicant did not timely file his federal income tax returns from 2004 to 2009. His wages were garnished in the amount of approximately \$40,000. When asked if he filed his federal income tax returns for 2006 to 2009, he stated "I just let them take the maximum out of my paycheck."²⁵ Applicant admitted he did not fill out and file the appropriate tax return forms.²⁶ Applicant claims he is having income tax withheld from his paycheck. He did not provide any evidence of the amount of federal or state income tax withheld from his paycheck.

Applicant provided a statement to an investigator from the Office of Personnel Management on June 30, 2009. He stated:

Both the [f]ederal and [State A] tax liens have been satisfied and I have not had any other past or current tax issues. I now have an accountant/attorney [Mr. X of State Y] handling the filing of my taxes to help avoid any issues or problems in the future. The only people that know about these issues are those involved to include my accountant.²⁷

* * *

As an added note about my tax lien issues, I was not attempting to be dishonest or otherwise avoid paying taxes on these issues. I had let the IRS file for me in years prior to this issue. They usually withheld enough money and allowed them to calculate what I owed and charge me accordingly. I am not sure what happened on these two federal liens and can only guess they did not know my correct salary or bonuses I received and did not withhold enough during the year.²⁸

Applicant's statement contradicts information provided in the affidavit by the CPA firm and his testimony. The CPA firm stated they did not file Applicant's federal or state income tax returns beyond 2005. They advised him to file his tax returns in 2006. Applicant admitted at his hearing he had not filed his 2006 through 2009 state tax returns.²⁹

²⁴ *Id.*

²⁵ Tr. 87.

²⁶ Tr. 87-90.

²⁷ GE 5 at 3.

²⁸ *Id.*

²⁹ Tr. 87-90.

Applicant stated at his hearing that he was unaware that he was required to file federal tax return forms through the IRS Collection Agency.³⁰ This statement contradicts his statement of June 30, 2009. He also provided a statement in September 6, 1996. In it he stated:

During 1994/1995 time period, the IRS claimed that I owed \$18,000 or \$20,000 in taxes. I did not have much income coming in so [the] IRS took the money owed from stocks I that I owned. (sic) To my knowledge the IRS received the money they required. I have been current with the filing of my taxes. However I did not file for tax years 1993, 1994, and 1995. I was not required to file because I did not make enough money for those years to file.³¹

Applicant was aware as far back as at least 1994, when he made the above statement, of his duty to file his income tax returns. Applicant's position was that he understood he had to pay taxes, but did not know he had to file his income tax returns. He stated he believed the government could take the maximum money from his pay to satisfy his taxes and because he did not care about receiving a refund, he did not have to file a form. He believed filing the form was a formality. I find Applicant was not credible.³²

I find Applicant's testimony throughout the hearing was untruthful, intentionally misleading, and he repeatedly provided false testimony. I have considered all of the documents provided to me by Applicant.³³

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 must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c),

³⁰ Tr. 90-93. Applicant protests the constitutionality of the IRS and Federal Reserve. Those matters are not pertinent to the issues raised in this hearing and will not be addressed.

³¹ Tr. 124-131. GE 6 at 3. Applicant confirmed the signature on the document belonged to him, but could not recall aspects of his statement.

³² Tr.134-141, 153-154.

³³ AE A-N.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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 relating to the guideline 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.

The guideline notes conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following are potentially applicable:

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

Applicant has a long history of failing to file his federal and state income tax returns. He did not file his federal tax returns in 2004 and 2005 and his wages were garnished. He again failed to file his 2006 through 2009 federal tax returns. He failed to file his state income tax returns from 1999 to 2007 and his wages were garnished. He again failed to file his state income tax returns from 2008 to 2009. Applicant incurred tax obligations while living in State D that he has not paid. Tax liens were entered against him by State D. I find there is sufficient evidence to raise all of the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

I find none of the mitigating conditions apply. Applicant has intentionally and deliberately failed to file his federal and state income tax returns. He has contested the legitimacy of the IRS and other tax issues in federal and state court and lost. In 2006, his CPA firm assisted him in filing his 2000 to 2005 federal and state income tax returns. He was advised by the CPA firm that he should file his 2006 federal and state income tax returns and he did not. He admitted he did not file his 2006 through 2009 federal income tax returns. He admitted he did not file his 1999 through 2009 state income tax returns. It appears that sometime around 2006 or 2007 he began to have taxes withheld from his income, but claims he did not know he had to actually file the tax forms. He did not provide sufficient evidence regarding taxes being withheld from his income. Based on all of the evidence, I find Applicant was well aware of his obligation to file his federal and state income tax return forms and did not.

Applicant has been living in State A since 1999 or 2000, and has not willingly paid his taxes. State A has had to garnish his wages. Applicant failed to change his state of residence to State A after living there for the requisite time period, as is required by law. He continues to owe State D taxes. Applicant was afforded an opportunity to provide evidence that he filed the federal and state income tax returns in question, and he did not. Applicant's intentional actions cast doubt on his judgment, reliability, and trustworthiness. His repeated conduct raises serious doubts about his ability to follow rules. None of the circumstances that were raised were beyond his control. Factually, he created all of the issues by his repeated actions. Paying past taxes through garnishment is not a good-faith effort to resolve his problems. There are not clear indications the problem is resolved because Applicant continues to fail to file his income tax returns. His disputes were resolved against him in court.

Guideline E, Personal Conduct

The security concern relating 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 16 and especially considered the following:

(e) personal conduct, or concealment of information about one's conduct, that creates 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.

Applicant has a long history of failing to file his income tax returns, both federal and state. He claimed residency in a state he had not lived in for over ten years, presumably to avoid paying state income taxes in the state where he lives. His actions forced State A, where he was living, to garnish his wages to pay his tax liability. His failure to file his federal income tax returns forced the federal government to garnish his wages to pay his tax liability. He did not provide proof that he has filed his 2006 through 2009 federal income tax returns. He did not provide proof he has filed his 2006 through 2009 state income tax returns. His conduct was deliberate and intentional. I find Applicant's actions reflect questionable judgment and untrustworthy behavior. I find his personal conduct creates a vulnerability to exploitation, manipulation, or duress because it may affect his personal, professional and community standing. Therefore, the above disqualifying condition applies.

I have considered the mitigating conditions in AG ¶ 17. I find three potentially applicable. They are:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's repeated and intentional disregard for filing his federal and state income tax returns is not minor. His deliberate actions and failure to show he is current in filing his taxes cast serious doubt on his reliability, trustworthiness and good judgment. He has not acknowledged or corrected the behavior. To the contrary, his behavior is a continuing course of conduct that has not ceased. The conduct is likely to recur and he has not taken steps to reduce his vulnerability. Applicant's testimony was unbelievable. He is aware of his obligation to file and pay his taxes. Instead, he chooses to force the federal and state government to garnish his wages or levy a tax lien against him. I find none of the mitigating conditions apply.

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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served his country in the Air Force. He has worked for a federal contractor for many years and held a security clearance. Applicant is well aware of his responsibility to file and pay federal and state income taxes. He has consistently and intentionally neglected his legal responsibility. His response that he was unaware that he actually had to file a form was disingenuous and his testimony lacked candor. His CPA firm provided an affidavit that they assisted him in filing his 2000 through 2005 Federal and state income tax returns and advised him to file his 2006 returns. He did not resolve State D's tax liens. His actions show that he is unwilling to follow rules. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge