



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-05434  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: M. Elizabeth Stachura, Esquire

December 19, 2008

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 17, 2006. On August 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

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Exemption 6 applies

Applicant answered the SOR on August 25, 2008, and he requested a hearing before a DOHA administrative judge. On September 23, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On October 3, 2008, I scheduled a hearing for November 6, 2008.

On October 8, 2008, counsel for Applicant entered her appearance and she requested a continuance. Department Counsel objected on the basis that Applicant had been notified of the planned hearing date of November 6, 2008, as early as September 22, 2008, and he had been advised to diligently retain an attorney if it was his intention to do so. During a conference call with the parties on October 10, 2008, it was determined that Applicant's counsel had no schedule conflicts for November 6, 2008. In the absence of good cause shown for a delay and after consideration of scheduling issues, I denied the request for continuance.

The parties appeared at the hearing as scheduled on November 6, 2008. Seven government exhibits (Ex. 1-7) and 12 Applicant exhibits (Ex. A-L) were admitted without any objections. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on November 14, 2008. Based on a review of the pleadings, exhibits, and hearing testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

DOHA alleged under Guideline F (financial considerations) that Applicant owes delinquent federal taxes of \$11,267 for 2002 (SOR ¶ 1.a), \$7,498 for 2003 (SOR ¶ 1.b), \$19,528 for 2004 (SOR ¶ 1.c), and \$2,403 for 2005 (SOR ¶ 1.d), and state taxes of \$8,900 for tax years 2000 through 2005 (SOR ¶ 1.e). Applicant admitted the allegations without explanation. His admissions are incorporated as findings of fact. After considering the evidence of record, I make the following additional findings of fact.

Applicant is a 50-year-old senior field engineer who has been employed by the same defense contractor since October 1986 (Ex. 1, Tr. 46). He has held a security clearance since he served in the United States Navy from October 1976 to October 1986 (Ex. 1, Tr. 48, 87).

Applicant and his spouse married in August 1978 (Ex. 1, Tr. 48), and they had two children (Tr. 48). In October 1986, he was discharged from the Navy for medical reasons when his son was about seven and his daughter five (Tr. 48-49, 182, 200). He began working for his present employer that same month, which meant a relocation for himself and his family (Tr. 50, 182). His spouse began working part-time during the

school day for a retailer (Tr. 183). In May or June 1987, Applicant's employer lost the contract he was working on. Faced with unemployment or finding another job in the company, Applicant took a position with his employer at the same pay but in another state, so he and his family moved again (Tr. 51, 183).

Applicant and his spouse purchased a home in their new locale. She was unemployed initially, but subsequently worked about 14 hours per week in accounts payable in a company's insurance department (Tr. 184). In late 1988 or early 1989, Applicant again faced the prospect of unemployment as his employer lost the contract for his program. Unable to find other suitable employment in the area after a brief search, Applicant stayed with his employer but had to move his family yet again (Tr. 184). On assurances from their real estate agent that their home could sell anytime, Applicant and his spouse made no effort to find tenants. The house remained on the market for about a year before it sold in late 1989 at a loss of several thousand dollars (Tr. 52-55, 185).

In their new locale, Applicant and his spouse found a home they wanted to buy. Thinking their former residence would sell quickly, they made a deal with the builder to rent it until they were able to close on their other home (Tr. 56). Even with his spouse working in data entry part-time for a municipal community services board (Tr. 186), their income was insufficient to cover their financial obligations, which included their rent and the mortgage on their prior residence. Applicant and his spouse incurred substantial debt as they relied on credit cards and loans (Ex. 3, Tr. 54-55) to cover travel expenses associated with the showing of their house (Tr. 185). After it sold, they bought the house they were renting (Tr. 56), taking out a VA 30-year mortgage of \$121,500 in January 1990. They made their mortgage payments on time (Ex. 5).

Following a government consolidation of his military customer in the mid-1990s, Applicant was yet again faced with the prospect of looking for a new job or of relocating to stay with his employer. He was unsuccessful in finding "equitable" employment where he was living, and he moved in October 1994 with their son to keep his job with the defense contractor (Tr. 57-58, 187). Applicant's spouse and daughter joined them in January 1995 (Tr. 187). Applicant's spouse got a job with a home improvement retailer in their new locale, and she progressed through the ranks to become a store manager by 2003 (Tr. 65, 190-91). Applicant and his spouse rented out their home in their previous locale until it sold in about September 1996 (Ex. 5). The rent covered only a portion of the mortgage (Tr. 188-89). They were unable to qualify for a mortgage in their present locale (Tr. 59), so they have been renters since 1995.

For several years starting with tax year 1997, Applicant failed to adjust his tax withholdings to account for the impact of the loss of the home mortgage deduction.

When he filed his and his spouse's joint income tax return for tax year 1997, they underpaid their federal taxes on taxable income of \$58,279. After credit for \$6,616 in taxes withheld, but with penalties and interest added, they owed the Internal Revenue Service (IRS) about \$4,601.49 as of May 1998 (Ex. B). They could not afford to pay the debt, as they were still paying on credit card obligations incurred for living expenses in the past (Tr. 60-61). Applicant arranged with the IRS to repay the debt. After the IRS credited them \$106.47, Applicant paid \$150 in July 1998, \$326 in August 1998, and \$350 each in October and November 1998. Applicant did not provide evidence of subsequent payments for the tax debt, but IRS records show their tax obligation for tax year 1997 was satisfied as of December 2001 (Ex. B).

For tax year 1998, Applicant and his spouse filed separately. He prepared the returns himself using tax software. Based on the calculations, he thought they would be better off filing separately (Tr. 64). His portion of their taxable income was \$43,819. After his return was filed and assessed, he owed \$4,686.67 for tax year 1998 as of May 1999 (Ex. B). His spouse owed as well, and he wasn't able to pay her tax debt (Tr. 63). Applicant made one payment of \$326 toward his debt in August 1999, and subsequent payments starting in June 2000. As of June 2003, he had satisfied his federal tax debt for 1998 (Ex. B, Tr. 61).

Applicant and his spouse resumed filing joint returns starting with tax year 1999. On taxable income of \$78,742 for 1999, they owed taxes of \$16,358 but had only \$8,826 in taxes withheld. For tax year 2000, Applicant and his spouse earned joint taxable income of \$99,129. They had \$15,926.77 withheld on a federal tax debt of \$22,055 (Ex. B). They did not have the funds to cover these tax debts because they were making payments on about \$25,000 to \$30,000 in credit card debt (Tr. 90) incurred in part for living expenses (food, gasoline, heating oil, Tr. 105) and unexpected expenses since early 1989 (Tr. 106). In 2001, Applicant and his spouse consulted with a credit counseling service to consolidate their substantial credit card debt (Ex. 3). Starting in August 2001, they began making monthly payments of about \$545 per month to the credit counseling service (Ex. F, Tr. 90-97). Applicant opened and charged on several low limit credit card accounts after 2001 that he subsequently added into the debt consolidation or paid outside of the plan (Tr. 98-100). A delinquent telephone debt of \$1,065 was paid after charge off in or about August 2004 (Ex. 5, Ex. 7).

Meanwhile, his tax debt continued to grow. For tax year 2001, they owed at least \$663 (Ex. C). On joint taxable income of \$99,820 for 2002, they had only \$11,672.49 withheld on taxes owed of \$20,749 (Ex. B). On October 18, 2002, the IRS issued a notice of levy to collect back taxes of about \$7,342.25 for tax year 1999. (Ex. B).

In spring 2003, Applicant's spouse began collecting temporary disability for about eight or nine months. Her benefit was less than what her pay would have been (Tr. 66-67), but their joint taxable income for that year still totaled \$87,056. Available information shows a miscellaneous payment of \$1,092 toward his federal tax debt in March 2003 but nothing thereafter until mid-May 2004 (see Ex. B).

In or before October 2004, Applicant paid \$1,200 up-front and then \$100 per month thereafter (Tr. 127) to a tax resolution firm that promised to work with the IRS to mitigate penalties and interest (Tr. 70). Applicant continued to receive notices from the IRS but did not respond on assurances from the tax resolution firm that it was working on his case (Tr. 71). After the IRS took most of one paycheck, he realized that the tax resolution company was giving him the "runaround" (Tr. 72). Applicant stopped his monthly payments to the company and he contacted the IRS directly. The IRS agreed that about \$243 would be taken out of his pay every two weeks (Ex. B, Ex. G, Tr. 74).<sup>1</sup> These payments, which continued to February 2007, were applied to the tax delinquencies for tax year 1999 and, after that debt was satisfied, to tax year 2000 (Ex. 3, Ex. B, Ex. G, Tr. 62, 74).<sup>2</sup>

On May 31, 2004, the IRS processed Applicant's and his spouse's joint return for 2003. A tax debt of \$14,239 was assessed but they had only \$9,648.72 in withholdings. On August 27, 2004, the IRS filed a tax lien in the amount of \$28,224 (Ex. E). When Applicant prepared their joint income tax return for tax year 2004, he learned that their tax liability had "spiked" for that year (Tr. 123). His spouse had returned to work in January 2004 but at a lower position of assistant manager (Tr. 151). She resigned in February 2004 as she "didn't have the heart for it anymore" (Tr. 152). Denied unemployment and behind on household bills, including a couple of months late in their rent (Tr. 119), Applicant's spouse did not rollover her 401(k) into a new account. Instead, they used some of the money to pay their household obligations (Tr. 67-68). Because of the penalties associated with early withdrawal from the 401(k), Applicant and his spouse owed at least \$11,019.41 in delinquent taxes for 2004 (Ex. 4). He had

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<sup>1</sup>Applicant testified he and the IRS (and starting in February 2007, the state) agreed to the amounts taken from his pay (Tr. 73-74). The leave and earnings statements list the payments as a garnishment (Ex. G).

<sup>2</sup>Applicant testified that he started working with the tax resolution firm in October 2004 and that the IRS garnished almost his entire paycheck in March 2005 (Tr. 71, 125-26). The available evidence suggests but does not confirm, however, that his contacts with the tax resolution may have been as early as October 2002, in response to the IRS levy for tax year 1999. A "miscellaneous payment" of \$1,092.50 was made toward his tax debt on March 24, 2003, and regular payments of \$242.31 were made to the IRS starting May 17, 2004 (Ex. B).

an accountant look over his return for any errors, because he could not believe what they owed (Tr. 68, 123).<sup>3</sup>

Applicant's spouse got a job working as an operations manager for an electronics retailer in 2004. She earned about half their household income. In December 2004, they incurred unexpected expenses totaling about \$5,000 to pay for her mother's funeral and related travel costs (Tr. 196, 202). The stress of a long commute and 60-70 hour work weeks took its toll on Applicant's spouse by 2006. She planned to resign, but her employer offered her a position closer to home with a 40-hour work week but at less income (Tr. 130-33, 194). In 2005, Applicant adjusted his filing status to married claiming zero dependents so that additional taxes would be withheld from his pay (Tr. 84), although they ended up owing \$2,403.10 for that year (Ex. 4).

In early 2007, the state sought garnishment action to collect the back state taxes, even though Applicant claims he was making "fairly consistent" payments toward the \$8,900 state tax debt (Tr. 74, 142).<sup>4</sup> In January 2007, he was interviewed for his clearance about the federal tax lien and other financial issues. He indicated he was paying the IRS \$500 a month, and that he considered his financial situation favorable (Ex. 3).

Effective with the pay period beginning February 10, 2007, his employer stopped paying the IRS out of Applicant's wages and the state began to attach his wages (Tr. 144). After a payment of \$120.98, the state has taken \$126 from his pay twice monthly (Ex. G). Applicant did not notice that the IRS payment had stopped for a couple of months because he was adjusting his W-2 status (Ex. 2, Tr. 75). On May 21, 2007, the IRS requested repayment from Applicant of \$2,403.10 for tax year 2005, and from his spouse of \$7,498.82 for tax year 2003 (Ex. 4). On September 3, 2007, the IRS issued a notice of levy for the 2003 taxes (Ex. B). Applicant contacted the IRS and he agreed to pay his back taxes at \$600 per month. He apparently made the full payment in December 2007, but only a partial payment of \$400 or \$450 in January 2008 (Tr. 76). Applicant did not make any subsequent payments to the IRS, in part because of the high cost of home heating oil in February/March 2008 (Tr. 171).

After preparing their joint tax return for 2007, Applicant realized that they had overpaid their taxes by \$1,978. He testified that a refund for 2006 had been intercepted by the IRS and he fully expected his refund for 2007 to be taken as well. He assumed

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<sup>3</sup>Applicant testified he knew that early withdrawal would increase their taxes, but he was unaware of additional penalties (Tr. 120).

<sup>4</sup>Applicant tried unsuccessfully to obtain records from the state confirming his payments (Tr. 140).

this compensated for their obligation to make the monthly \$600 payment to the IRS (Tr. 77-78, 150). IRS records confirm his refund for 2007 was taken by the IRS on or before May 12, 2008, and applied to tax year 2002 (Ex. 4). Applicant's and his spouse's economic stimulus tax rebate of \$1,200 was intercepted by the IRS on or about June 23, 2008, and applied toward their obligation for 2002, leaving them with a remaining balance of \$10,248.55 for 2002 (Ex. C).

Applicant's spouse resigned from her job in June 2008 (Tr. 152). Her employer went to a computer-generated time schedule under which she no longer could rely on regular hours. She appealed a denial of unemployment compensation, and has been looking for a job in an office environment (Tr. 130-33, 152, 197).

By IRS notice dated March 10, 2008, Applicant's spouse was informed she owed \$19,528.02 in delinquent federal income taxes for tax year 2004 (Ex. 4). Applicant asked the IRS to roll her tax delinquency into the existing installment agreement. He was advised that they would have to submit another agreement (Tr. 77-78). As of July 2008, the IRS records indicated Applicant's and his spouse's outstanding delinquent tax debt for tax years 2002 through 2005 totaled \$41,955.16 (Ex. C).<sup>5</sup>

On September 25, 2008, Applicant and his spouse proposed to pay the IRS \$300 per month.<sup>6</sup> In acknowledging receipt of his proposal, the IRS notified Applicant on October 29, 2008, that he should continue to make the payments under existing installment agreements pending IRS review of his proposal (Ex. A).

As of October 13, 2008, the IRS reported outstanding tax balances of \$10,461 for 2002 and \$9,003.15 for 2003 (Ex. B), due to interest continuing to accrue (Tr. 153). As of late September 2008, they had about \$6,717.73 in credit card debt that remained to be resolved in the debt consolidation plan. About \$45,191 had been disbursed to their creditors under the plan as of October 2008 (Ex. F, Ex. H). Applicant and his spouse intend to continue to make their monthly payments until the debt is paid off in about August or September 2009 (Ex. H. Tr. 85). Once that debt is paid, they plan to increase the amount of their monthly payment to the IRS (Tr. 85). Applicant's wages continue to be attached in the amount of \$126 twice a month in repayment of their state taxes. He

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<sup>5</sup>The breakdown on the tax debt is \$10,258.14 for 2002, \$8,706.04 for 2003, \$20,159.99 for 2004, and \$2,830.99 for 2005 (Ex. C).

<sup>6</sup>The IRS acknowledged receipt of the proposed installment agreement in relation to tax year 2005 (Ex. A). The amount of Applicant's back tax obligation was not made part of the record for review. He testified he owed less than in previous years (Tr. 84). He overpaid his federal taxes for 2006 but only by about \$90 (Tr. 85) and by a much larger amount, almost \$2,000 (Tr. 85), in 2007. His expected refunds were apparently intercepted by the IRS (Tr. 76).

anticipates that his delinquent state taxes will be satisfied in two or three years, provided he is able to keep his job (Tr. 89). Applicant owes state taxes for 2006, but not for 2007 (Tr. 136).

Applicant and his spouse rent a two-bedroom house of about 1,200 square feet. As of early November 2008, they were one month behind in their rent, which is \$1,000 per month (Tr. 171-72). They own only one car. Applicant has been taking the bus to work for the past couple years (Tr. 86-87, 155). The car was paid off in about September 2008 (Ex. D, Tr. 172-73). He realizes they are not in a position to take on another car payment (Tr. 87). They have been operating under a budget for the past four years. Before that, they tried to pay the bills as they came in (Tr. 138), but Applicant occasionally forgot to pay some of them. Most of their household bills are now paid electronically (Tr. 139). He has set aside \$300 to make a payment to the IRS in November 2008 (Tr. 156). They pay \$130 per month for cable television and Internet service (Tr. 173). He has \$18.93 deducted from his pay every two weeks for gym memberships for himself and his spouse (Ex. G, Tr. 160). They went to the gym a couple times per week until six months ago when his spouse injured her shoulder (Tr. 160). Applicant's sister-in-law gave him \$6,000 to pay for legal representation at his security clearance hearing. She has not asked to be repaid, although Applicant and his spouse intend to repay her (Tr. 201).

Applicant is active in his church, having taught Sunday School for the past year, and in his local community, where he coaches softball and is on the board of directors for a softball league. In both situations, he has shown himself to be conscientious and honest (Ex. I, Ex. J, Tr. 80-82).

Applicant's employer is aware of his credit issues. His current supervisor recently took over the department. He has had limited contact with Applicant since but indicates that Applicant has been reissued a company credit card which he is monitoring closely. Based on his observations, he supports continuation of Applicant's clearance (Ex. L). A coworker who has observed Applicant's work on a daily basis has found him to be trustworthy, reliable, and to possess good judgment. Applicant, who handles classified information on a daily basis, has given him no reason to believe he would mishandle sensitive information (Ex. K).

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

potentially disqualifying conditions and mitigating conditions, which are useful 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 common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the 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 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.

Applicant and his spouse underpaid their federal and state income taxes every year starting with tax year 1997 through 2005. Their federal tax debt totaled more than \$50,000, excluding interest and penalties. Although no state tax records were provided for review, Applicant admitted that he and his spouse owed about \$8,900 in delinquent state income taxes for tax years 2000 through 2005. Applicant made payments to satisfy his delinquent taxes for 1997 and 1998. His wages were garnished by the IRS in the amount of \$1,092.50 in March 2003 for his 1999 taxes, and at \$243.31 every other week from May 2004 to February 2007. These payments, as well as expected tax refunds from 2006, 2007, and the economic stimulus refund, were intercepted and applied to their delinquent federal income taxes but they still owed \$41,955.16 as of July 2008. The state began garnishing Applicant's wages in late February 2007, at \$126 every other week as of May 2007. Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

Concerning the potentially mitigating conditions, AG ¶ 20(a) ("the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment") does not apply. Applicant adjusted his tax withholdings so that they were entitled to federal tax refunds for 2006 and 2007, and to a state tax refund for 2007. Yet, it took him a couple of months to notice that his employer had stopped the IRS garnishment in February 2007. He made no payment until after the IRS issued a notice of levy in September 2007. While Applicant contacted the IRS and agreed to \$600 monthly payments, he made only one full payment in December 2007. He paid the IRS only \$400 or \$450 in January 2008 and nothing thereafter while interest continued to accrue on his and his spouse's delinquent tax debts. The delay in resolving their federal and state income tax debts is due at least in

part to the fact that they have paid a tax resolution firm \$545 to \$568 per month since August 2001. As of late September 2008, \$45,216 had been disbursed to their creditors. This extensive credit card debt was not alleged in the SOR, but it is relevant in assessing whether he has handled his finances appropriately, and whether his current financial situation presents an unacceptable security risk. There is merit to the government's concern that Applicant has given resolution of his consumer credit delinquencies priority over his tax obligations.

AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," applies in limited part. During 1989, Applicant and his spouse paid both the mortgage on their house in their prior locale, and rent at their new location. They also had travel costs associated with the attempts to sell their home. They relied on credit to pay for living expenses, even after they were settled in their new location, and this had an impact on their taxes years later as they could not afford to pay their back taxes and the monthly payment under a debt consolidation plan. Applicant also relied in good faith to his detriment on the assurances of a tax resolution firm that it was working on his behalf, but he should not have ignored IRS notices.<sup>7</sup> He also made a poor financial decision in failing to research the tax implications of his spouse cashing out her 401(k) in 2004.

Applicant submits he arranged with the IRS to have \$243.31 taken from his wages every two weeks (see AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"), although his earnings statement lists the deduction as a garnishment. This continued until mid-February 2007, when unknown to Applicant at the time, the state began garnishing his wages to collect delinquent state taxes. However, I am unable to fully apply AG ¶ 20(d) or AG ¶ 20(c) ("the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control"). In May 2007, the IRS notified Applicant and his spouse of their respective tax delinquencies for 2005 and 2003. There is no evidence that Applicant or his spouse made any payments that summer to the IRS. It was not until after the IRS issued a notice of levy in September 2007 that Applicant contacted the IRS and agreed to make \$600 payments. He made one full payment in December 2007, a partial payment in January 2008, and nothing thereafter. He attributes his failure to make any payments of late to high heating costs, to his mistaken assumption that his \$1,978 tax refund for 2007 would cover for the payments,

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<sup>7</sup>Applicant testified that once he realized the tax firm had done nothing on his behalf, he "immediately" called the IRS. It is unclear when he contacted the IRS, who expressed to him that they understood what he was saying but that they could not let him "ignore" them for that long (Tr. 72-73).

and to his spouse's unemployment since June 2008. Interception of his tax refund would cover three months, and of their economic stimulus payment another two months. In late September 2008, Applicant and his spouse proposed that they repay their federal tax debt at \$300 per month. As of his pay period ending October 3, 2008 (Ex. G), Applicant's take-home pay for the year was \$31,370.98 on gross earnings of \$58,647.82. They no longer had a car payment of \$315 per month, having paid off their car the previous month. Yet, they were one month behind in their rent as of November 2008, and they had to rely on his spouse's sister for the funds to retain legal counsel for the hearing on his security clearance suitability.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances in light of 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.

Applicant has always complied with his obligations to file income tax returns. Yet he has a chronic record of underpayment of income taxes, both federal and state, that cannot be attributed to changes in work location or other factors outside of his control. Despite joint taxable income of almost \$100,000 in both 2000 and 2002, Applicant's and his spouse's delinquent federal taxes for 2000 were not satisfied until 2005, and their back taxes for 2002 through 2005 are still unpaid. The ongoing repayment of their state tax debt at \$126 every two weeks since February 2007 justifies a favorable finding as to SOR ¶ 1.e, but the efforts to deal with their outstanding federal tax delinquency have been inconsistent. Considerable concerns persist about Applicant's financial judgment and ability to repay their substantial federal tax debt in the foreseeable future. They are one month behind in their rent, yet continue to pay \$36 per month for a fitness club that

they haven't used for six months, and \$130 per month for cable and Internet services. His work record, including his appropriate handling of classified information is in his favor, but it is not enough to overcome the financial concerns in this case.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

In light of the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI  
Administrative Judge

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