

exhibits; Applicant relied on one witness (himself) and eight exhibits. The transcript (R.T.) was received on December 15, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings and Evidentiary Issues

Prior to the close of the hearing, Department Counsel moved to amend subparagraph 1.a of the SOR to designate the referenced tax lien as a state lien instead of a federal lien. Applicant did not object to the amendment, and Department Counsel's motion to amend was granted.

Before the close of the hearing, Appellant requested leave to supplement the record with documented partnership tax lien information and information material to creditor's 1.g's default judgment. For good cause shown, Applicant was granted 10 days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with an explanatory e-mail covering conversations he had with an IRS representative about the tax liability status of his personal and corporate tax liabilities and copies of tax returns filed in behalf of himself and his sons for the tax years of 1995 through 1998.

Applicant's submissions were admitted as exhibits I through L. He followed up his submissions with e-mail accounts of his unsuccessful efforts to enlist the same IRS representative to forward a non-collection letter (see ex. M). He did not produce an IRS letter covering the cessation of collection activities against his corporation and/or his sole proprietorship, and recounted in a final e-mail that the IRS representative told him she could not send such a letter. Nor did Applicant provide any documentation of the dissolution of his product design corporation.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated (a) IRS tax liens in November 1998, November 1999, March 2001, and April 2008, respectively, for tax years 1996 through 2003, that exceed \$42,000.00 in the aggregate, (b) accumulated additional tax debts with the IRS for tax year 2004, (c) submitted an offer in compromise to the IRS in May 2008 for \$3,000.00 to settle all federal taxes owed by him and/or his businesses for tax years 1996 through 2005 (no response to date), (d) a debt with a medical provider for \$282.00, and (e) a personal judgment against him in the amount of \$8,711.16 in February 2007 that is unsatisfied.

Under Guideline E, Applicant is alleged to falsified the security clearance application (e-QIP) he completed in February 2006 by (i) omitting IRS liens filed against him when responding to question 27 and (ii) omitting his debts over 180 and 90 days delinquent, respectively, when responding to question 28(a) and (b).

Under Guideline J, the falsification allegations are incorporated by reference and cover the same underlying alleged facts alleged under Guideline E. The Guideline J allegations add a criminal component to Applicant's alleged e-QIP omissions

For his response to the SOR, Applicant admitted his federal tax lien of April 2008 and his still pending offer in compromise, his medical debt, and the judgment entered against him in February 2007. He denied the remaining allegations without explanation or comment.

Findings of Fact

Applicant is a 68-year-old self-employed owner and operator of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant divorced his wife of 14-years in September 1983 (ex. 1). He has two children from this marriage (ages 41 and 39, respectively).

Applicant started his original product design company (a graphics design business) in 1971. Around the same time, he founded a temporary personnel company to support his product design business, and ran it for five to six years (to 1976) before folding it into a new product design-personnel company (according to the information he furnished in his e-QIP). This consolidated enterprise he incorporated in 1981 (R.T., at 29-30). Besides his incorporated graphics business, Applicant owns a product design-personnel company, which he started in the late 1990s and operates as a sole proprietorship (R.T., at 38). He was the president and only officer of his now defunct company (R.T., at 34-38).

The founding mission of his product design business was to develop technical data for major defense contractors (see ex. H). At one time, his company employed 43 employees and was a profitable enterprise (earning close to \$700,000.00 a year between 1994 and 1996); it now has no employees and is no longer operational as of January 2008 (R.T., at 36-37, 46, 82). While his product design business does not require a security clearance in Applicant's judgment, he has not provided any documentation of his winding up the corporation's affairs. So, whether his product design corporation is formally dissolved or merely dormant is unknown at this time.

Att present, the only one of Applicant's companies that has a facility security clearance is the personnel company he started in the late 1990s and operates as a sole proprietorship (R.T., at 36-42). The primary mission of his personnel company is to place temporary employees with major defense contractors (R.T., at 43). Applicant receives no salary from his product design-personnel company, and currently operates it out of his garage and home (R.T., at 38). His company has had a facility security clearance from its inception. His two employees have security clearances (R.T., at 44).

Applicant himself does not have a clearance and does not need one except to satisfy the facility requirements for his company (R.T., at 31-33, 43-44).

Applicant's two sons (A and B) have a company that they own and operate separately from Applicant. Although A and B operate their partnership business out of Applicant's home (R.T., at 95-97), their company has a different name, and they use a different zip code for mailing purposes (see exs. I and J; R.T., at 58-60, 97-99).

Between 1998 and 2005, Applicant and his sons encountered financial difficulties with their companies. Records reflect that their state of residence filed a tax lien against A/B's company in November 1998 to cover owed taxes in the amount of \$336.00 (see exs. A, A-1, B and K). Neither Applicant nor A/B paid the taxes secured by the lien. And the lien has not been discharged to date. The IRS filed a tax lien against A/B and their company in November 1999 to cover taxes owed by A/B and their company in the amount of \$405.34 (see exs. A, A-1, C and L). This lien remains unsatisfied as well.

The IRS filed a lien against Applicant's product design corporation in March 2001; this lien covered delinquent taxes totaling \$30,992.11 for the inclusive tax years of 1996, 1998, 1999 and 2000 (see exs. 2, D and E). Applicant never paid the taxes covered by the lien in behalf of his wholly owned corporation, and the lien has not been released to date. Records report that Applicant's corporate business is in debt to the IRS for back taxes for the 2004 tax year in the amount of \$2,064.18 (see ex. 2; R.T., at 107). This tax debt has not been satisfied to date either. Albeit, it is not included in the IRS' 2008 lien (see exs. 2 and E).

In April 2008, the IRS filed a tax lien against Applicant's sole proprietorship to cover delinquent taxes of \$9,687.55 for tax years 1998, 1999, and 2003 (see exs 2 and E). These taxes have not been satisfied to date.

Applicant attributes the tax problems associated with his company to the contractor ©) who engaged his company in 1996 to work on various projects in his company's facility (see ex. H). After generating hundreds of thousands of dollars in gross income from work performed for C, C notified Applicant's company in 1996 of necessitated personnel changes that would reduce his company's revenue without any corresponding cost reductions (see ex. H; R.T., at 86-87). Two weeks after notifying Applicant's company of these changes, C terminated its contract with Applicant's company (ex. H). C's actions imposed serious financial hardships on Applicant's company, which did not have the cash on hand to meet tax, payroll, rental and utility obligations, and struggled to survive without much financial success (ex. H). Applicant considered suing C for contractual breach, but ultimately declined after hearing that he could be risking his life by confronting C and its principals in any court action (see ex. H; R.T., at 87).

Applicant's financial misfortunes with the operations of his companies were compounded by two physical accidents he suffered between 1998 and march 2001 (see ex. 2). The accidents impaired the nerves in his neck and right arm and significantly

affected his ability to operate his graphics business (ex. 2; R.T., at 72-73). He survived for the ensuing five years on the strength of his disability insurance (R.T., at 73-74). His disability insurance payments ceased in February 2006 when he reached the retirement age of 65 (ex. 2; R.T., at 73, 118). Without an adequate income stream to sustain him, he could not meet his personal and business-related debts. Applicant assures he currently lives within his means with the income he receives from his company (see ex. 2).

Applicant submitted a written compromise offer to the IRS in May 2008 (see ex. 2; R.T., at 90) in the amount of \$3,000.00. His written compromise offer seeks settlement of all taxes owed by himself and his companies for the inclusive tax years of 1996 through 2005. His offer does not include any taxes owed by his sons and their company for any of the covered years. Moreover, none of the correspondence from the IRS attached to his interrogatory responses (ex. 2) make any reference to his sons or their company.

Applicant has tried in the past, without success, to reach the responsible IRS official to ascertain the status of his compromise offer (R.T., at 90-91, 94). In his most recent discussions with an IRS representative, he assures this IRS representative told him that his personal and corporate tax liabilities were declared uncollectible, and that he would be receiving a letter to that effect (see ex. M). This same IRS representative told Applicant that she could not send a confirming close-out letter, or discuss his case with anyone outside of her office (see ex. M). Applicant's proofs do not include any correspondence from this IRS representative, or any other IRS official, regarding enforcement suspension and/or the agency's reactions to Applicant's compromise offer.

Besides his federal tax debts, Applicant incurred two consumer-related debts that were reported to be delinquent in his credit reports. Creditor 1.f is a medical debt in the amount of \$282.00. It is reflected in as delinquent in Applicant's creditor reports. While the debt remains outstanding and the subject of ongoing collection activity, medical records support Applicant's claims that he is not responsible for the debt (see ex. F). He documents his claims that he bears no personal responsibility for this debt (see ex. F; R.T., at 71-72). His furnished medical documentation does not identify the responsible party that is the subject of collection action (ex. F).

Applicant's other consumer debt (with Creditor 1.g) covers a credit card account opened in March 2000 (exs. 3 and 4). When Applicant fell off a ladder in February 2001, injured his neck, he encountered recurrent difficulties in meeting his personal and business obligations. A settlement with a local yacht club over a slip and fall incident produced a \$70,000.00 settlement for Applicant in 2004 (see ex. 1; R.T., at 124-25). Whether and how Applicant used these proceeds to address his debts is unclear. Records show, though, that he stopped making payments altogether on the creditor 1.g account in February 2006 and received a demand letter from the creditor in August 2006 (ex. F). When he did not seasonably respond to this creditor's demand, creditor 1.g filed suit and obtained a civil default judgment against Applicant for \$8,711.16 in February 2007 (see exs. 3 and 4; R.T., at 74-75). This judgment remains outstanding.

Applicant attributes this delinquency and ensuing judgment to health-related circumstances beyond his control. He fell off a ladder and injured his neck in February 2001. The injury required serious neck surgery and extended therapy. Because of this injury, Applicant was off work for a number of months and fell behind with some of his debts (including his credit card debt with creditor 1.g. He still considers himself to be primarily disabled.

While Applicant was disabled and recuperating at home, the IRS (in April 2001) filed and notified Applicant of its federal tax lien. The lien was filed against Applicant's corporation and served on his P.O. Box, and not against Applicant personally. Applicant claims he never checked the post office for any IRS correspondence, and did not know of any IRS lien notice until after he was told of the lien by an interviewing investigator from the Office of Personnel Management (OPM) who apprised him of the lien in 2006 (see ex. 2; R.T., at 132). By contrast, the smaller liens filed by the IRS in 1998 and 1999 (creditors 1.a and 1.b) name his sons and a different P.O. Box number (ex. 2).

It is clear enough from this record that nothing in either of the identified 1998 and 1999 lien documents or related tax returns make any reference to Applicant or suggest any ownership link between Applicant and the company affiliated with Applicant's sons (*compare* exs. B and C with J). The initials of the companies owned by Applicant and his sons, respectively, are identical; their reference on the lien documents identified in exhibits B and C provides no helpful guidance. Applicant's only explanation for A/B's adoption of the same initials for their company was their perceived desire to take advantage of Applicant's business reputation and contacts (R.T., at 95).

Key to differentiating the lien documents covering Applicant's companies with those of A/B's company are the names of Applicant's sons and their zip different codes appearing on the lien and underlying tax returns. Based on the documentation and testimony present, Applicant's explanations about the coverage of the liens associated with creditors 1.a and 1.b are accepted. Inferences warrant, accordingly, that the liens covered by creditors 1.a and 1.b cover taxes owed by A/B, and not Applicant. Applicant has no manifest legal responsibility for the underlying taxes associated with creditors 1.a and 1.b.

Asked to complete his e-QIP in February 2006, Applicant answered "no" to question 27 (inquiring about liens placed against his property for failing to pay taxes), and question 28(a) and (b) (asking about debts over 180 and 90 days delinquent, respectively). He attributes his omissions to (a) the lack of any personal responsibility for the tax obligations of his corporation, (b) the lack of knowledge of any tax liens filed against him, (c) and the absence of any unpaid personal debts (see ex. 2; R.T., at 63-72, 80-81, 127-32, 136-38). In his follow-up interview with an OPM investigator in September 2006, he explained the circumstances surrounding his 2001 business-related tax lien in considerable detail after being shown a copy of the lien by the investigator (see ex. 2). Because of the close association of Applicant's company and himself, typical separation between an owner and his company is complicated.

To the extent the IRS recognizes the personal and corporate legal distinctions in the exchanges Applicant recites in his post-hearing e-mail submissions, treatment of Applicant and his company as a unitary association for tax and E-QIP reporting is not justified. It may well be that Applicant and his company should be treated as a unitary entity, but the evidence is not sufficiently developed in this record to make this case. Question 28 of Applicant's e-QIP asks financially related questions about Applicant in a personal way and provides no expansive definitions of the term "your" that could suggest inclusion of Applicant's corporate interests. His explanations regarding his omission of his corporation's tax lien are accepted.

By contrast, Applicant's omissions of his personal tax deficiencies for tax years 1998, 1999 and 2003 (covered by subparagraph 1.e) do not involve any semantical distinctions between corporate and personal debts. These underlying tax debts were clearly treated by the IRS as his personal debts based on the identifying information supplied in the covered 2008 lien and Applicant's own testimony about the sole proprietorship he established in the late 1990s.

Because the tax lien covering Applicant's personal taxes was not filed until April 2008, this lien was not covered by question 27 of the e-QIP he completed earlier. The underlying taxes, though, were in delinquent status, and are covered as omissions in sub-paragraphs 2.b and 2.c. It is certainly reasonable to believe that the IRS provided Applicant with regular late notices about his underlying personal tax deficiencies. However, there is no developed documentary paper trail of notices, or Applicant acknowledgments of notice receipts, to forge the basis for any hard findings.

Without substantial evidence of Applicant's receiving regular late notices from the IRS concerning his personal tax deficiencies, no fair inferences can be drawn that he deliberately omitted these delinquent tax debts that covered in the IRS's 2008 tax lien. Likewise, the ownership relationship of Applicant to his sons' company is not sufficiently developed to warrant inferences that his personal interests are unitary with A/B's company.

So, as to alleged omissions that Applicant deliberately omitted the tax liens covered by sub-paragraphs 1.a, 1b, and the underlying taxes covered by sub-paragraph 1.e, favorable inferences warrant, too, but for different reasons. Here, the proofs are insufficient to establish that Applicant (a) had any ownership interest in A/Bs's partnership and/or that he (b) was made aware of debt deficiencies relative to his sole proprietorship.

The SOR also alleges that Applicant omitted his medical debt (creditor 1.f) from 28b (inquiring about debts over 90 days delinquent). Applicant attributes his failure to list his medical debt to his claimed lack of any monies owed to the creditor 1.f (see ex. F; R.T., at 116). Applicant's claims of unintentional omission are corroborated by the documentation presented by the Government (see ex. 2) and Applicant to a more limited degree (see ex. F, showing a zero balance attributable to Applicant personally).

Addressing Applicant's credit card account with creditor 1.g (the judgment creditor), Applicant informs that he simply misunderstood the status of his ongoing negotiations with the creditor at the time over setting up a new payment plan (R.T., at 118-19). Applicant's explanations lack relevant specifics but suggest some Applicant confusion. The August 2008 demand letter he received from creditor 1.g recites only a five month past due history (see ex. F). So, it is quite plausible that he had some memory confusion over just when this account became over 180 and/or 90 days delinquent. In any case, omission of the underlying debt is not alleged in the SOR, though, and no inferences need be drawn on whether or not Applicant should have listed this debt when responding to question 28 of his e-QIP.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

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

Financial Considerations

The Concern: "Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." Adjudication Guidelines, ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15.

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. See Adjudicative Guidelines (AG), ¶ 30.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

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

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

Analysis

Applicant is the president and chief operating officer of two small defense contractors (one incorporated and the other operated as a sole proprietorship) he has owned and operated since his founding of the companies (in 1976 and 1998, respectively). Over the course of an eight-year period, Applicant's companies failed to pay owed federal income taxes. The IRS filed two tax liens against his companies and two smaller ones against a company owned by his sons (A/B) that remain unpaid and unsatisfied. His corporation is liable as well for assessed taxes for the tax year of 2004. Additionally, a consumer credit card company took a default judgment against him in

February 2007 for \$8,711.16. This judgment remains unpaid and unsatisfied. Considered together, and without resolution, the recurrent tax liens and debts associated with Applicant and his company, and the still outstanding civil judgment entered against him raise security significant concerns. Initial security concerns were also raised against Applicant's omissions of federal tax liens and his delinquent debts.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of federal tax liens through the small company he owns and manages, his outstanding judgment indebtedness, and his past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to recurrent income shortages following contract terminations and other business related short-falls with his companies and personal finances. To date, he has not been able to effectuate a compromise settlement with the IRS on owed taxes by both of his companies, and the IRS has reportedly declared these debts uncollectible. Applicant provides no documentation of this reported uncollectible status, or whether the IRS' reported decision covers his companies and himself. Without any documented dissolution of the corporate enterprise he claims to have shuttered in 2008, ascertainment of IRS enforcement intentions cannot be made without considerable speculation.

Applicant does not provide adequate explanations either as to why he has not made more concerted earlier attempts to work out payment arrangements with the IRS. Nor has he provided any convincing justifications for failing to make any concerted attempts to resolve the outstanding judgment against him.

Since receiving the SOR, Applicant has initiated little follow-up efforts to resolve the outstanding tax liens covering his product design corporation (reportedly no longer operational) and personnel proprietorship he owns and maintains. Afforded an opportunity to consummate compromise arrangements with the IRS on all of the owed taxes by his corporation and his sole proprietorship, he has not been able to engage the IRS in any tangible settlement discussions, much less obtain approval of his still pending compromise offer. Prospects for reaching any compromise accord with the IRS are less promising in the face of the latest information furnished Applicant by the IRS representative who spoke with him.

Mitigation credit to Applicant is very limited based on his furnished proofs. True, two of the documented state/federal tax liens (associated with creditors 1.a and 1.b) involve tax deficiencies covered by a company owned by Applicant's two sons and have no tangible legal connection with Applicant. Applicant was careful in his May 2008 compromise offer to limit the coverage of his compromise to federal taxes owed the IRS by himself and his own graphics design and personnel businesses.

However, the remaining tax and consumer debts belong to Applicant. The corporate taxes covered by the IRS's March 2001 lien were accrued over a five-year period spanning 1996 and 2000, and involve a company wholly owned and operated by Applicant. As his company's owner and president he was responsible for making sure that the corporation's taxes were timely paid. He acknowledged as much in his compromise offer which covers all federal taxes owed by himself, his sole proprietorship, and his corporate business. Of all of the proven debts listed in the SOR, he is only able to document resolution (by way of release of any liability he might have) of the small medical debt covered by subparagraph 1.f of the SOR.

Accordingly, the tax debts and judgment debt linked to Applicant exclusively in the SOR through his identified graphics design corporation and personnel business remain his legal obligation and responsibility, even if the IRS considers the underlying taxes no longer collectible. And at this time, the IRS has not provided any documentary proof to Applicant that it is no longer looking to enforcement of back taxes associated with himself and his companies. The same holds true with the judgment debt identified in subparagraph 1.g. As a result, MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," cannot be applied to Applicant's situation. ¶ MC 20 (d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has some limited applicability based on Applicant's documented payment of his creditor 1.f medical debt and satisfactory proofs that the tax debts covered by subparagraphs 1.a and 1.b are not his obligations or responsibilities.

Because Applicant has not chosen to seek any counseling advice relative to his identified tax and judgment debts, he may take only limited advantage of ¶ MC 20©), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." While there is some reason to anticipate future resolution of his federal tax issues based on his documented written compromise, he has produced no tangible progress with the IRS to date. Nor does he provide any tangible evidence of repayment efforts with the consumer judgment holder covered in the SOR. Considered together, Applicant's efforts are not enough to warrant any more than partial application of ¶ MC 20©).

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of

a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not help Applicant to overcome the judgment lapses associated with his tax debt accumulations and consumer judgment concerns. His long work history in providing contact support for other defense contractors is commendable and deserving of public praise. His failure, though, to diligently monitor and ensure timely tax payments to the IRS in connection with his corporate and personal businesses reflects the lack of adequate attention to his fiducial duties of meeting his companies' tax obligations. His efforts to compromise these accrued tax debts (most of which are covered by still outstanding tax liens) have been unsuccessful to date and preclude him from mitigating security concerns over his ability to achieve and maintain stable finances for both himself and his defense-related business enterprises. These concerns are not mitigated under the whole person concept.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, his earnest but still mostly unsuccessful steps to resolve them, and the absence of sufficient efforts to demonstrate his financial responsibility and trustworthiness in managing his finances, Applicant does not mitigate security concerns related to his proven debt delinquencies. While Applicant is to be commended and encouraged in his repayment efforts, more tangible proofs of success are necessary to satisfy minimum standards of security eligibility. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.c through 1.e and 1.g of the SOR. Favorable conclusions warrant with respect to subparagraphs 1.a, 1.b and 1.f.

Applicant's e-QIP omissions

Posing potential security concerns, too, are Applicant's documented omitted tax liens and delinquent debts in the e-QIP he completed in February 2006. He attributed his omissions to (a) the lack of any personal responsibility for the tax obligations of his corporation, (b) the lack of knowledge of any tax liens or underlying taxes assessed or filed against him, and (c) the absence of any unpaid personal debts. His claims have merit.

From a whole person perspective, Applicant presents as an essentially honest applicant who experienced mostly business-related losses and ensuing tax liens and persuaded he did not deliberately omit the corporate tax lien filed against him and his company in March 2001. His e-QIP omissions appear to be isolated mistakes and the source of misunderstandings, and are not indicative of any overall trust problem.

Applicant's accepted explanations enable him to persuasively demonstrate that his omissions (if they can be characterized as omissions) were inadvertent, based on the corporate nature of the 2001 tax lien against his company and his lack of any personal knowledge, or reasons to believe otherwise, that question 28 of his e-QIP covered not just personal liens, but corporations in which the applicant had a material interest.

Based on Applicant's stated understanding of the financial questions in the e-QIP and his accepted claims he the lien was not his personally, the lack of any documented evidence of Applicant's notification of personal taxes owed, and his accepted assurances that his medical debt had already been paid (the only cognizable claims covered by Guideline E of the SOR), Applicant is able to successfully refute the allegations of falsification in the SOR. Favorable conclusions warrant with respect to the allegations covered by Guidelines E and J.

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

Formal Findings

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

GUIDELINE F: (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-paras. 1.a, 1.b and 1.f:	FOR APPLICANT
Sub-paras. 1.c, through 1.e and 1.g	AGAINST APPLICANT
GUIDELINE C: (PERSONAL CONDUCT):	FOR APPLICANT
Sub-paras. 2.a through 2.c:	FOR APPLICANT
GUIDELINE J. (CRIMINAL CONDUCT):	FOR APPLICANT
Sub-para. 3.a	FOR APPLICANT

Conclusions

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

Roger C. Wesley
Administrative Judge

