



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



In the matter of: )  
)  
) ISCR Case No. 14-04189  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: Alan Edmunds, Esquire

02/09/2016

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed, signed, and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 27, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on November 3, 2014, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he answered it on December 2, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 2, 2015, and I received the case assignment on August 25, 2015. DOHA issued a Notice of Hearing on October 19, 2015, and I convened the hearing as scheduled on November 10, 2015. The Government offered exhibits (GE) marked as GE 1 and GE 2, which were received and admitted into evidence without objection. Applicant and two witnesses testified. He submitted exhibits (AE) marked as AE A through AE Q, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 20, 2015. I held the record open until December 10, 2015, for Applicant to submit additional matters. Applicant timely submitted AE R - AE Z, which were received and admitted without objection. The record closed on December 10, 2015.

### **Procedural and Evidentiary Ruling**

At the hearing, Applicant, through counsel, objected to the admission of GE 3 and GE 4 on the grounds that the documents were hearsay, lack of foundation, and lack of authentication. After discussion and review of documents by the Applicant, the Government withdrew its request for the admission of GE 3 and GE 4. (Tr. 27.)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b - 1.d, and 1.f of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.e, and 2.a - 2.d of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 50 years old, worked as a systems administrator for a DOD contractor for more than nine years until September 11, 2015, when he was laid off due to a lack of work for his skill set. At the time of the hearing, he had a job offer for a similar position with another DOD contractor. Applicant has worked as a systems administrator for many years, and he has held a security clearance since 1988.<sup>2</sup>

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>GE 1; AE Y; Tr. 53, 67-68.

Two co-workers testified on Applicant's behalf. Both worked with him for a number of years. Applicant was the supervisor of one, and during that time, they had close contact. Each witness continue to remain friends with Applicant outside of work. Both witnesses reviewed the SOR. Even in light of the SOR allegations, both have no reservations about recommending Applicant for a security clearance. They consider him honest and trustworthy. They know his character, which they describe as outstanding, and this knowledge is the basis of their recommendation. Applicant also submitted seven letters of recommendation, including letters from his two witnesses, his girlfriend, and a friend. The witnesses all described him as hard-working, knowledgeable, honest, and a man of integrity. As with his witnesses, all recommended him for a security clearance based on their experiences with him.<sup>3</sup>

Applicant received an Associate of Arts degree in 1984. Applicant and his former wife married in 1989, and they divorced in 2006. He has three children from his marriage. His daughters are 24 and 21 years of age, and his son is 19 years of age. He has not remarried. His child support payments have ended, and he paid the child support arrearage incurred when the court increased his child support payments in 2014. Applicant lives with his girlfriend. He moved his residence from State A to State B in June 2008. He continues to reside in State B.<sup>4</sup>

Under the terms of their separation agreement, Applicant and his former wife had to sell the marital home by June 2009. Before listing the house for sale, the realtor recommended certain repairs be made to the house, which his former wife had done. Whenever she requested payment from him for his share of the repair costs, he wrote her a check. He requested that she provide him a copy of the receipts for these repairs, which she did not do.<sup>5</sup>

Applicant did not file his federal and state income tax returns for the tax year 2009 by April 15, 2010 because he was waiting for his former wife to send him the receipts for the house repairs. He needed this information for his tax returns. After moving to State B, Applicant continued to have state income taxes withheld from his pay for State A, not State B. He indicated at the hearing that he believed he needed to continue filing taxes in State A because he worked in State A. Applicant acknowledged that he did not timely file his federal and state tax returns for the tax year 2010, but stated that he timely filed his federal and state tax returns for the tax year 2011. Applicant provided no explanation for filing his tax returns for the tax year 2010 late. He also indicated that he timely filed his federal and state income tax returns for the tax years 2012, 2013, and 2014.<sup>6</sup>

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<sup>3</sup>AE P; Tr. 30-48.

<sup>4</sup>GE 1; AE I - AE M; Tr. 53, 69.

<sup>5</sup>AE I; Tr. 63, 70-73, 82.

<sup>6</sup>AE S - AE U; Tr. 57-58, 63-65, 82-90, 94.

After the hearing, Applicant provided a copy of his federal and state income tax returns for the tax years 2009 through 2014, which were prepared by a tax preparation business. These tax returns reflect that the preparer completed Applicant's federal tax return for the tax year 2009 on April 10, 2011, one year late; for the tax year 2010 on January 21, 2012, nine months late; for the tax year 2011 on January 21, 2012, timely; for the tax year 2012 on July 16, 2013, three months late;<sup>7</sup> for the tax year 2013 on February 19, 2014, timely; and for the tax year 2014 on April 11, 2015, timely. While these documents do not identify the date filed, it is inferred that the documents were filed on or near the date of completion.<sup>8</sup>

The tax preparer also completed tax returns for State A and State B. Because the information on state tax returns is generally drawn from the federal tax returns, I find that the tax preparer completed the returns at the same time as the federal tax returns were completed. The tax preparer completed non-resident tax returns for State A for the tax years 2009, 2010, and 2011. The 2009 State A tax return indicated that Applicant filed a tax return for the tax year 2008 in State A, and that he lived in State B for the entire tax year of 2009. Each State A tax return for these three years showed that Applicant received a refund of all State A taxes withheld from his pay in the tax year. At the hearing, Applicant did not indicate an understanding that he needed to file the State A tax returns to obtain the State A taxes withheld from his pay. These tax documents were not available at the hearing. The tax preparer also prepared tax returns for State B for the tax years 2009 through 2014.<sup>9</sup>

Applicant's completed and filed federal income tax returns reflected that Applicant owed additional taxes in the amount of \$3,300 for 2009, of \$4,743 for 2010, of \$4,297 for 2011, and of \$3,101 for 2012, totaling \$15,441 and that he was entitled to a refund in the amount of \$3,441 for 2013 and of \$3,698 for 2014, totaling \$7,139. Applicant did not pay the taxes owed when he filed his tax returns. Instead, he chose to wait until the Internal Revenue Service (IRS) contacted him because he knew he would also owe interest and penalties on his unpaid taxes. While waiting for the IRS to contact him, Applicant was paying on his past-due taxes to State B.<sup>10</sup>

Applicant received a letter from the IRS advising that he owed taxes for three years. The date of the letter is unknown. He contacted the IRS after receiving this letter and reached an agreement on a monthly payment plan. The IRS consolidated his tax debts for all tax years into one payment plan. Applicant agreed to pay \$400 a month until his estimated debt of \$20,000 was paid in full. The date of the agreement and the date Applicant began his payments are unknown. At the hearing, Applicant provided a

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<sup>7</sup>His documentation does not show whether he requested an extension of time to file this tax return. If he did, it would have been timely filed.

<sup>8</sup>AE S - AE X.

<sup>9</sup>AE S - AE X; Tr. 75, 79, 85-85.

<sup>10</sup>AE S - AE X; Tr. 93-95.

16-month payment history report (June 2, 2014 through September 1, 2015) from the IRS and a copy of the IRS confirmation of his monthly payments, which covered the same time period. Applicant consistently paid \$400 for 16 months for a total payment of \$6,400. After the hearing, Applicant provided a copy of the monthly payment notices from the IRS for his installment agreement. The earliest notice is dated May 21, 2014. This notice reflected that Applicant paid \$400 on May 2, 2014 and that he owed \$15,671 in taxes, \$2,279 in penalties, and \$969 in interest for a total remaining debt of \$18,919. The total amount of Applicant's actual debt is unknown. On page 2 of the notice, the IRS listed each tax year for which Applicant owed taxes, the amount of taxes owed, penalties owed, and interest charges. The notice identified the tax years that Applicant owed debt as 2009, 2010, 2011, and 2012. The notice documentation reflected monthly payments of \$400 from at least May 2014 through October 2, 2015. The April 22, 2015 notice reflected a balance due of \$15,451 and the May 27, 2015 notice showed a balance due of \$11,450. A careful review of the monthly notices indicated discrepancies in Applicant's payment history. The notices indicated that Applicant did not make a payment on his tax debt from October 2014 until June 2015, but showed a reduction in his balance owed each month. This information directly conflicts with the IRS payment history and receipt confirmation documentation, which showed that Applicant made the required monthly payment. The documentation does not provide an explanation for the \$4,000 reduction in the amount of taxes owed as of May 27, 2015. Since, as a matter of practice, the IRS automatically recaptures a tax refund and applies the refund to a debt owed,<sup>11</sup> I assume that much of the reduction is due to his 2014 tax refund. The remaining reduction mostly likely arose from the application of payments not previously applied to his account. As of October 28, 2015, Applicant still owed \$9,729 to the IRS for tax years 2010 and 2012. The notice of payment documents showed that Applicant paid his tax debt for 2009 and 2011.<sup>12</sup>

Because he did not file tax returns for at least two years after he moved into State B, he owed income taxes to State B. When he filed his income tax returns with State B for the tax years 2009, 2010, and 2011, Applicant owed taxes in the approximate amount of \$15,000. He could not pay the taxes owed at the time he filed the returns. State B issued a notice of tax assessment for these tax years between July 9, 2012 and August 1, 2012. With penalties and interest, Applicant owed almost \$20,000 to State B. After receiving the notices, not before, Applicant contacted State B's tax office, and the parties agreed upon a payment of \$1,200 monthly until the debt was paid. The payment would be deducted from Applicant's pay.<sup>13</sup> Applicant began his payments in December 2012 and completed his payments in January 2015. On March 5, 2015, State B notified Applicant's employer that it was releasing its lien (voluntary

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<sup>11</sup>I take administrative notice of the known fact that the IRS applies tax funds to outstanding tax debts.

<sup>12</sup>AE F; AE G; AE R; Tr. 90.

<sup>13</sup>Applicant's documentation reflected that the actual monthly payments varied in some years. AE E

garnishment) on Applicant's property (income). Applicant fully resolved his tax debt with State B.<sup>14</sup>

Applicant provided a personal financial statement, which shows his monthly income and expenses. Before his lay-off, he earned \$10,338 a month in gross income and received \$5,949 a month in net income. His monthly expenses included \$1,750 for rent, \$150 for groceries, \$400 for utilities, \$240 for car expenses, \$200 for insurance, \$10 for medical, and \$150 for miscellaneous expenses for total reoccurring monthly expenses of \$2,900. His monthly debt payments included \$400 to the IRS, \$590 on two lines of credit, \$170 on credit cards, \$250 on education loans, and \$370 on a car loan for total debt payments of \$1,790. He had a net remainder of \$1,250. He received severance pay from his employer, when he left his job, and unemployment benefits at the time of the hearing. When he worked, he had sufficient income to pay his customary expenses. The status of his income and expenses as of the date of this decision is less clear because of his lay off. Applicant received credit counseling in September 2015. His October 26, 2015 credit report reflects that his bills are current and paid. It also shows that he paid and closed many accounts, none of which were past due. He paid two small judgments. The credit report does not show any liens filed by the IRS for tax debt.<sup>15</sup>

When Applicant completed his e-QIP on January 27, 2013, Applicant answered "yes" to the following questions and provided additional information:

1) Section 25 - Investigations and Clearance Record

Have you **EVER** had a security clearance eligibility/access authorization denied, suspended, or revoked? and

2) Section 26 - Financial Record

In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes as required by law or ordinance.

In his e-QIP answer to the first question above, Applicant advised that his clearance eligibility/access had been denied, suspended or revoked by another federal agency in July 2011 because he did not sufficiently pass the polygraph administered by the agency investigator. The Government alleges that he deliberately omitted information about his security clearance being suspended in June 2007 when he was hospitalized for mental health issues. Applicant denied that he deliberately omitted this information at the hearing and in his response to the SOR. He is not, nor was he, aware that his clearance had been suspended in June 2007. After receiving the SOR, Applicant contacted his security office in 2014 and requested information about the suspension of

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<sup>14</sup>AE E; AE I; Tr. 56-60, 85-86, 88-90.

<sup>15</sup>AE A - AE D; Tr. 76.

his clearance in 2007. His security office searched their computer records in 2014 and could not find a reference to the suspension of his security clearance in 2007. The security office reaffirmed this finding in October 2015.<sup>16</sup>

In his e-QIP answer to the second question above, Applicant stated that he failed to pay \$1,400 in federal taxes for the tax year 2006 and that his wages were garnished in November 2012 to pay the debt. He also acknowledged that he did not pay income taxes to State B in 2009, that he filed his State B tax returns for the years 2009, 2010, and 2011 in the same year, and that he owed State B approximately \$20,000. He further indicated that he contacted State B and arranged for a monthly payroll deduction to pay his taxes. The Government alleges that deliberately omitted that he failed to pay his federal income taxes for the tax years 2009, 2010, and 2011. In his response to the SOR, Applicant denied intentional omitting this information. At the hearing, he acknowledged that he omitted this information, but he again denied that he intentionally tried to hide this information from the Government. When he completed his 2013 e-QIP, Applicant also acknowledged a hospital admission for depression in 2007. In his 2006 e-QIP, Applicant advised that he received counseling for depression in 2005, that his wages had been garnished in 2005 by State A for taxes owed for the tax year 2003, and that he had one credit card debt.<sup>17</sup>

When Applicant completed his e-QIP on January 27, 2013, Applicant answered “no” to the following question:

Section 26 - Financial Record

You are currently over 120 days delinquent on any debt.

The SOR alleges that he intentionally falsified his answer to this question when he did not acknowledge his federal tax debts for the tax years 2009, 2010, and 2011. Applicant denied that he intentionally falsifying his answer. Since he had not received a bill from the IRS, he did not believe that he had a current federal debt.<sup>18</sup>

After his hospitalization in 2007, another federal agency directed him to report for a psychological evaluation, which he did. He was never given a diagnosis of a medical condition nor did the agency tell him that his security clearance had been suspended. At the time of evaluation and after it, he understood that he still had an active security clearance. His understanding is support by the facility security office at his last employment.<sup>19</sup>

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<sup>16</sup>Response to SOR; AE Z; Tr. 60-61.

<sup>17</sup>GE 1; GE 2; Tr. 61-62, 97-99.

<sup>18</sup>Response to the SOR; GE 1; Tr. 98-99.

<sup>19</sup>AE Z; Tr. 100-110.

## Policies

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(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 contained 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, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant failed to timely file his state income tax returns for two years. He owed both federal and state taxes, which he did not pay at the time he filed the tax returns for the 2009, 2010, 2011, and 2012 tax years. Most of the debts had not been fully resolved at the time of the issuance of the SOR. These three disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

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

Applicant failed to file his federal and state income tax returns for the tax year 2009 because he was waiting for his former wife to provide him with copies of repairs

receipts necessary for the completion of his 2009 tax returns. His wife's refusal to provide this documentation is a factor beyond his control. Mitigating condition 20(b) has some applicability to the 2009 tax year, but is not fully applicable because Applicant did not take any independent steps to obtain the documentation. His decision to wait for her is not evidence of acting reasonably under the circumstances. He had no explanation for his late filing of his 2010 taxes.

Applicant did not initiate contact with the IRS or state tax office about the payment of the taxes owed. When he received the notices of assessment from State B in 2012, he contacted the state tax office to arrange payment of the debt. He and State B agreed upon a monthly payment and the automatic deduction of the payment from his salary, which began in December 2012. He fully resolved his State B tax debt by January 2015.

After he received notice of his full tax debt from the IRS, Applicant contacted the IRS and agreed to pay \$400 a month on his tax debt for the years 2009, 2010, 2011, and 2012. He began these payments about two years ago, and he has reduced his federal tax debt by approximately 50%. With the payment agreement and his monthly payments, the IRS did not garnish his wages or file a lien against him. AG 20(c) is fully applicable because Applicant received financial counseling recently, and he paid or is paying his tax debts. His monthly expenses have always been paid, and he fully resolved his child support arrearage on his own initiative. Because he waited until he received notices from the IRS and state tax authority before making contact to resolve his tax debts, AG 20(d) is only partially applicable

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

The Government alleges Applicant falsified his 2013 e-QIP (SOR ¶¶ 2.b - 2.d) when he failed to acknowledge that he had not paid his federal income taxes for the tax

years 2009, 2010, and 2011; when he failed to acknowledge that he was currently delinquent on his federal taxes for 2009, 2010, and 2011, and when he failed to acknowledge that his security clearance had been suspended in 2007. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2013 security clearance application when he failed to acknowledge that he did not pay his federal taxes in 2009 and 2010 and failed to acknowledge that he did not pay taxes owed for 2011 and 2012. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying his answers on his security clearance application.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>20</sup>

Applicant denied that his security clearance was suspended by another federal agency. After receiving the SOR in November 2014, Applicant requested his security office review its security records for a suspension of his security clearance in 2007. His security office could not find any indication in its records that his security clearance had been suspended by any agency. The security office reaffirmed its finding in October 2015. Applicant denied any knowledge that his security clearance had been suspended in 2007. His denial is credible. The Government has not established that his security clearance had been suspended or that he intentionally falsified his e-QIP when he did not acknowledge a suspension of his security clearance in 2007.<sup>21</sup> SOR allegations 2.a and 2.b are found in favor of Applicant.

Concerning his failure to acknowledge that he had not timely paid his 2009 and 2010 state taxes, Applicant repeatedly denied intentionally omitting this information from his e-QIP. Even though Applicant admitted that he knew he had not paid these taxes and that he did not timely pay his federal taxes for 2009, 2010, 2011, and 2012, his statement that he did not intentionally omit this information is credible because he listed other potentially negative information in his 2013 e-QIP, including his 2007 hospitalization for depression and his failure to file income tax returns and pay taxes owed to State B, and in his 2006 e-QIP, he listed treatment for depression, a wage garnishment for taxes owed to State A, and a credit card debt. By listing his state tax debts, Applicant placed the Government on notice of potential tax and financial issues. The Government has not established that Applicant intentionally falsified his e-QIP answers. SOR allegation 2.c is found in favor of Applicant under Guideline E.

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<sup>20</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

<sup>21</sup>The Government's argument that because another federal agency directed that he have a psychological evaluation, his security clearance was suspended and he knew his security clearance was suspended after the evaluation is rejected as not supported by the evidence of record.

Applicant had not received a notice from the IRS about the full amount of his past-due tax debt by the time he completed his e-QIP. He did not view his unpaid and past-due tax debt as a current delinquent debt because he had not received this notice. Therefore he answered “no” to the question in Section 26 of his 2013 e-QIP. Applicant’s erroneous interpretation of the information requested is insufficient to make his incorrect response to the question an intentional falsification of his e-QIP. SOR allegation 2.d is found in favor of Applicant.

### **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 an applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant’s eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial

problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant showed poor judgment when filed his 2009 income tax return one year late and his 2010 income return nine months late. While his returns were not timely, he took responsibility on his own initiative to file the returns before any contact from the IRS. When he moved from State A to State B, he did not immediately change his state of residence for tax purposes, creating tax issues for himself. He has corrected his state of residence and has properly filed his state tax returns. He was slow for a short period of time with filing his tax returns, but he has corrected his past behavior. He incurred tax debt in State B because he failed to properly file his tax returns. His more recent income tax returns reflect that he has sufficient money withheld from his pay to prevent a repeat of his previous issues with lack of funds to pay his taxes. Applicant changed his behavior and attitude about making sure his income tax returns are timely filed. He not only acted responsibly about resolving his tax problems, he recognized, and did not question, the interest and penalties he incurred for his late filings. For more than three years, he has been in compliance with his negotiated payment plans to pay back his federal and state taxes, which totaled around \$40,000. He has systematically reduced his tax liability to the federal government, and he fully resolved his state tax debt. He has shown a track record for debt resolution and for payment of his debts. Applicant’s security clearance was never suspended in 2007 nor did he intentionally falsify his e-QIP as he provided other negative tax information when he completed both his 2006 and 2013 e-QIPs giving the Government notice about potential tax issues. Applicant acted responsibly towards the correction of his tax issues. While he failed to timely file his tax returns and to pay the taxes owed for a short period of time, he cannot be exploited, coerced, or pressured to provide classified information to unauthorized individuals or representatives of foreign governments because he has resolved or is resolving his shortcomings with his taxes.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant mitigated the security concerns arising from his finances and personal conduct under Guidelines F and E.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is granted.

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MARY E. HENRY  
Administrative Judge