



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



In the matter of:)
)
) ISCR Case No. 17-00661
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

05/09/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On June 8, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on June 29, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2017. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2018. I convened the hearing as scheduled on March 20, 2018. The Government offered exhibits (GE) 1 through 12. Applicant objected to GE 9. The objection was sustained. There were no other objections, and GE 1-8 and 10-12 were admitted into evidence. Applicant and three witness testified.¹ He offered Applicant Exhibits (AE) A through K. There were no objections to the exhibits, and they were admitted into evidence. The record was held open until April 3, 2018, to allow Applicant to submit additional documents. He provided documents that were marked AE L and M. Department Counsel objected to the exhibits based on “relevance and incompleteness.” The objection was overruled, AE L and M are admitted into evidence, and the record closed.² DOHA received the hearing transcript on March 28, 2018.

Procedural Matters

On April 10, 2018, I received an email from Applicant’s Counsel questioning the accuracy of the hearing transcript. He requested to go on the record to correct “the omissions and errors” that he believed existed based on his “recollection and notes.” He intended to file a motion, travel to DOHA headquarters, and “have my client appear telephonically.” Department Counsel objected to reopening the case “to add/amend any testimony” and requested Applicant’s counsel provide objective evidence to show an omission or error in the transcript. I responded to both counsel that until I received a motion, I could not rule. I also gave a due date of April 23, 2018, for the motion. On April 18, 2018, I received an email from Applicant’s Counsel stating: “There will be no post hearing motion filed in regards to [Applicant’s] matter, thank you.”³ The issue is therefore moot.

Findings of Fact

Applicant denied all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 57 years old. He is married and has two grown children. He served in the military for 20 years, retiring as an E-6. His wife is employed. He has held a security clearance since 1978.⁴ He has worked for federal contractors since retiring from the military and is presently the manager of his company’s security program.

The SOR alleges Applicant is indebted to the Federal Government for a tax lien entered in 2011 in the approximate amount of \$21,850 for tax years 2007, 2008, and

¹ One witness, Applicant’s tax consultant testified telephonically.

² Hearing Exhibit (HE) I is Government Counsel’s discovery letter. HE II is the email correspondence of Department Counsel’s objection to AE L and M and my ruling.

³ HE III is the email correspondence. I reviewed the transcript and although I found some errors, none of them were material or relevant to my findings.

⁴ Tr. 48-51.

2009. Applicant attributed this tax lien to his tax preparer filing his returns incorrectly. He said the preparer listed him as a 1099 employee, and he should have been listed as salaried. He was asked when he learned of the problem. He stated: "I think it was the tax year of 2009 is when I actually went and got that sorted."⁵

Applicant testified that he worked in Iraq from March 2007 to December 2007. He said he deployed as a contractor once every six months from 2008 to 2016, and during this period his wife handled their finances and taxes. He testified that H&R Block prepared his 2007 through 2009 Federal tax returns. He said he was unaware that he had a Federal tax lien entered in 2011 (SOR ¶ 1.a-\$21,850). He became aware of it when he attempted to refinance his house in 2016. He admitted he owed Federal taxes for 2007, but did not recall the amount. He testified he had refunds for 2008 and 2009 that were applied to his 2007 tax debt. He explained that he was unable to timely pay his 2007 Federal tax debt because it was a large amount. He stated he had a payment plan with the Internal Revenue Service (IRS) to pay his 2007 tax debt, but could not remember when it began. He did not provide supporting documentation of an installment agreement or tax documents to substantiate his statements. Applicant submitted a post-hearing document, which was a page from his 2009 Federal 1040 tax form beginning at line 38. Line 75 indicates the amount of tax owed for 2009 is \$6,567.⁶

Applicant denied he owed Federal income taxes for 2010 (SOR ¶ 1.b-\$7,335). He testified that he filed his 2010 Federal tax return on time and did not owe any taxes for 2010. He testified that he filed his 2011 Federal income tax return on time and denied he owed taxes for 2011 (SOR ¶ 1.c-\$8,239). He stated he had a refund due for tax year 2011 that was applied to his 2007 tax debt.⁷

A copy of Applicant's IRS transcript dated March 30, 2017, for tax year 2010, reflected that as of April 10, 2017, the account balance owed was \$7,335 for that tax year (SOR ¶ 1.b). The transcript shows the 2010 Federal tax return was filed on May 9, 2011. It noted that a penalty was assessed, additional tax assessed, and interest charged for late payment as of December 31, 2012. It noted on January 19, 2013, an installment agreement was established, and on April 22, 2013, the status was "no longer in installment agreement." On August 5, 2013, a "Collection due process Notice of Intent to Levy" was issued. No documentary evidence was provided to show Applicant's 2010 Federal tax debt is paid.⁸

A copy of Applicant's IRS transcript dated April 21, 2017, for tax year 2011, reflected the account balance owed as of May 8, 2017, was \$8,239 for that tax year (SOR ¶ 1.c). The tax return was filed on August 13, 2012, and a penalty was assessed for filing

⁵ Tr. 50- 52.

⁶ Tr. 52, 55-60, 81. I have reviewed GE 6 and it reflects installment agreements that were implemented and shortly thereafter terminated.

⁷ Tr. 57-59.

⁸ GE 6 pages 2-4.

after the due date.⁹ An installment agreement was established in September 2012 and a \$150 payment was made in December 2012. On April 22, 2013, the transcript noted “no longer in installment agreement status.” An additional payment of \$150 was received in May 2013. A “Collection due process Notice of Intent to Levy” was issued on August 5, 2013, and an “Initial levy imposed” on April 17, 2017. Applicant testified that he remembered participating in an installment agreement with the IRS. He believed he made 15 payments, but could not remember.¹⁰ No documentary evidence was provided to substantiate the installment agreement payments or to show Applicant’s 2011 Federal tax debt is paid.¹¹

A copy of Applicant’s IRS transcript dated April 21, 2017, for tax year 2012, reflected that as of May 8, 2017, he had a zero balance owed for that tax year. It reflected an extension of time to file tax return was granted until October 15, 2013. The transcript reflects that the tax return was filed on July 11, 2016. When asked if he failed to file his 2012 until 2016, Applicant stated: “I don’t remember. Honestly, I mean I filed all my taxes when they go.”¹²

Applicant testified that he filed his 2013 Federal income tax on time and he received a refund that was applied to his tax debt. He did not know what tax year it was applied.¹³ A copy of Applicant’s IRS transcript dated April 21, 2017, for tax year 2013, reflected that as of May 8, 2017, no tax return had been filed. An inquiry about the non-filing was issued by the IRS on October 20, 2014. Applicant testified he believed his tax consultant filed the tax return for 2013.¹⁴

Applicant testified that he timely filed his 2014 Federal income tax return. He could not remember if he received a refund or owed taxes.¹⁵ A copy of Applicant’s IRS transcript dated March 30, 2017, for tax year 2014, reflected the account balance owed as of April 10, 2017, was \$2,298 for that tax year. On November 9, 2015, an inquiry was sent to Applicant for non-filing. The transcript reflects the tax return was filed on May 16, 2016. A “Collection due process Notice of Intent to Levy-return receipt signed” was noted on the transcript on September 9, 2016. No post-hearing documentary evidence was provided to show Applicant’s 2014 Federal tax debt is paid.¹⁶

⁹ The transcript notes “tax return previously filed” as July 3, 2012. GE 6 at page 6.

¹⁰ Tr. 95-98.

¹¹ GE 6 pages 5-7.

¹² Tr. 100; GE 6 pages 8-9.

¹³ Tr. 61-63.

¹⁴ Tr. 63, 100; GE 6 pages 10-11.

¹⁵ Tr. 64, 105.

¹⁶ GE 6 pages 12-14. SOR ¶ 1.d alleged Applicant failed to file his Federal income tax return for 2013. Evidence that may show other years’ tax returns were not filed timely, or previous tax liens that were filed

A copy of Applicant's IRS transcript dated April 21, 2017, for tax year 2015, reflected the account balance owed as of May 8, 2017, was zero for that tax year.¹⁷

IRS FORM 668(Y) (c)-Notice of Federal Tax Lien was issued in Applicant's name on September 5, 2008, for tax year 2003. The date of the assessment was February 18, 2008, in the amount of \$12,028. The lien was paid and released in May 2010. Applicant testified that he was unaware of this tax lien, and he did not remember paying it. He believed that when his tax consultant "redid my taxes throughout the years, the money that she got the money back, she put towards this apparently."¹⁸

A Notice of Federal Tax Lien was issued in Applicant and his wife's name on September 5, 2008, for tax year 2006. The date of the assessment was May 28, 2007, in the amount of \$612. The lien was paid and released on April 27, 2011. Applicant testified that he was unaware of the tax lien, and he did not remember paying it.¹⁹

IRS FORM 668(Y) (c)-Notice of Federal Tax Lien was issued in Applicant and his wife's name and on November 9, 2011, for tax years 2007, 2008, and 2009. The dates of assessments were: February 23, 2009; December 20, 2010, and June 14, 2011, respectively. The amount owed for 2007 is \$10,215; 2008 is \$5,215, and 2009 is \$6,419.²⁰ Applicant testified that he disputes the accuracy of the 2011 tax lien. He did not provide supporting documents.²¹

Applicant's tax consultant, Ms. W testified telephonically on his behalf. She stated that Applicant contacted her either in late 2013 or early 2014 to help him with tax issues attributed to previous tax returns prepared by a different tax preparer. Ms. W testified that she learned Applicant had additional tax issues beyond tax years 2007-2009 after Applicant authorized her through a power of attorney to contact the IRS. She did not know Applicant previously had Federal tax liens for tax years 2003 and 2006 because her power of attorney was limited to tax years 2007 to 2014. She confirmed with the IRS that there were Federal income taxes owed for tax years 2007, 2008, and 2009. The total amount owed for these tax years was \$22,090. She filed an amended 2007 Federal tax return for Applicant. She did not file an amended return for 2008. She stated Applicant told her he

and released, or any other derogatory information that was not alleged will not be considered for disqualifying purposes. It may be considered when making a credibility determination, in the application of the mitigating conditions, and in a whole-person analysis.

¹⁷ GE 6 pages 15-16.

¹⁸ Tr. 112-115.

¹⁹ Tr. 109-112; GE 10, 11.

²⁰ GE 12.

²¹ Tr. 84-85.

was unaware of a 2011 Federal tax lien for these tax years until he attempted to refinance his house.²²

After contacting the IRS, Ms. W testified that she learned that Federal income tax returns had not been filed for 2010, 2011, and 2012.²³ She testified that she filed these returns on Applicant's behalf. She stated she believed Applicant thought his previous tax provider had completed the returns for him. She learned from the IRS that Federal income taxes were owed for tax years 2010, 2011, 2013, and 2014. Applicant was entitled to a refund for 2012. She said there were mistakes made by the previous tax preparer such as income was not reflected correctly and deductions were not proper. Ms. W testified that Applicant had a payment plan, which required payments of \$150 every two weeks, but it stopped when the IRS did not receive Applicant's 2013 Federal income tax return. She stated Applicant's 2013 Federal tax return was filed on time, but it was not received by the IRS. She said she resent the tax return. The record was held open for Applicant to provide documentary evidence that his 2013 Federal income tax return was filed. No post-hearing documents were provided to support her statements or to confirm that Applicant's 2013 Federal income tax return was filed.²⁴

Ms. W said that she submitted an offer of compromise to the IRS on behalf of Applicant in December 2016. She then learned because the 2013 tax return had not been received the offer of compromise could not be accepted. She submitted another offer in January 2018. She counseled Applicant about ensuring a sufficient amount of money be withheld from his pay for federal taxes. She noted that Applicant's 2016 Federal income tax refund and any other years' refunds were applied to his tax liability. No post-hearing documents were provided to confirm an offer of compromised was submitted to the IRS and what tax years it may have included.²⁵

Ms. W testified that she did not speak to a government investigator about Applicant's tax issues, and only spoke to the IRS.²⁶ She explained that the IRS's practice is to send a certified letter to the party of the Notice of Tax Lien, which informs the person of the implementation of the lien. The tax consultant testified that she believed Applicant thought the 2007-2009 tax debt had been previously resolved. She explained Applicant worked several small jobs and there was no Federal income tax withheld from those earnings, so the additional income increased his tax liability. She stated that when Applicant contacted her in late 2013 or early 2014 it was because of a tax return he thought was wrong. After correcting it and getting the power of attorney, she verified that

²² Tr. 61, 167-181.

²³ Tr. 170-171. Ms. W statement contradicts the tax transcripts that show the returns were filed, albeit late. It is unclear if Ms. W was referring to filing amended returns.

²⁴ Tr. 170-174, 178-182.

²⁵ Tr. 175, 178-185.

²⁶ Tr. 187-189.

he owed taxes for multiple tax years. She discussed this with him when she first started working with him. She stated that he was aware he owed the IRS money.²⁷

Ms. W testified that a new installment plan with the IRS was to begin in April 2018 to pay \$400 a month for taxes owed from 2007 through 2014, excluding 2012 when he received a refund. This payment plan will be implemented while Applicant waits for a response to the offer of compromise. Applicant confirmed the installment plan.²⁸ Ms. W estimated the total amount owed to the IRS is \$43,378. No documents were offered regarding the installment plan or other payments made toward the Federal tax lien owed for tax years 2007, 2008, 2009, or taxes owed for 2010, 2011, or 2014 (SOR ¶¶ 1.a, 1.b, 1.c).²⁹

A coworker of Applicant's who is a senior security manager testified. He has frequent contact with Applicant both professionally and socially, and interacted with Applicant when he was a Facility Security Officer (FSO) for a government contractor where they both worked. They worked together from 2008 to 2013. The witness was aware that Applicant returned early from a deployment to Iraq. They sat next to each other at work. He and Applicant discussed his ongoing tax issues.³⁰ The witness stated that when he first came to work with Applicant in 2008, Applicant stated:

That's when he informed me, hey, I left early and you know, there was going to be some tax issues and stuff like that and I think he had reached out, he was looking for a tax consultant to kind of work that issue and to kind of get that taken care of and everything. But it seemed like as it worked on, I don't know if the tax agents were pretty much proactive on her part, but (sic).³¹

The witness believed Applicant was aware of the tax issues because of his early departure from Iraq. He testified that Applicant told him he was unaware of the 2011 tax lien until he attempted to refinance his house. The witness testified that Applicant's tax consultant was supposed to be addressing the tax problems. He and Applicant handled hundreds or thousands of electronic Questionnaires for Investigations Processing (e-QIP). He testified that Applicant would be aware of his duty to report tax issues. The witness had no reservations in recommending that Applicant retain his security clearance.³²

²⁷ Tr. 187-196.

²⁸ Tr. 72-75, 77-78, 199.

²⁹ Tr. 199-200.

³⁰ TR. 27-39.

³¹ Tr. 38-39.

³² Tr. 27-39.

Applicant's program manager (PM) testified. He has 42 years of experience in the military and as a contractor. He stated that Applicant is the manager of the security program and common access card program for the company. Applicant works with the FSO of the company and would be familiar with all of the security duties. Applicant has been in his position as security manager for a year. Before that he was the FSO for the company's local office. The PM was unsure how long Applicant had been the FSO, but thought it was at least ten years. The PM confirmed that Applicant would be aware of a duty to report certain security concerns. The PM has had daily contact with Applicant over the last ten years. He believes Applicant is the best security person he has ever had work for him. He considered Applicant completely honest. He had a general idea of the allegations against Applicant and had no concerns about them because he knows Applicant's character and his job performance. He described Applicant as "phenomenal." He would have a concern if he believed Applicant intentionally failed to report derogatory information.³³

On Applicant's June 2016 e-QIP, he answered "no" to "Section 26-Financial Record Taxes-In the past seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance." When asked by his attorney why he answered this way, he stated: "Because I filed my taxes." His attorneys asked: "But, it says file or pay. Did you believe that your answer was correct on both accounts that you filed and you paid?" He stated "sure." He then confirmed that his tax preparer had proof or documents to substantiate his claims. The record was held open, but no corroborating documents were provided.³⁴

Applicant was asked by his attorney about his interview on September 22, 2016, with a Government investigator and he again answered "no" to having "delinquent taxes, fail to file or fail to disclose." He was asked "Did you fail to disclose?" Applicant testified "no." He was asked: "Did you think at any time that you were delinquent in filing or paying taxes?" He responded: "No, not at all." Applicant testified that he was a former FSO. When asked by his attorney, "Do you believe it's incumbent upon a security clearance holder to disclose to the Government when they are delinquent in tax payments or tax filings?" He responded: "Of course." He denied he deliberately failed to disclose his tax information.³⁵

Applicant testified that he did not learn about the 2011 Federal tax lien until he tried to refinance the mortgage on his house in 2016. The SOR alleged Applicant failed to report the 2011 Federal Tax lien in his May 2017 response to Government Interrogatories and falsely stated that he was not aware of the tax lien until he tried to refinance his mortgage in February 2017. At his hearing, he was asked by his attorney: "Did you admit

³³ Tr. 41-48.

³⁴ Tr. 64-65.

³⁵ Tr. 65-66.

or deny that you were aware of the tax lien.” Applicant stated: “I deny. I wasn’t aware at that time.”³⁶

When questioned by Department Counsel, Applicant only recalled seeing an email he sent in May 2017 in response to the Government Interrogatories, but did not recall reviewing the personal subject interview summary; he did not recall any part of the email; and, he did not recall reviewing any documents that were sent to him as part of the Government’s discovery. Applicant was provided a copy of his email of May 9, 2017. In it he stated: “No[t] reporting my tax lien to DSS. I did not know I had a lien from 2011 until I tried to [remortgage] on my house in February of this year.” Applicant then said he confused what year he tried to remortgage his house and learned of the 2011 tax lien. He was given a copy of the summary of his personal subject interview with the investigator to review. He testified he did not remember any of the details of the interview. He confirmed that he signed GE 8 and checked the “yes” block to question 4 that stated: “Subject to any additions or deletions made above, do you agree with and adopt the investigator’s summary as accurately reflecting your interview.” In response to question 3, he wrote: “Recent Credit Report is added.” The last page asked if Applicant had ever failed to file or timely file Federal tax returns and he checked the “yes” box. No comments were provided on this document.³⁷

Applicant then testified that the summary of his interview was not accurate because he did not know about the tax liens. He denied he told the Government investigator about tax liens. He testified that he told the investigator that Ms. W was taking care of his taxes. He stated the reason he signed the statement saying the summary of his interview was accurate was because he misinterpreted it. He stated that the information that is in his personal subject interview was provided by Ms. W. He believed that the Government investigator contacted Ms. W and attributed her statements to him in his summary of personal interview. Applicant then acknowledged that he discussed his tax liens during his September 2016 interview with a Government investigator. Ms. W denied she spoke with the Government investigator.³⁸

Applicant testified that he filed his Federal tax returns for all the past years. Applicant stated that the 2011 Federal tax lien is inaccurate. He did not provide supporting documents to show the lien was disputed or released. He said that he reviewed each years’ tax return before signing and filing them.³⁹ He did not remember if he owed Federal taxes for 2011.⁴⁰ He testified that he did not remember, if after reviewing his tax returns each year, if he owed taxes, and whether he paid them. He stated he first became aware

³⁶ Tr. 66-69.

³⁷ Tr. 129-153.

³⁸ Tr. 66—68; 129-153; GE 8. GE 3 is a blank copy of the same Interrogatories as in GE 8 and was admitted because GE 8 was blurry.

³⁹ Tr. 79-81.

⁴⁰ Tr. 93-94.

of his tax issues when he began working with Ms. W in 2012.⁴¹ Applicant testified he believed he began working with her in 2011 or 2012, and she filed his 2011 Federal income tax return.⁴²

Applicant testified that he reported to his corporate office that he was participating in a payment plan with the IRS that began in September 2012. He could not remember when he made this report. He did not provide any documentary evidence. He stated he learned that his 2013 Federal tax return was delinquent when he received the SOR. He could not remember if he paid taxes for the years he owed.⁴³

When asked why he failed to report his tax deficiencies to the Defense Security Service (DSS) as required, Applicant stated: "I don't remember whether I did or not." He stated that he did not report the information to DSS, but believed he reported it to his corporate security. He did not remember when he made this report.⁴⁴

Applicant confirmed that he remembered being interviewed by a Government investigator in September 2016. He remembered being asked if he had financial problems and initially stating he did not. He was then asked by Department Counsel: "It was only after being confronted with the information about the tax liens that you discussed the tax liens, correct?" Applicant responded, "Correct." He was further asked: "Why did you not disclose the information prior to being confronted with it?" He stated he was unaware of the tax liens at that time. He was further confronted by Department Counsel regarding a statement that he told the investigator the tax liens were with his accountant Ms. W and she handled all of that. Applicant responded: "I don't remember, if that's what it says." He went on to say he did not remember the specifics of the interview.⁴⁵

Applicant provided character letters. The authors noted that Applicant was responsible for the management of the security programs and he consistently exceeded requirements. He is considered an honest proactive security professional, who demonstrated a commitment to properly safeguard national security information. He is a trusted colleague. Other letters stated that Applicant had oversight of 135 highly sensitive operating facilities throughout Iraq. He fulfilled his mission without incident with the highest standard of excellence. He is considered humble, reliable, trustworthy, loyal, and trustworthy.⁴⁶ Applicant also provided a certificate of training and a financial counseling

⁴¹ Tr. 106-107, 116-121.

⁴² Tr. 88, 91-95.

⁴³ Tr. 88, 90-99.

⁴⁴ Tr. 98-99.

⁴⁵ Tr. 123-125.

⁴⁶ AE B, K.

certificate required for filing bankruptcy, along with financial and investments statements.⁴⁷

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 national security eligibility will be resolved in favor of the 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. Directive ¶ E3.1.15 states 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 that an 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 EO 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

⁴⁷ AE E, F, G, H, I.

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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of failing to meet his financial obligations. He failed to pay his 2007, 2008, 2009, 2010, 2011 and 2014 Federal income taxes. He failed to timely file his 2013 Federal income tax return. There is sufficient evidence to support the application of the above disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant prove mitigation. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant did not provide documentary proof that he filed his 2013 Federal income tax return. He failed to provide documentary proof that he paid or is paying his 2007 through 2011, and 2014 Federal income taxes or is participating in a payment plan. Although he disputed he owed taxes for certain tax years, and said he paid taxes for other years, he did not provide documents to show any of his delinquent Federal income taxes are paid or his 2011 Federal tax lien is released. Applicant is working with a tax consultant, but without substantiation that he has taken action to resolve his outstanding tax obligations, his tax problems remain ongoing. There is insufficient evidence to conclude his tax problems were beyond his control based on his testimony that he reviewed and signed his Federal tax forms each year. There is some testimony that his tax consultant is working with the IRS to resolve his tax debt, but no documents were provided indicating that a resolution has been negotiated. Government exhibits support that a couple of installment payments were made over the years, but they are insufficient to conclude he is adhering to a good-faith effort to pay his tax debts. None of the mitigating conditions apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a nation security eligibility determination, or other official government representative.

I have considered all of the evidence and conclude that Applicant deliberately omitted on his June 2016 e-QIP that he failed to timely file his 2013 Federal income tax return and pay Federal taxes for multiple years. I find he deliberately provided false material facts during his September 22, 2016 interview with a Government investigator, when he stated he did not have delinquent tax information when in fact he owed delinquent Federal income taxes for several years. Although, I believe Applicant may have been unaware that a Federal tax lien was filed against him in 2011, I find he was aware that he owed Federal income taxes for the tax years included in the lien (2007, 2008, and 2009). There is insufficient evidence to conclude Applicant had a duty to report his tax delinquencies to the DSS, or that he deliberately failed to report them. He stated he believed he had reported it to his corporate office. I find in his favor for SOR ¶ 1.d that

he was unaware of the 2011 Federal tax lien when he completed his interrogatories and for SOR ¶ 1.c. The evidence shows that Applicant was aware he had tax consequences when he returned from Iraq in 2007, a matter he discussed with his coworker who was a witness. He began working with a tax consultant in late 2013 or early 2014 due to his tax problems. The IRS transcripts corroborate his tax debts. The above disqualifying conditions apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant prove mitigation. Two mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (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.

There is insufficient evidence that Applicant made prompt, good-faith efforts to correct his omissions on his June 2016 e-QIP before being confronted with the facts during a subsequent interview. There is insufficient evidence to conclude Applicant made a good-faith effort to correct the falsifications he made to the Government investigator in September 2016, or that he reported his tax delinquencies to the DSS, as required. AG ¶ 17(a) does not apply.

Applicant's omissions and falsifications are not minor. Applicant served as an FSO for many years and then as manager of his company's security program. He was aware of his responsibility to disclose his derogatory tax issues on his e-QIP and when he was interviewed by a Government investigator. He denied having tax problems and failed to report them as required. His omissions and falsifications are serious and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not 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(d):

- (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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guideline, but some warrant additional comment.

Applicant is 57 years old and an experienced former FSO and present security manager for his company. Upon his early return from Iraq in 2007, he became aware that he had negative income tax consequences. The evidence supports that he had two tax liens filed in 2008 for tax years 2003 and 2006 that were paid in 2010 and 2011. Although he testified that his previous tax preparer made mistakes, he failed to provide documentary evidence to show he did not owe Federal income taxes for tax years 2007, 2008, 2009, 2010, 2011, and 2014. The one post-hearing tax document he provided showed that he owed taxes for 2009, contrary to his testimony. His tax consultant testified that he owed Federal income taxes for several years, and she is negotiating with the IRS for an offer of compromise. She has been working with him since late 2013 or early 2014, which confirms that Applicant was aware of his tax problems prior to then.

Applicant had an opportunity to show that the 2013 delinquent Federal tax return has been filed, but did not. He also did not provide documents to show he does not owe the Federal income taxes alleged in the SOR or that he paid them. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).⁴⁸

Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay Federal income taxes raise serious concerns. His deliberate failure to disclose his tax issues on his e-QIP and to a Government investigator, and report it to the

⁴⁸ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

DSS is equally a serious security concern. The record evidence leaves me with 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 Guideline F, financial considerations and Guideline E, 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
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.d:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge