



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06260
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

June 25, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file timely federal or state income tax returns for tax years 2000 through 2004. In October 2007, a state tax lien was filed against him for \$12,619.30, which was released in June 2009. In December 2009, he entered into an agreement with the Internal Revenue Service to repay about \$90,000 in delinquent federal income taxes at \$200 per month, and he has been repaying a delinquent credit card debt of \$3,215 at \$150 per month since June 2009. It is too soon to conclude that his financial problems are safely in the past. Personal conduct concerns raised by his omission of any tax debts from his security clearance application are also not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 14, 2009. On February 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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. 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) effective within the Department of Defense as of September 1, 2006.

Applicant responded to the SOR on March 10, 2010, and requested a hearing. The case was assigned to me on April 9, 2010, and on April 15, 2010, I scheduled a hearing for May 12, 2010.

I convened the hearing as scheduled. Seven Government exhibits (Ex. 1-7) were entered into evidence. Exhibit 6, a report of a judgment lien, was admitted over Applicant's objection.¹ An eighth exhibit was offered but then withdrawn. Applicant submitted 17 exhibits (A-Q), which were admitted without any objections, and he testified, as reflected in a transcript (Tr.) received on May 24, 2010.

Procedural and Evidentiary Rulings

At the hearing, the Government moved to amend the SOR under the authority of ¶ E.3.1.17 of the Directive to add a new allegation as subparagraph 2.c under Guideline E, Personal Conduct. The Government alleged that Applicant deliberately falsified his January 2009 e-QIP by failing to disclose, in response to questions 28.a and 28.b (financial delinquencies), that he owed delinquent federal and state income taxes, as set forth in SOR 1.a and 1.c. Applicant objected on the basis that he did not deliberately omit the information. I granted the amendment based on the undisputed evidence that he owed state and federal income taxes that were more than 180 days past due within the seven years preceding his e-QIP, and were more than 90 days past due as of his execution of the e-QIP on January 14, 2009. Having allowed the motion, I informed both parties that while the tax delinquencies had clearly not been listed on Applicant's e-QIP, I would be making a determination as to whether Applicant's omission was deliberate after reviewing all the evidence. Applicant declined an opportunity for additional time to respond to the new allegation. (Tr. 128.)

Findings of Fact

The amended SOR alleged under Guideline F, Financial Considerations, that Applicant was indebted to the state for a \$12,619 tax lien filed in October 2007 (SOR 1.a), that he owed \$2,850 for a credit card debt in collection (SOR 1.b), and that he owed the IRS about \$90,000 in federal taxes (SOR 1.c). Under Guideline E, Personal Conduct, Applicant was alleged to have deliberately falsified his e-QIP by not disclosing the state lien or federal tax liens totaling \$26,595.28 filed for 2000 and 2001 (SOR 2.a), or his tax debts in response to e-QIP questions 28.a and 28.b (SOR 2.c). It was also alleged (SOR 2.b) that Applicant declined on March 4, 2009, to execute a release for an authorized investigator to verify the taxes owed the IRS.

¹The exhibit pertains to an unalleged judgment lien filed by an automobile insurer against Applicant in 1992. Whereas his social security number and address were on the lien (Tr. 35.), and he had been involved in an automobile accident around that time (Tr. 38.), I admitted the document. It was given little weight, however, in light of its dated nature and lack of other evidence about the lien.

Applicant denied that he owed the state tax debt because it had been paid in April 2009 and because the lien was released in June 2009. He admitted the delinquent credit card and federal income tax debts, which were being repaid under installment agreements. Applicant denied deliberate omission of the liens on the basis of his understanding that a lien was placed on something that could be sold with proceeds going to the executor (i.e., a mechanic's lien). He acknowledged that he had declined to sign a release, but he had explained to the investigator that he wanted to have an agreement in place with the IRS before any contact was made. Applicant averred he was not advised that his failure to sign the release would be considered noncompliant or a violation of rules. Applicant also denied intentional concealment of his tax debts, claiming that "it just didn't fit with any of the questions as [he] was answering them." (Tr. 96.)

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

Applicant is a 42-year-old technical network engineer, who has been employed by a defense contractor since January 2009. He seeks his first security clearance. He served in the U.S. military from April 1987 to December 1990.² Applicant was married from July 1989 to December 1990. He and his ex-wife had no children during their brief marriage. (Ex. 1.)

Financial Considerations

Applicant worked as a carpenter in the construction trade before he started a new career in computer networking in 2009. Around 2000, he was employed as a contract employee, and for the first time, income taxes were not withheld from his pay. Due to the weather's impact on construction, and projects not being ready on time, Applicant went some weeks without work. He was unable to pay his taxes when it came time to file his income returns for tax year 2000, so he chose not to file returns. Now knowing that he had to set aside sufficient funds to pay current and back taxes, Applicant elected to not file federal or state income tax returns for subsequent years through tax year 2004 when they were due.³ (Tr. 77-78) His annual income was between \$30,000 and \$35,000 per year until 2005, when he earned about \$39,000. (Tr. 114.) With his increase in income due to more stable work hours, Applicant retained the services of a tax resolution company in February 2006, at a cost to him of \$2,900 (Tr. 112), to address his delinquent federal tax debt (Tr. 69, 97, 110.). With the help of the tax resolution firm, he filed his delinquent returns in 2006 or 2007. (Tr. 77.) He apparently filed his returns for 2005 and 2006 on time, but he did not pay the taxes he owed. (Ex. J, Tr. 108.)

²Applicant responded affirmatively on his e-QIP to whether he received other than an honorable discharge from the military, and he indicated for type of discharge "bcd." (Ex. 1.) The circumstances under which he was discharged were not made an issue at his hearing since the SOR alleged no concerns about Applicant's military service.

³Applicant testified that he filed timely income tax returns for tax years 2005 through 2009, because he hired a tax resolution firm at the beginning of 2006. (Tr. 108.)

In January 2007, Applicant started his own business as an independent contractor. His intent was to increase his income so that he could make payments on his tax debts once he had plans in place with the state and the IRS. By August 2007, the tax resolution company had not reached any agreement with the IRS on his behalf for repayment of his delinquent federal tax debt. The IRS filed a \$26,595.28 tax lien against Applicant for delinquent taxes from 2000 and 2001. (Ex. 2, Tr. 69-70.) Applicant met with the IRS himself, but the IRS would not agree to any installment plan due to his insufficient income. Applicant ceased his own business operations in August 2007, and he returned to work for his previous employer. (Tr. 70, 114-15.) In mid-October 2007, the state filed a \$12,619 tax lien against him for delinquent state taxes for tax years 2000 through 2006. (Ex. 4, 5, 7, Tr. 75.) In January 2008, Applicant entered into an agreement to repay his delinquent state taxes at \$580 per month. (Ex. 75.) With the help of a local accountant, he filed timely income tax returns for tax years 2007 and 2008. (Tr. 79, 111.)

He also began working toward a new career. While employed in construction during the day, Applicant attended two night classes per week starting in February 2008, to obtain a master certificate in personal computer and networking administration. He successfully completed 488 hours of instruction with top grades, and he earned his certification in mid-August 2008. (Ex. P.) Applicant financed this training through student loans of \$15,879 and \$1,000. (Ex. 4, 5.)

Around April 2008, Applicant stopped paying on a credit card account that he had used to purchase tools for his business. As of January 2009, Applicant owed a \$3,320 delinquent balance in collection with the assignee identified in SOR 1.b. (Ex. 2, 4, 5.) Applicant was also 180 days past due on another credit card account, which had a \$1,198 balance. Applicant's student loans were in deferment. (Ex. 5.)

In January 2009, Applicant started his new career as a technical computer network engineer with his current employer at \$25 an hour. (Tr. 71.) On March 4, 2009, Applicant was interviewed during an investigation of his background for a security clearance. Applicant admitted that he had been unable to meet his federal tax obligations since 2000, and that he owed about \$90,000 to the IRS. He also acknowledged the two outstanding credit card debts in collection. Applicant expressed his intent to satisfy his debts, which he attributed to insufficient income. (Ex. 2.)

Applicant made \$580 monthly payments toward his state tax debt from about January 2008 until March 2009. (Tr. 113.) In April 2009, he made a lump sum payment of about \$3,400 to settle the debt.⁴ (Ex. A, Tr. 74-76, 113.) To do so, he took out a \$5,500 loan from his credit union, which he is repaying at \$120.63 every two weeks. (Tr. 76.) Applicant used \$1,500 of the loan to retain a new attorney to negotiate with the IRS on his behalf toward resolving his federal income tax debts. (Tr. 75-76.) In early December 2009, Applicant entered into an installment plan with the IRS under which he was to repay his delinquent federal tax debt, now about \$92,000 or \$93,000 (Tr. 114.),

⁴The state released the tax lien in June 2009. (Ex. A.)

at \$200 per month.⁵ Applicant made four \$200 monthly payments as of March 2010. (Ex. F, Tr. 81.)

In June 2009, the assignee currently holding the debt identified in SOR 1.b agreed not to file legal proceedings to recover the \$3,215.75 balance if Applicant made \$150 monthly payments starting in July 2009. (Ex. B.) Applicant made two \$75 payments per month from July 2009 through at least March 2010. (Ex. F.)

As of early March 2010, the balance of Applicant's student loan debt was \$18,119.50. (Ex. M, Tr. 105.) He paid \$175 toward his student loan debt between March and May 2009, but he returned to school and the loan was again deferred until January 2010. (Tr. 105-06.) In February 2010, he began making payments at \$150 per month. (Ex. F, M, Tr. 106.) He filed his federal and state income tax returns on time for tax year 2009, and in contrast to previous years, owed no taxes. (Tr. 109.)

Applicant has made payments on a vehicle loan for a 2002 model-year truck that he bought in January 2005 for \$34,512. As of February 2010, he was apparently behind in his payment, as the payment due was \$792.74 on a scheduled monthly payment of \$479.34. The outstanding balance was \$6,638.43. (Ex. H.) The loan is scheduled to be paid off in January 2011. (Tr. 85.) Applicant has also been making payments of \$150 per month on an unsecured debt consolidation loan of \$4,899 that he opened in February 2007 and was to be repaid at \$137 per month. As of February 2010, he owed \$2,534 on the loan (Ex. 4, F.), which he took out to settle three or four credit card accounts for less than their full balances. (Tr. 102-04.) It was last delinquent in October 2008, when it was 90 days past due. (Ex. 4, 5.) After paying on his debt obligations, Applicant has about \$400 in discretionary income each month, some of which is being deposited in savings and in a 401(k) account. (Tr. 84-85.) As of March 31, 2010, Applicant had \$549.02 in his checking account. (Ex. F.), and about \$400 in his 401(k). (Tr. 85.) Applicant expects to have his debts paid off by September 2011 with the exception of his student loan and federal tax debts. He will have \$1,000 extra to put toward those debts each month. (Tr. 81.)

Personal Conduct

At the request of his employer, Applicant completed an e-QIP on January 14, 2009. He checked "No" in response to question 27.c, "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" Applicant responded affirmatively to questions 28.a, concerning whether he had been over 180 days delinquent on any debts, and 28.b about whether he was currently over 90 days delinquent on any debts. But he listed only the delinquent credit card debt identified in SOR 1.b. (Ex. 1.) Applicant did not disclose that he owed any delinquent federal or state taxes.

⁵The agreement with the IRS appears to cover the tax periods 2000 through 2008, with the payments applied first to the federal tax debt for 2000. (Ex. C.) On January 6, 2010, the IRS issued a monthly statement showing a current balance of \$53,374.23 for three of the tax years: \$12,972.09 for 2000 after a first payment of \$200, \$20,087.32 for 2001, and \$10,487.25 for 2005. (Ex. J.) The available record does not include the balance information for tax years 2002, 2003, 2004, 2006, 2007, or 2008.

When Applicant was interviewed by the government investigator on March 4, 2009, he denied an intent to conceal a \$26,595.28 federal tax lien against him for tax years 2000 and 2001. He told the investigator that he had forgotten about the issue. He stated that he had been unable to meet his federal income tax obligations since 2000 and that he owed about \$90,000 to the IRS. Applicant claimed that he had filed his income tax returns every year,⁶ and he wanted to reach a compromise with the IRS. Applicant declined to sign an IRS release since the matter was not resolved and he wanted to be able to prove that he was attempting to arrange for repayment. Applicant signed releases for the two card delinquencies in collection. (Ex. 2.)

At DOHA's request, Applicant reviewed the investigator's summary of his March 2009 interview, which included the assertion that he had forgotten about the federal tax lien when he completed his e-QIP. Applicant confirmed on October 29, 2009, that the summary was accurate, adding only that the credit card debt identified in SOR 1.b was being repaid at \$150 per month, and that he was close to an agreement with the IRS to repay his federal tax delinquency at \$200 per month. (Ex. 2.)

Applicant testified at his May 2010 hearing that it did not occur to him to report the known liens or tax delinquencies on his e-QIP because he understood a lien had to be applied to property that could be sold, and he owned no property. (Tr. 86.) He testified that he read the financial delinquency inquiries as pertinent only to credit-related items, such as credit card or loan accounts. (Tr. 89-90.) The tax debt "just didn't fit with any of the questions as [he] was answering them." (Tr. 96.) He denied he had told a government investigator in March 2009 that he had forgotten about the federal tax lien, and that he missed the error in the report of his interview, despite reviewing the report "two, three times" for its accuracy. (Tr. 91-92.) As for him declining to sign a release for the investigator to verify his delinquent taxes with the IRS, Applicant admitted that he was concerned at the time that if he signed the release, his payment plan with the IRS might be affected. But he countered that he told the investigator that his tax debt was about \$90,000 rather than the original \$26,000 known to the government, and that "it wasn't made clear to [him] that not signing it would have such large complications or repercussions." (Tr. 93-95.) He further testified that while he received a notice from the IRS of the tax delinquency, he was unaware that any liens had been placed against him before he received the SOR. (Tr. 97.) He volunteered that the state had levied against his bank account for back taxes around late 2007, although he did not view that levy as being placed against his property. (Tr. 98.) Applicant maintained that he tried to be as honest as he could in answering all questions during the investigation and adjudication of his clearance. (Tr. 99.)

Applicant demonstrated technical competence in his first year as a computer network technician. He worked well independently as well as in a team atmosphere, and presented a positive and professional image to his customers. He was given exceptional ratings in several areas of his performance, including for his personal

⁶In response to why he had told the investigator that he had filed his returns every year when the returns for at least tax years 2000 through 2005 had not been filed as of 2006, Applicant responded, "I mean as the conversation went, he had asked me if my taxes had all been filed and of course at the time of this interview they were all filed." (Tr. 80.)

integrity and accountability. He received an overall rating of exceptional at his annual review. (Ex. O)

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 that “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. 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 in the record. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion when seeking to obtain 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 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

Financial Considerations

The security concerns about financial delinquencies are set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant did not file timely federal or state income tax returns for tax years 2000 through 2004, because he failed to set aside the funds to pay his taxes when they became due. With the help of a tax resolution firm, he filed his delinquent returns in 2006 or 2007, and filed his 2006 returns on time. As of October 2007, he owed back taxes totaling \$12,619 to the state, and a lien was filed against him. The IRS filed a lien for nonpayment of \$26,595.28 for delinquent federal taxes for 2000 and 2001. No evidence was presented of any subsequent IRS liens, but Applicant admitted owing the IRS \$92,000 or \$93,000 as of May 2010. Furthermore, although only one credit card debt was alleged in the SOR, the evidence established that Applicant was seriously delinquent on two credit card accounts totaling \$4,518 as of February 2009. AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," apply.

Concerning the potentially mitigating conditions, AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment" cannot reasonably apply. Although Applicant filed his income tax returns on time starting in 2006, he made no payments on his state income tax delinquency until January 2008, or on his federal income tax delinquency until December 2009. The credit card delinquency was incurred recently, and he began making payments on the debt in SOR 1.b less than one year ago.

Applicant's case for mitigation under 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)," is likewise not persuasive. Applicant must have known that his employer was not withholding taxes for him starting with tax year 2000. Even if he did not understand that he could have made estimated taxes, he knew he was required to pay income taxes. Applicant testified that he earned between \$30,000 and \$35,000 per year, and yet he failed to set aside the funds needed to comply with his tax obligation for several years. Inconsistent work hours may have contributed to his financial problems, but his failure to timely address his tax issues was within his control.

AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies because he began taking steps to resolve his tax debts starting in February 2006. He hired a tax resolution firm to negotiate favorable repayment terms with the IRS. While the firm did not accomplish the desired result, Applicant’s delinquent returns were filed. From January 2008 through March 2009, Applicant made regular monthly payments on his state tax debt, and it was settled in April 2009, albeit with proceeds from a \$5,500 loan that Applicant is currently repaying at \$120.63 per month. Applicant’s state tax payments were prompted by the state’s levy on his income. Yet, he demonstrated good faith by making regular payments and eventually resolving the debt. As shown in his checking account statements (Ex. F.), he began making payments of \$150 per month toward the credit card debt identified in SOR 1.b. Applicant had paid about half of the balance as of May 2010. Payments made under threat of court action are not entitled to the same weight in mitigation had he contacted the lender and arranged for repayment before the debt was referred for collection. However, the debt is likely to be satisfied in the near future.

Although these efforts to address his debts are in Applicant’s favor, financial concerns are not fully mitigated. As of May 2010, Applicant had paid at most \$1,000 of his federal tax debt of between \$92,000 and \$93,000, so he continues to be burdened by very sizeable debt. Around September 2011, when his debts but for the student loan and federal taxes should be satisfied, Applicant expects to have \$1,000 extra that he intends to put toward these debts. But the amount of available income, and of any increase in his monthly payments to the IRS, remain to be seen. While there is nothing in the Directive that requires that an applicant be free of debt, 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.” Payments of \$200 monthly to the IRS since January 2010 are not sufficient to constitute a meaningful track record. Even if he accelerates his payments starting in September 2011, it will be several years before the IRS debt is satisfied.

Personal Conduct

The security concerns about personal conduct are 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 following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation.

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Concerning the alleged intentional falsification of his e-QIP, Applicant did not disclose the state or federal tax liens when he completed his e-QIP. Nor did he report anywhere on his e-QIP that he owed delinquent federal and state income taxes. The liens had been issued before he applied for a security clearance. Even though Applicant had begun repaying his state tax debt, the lien should have been disclosed in response to question 27.c. Moreover, his tax debts were over 180 days delinquent and should have been disclosed in response to questions 28.a and 28.b, as alleged in the amended SOR.

At his hearing, Applicant testified to his understanding of a lien as something which is placed against property that can be sold. He later testified that he had been unaware of the tax liens until the SOR was issued, and he was provided his credit report. There is contrary evidence from Applicant that indicates he may have known of the federal tax lien as of March 2009, if not before. When confronted about the \$26,595.28 federal tax lien for 2000 and 2001, Applicant did not claim that he was unaware of it. He told a government investigator that he forgot about “the issue,”⁷ although it is unclear whether “the issue” to which he referred was the lien or the federal tax delinquency. Applicant received written notification of the release of the state tax lien in June 2009, but there is no proof that he received notice of the lien when it was filed. Given Applicant’s employment in the construction trade, his understanding of liens could well have been limited to mechanics’ liens, which operate largely as he described. The evidence falls short of establishing that Applicant intentionally falsified his e-QIP when he responded negatively to the lien inquiry.

In contrast, Applicant unquestionably knew that he owed delinquent state and federal income taxes when he completed his e-QIP. He had retained the services of a tax resolution firm in February 2006 to negotiate on his behalf with the IRS. In January 2008, he began to repay his state tax debt after the state levied on his wages. As of January 2009, he owed about \$90,000 to the IRS, for taxes due from as far back as 2000. It is simply not credible for Applicant to claim that he understood the financial delinquency inquiries to pertain only to consumer credit card debts and loans. 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,” applies to the amended allegation in SOR 2.c.

⁷Applicant now denies that he told the investigator he had forgotten about the federal tax issue. There is no evidence proving a mistake in transcription, or of a motive on the investigator’s part to report other than what Applicant said. Also, Applicant could have corrected this purported error when he reviewed the investigator’s report in October 2009, and he did not do so. Applicant’s claim that he did not make the statement is rejected as not credible.

During his March 2009 interview, Applicant declined to provide a release for the investigator to verify his federal tax delinquency with the IRS (SOR 2.b). Guideline E concerns are implicated under AG ¶ 15(a) by a failure, without reasonable cause, to complete a requested release. On the other hand, there is no indication that the investigator told Applicant that a refusal to execute a release could result in an unfavorable adjudication of his clearance, or that it could be considered a failure to cooperate. Although the evidence does not rise to the level of a refusal to cooperate that would normally disqualify Applicant from consideration for a clearance, he exhibited poor judgment in putting his personal interest before the Government's legitimate request for information needed for proper adjudication. AG ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information," applies.

None of the potentially mitigating conditions apply to his deliberate omission of his federal and state income tax delinquencies from his e-QIP, or to his decision not to sign the requested release for IRS tax information. Although Applicant informed the investigator in March 2009 that his federal income tax debt was about \$90,000 rather than the \$26,595.28 subject to the tax lien, the Applicant had to be confronted with the fact of a previously undisclosed federal tax lien. Furthermore, AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," cannot reasonably apply in light of his failure to sign the requested release to verify his representations about his IRS tax debt.

His deliberate omission of his tax delinquencies from his e-QIP is felonious conduct punishable under 18 U.S.C. § 1001. It is too recent and serious to qualify for mitigation under 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." 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," also does not apply. He continues to justify his decision not to sign the release, and to incredibly maintain that he did not realize that he had to list his tax delinquencies on his e-QIP. Reform of the personal conduct concerns is incomplete.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at

AG ¶ 2(a).⁸ Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant disregarded his obligations to file timely income tax returns and to pay taxes for several years. He did not set aside funds to pay his taxes when they were due. With assessed penalties and interest, he owed about \$12,619 to the state and \$92,000 or \$93,000 to the IRS. Applicant also allowed some credit card accounts to become seriously delinquent. He paid off some of his credit card debt with a consolidation loan that he is still repaying at \$150 per month. In April 2009, he satisfied his delinquent state taxes with another loan that is being repaid at \$120.63 per month. Three years after he had hired a tax resolution firm to negotiate with the IRS on his behalf, he had no installment plan in place with the IRS. Applicant declined to comply with a requested release that would have authorized the government investigator to obtain tax information from the IRS.

Applicant showed personal initiative and determination in pursuing a new career in computer networking that would provide him the stable income that he needs to address his large federal tax debt and \$18,000 in student loan debt. Yet, I am unable to conclude at this time that it is clearly consistent with the national interest to grant Applicant access to classified information because of the aforesaid financial judgment and personal conduct concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a(1):	For Applicant
Subparagraph 2.a(2):	For Applicant

⁸Under AG ¶ 2(a), those factors are:

(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.

Subparagraph 2.b:
Subparagraph 2.c:

Against Applicant
Against Applicant

Conclusion

In light of all of the circumstances presented by 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