



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03230  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2018

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant did not file several years of annual state and federal income tax returns on time, as required. These late filings were largely due to conditions beyond his control, including a nonresponsive accountant. Under the circumstances, Applicant undertook responsible, good-faith efforts to remediate the problem by hiring a second, better qualified accountant, who prepared and filed his past-due tax returns, and by keeping his employer informed. Applicant's tax filing issues are unlikely to recur, and no longer cast doubt on his current judgment, trustworthiness and reliability. Applicant provided sufficient evidence to mitigate financial security concerns. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 25, 2016. On October 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on October 25, 2017, and requested an administrative (written) decision in lieu of a hearing. He also included four groups of documents (Attachments (Att.) 1 through 4), which are also included in the record.<sup>1</sup> On November 27, 2017, Department Counsel requested a hearing, under ¶ E3.1.7 of the Directive. The case was assigned to me on February 16, 2018. On March 23, 2018, a Notice of Hearing was issued scheduling the hearing for April 25, 2018.

The hearing convened as scheduled. At the hearing, Government's Exhibits (GE) 1 and GE 2 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through AE I, which were admitted without objection. The record closed on the date of the hearing. DOHA received the hearing transcript on May 4, 2018.

### **Findings of Fact**

Applicant partially admitted and partially denied SOR ¶¶ 1.a and 1.b, with explanations and documents. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 32 years old. He and his wife have been married since 2011. They have one child. Applicant earned a bachelor's degree in 2007, and a master's degree in December 2017. (GE 1) He has held various positions in the defense industry, with a security clearance, since February 2011. He has worked for his current employer, a large defense contractor, since June 2017. (Tr. 12-13; 50-52; GE 1) His wife runs her own publishing and consulting business out of their home. (Answer; Att. 1)

In SOR ¶ 1.a, the Government alleged that Applicant had failed to file Federal taxes (tax returns) for tax years 2011-2015, as required, and that they remained unfiled as of the date of the SOR. Applicant admitted that all those tax returns had been filed late. He stated that returns for tax years 2011-2013 had been filed by the date of the SOR, but acknowledged that returns for tax years 2014 and 2015 remained unfiled. (Answer)

In SOR ¶ 1.b, the Government alleged that Applicant had failed to file his state taxes (tax returns) for tax years 2007, 2008, 2013 and 2015, as required, and that those tax returns remained unfiled as of the date of the SOR. Applicant admitted SOR ¶ 1.b for all years except 2007. (Answer)

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<sup>1</sup> Tr. 42-44.

Federal income tax returns are generally due on or before April 15 of the year following the tax year at issue.<sup>2</sup> The state income tax return filing deadline for Applicant's home state is generally May 1 of the following year.<sup>3</sup>

When Applicant married his wife, he learned that she had outstanding tax issues and unfiled tax returns from her prior marriage, which ended in 2010. He testified that his wife's first husband had failed to file their joint tax returns between about 2007 and 2010. (Tr. 48, 78; Answer) When Applicant learned this, they hired an accountant. The accountant filed his wife's past due returns in 2011. (Answer; Tr. 78-81)

As a result, Applicant's wife owed an estimated \$30,000 to \$40,000 in past-due taxes (perhaps jointly with her former husband). This was because she had sold some stock and withdrawn money from an individual retirement account. Applicant testified that he did not want to be responsible for the tax debt his wife brought into their marriage, in part because of the possible impact on his security clearance. (Tr. 79-81).

Applicant's wife and her first husband jointly owned a house in another state. The husband was to sell the house within five years of the divorce, in 2010. He did not do so. (Tr. 82-83) On their accountant's recommendation, Applicant and his wife intended to sell that house and use the proceeds to pay his wife's past-due tax debt. (Tr. 84) They later learned that the house had been abandoned. The accountant surmised that the IRS might claim that Applicant's wife therefore had no assets. Thus, Applicant's own assets (or their joint marital assets) were potentially vulnerable to satisfy his wife's tax debt. (Tr. 81-82; Answer) The home in State 2 is now in foreclosure. (Tr. 83) Applicant testified that his wife's past-due tax debt has yet to be resolved. (Tr. 55-60, 81-83) Since 2011, Applicant has filed as an "injured spouse," to protect refunds that the IRS might otherwise keep to pay his wife's past-due taxes from prior years. (Answer, Att. 1. Tr. 79-80, 82)

Applicant's accountant prepared and filed their 2011 federal and state income tax returns in April 2012. These returns were filed on time, contrary to SOR ¶ 1.a. Their accountant filed their 2012 and 2013 state and federal income tax returns in March 2015. (Ans. Att. 1; Att. 4; Tr. 66) All of these returns reflect refunds.

Applicant testified that his accountant told him she was a certified public accountant (CPA) with 30 years of experience. "She stated that I had 3 years to file and I believed her . . .". (Answer; Tr. 48-49) When asked at hearing why he did not file his tax returns on time every year, as required, Applicant said he followed his accountant's professional advice, which was that he had three years to file his tax returns if he did not owe anything in taxes. Applicant acknowledged, however, that he knew his tax returns were late. (Tr. 64)

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<sup>2</sup> See <https://www.irs.gov/filing/individuals/when-to-file>.

<sup>3</sup> See [https://tax.\[Name of Applicant's home state\].gov/when-to-file](https://tax.[Name of Applicant's home state].gov/when-to-file).

Applicant also said their accountant had filed the required extensions. He never received any corroborating documentation from her. (Answer; Tr. 64-65) Applicant also acknowledged that he later learned (from his current accountant) that the advice he received from the first accountant's was wrong, and that, "it doesn't matter if you owe or not, you have three years to get a refund, but you still have to file." (Tr. 57)

Applicant testified that he and his wife gave their first accountant power of attorney to deal with the IRS on their behalf. After that, they no longer received any letters from the IRS. Applicant therefore believed that his taxes were being handled properly by the accountant. (Tr. 80-81; Answer)

At some point in either 2016, Applicant's accountant became non-responsive. In his Answer, Applicant said, "When I filled out the SF-86, I was trying to get my paperwork back from [the accountant] so [I] put her down as the person responsible for knowing about my tax situation. (Answer at 2; GE 1 at 35-36) He testified that he lost contact with her "right after I finished filing the e-QIP," in May 2016. (Tr. 65)

Applicant testified that he attempted to reach his accountant on numerous occasions. Sometimes he heard back by voicemail but was never able to establish direct contact. At some point, he got no response by either phone or e-mail.<sup>4</sup> His wife drove by the accountant's office several times, but she was never there. (Tr. 68-69) He became worried because he was in the process of preparing his SCA, and knew his clearance might be affected. (Tr. 57, 58, 68, 87) He later learned that his current accountant was unable to verify the first accountant's credentials. (Tr. 74; Answer)

Applicant disclosed on his May 2016 SCA that his 2014 and 2015 state and Federal income tax returns remained unfiled. He provided contact information for his first accountant, stated that she was working with the IRS and that he would file his returns and pay whatever taxes were owed. (GE 1 at 35-36)

Applicant did not disclose on his SCA that he had also failed to timely file his tax returns for tax years 2011, 2012, and 2013. (GE 1; GE 2 at 3) At hearing, he testified that he did not report those returns as having been filed late because they had been filed by the time he submitted his SCA. He recognized, in hindsight, that the plain language of the questions called for disclosure of all late-filed tax returns in the last seven years. (Tr. 53-54)

Applicant also did not file his 2016 income tax returns on time, though this was again largely due to his first accountant's non-responsiveness. (Tr. 68-69) Applicant's background interview was on March 15, 2017. (GE 2) This was one month before the April 15 federal tax filing deadline, and six weeks before the May 1 state filing deadline

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<sup>4</sup> APPLICANT: "And at that same time, I was trying to say, I don't care if you are working on them, I want my paperwork back. And that is the messages that I kept leaving her, I want my paperwork, so I can give it to someone else to do it properly." (Tr. 68)

for tax year 2016.<sup>5</sup> He said in his interview that he was “working with a CPA,” though in fact he had had no contact with his first accountant for some time. (GE 2)

At some point during this period, having lost contact with his first accountant, Applicant began seeking other options. Applicant began contacting other accountants for assistance, but found many of them too expensive. (Tr. 60) Applicant was hospitalized unexpectedly and missed several weeks of work in mid-2016. His wife was also hospitalized for a time in 2017, circumstances which took precedence over his tax issues. (Tr. 88-90; Answer; Att. 3). Applicant kept his employer and his facility security officer apprised of his tax status. (Tr. 50-54; GE 1; Answer) Ultimately, this led Applicant to his second accountant, the wife of one of Applicant’s supervisors. (Tr. 69-70)

Applicant and his wife retained this second accountant, a CPA, in July 2017. (Answer, Att. 2; AE F; AE J) The second accountant was more responsive, and Applicant quickly gained confidence in her ability to help him. (Tr. 70-72) Applicant gave her power of attorney and authority to request his prior state and Federal tax returns in October 2017. The new accountant expected to finish preparing Applicant’s past-due tax returns by November 2017, but was delayed when she became ill. (Answer at p. 3; Att. 2)

It also took some time for Applicant to gather proper records for his new accountant to review. Applicant acknowledged that he did not keep good records. In part, this was because Applicant had given his tax records to the first accountant, and never got them back. (Tr. 60, 86, 88-90)

By April 2018, Applicant’s second accountant had prepared all the state and Federal income tax returns that were then outstanding. This included returns for tax years 2014, 2015, and 2016 (AE D, AE C, AE B, respectively).<sup>6</sup> These returns were all filed by either Applicant or the CPA. (AE G) Applicant’s second accountant also prepared their 2017 state and Federal income tax returns. They were filed on time, in April 2018. (AE A, AE F, AE I) All of these returns reflect that Applicant and his wife were due refunds.

The second accountant’s review revealed that Applicant’s 2008 state and Federal income tax returns were also unfiled.<sup>7</sup> Applicant described this as a “curveball” he did not expect, since he thought he had filed that year. 2008 was the first full tax year after Applicant graduated from college, a time when he would have wanted whatever refund came his way. (Tr. 54-55) His 2008 returns were also prepared and filed, in April

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<sup>5</sup> See footnotes 2 & 3, above.

<sup>6</sup> Applicant did not initially provide documentation that his tax returns for 2015, 2016 and 2017 had in fact been filed. He provided that documentation during the hearing, and it was added to AE A, AE B, and AE C. (Tr. 91-95)

<sup>7</sup> For tax year 2008, only the state return was alleged as having been filed late. (SOR ¶ 1.b).

2018. (AE G). Applicant did not have to file a tax return in 2007, (the year he graduated from college) because he did not earn enough income. (AE G; Answer Attachment 4)

Applicant has full confidence in his second accountant's professional expertise and advice. He intends to continue working with her to insure that his tax returns are properly prepared and timely filed in the future. (Tr. 76-77)

One of Applicant's supervisors, a retired Air Force Lt. Colonel, submitted a recommendation letter. He has worked with Applicant since 2015. He considers Applicant a master in his craft, "agile on [his] feet" and having sound judgment. He has been vigilant in protecting network security. Applicant is younger than most who hold his position, but has proven trustworthy and dependable. Applicant has made his supervisor aware of matters in his personal life that could affect him professionally. He "has consistently guarded his integrity and sought to mitigate anything that presented a real or apparent challenge to it." (AE H)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."<sup>8</sup>

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 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(a), 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 not drawn inferences grounded on mere speculation or conjecture.

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<sup>8</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The financial considerations security concern 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. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following is applicable:

(f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant established that he did not earn enough income to require filing a state income tax return for tax year 2007, the year he graduated college. He documented that his 2011 state income tax return was timely prepared and filed by his first accountant.<sup>9</sup> AG ¶ 19(f) is not established as to those returns.

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<sup>9</sup> Applicant's 2011 Federal income tax return, also timely filed, was not alleged.

The allegations in the SOR are otherwise established. Applicant failed to timely file his annual Federal income tax returns for tax years 2012-2015. (SOR ¶ 1.a) He failed to timely file his state income tax returns for tax years 2008, 2013, and 2015. (SOR ¶ 1.b) AG ¶ 19(f) applies to those tax returns.<sup>10</sup>

Applicant had a duty to file his annual state and Federal income tax returns in a timely manner, and the fact that he did not do so for several years is a security concern. As the Appeal Board has long held:

Failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person 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. Aug. 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).<sup>11</sup>

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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,

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<sup>10</sup> Applicant also failed to timely file several other income tax returns during the tax years at issue that were not alleged. This includes his 2008 Federal return, and his state returns for tax years 2012 and 2014, as well as his state and Federal income tax returns for tax year 2016. I cannot consider these returns as disqualifying conduct, since they were not alleged in the SOR. However, I can consider them in weighing mitigation or changed circumstances, whether Applicant has demonstrated sufficient rehabilitation, under the whole person concept, and in weighing Applicant's credibility. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

<sup>11</sup> ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).



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; 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's wife had significant unresolved tax issues remaining from her first marriage. When Applicant learned this after they married in 2011, he hired an accountant. The accountant filed his wife's past-due returns in 2011. Applicant's wife owed between \$30,000 and \$40,000 in past-due taxes, tax debt likely caused by stock sales and withdrawing funds from an IRA during the first marriage.

Applicant was rightly concerned about the security implications of this debt for his own clearance. He sought to separate his wife's tax issues from his own. Applicant and his wife hoped to sell her prior marital home and use the proceeds to resolve her tax debts. To give Applicant and his wife time to sort that out, his first accountant, who represented herself to him as a CPA with 30 years' experience, told Applicant he had three years after the annual deadline to file his federal income tax returns if he was due a refund. This was bad advice, as he later learned. As the Appeal Board has noted, "The three-year statute of limitation is not a grant of a filing extension, but only a limitation upon claiming a refund."<sup>12</sup>

While Applicant was aware that taxpayers had a duty to file annual income tax returns, he nonetheless relied on his first accountant's improper advice for several years. She did not file his state and federal income tax returns for tax years 2012 and 2013 until March 2015. It is difficult under these circumstances to fault Applicant for relying on what he reasonably thought at the time was proper professional advice.

At some point in 2016, Applicant's accountant became non-responsive. Applicant made numerous calls, e-mails and visits to the accountant requesting that she return his tax paperwork, to no avail. His second accountant was also unable to verify the first accountant's qualifications. Like "proving a negative," it is difficult for an applicant to meet his burden and prove by substantial evidence that someone he relied on for professional advice became nonresponsive. Nonetheless, Applicant has done so here.

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<sup>12</sup> ISCR Case No. 12-11375 at 4-5 (App. Bd. Jun. 17, 2016) (citing and discussing 26 U.S.C. § 6511)

When Applicant was preparing his SCA, in May 2016, his 2014 and 2015 state and Federal income tax returns were both past due, as he reported. Applicant was still relying on his first accountant at this time, and he provided her contact information on his SCA.<sup>13</sup> Indeed, he believed even at the time of his PSI, in March 2017, that he was still working with her, as he indicated in his interview. In fact, by then he had lost contact with her.

Applicant's late-filed income tax returns, as alleged in the SOR, are largely attributable to the poor advice and non-responsiveness of his first accountant, hired in 2011. The first prong of AG ¶ 20(b) therefore applies. An exception is 2008, which pre-dates those problems. While I must consider all of Applicant's tax filing allegations together, his 2008 tax filing is (unlike the others) largely attributable to his youth and inexperience at the time, just a year after college. It is therefore also unlikely to recur, though for other reasons than those beyond Applicant's control.

In weighing Applicant's responsibility under the circumstances (the second prong of AG ¶ 20(b)) and his good-faith efforts (AG ¶ 20(d)), I must consider the timing of Applicant's actions. The Appeal Board has consistently held that timing of an applicant's resolution of his tax filing problems is relevant in evaluating mitigation. An applicant who resolves financial or tax problems only when his clearance might be imperiled raises questions about his willingness to follow the sometimes complex rules governing classified information when his personal interests are not at stake.<sup>14</sup>

In that regard, I must consider the fact that Applicant's state and federal tax returns for several years (2014 to 2016) were filed in April 2018, on the eve of both the annual state and Federal tax deadlines, and the hearing. However, as noted, Applicant relied to his detriment on an accountant who gave him bad advice and who ultimately proved non-responsive. That circumstance explains, at least in part, why Applicant also did not file his 2016 tax returns on time, by April 2017 (almost a year after he submitted his SCA). His 2016 tax returns are not alleged, but I must also consider their late filing and their effect on mitigation. Both Applicant and his wife were hospitalized and he was out of work for a certain period during this time, which explains some, though not all, of the delay. Applicant also had to find another accountant to help him, since his first one was unreliable and nonresponsive. This all took time.

Applicant testified credibly that he was well aware that his unfiled tax returns were a problem, both as related to his clearance and otherwise. He testified credibly that he became more and more concerned about his taxes as his first accountant went missing. He testified credibly that he kept his supervisors informed of his situation, and

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<sup>13</sup> Applicant acknowledged that he also should have disclosed on his SCA that his 2011-2013 tax returns were also not timely filed. He testified that he did not do because, though late, those returns had been filed by the time he submitted his SCA. Though Applicant's interpretation of how he should have answered those questions was wrong, I find his explanation credible, and conclude that he did not intend to deceive the Government by withholding that information.

<sup>14</sup> ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017).

documented it. This is how Applicant found his way to the second accountant, a CPA, and the wife of one of his supervisors.

Applicant hired his second accountant in July 2017 (before the SOR), and began to get his affairs in order. This, too, took time, for a variety of reasons, including the accountant's availability, as well as the fact that many of Applicant's tax records were in his (absent) first accountant's possession. Thus, even though Applicant's remaining unfiled tax returns whether alleged (2014 and 2015) or not (2016) were filed shortly before the hearing, Applicant has sufficiently explained why this happened.

Applicant's tax filing issues, as alleged in the SOR, have now all been resolved. Applicant and his CPA have filed the past-due state and federal returns alleged in the SOR. He documented that he owes no outstanding past-due state or federal taxes. The Appeal Board has held that an applicant cannot simply adopt a position of "no harm, no foul" or "all's well that ends well."<sup>15</sup> However, I nonetheless conclude that Applicant acted responsibly under the circumstances, and in good-faith. While Applicant has not established much of a track record of steady, timely, good-faith compliance with the requirements to file annual state and federal income tax returns, this is explainable under the circumstances. AG ¶¶ 20(b) and 20(d) apply.

In working with a qualified, professional CPA whom he has come to trust, Applicant has received and is receiving "financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control." AG ¶ 20(c) applies.

With his second accountant's assistance, Applicant has "made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." AG ¶ 20(g) therefore applies. Other than for 2008, AG ¶ 20(a) has less application to his other late-filed tax returns, given their recent resolution.

According to Applicant's testimony, his wife still has significant unresolved tax debt from her prior marriage, and her prior home, which her first husband abandoned, is facing foreclosure. But Applicant has been cautious about the impact that debt might have on his clearance ever since he found out about it, and took steps to resolve it. He has also kept his supervisors and employer informed about his tax problems. Most importantly, Applicant is now working with a reliable, qualified tax advisor and testified credibly that he will continue to do so in the future. Though his tax filings have only recently been resolved, I am confident that they will not recur, given what Applicant has already been through. In that regard, Applicant's tax filing issues are unlikely to recur and no longer cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) therefore applies.

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<sup>15</sup> ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015)

## **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 relevant 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 Guideline F in my whole-person analysis.

I had ample opportunity to evaluate Applicant's demeanor at the hearing and to form an opinion of his credibility. He was intelligent, well-spoken, and respectful, and he treated the process seriously. He presented a well-documented, well-organized case. I found him to be a credible witness.<sup>16</sup> Ultimately, I find that he recognized early on that he had tax problems, and that he took responsible steps to seek professional help in resolving them. His first accountant was effectively the cause of many of his problems. It took some time for Applicant to recognize this, and more time for him to deal with it. Notwithstanding the fact that many of the alleged late tax returns were filed quite recently, he engaged with his second accountant before the SOR was issued, and, with her help, has resolved the allegations. Having done so, Applicant is unlikely to find himself in this position again. In making this conclusion, I considered not only Applicant's credibility, but the record evidence as a whole. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to classified information.

## **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:

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<sup>16</sup> In her closing argument, Department Counsel also noted that she found Applicant's testimony credible concerning the actions he took over the years to resolve his tax situation. (Tr. 99-100). While this is not dispositive, it is something I considered.

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a-1.b:

For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Braden M. Murphy  
Administrative Judge