

Government's case consisted of ten exhibits (GE). Applicant relied on two witnesses (including himself) and 14 exhibits (AE). The transcript (R.T.) was received on March 9, 2010.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to supplement the record with documented arrangements with the Internal Revenue Service (IRS) to settle his payroll tax indebtedness. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with an IRS offer in compromise of his payroll tax debt, and canceled checks for the month of March 2010. Applicant's submissions were admitted as AEs P and Q.

After the record closed, Applicant submitted identical letters addressed to himself and his wife, dated August 6, 2010, advising them that were still processing their compromise offer, and expected to contact them within 45 days. Department Counsel offered no objection to admitting the letters, and they were accepted as Applicant's exhibit R.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) petitioned for Chapter 7 bankruptcy protection in June 2008 (discharged in September 2008); (b) be indebted to his state's franchise tax board in the amount of \$5,858; (c) incurred a federal tax lien covering federal income taxes owed in the amount of \$43,290; (d) be indebted to the IRS for federal taxes totaling more than \$180,000; and (e) accumulated delinquent debts with two creditors in the respective amounts of amounts of \$16,542 and \$1,529.

In his response to the SOR, Applicant admitted each of the allegations. He claimed that his listed debts are business-related to a residential home facility that he and his wife started in October 1997. He further claimed to have established a payment plan with the state to satisfy his personal state tax obligations, and to have retained a tax attorney to negotiate with the IRS to satisfy his personal federal tax debts. He explained he had fallen behind with his mortgage payments (covered by subparagraph 1.p), and to have satisfied the debt covered by subparagraph 1.q. He stated that he is an Air Force veteran with over 20 years of active military service and 13 years of experience working in the defense industry.

Findings of Fact

Applicant is a 54-year-old administrator of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Background

Applicant is married and has three children from this marriage, in addition to a stepchild from his wife's former marriage. GE 1. Applicant enlisted in the Air force in 1976 and served 20 years of active duty before his retirement in 1996. See GE 1 and AE D. His DD Form 214 notes a number of awards and citations that he received during his Air force enlistment.

In January 1997, Applicant and his wife purchased a residential home facility for seniors from the building owner for about \$30,000 and leased back the building housing the facility. Tr. 56, 60-61, 71-72, 101-23. They purchased the business with very limited due diligence examination of the residential center's business records and completed their purchase individually as sole proprietors, and not in a corporate or partnership form. Tr. 57, 67, 72. The facility was state-licensed in his wife's name, exclusively. Tr. 102, 124. By the terms of their business arrangement, Applicant's wife became the administrator of the facility and in charge of its daily operations. Tr. 59. She had served as the facility's administrator under the previous ownership for over 10 years while working another job, and was familiar with the business. Tr. 73, 122-23. Applicant became the facility's chief financial officer and fulfilled his duties on a part-time basis. GE 4.

Most of the residents in their facility were Social Security recipients who were charged \$947 a month for rent and care. See GE 4. Applicant claimed they produced a profit from the business until 2006. However, they provided no profit and loss statements or other business records covering their operations. Without any earnings statements, it is impossible to calculate the facility's actual revenues and operating costs for any of the years the facility was in operation.

Beginning in 2006, labor and other operating costs associated with Applicant and his wife's operation of their 49-bed facility designed to house elderly residents (60 and above) increased substantially. See GEs 2 and 4; Tr. 56-59, 126-32. Because of reduced occupancy (*i.e.*, from 49 beds to an occupancy range of 41 to 43) between 2006 and 2007, and state-imposed restrictions on how much they could increase their resident rent and care charges, they could no longer cover their operating expenses. To cover their operating deficits, they used their personal and business credit cards. See GE 4; Tr. 60-61, 72-73, 94-95, and 112-20.

By June 2007, Applicant and his wife had fallen further behind in their business and credit card accounts. Tr. 72. With their increasing debts, they determined they could no longer carry on with the business. To save cash, they prioritized their debts and failed to pay their business payroll taxes to state and federal taxing authorities as they were required to do. Tr. 73. They borrowed from their 401(k) retirement accounts to meet their business obligations, but ran out of other income sources. Tr. 78. After exhausting their business and personal credit cards in their attempts to cover their operating debts and expenses, they still fell short of what they needed to meet their monthly payroll and avert operating losses for the facility. Tr. 72.

As part of their efforts to salvage their business, Applicant and his wife offered to arrange a sale of the business to the building owner, but without success. Tr. 61, 96. Even after Applicant and his wife failed to meet their lease obligations in August 2007, the building owner declined to place the building and leased premises up for sale. Tr. 96-97.

Not until October 2007 did the building owner place his property on the market for sale. Tr. 98-100. He encountered difficulties, however, in selling the business and the building at his asking price. Tr. 99-101. Applicant's wife noted that the building owner received several offers in October 2007, but declined them all. Tr. 99. The state licensing authority even offered to assume operations of the facility, but the lessor would not entertain the state's offer.

In December 2007, the building lessor issued an eviction notice to Applicant and his wife. Tr. 100. This placed considerable hardship on the operators of the facility who faced the challenging prospects of trying to place the remaining 23 residents of the facility. Tr. 100-01. When the building owner did not renew their lease in January 2008, they abandoned their leased center. Tr. 100. Neither Applicant nor his wife received anything from the lessor who assumed control of the facility after they departed. Tr. 100-01.

Applicant attributed a confluence of factors to their inability to raise more revenue to save their business: Limited ability to expand the facility's occupancy due to state restrictions on increasing occupancy rates and minimum wage increases that affected their direct labor costs in running the facility. They lost about eight beds in the 2006-2007 operating period (from 49 to between 41 and 43 on average), and, as a result, could no longer cover their operating costs and produce a profit. Tr. 94-95, 108-11.

Accrued debts and efforts to resolve them

Faced with increased burdensome state regulations and increased taxes on their facility, Applicant and his wife withheld state and federal payroll taxes collected from their employees between 2006 and 2008. By March 2010, these non-remitted payroll taxes exceeded \$13,000.00 in withheld state payroll taxes and \$160,000 in withheld federal payroll taxes. See GE 4 and AE N. During this two-year period, they also accumulated \$5,538 in back state personal taxes and accrued \$43,296 in back federal personal taxes. See GEs 4 and 7. Credit reports indicate that the IRS filed tax liens against them to cover personal taxes owed for tax years 2006 and 2007, as of December 2009. See GE 3 and AE C.

Besides their major tax accruals, Applicant and his wife accumulated almost \$500,000 in various consumer debts (mostly credit cards). See AE 7; Tr. 74-75. Because their credit reports, interview summaries, and testimony do not distinguish their personal debts from their business-related debts associated with the operation of their facility, their personal and business-related debts cannot be clearly identified and distinguished.

After briefly exploring Chapter 13 measures to resolve their debt situation, Applicant and his wife elected to petition for Chapter 7 bankruptcy protection in June 2008. See GEs 4 and 7; Tr. 61-63. In their bankruptcy petition, they scheduled \$423,278 in total secured claims. The largest of their scheduled secured claims, was a \$386,663 first mortgage, which represented the refinanced mortgage they completed in January 2006. See GE 7 and AE J; Tr. 77-78. They allocated \$93,663 of this secured claim to unsecured debt. GE 7. Credit reports indicate Applicant and his wife financed the purchase of their home in March 1999 with a \$136,000 mortgage. GE 2. Between March 1999 and January 2006, they refinanced their home several times before they placed a first mortgage on the property in January 2006. See GEs , 2, 3, 6, 8, and 10.

In December 2009, their mortgagee (creditor 1.p) filed a notice of default and election to foreclose its first trust deed and copied Applicant and his wife with its recorded filing. See AE J. The mortgagee cited Applicant's delinquent mortgage payments totaling \$41,409, as of December 2009. AE J. Their property is currently valued around \$238,000 (see AE K), and they estimate they currently owe approximately \$393,000 on their first mortgage on the property. Tr. 77.

More recently, Applicant and his wife initiated efforts to modify their mortgage through a third-party intermediary were unsuccessful. See GE 4; AE J. Because Applicant and his wife did not reaffirm their first mortgage in their bankruptcy petition, they expected no deficiency. Tr. 68-69. But since June 2008, they have continued to live in their home while paying nothing towards the back mortgage obligations. Without any chance of modifying their mortgage, they face almost certain non-judicial foreclosure of their home by May 2010. AE J: Tr. 88-89.

In their Chapter 7 petition, Applicant and his wife scheduled unsecured priority claims of \$160,748. Of these priority claims, \$13,323 was allocated to state payroll taxes for 2006 through 2008 and \$7,920 for state income taxes for 2006. GE 7. They allocated \$139,505 to federal income and payroll taxes owed the IRS from 2006 to 2008. GE 7.

Besides their secured and unsecured priority claims, Applicant and his wife listed unsecured claims in their Chapter 7 bankruptcy petition of approximately \$499,000. GE 7. Included in their scheduled unsecured claims were three credit card accounts that were reduced to judgment in December 2007 in the total amount of \$57,212. GE 3. The creditor recorded its judgment as a lien against Applicant's property in February 2008. GE 4. Credit records document that the judgment was discharged in bankruptcy. See GE 3.

Aggregate secured and unsecured claims scheduled by Applicant and his wife in their Chapter 7 bankruptcy petition exceeded \$1 million. GE 7. They received a Chapter 7 discharge in September 2008 in what amounted to a no-asset case (AE A), and documented post-petition financial counseling. AE G. Discharged debts encompass the unsecured portions of their home mortgage and all of the scheduled unsecured claims. Not discharged were their local property taxes (creditor 1.q) and their state and federal income and payroll taxes. See GE 7.

Failing to achieve any loan modification to avert foreclosure of their home, Applicant and his wife contacted a credit counseling firm in February 2010. See AE J. No lists of identified creditors and payment schedules are furnished, and it is unclear what benefits they derived (if any) from their contact with the credit counseling service. See AE J.

In November 2007, Applicant and his wife completed an installment agreement with their state's franchise tax board to repay the reported delinquent state personal taxes they owed for tax year 2006 in the aggregate amount of \$7,980. See AE H; Tr. 63. They agreed to monthly payments of \$221 a month, subject to automatic deduction. Applicant and his wife made their required monthly payments before they filed for Chapter 7 bankruptcy protection, but suspended their payments during the pendency of their bankruptcy. The post-bankruptcy notice they received from the franchise tax board in November 2008 reported a \$7,559 balance due on their delinquent 2006 personal taxes.

In June 2009, Applicant and his wife entered into a new installment agreement with their state's franchise tax board to repay their computed back state taxes (\$12,757) for the tax years of 2006 and 2007. See AE B. They agreed to the automatic deduction of \$300 a month. Updated summaries furnished by the franchise tax board indicate that Applicant and his wife are in payment compliance with their agreement and currently owe a little less than \$12,000 for both years. See AE H.

Applicant and his wife completed an installment agreement with the IRS in November 2007 to repay their owed federal income taxes owed for the tax year of 2006. See AE I. Initially, they agreed to remit \$600 a month to cover the calculated \$24,408 owed for the tax year of 2006. Records indicate that Applicant and his wife complied with the terms of their payment agreement before they petitioned for Chapter 7 bankruptcy protection. AE I; Tr. 65.

Applicant and his wife revised their installment agreement following their bankruptcy discharge to cover their unpaid 2006 (\$13,351) and 2007 (\$24,884) personal federal taxes. Under the terms of their revised installment agreement with the IRS, Applicant and his wife increased their monthly installment payments to \$2,000 a month. See AEs I and O. By all accounts they have been compliant with their revised payment terms. See AEs I and O; Tr. 80-81. They currently owe the IRS approximately \$38,236 for their personal taxes for 2006 and 2007. AE O.

In their most recent personal financial statement, Applicant and his wife list their home with an assessed value of \$238,000 and a first mortgage on the property in the amount of \$393,000. AE K. They reported net monthly income of \$10,517 and net monthly expenses of \$6,615 (which presumably includes the \$2,300 monthly payments they committed for back state and federal income taxes). See AE K. They reported scheduled monthly debt payments of \$645. This left them with a reported net monthly remainder of \$3,257. AE K. Their reported debt payments do not include any rent or

mortgage payments, and it remains unclear how long they will be able to remain in their residence without any monthly mortgage or rental payments.

Applicant and his wife still owe the IRS approximately \$160,000 in withheld payroll taxes for taxes collected from their employees for the tax years of 2006 and 2007. See GE N; Tr. 67-68. And they still owe over \$13,323 in withheld state payroll taxes. See GE 7. Applicant claims his wife pays these state taxes through individual garnishment proceedings, but provides no documentation to corroborate his claims. Tr. 63-64. How much of the outstanding state payroll taxes have been discharged, and whether Applicant is at any risk to garnishment in the near future remain unanswered questions.

Before the hearing, Applicant and his wife had not made any voluntary attempts to resolve their back payroll taxes with either the federal or state taxing authorities. The only tax debt they have been able to document as paid to date is their local property tax debt owed to creditor 1.p. See AE E; Tr. 71-72.

On March 2010, Applicant and his wife submitted an offer in compromise to the IRS. See AE P. In their Form 656 submission, they cite uncollectibility as the basis of their compromise submission and offer monthly payments of \$1,775 for 24 months (for a total payout of around \$44,000) in satisfaction of their federal payroll tax debt. They remitted checks of \$1,775 and \$150 with their compromise submission, and provided copies of the canceled checks. AE Q. However, they have not documented any IRS acceptance of their payroll tax compromise offer, and it cannot be determined from the evidence developed whether the IRS will accept Applicant's offer, or what additional payment conditions the agency will impose, should it elect to compromise the debt. At this time, the IRS is still processing their offer (see AE R), and has provided no clues of when or how they will respond to Applicant's compromise offer.

Endorsements

Applicant is well regarded by his current and past supervisors. He is credited with being a reliable and trustworthy security manager and administrator with responsibilities over corporate credit card accounts. See AE F. Both character references characterize Applicant as honest and skilled in his assigned duties and as a credit to his employer.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether a

security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AGs, ¶ 18.

Burden of Proof

Under the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in

large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation of the Government's case.

Analysis

Applicant was the chief financial officer of a residential center for seniors that he and his wife purchased in 1997, and operated for over ten years before succumbing to deteriorating economic conditions and eventual abandonment of the business. For the last three years of his facility's operation, he and his wife (who operated the facility on a full-time basis) failed to pay state and federal income taxes, while withholding state and federal payroll taxes, and failed to remit them as legally required. During these final years of operation, they accumulated large credit card debts, and defaulted in the mortgage on their home.

Both the IRS and the state's franchise tax board filed tax liens to cover back taxes owed by Applicant and his wife to the federal and state authorities. While Applicant's many unsecured personal and business debts (almost \$500,000 worth) were discharged in his Chapter 7 bankruptcy, his tax debts have not been discharged. Between their personal state and federal tax obligations, Applicant still owe over \$200,000 in undischarged state and federal personal and payroll taxes. Through refinancing initiatives, they have added almost \$250,000 in secured debt to their property and now face almost certain foreclosure in the near future. With limited net income at their disposal of just over \$10,000 a month, they are obligated to make monthly installment payments to state and federal taxing authorities in excess of \$2,300. And they have committed to make monthly \$1,775 payments to the IRS under a compromise proposal they have pending with the IRS covering their withheld payroll taxes.

Whether or not the IRS will accept Applicant's compromise proposal is an open question. Failure to escrow and remit withheld escrow taxes collected from employees represents a serious fiduciary breach and exposes the fiduciary to potential criminal liability. At this time, Applicant awaits acceptance of his settlement proposal from the

IRS, and documents no tangible efforts to resolve withheld payroll taxes owed to his state's taxing authority. The only pre-bankruptcy tax accrual that he has been able to resolve is the local property tax owed to creditor 1.q.

Garnishment proceedings were initiated by the state against Applicant's wife to recoup the state's share of withheld payroll taxes for the covered years. Applicant remains vulnerable to state enforcement action as well for as long as these taxes remain unpaid.

Security concerns are raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of creditor card and real estate debts, in addition to his accrual of significant state and federal tax liens and payroll tax arrearage, warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC ¶ 19(a) "inability or unwillingness to satisfy debts" and DC ¶ 19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to recurrent revenue shortages caused by a combination of overly restrictive state restrictions on the operators of residential home facilities (like the one operated by Applicant and his wife), and reduced occupancy rates. See AE 4. Efforts to transfer their facility to either the state or a private party were unsuccessful and prompted their seeking Chapter 7 protection, mortgage modification relief, and installment agreements with state and federal tax authorities. Their efforts to date have yielded mixed results.

To date, Applicant has not been able to effectuate a compromise settlement with the IRS on withheld payroll taxes owed by himself and his wife, jointly and severally, for tax years 2006 and 2007, based on the ground that the taxes are not collectible/. by both of his companies, and the IRS has reportedly declared these debts uncollectible. Applicant provides no documentation of this reported uncollectible status, or IRS guidelines for considering compromise offers concerning non-remitted payroll taxes. Without any documented dissolution of the proprietary enterprise he claims to have closed with his wife in 2008, ascertainment of IRS enforcement intentions cannot be made without considerable speculation.

Applicant does not provide adequate explanations either as to why he and his wife did not make earlier attempts to arrange payment with state and IRS tax authorities regarding their owed payroll taxes. Nor has he provided any documented operating ledgers, journals, and profit and loss statements covering his residential center's performance during any of the years of the center's operation.

Without more financial information it is impossible to determine what portion of his scheduled unsecured debts in his Chapter 7 bankruptcy were business-related, and

which of the scheduled debts were personal ones. Judging from the number of refinanced mortgages Applicant and his wife completed between 1999 and January 2006, and the size of the accumulated debts they accrued before 2008, it is difficult to avoid conclusions that they were making business and personal decisions that exceeded their earnings capabilities.

Since the hearing, Applicant initiated some follow-up efforts to resolve his outstanding payroll tax obligations associated with his operation of his residential center. He has received no acceptance from the IRS to date on his very modest compromise offer, and has been told only to expect IRS contact within 45 days. How and when the IRS determines to respond are open questions.

Payroll taxes that an employer withholds from an employee never belong to the employer, but rather are held in a constructive trust for the federal government. As a trustee, the employer has a fiduciary duty to properly report and turn over all withheld taxes to the U.S. Government. Withholding of payroll taxes and failing to escrow them represents a serious fiducial breach and exposes the violator to potential criminal liability. While it would be premature to speculate what reactions the IRS might have to Applicant's compromise offer, it is not at all certain the IRS will accept the offer. Complicating Applicant's payroll tax problem is his documented failure to date to make contact with the state's payroll tax authority to explore compromise arrangements with the state taxing authority.

Mitigation credit to Applicant is very limited based on his furnished proofs. True, he and his wife paid off the local property tax bill (creditor 1.q), and they exerted considerable efforts in working with third parties to modify their mortgage obligations, albeit without success. Moreover, two of the documented state/federal tax liens (associated with creditors 1.b and 1.c) are covered by installment agreements that Applicant and his wife have honored from inception. They both completed a successful bankruptcy covering debts that are in part business-related. And any potential deficiency liability from the expected foreclosure of their home was discharged in their Chapter 7 bankruptcy. So, they can be credited with making documented efforts to resolve some of their debts and stabilize their finances.

However, the remaining state and federal tax debts are collectively quite large (over \$170,000 allocated between the state and federal payroll obligations for 2006 and 2007) and involve potentially serious breaches of state and federal fiduciary responsibilities. IRS resolution of Applicant's compromise offer is likely to be time-consuming, and not susceptible to any easily predictable outcome. Further, it is less than certain at this juncture whether Applicant and his wife will ever be able to settle his state's reported payroll tax debt for tax years 2006 through 2008. Currently, his wife is being garnished for the unpaid state payroll taxes. As a co-owner of their proprietary business, Applicant remains jointly and severally liable for payment of the outstanding state payroll taxes. Without satisfaction assured, though, he remains potentially exposed to state tax enforcement action (inclusive of garnishment for any unpaid balance.

Of all of the proven debts listed in the SOR, Applicant is only able to document (a) discharge of creditors with unsecured non-priority claims covered in his Chapter 7 petition; (b) payment of his local property tax debt; and (c) installment agreements with state and federal taxing authorities covering his personal tax obligations for tax years 2006 and 2007. The remaining portions of his aggregate debt accruals remain unresolved.

Accordingly, the payroll tax debts linked to the residential center that Applicant and his wife owned and operated between 2006 and 2008 are unresolved and remain his legal obligation and responsibility, even if the IRS considers the underlying taxes no longer collectible. As a result, MC ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” cannot be applied to Applicant’s situation. MC ¶ 20 (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” has some applicability based on Applicant’s documented payments, his bankruptcy discharge, and his installment agreements with his state’s franchise tax board and the IRS.

Because Applicant and his wife have elected to obtain post-bankruptcy counseling, he may take only limited advantage of MC ¶ 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.” While there is some reason to anticipate future resolution of his federal payroll tax issues based on his documented written compromise offer, he has produced no tangible progress with the IRS to date. Nor does he provide any tangible evidence of repayment efforts with the state authority responsible for enforcing his state payroll tax obligation. Considered together, Applicant’s efforts are not enough to warrant any more than partial application of MC ¶ 20(c).

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not help Applicant to overcome the judgment lapses associated with his payroll tax debt accumulations and consumer judgment concerns. His active duty military service with the Air Force and long work history in providing contact support for the defense contractors he has been associated with are commendable and encouraging. His failure, though, to diligently monitor and ensure timely payroll tax payments to his state and federal tax authorities in connection with his residential home business reflects a lack of adequate attention to his fiducial duties of meeting his business’s tax obligations.

Applicant’s efforts to compromise his accrued payroll tax debts have not achieved fruition to date and preclude him from mitigating security concerns over his ability to

restore his personal finances to acceptable levels of stability and surmount doubts about his ability to discharge his fiducial duties over accounts entrusted to his stewardship. These concerns are not mitigated under the whole person concept.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, his earnest but still significantly unresolved steps to discharge his outstanding tax debts, and the absence of sufficient efforts to demonstrate his financial responsibility and trustworthiness in managing his finances, Applicant does not mitigate security concerns related to his proven debt delinquencies. While Applicant is to be commended and encouraged in his repayment efforts, more tangible proofs of success are necessary to satisfy minimum standards of security eligibility.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.d through 1.o of the SOR. Favorable conclusions warrant with respect to subparagraphs 1.a through 1.c, 1.p, and 1.q.

In reaching my decision, I have considered the evidence as a whole, including each of the AG 2(a) factors enumerated in the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, guidelines, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-paras. 1.d, through 1.o	Against Applicant
Sub-paras. 1.a through 1.c, 1.p, and 1.q:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

