

DATE: October 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-10334

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's security clearance was revoked in April 2000 for a pattern of criminal assault behavior (six domestic incidents) between November 1995 and March 1998. On reapplication, Applicant has shown he has completed his court-ordered counseling and there has been no recurrence, thereby mitigating the personal conduct concerns. Applicant had delinquent debt following his divorce from his second wife, which he is in the process of resolving. Clearance is granted.

STATEMENT OF THE CASE

On February 23, 1999, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR alleged personal conduct concerns, specifically six domestic violence incidents from late November 1995 to late March 1998, and one security violation in October 1997 where Applicant left a controlled room unattended. The two most recent domestic assault and battery offenses were also alleged under criminal conduct.

A due process hearing was held before DOHA Chief Administrative Judge Robert R. Gales on August 18, 1999. On October 27, 1999, Judge Gales issued a decision favorable to Applicant. He concluded Applicant had successfully participated in formal rehabilitation and counseling, and had minimized the stressors which had led to the domestic incidents, two of which were "purely verbal," two involved "relatively minor physical clashes," one involved his son who has diagnosed mental/behavioral disorders where the son had to be physically restrained, and one involved a temporary restraining order obtained by a former spouse during a period of marital discord. The security violation was found to be inadvertent and isolated. (ISCR 99-0122, October 27, 1999).

Department Counsel appealed, and on April 7, 2000, the DOHA Appeal Board reversed, finding the judge's analysis of

the six domestic incidents was "artificial, strained, and failed to reflect a reasonable interpretation of the evidence as a whole," and Applicant engaged in a pattern of poor judgment and irresponsibility that resulted in criminal behavior over a period of years. The Board further concluded Applicant's evidence of reform was "limited, sketchy, and uncorroborated . . . relatively recent and brief in duration compared to his history of misconduct." (App. Bd. ISCR 99-0122, April 7, 2000). Applicant's clearance was revoked on April 17, 2000.

Applicant reapplied for a security clearance in April 2001. On May 11, 2001, the Defense Industrial Security Clearance Office (DISCO) acknowledged receipt, and notified Applicant of his responsibility to provide sufficient information to DOHA to justify reopening of his case. On July 2, 2001, Applicant provided DOHA documentation proving his completion of two programs as a condition of his probation for the March 1998 domestic assault. His case was reopened and a new investigation was conducted by DSS, which revealed no further criminal assault incidents or security violations, but disclosed financial indebtedness.

On August 5, 2004, DOHA issued a new SOR to Applicant under Guideline F, financial considerations, alleging four delinquent debts totaling \$49,505, and under Guideline E, personal conduct, alleging the previous denial of his security clearance for the six domestic violence incidents that were the subject of the August 1999 proceedings.

In his Answer of August 27, 2004, Applicant admitted three of the four debts but denied that he owed a \$40,867 second mortgage on his home after its foreclosure. Applicant admitted the six domestic violence incidents, submitting in mitigation that he had completed the programs required and there has been no recurrence. Applicant requested a hearing if the information was not sufficient to resolve his case, and the case was assigned to me on April 4, 2005. On May 6, 2005, I scheduled a hearing for May 26, 2005.

At the hearing, 22 government exhibits were admitted, including the transcript and decisions from the August 1999 proceedings. At the government's request, I agreed to take official notice of the pertinent state's criminal statutes for assault and assault and battery, and indecent assault and battery on a child under fourteen.⁽²⁾ Applicant testified and submitted six exhibits. A transcript of the hearing was received on June 8, 2005. The record was ordered held open until June 24, 2005, for Applicant to submit additional documentation and for Department Counsel to brief the issue of whether a DOHA administrative judge is precluded from rendering new findings on issues that were the subject of a prior DOHA proceeding and resolved in Applicant's favor but were overturned on appeal due to inadequate rehabilitation. Applicant timely forwarded six additional exhibits, which were admitted without objection. Department Counsel was granted an extension until July 11, 2005, to file its brief, which was forwarded by facsimile after close of business on that date.

RULINGS ON PROCEDURE

At his hearing, I requested the government's position as to whether it was proper for DOHA to revisit the six domestic violence incidents that had been the subject of Applicant's August 1999 proceeding, where the DOHA Appeal Board had found no error in the judge's findings of fact and had overturned the decision primarily because of inadequate showing of rehabilitation. In his July 11, 2005, response to this Judge's order, Department Counsel submits Applicant is collaterally estopped from challenging his criminal convictions, decisions of the DOHA Appeal Board but not the DOHA administrative judges are legally binding, and the Board's reversal of an earlier favorable decision does not preclude another administrative judge from making new findings and reaching conclusions in light of the evidence of rehabilitation that was not before the Board.

DOHA Appeal Board decisions are binding on the DOHA hearing judge. Department Counsel is also correct in noting that decisions of DOHA administrative judges have no precedential weight **in other cases**, as each case has its unique facts and circumstances. The salient issue here is whether findings of a DOHA administrative judge, which are not overturned on appeal, are binding on another DOHA administrative judge asked to consider the same issues which were not disturbed on appeal.

The principal of collateral estoppel (issue preclusion) prevents the relitigation of an issue of law or fact that was litigated and necessarily determined in a previous case. It promotes judicial efficiency, assures that the parties will not be called upon to relitigate the same controversy or issue, and allows the parties to rely on the matters they considered settled. It is

well settled that the doctrine of collateral estoppel applies in industrial security proceedings. The DOHA Appeal Board has addressed collateral estoppel primarily in the context of the effect of criminal convictions on DOHA adjudications (*see e.g.*, ISCR 99-0116, App. Bd. ay 1, 2000, collateral estoppel precludes applicants from contending they did not engage in the criminal acts for which they were convicted). The same due process of law that does not give an applicant the right to relitigate matters adjudicated in a prior due process proceeding applies to the government. Applicants have a right to expect repose in adjudications. However, collateral estoppel does not preclude the relitigation of an issue if the facts and circumstances relating to it have changed significantly since the prior judgment. In this case, there is new evidence of rehabilitation that was not before the Board. In determining whether Applicant has met his burden of reform with respect to those domestic incidents that led the Board to reverse the original administrative judge's decision, the nature, extent, and seriousness of the incidents themselves must be evaluated. Furthermore, the DOHA administrative judge may properly reconsider the security significance of past conduct in light of more recent conduct having security significance. (*See e.g.*, ISCR 02-17609, May 19, 2004) The debts alleged under Guideline F were not considered in the prior proceeding. Accordingly, I am not barred from rendering findings and conclusions with respect to the domestic violence incidents as they bear on Applicant's current security suitability.

FINDINGS OF FACT

Applicant admitted the six domestic violence incidents and the indebtedness alleged in ¶¶ 1.b., 1.c., and 1.d. of the SOR at issue, dated August 5, 2004. These admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is a 53-year-old electrical engineering technician who has worked for his present employer since August 1995. He seeks restoration of a secret security clearance that was revoked in April 2000 following a DOHA Appeal Board reversal of a favorable decision by the DOHA administrative judge. He had held a security clearance continuously from 1975 until it was revoked in 2000.

Applicant has been married four times (twice to his first wife). He has three children, all with his second spouse, to whom he was married for 15 years (from June 1982 to October 1997). Applicant has been married to his present wife since July 1998. For about two and one-half years starting in late Fall 1995, Applicant was involved in several domestic disputes which led to police and even court involvement:

- In November 1995, Applicant was involved in an altercation with his then 12-year-old son, who was on medication for various medical and behavioral health issues (Attention Deficit/Hyperactivity Disorder, Tourette's, Obsessive Compulsive Disorder). Applicant physically restrained his son following an unprecipitated act of aggression towards him. His spouse (second wife) called the police who responded, but no charges were filed. money supply." There is no evidence Applicant threatened or engaged in physical violence towards her on that occasion, but she secured a temporary restraining order against him. The order was dropped one week later, although they separated, with her being granted custody of the children. In October 1996, a wage garnishment order was executed for child support. Their divorce was final in October 1997. his previous marriage. Applicant was paying about \$357 a week in child support per month on an hourly wage of \$18-\$19. Applicant was transported to the police station to diffuse the tension. assault involved, and the police left after advising Applicant and his spouse of their rights. finally arrived home at 1:45 a.m., they had an argument, which turned physical when Applicant went to leave. As he tried to "shoulder" his way past her, he bumped into her causing injury to her eye. Applicant was arrested for domestic assault and battery. In mid-March, the case was continued without a finding for 60 days on payment of \$60. argument. Applicant called the police, who arrested him for domestic assault and battery. On motion of the state, the assault charge filed early in the month was brought forward and Applicant was prosecuted jointly for the two offenses. In July 1998, Applicant admitted to sufficient facts for the earlier offense, the assault charge filed nine days after the first was dismissed, and his case was continued without a finding for one year on the conditions he be evaluated at a center for addictive behaviors, attend a batterer's intervention program, and report to a probation officer every other week for a year.

On October 9, 1998, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about the domestic disputes that led to police and/or court intervention. He admitted a history of verbal discord with his present spouse, largely over financial matters, including monies paid in child support to his second wife. His

second wife had spent frivolously, which was a factor in his divorce from her, and his wages were being garnished per court order for child support for his three children even as his visitation rights were suspended. Applicant acknowledged unpaid debts--department store credit card debts of \$5,000 (SOR ¶ 1.d.) and \$476 (SOR ¶ 1.c.)⁽³⁾ and a \$2,600 VISA card debt (SOR ¶ 1.b.)⁽⁴⁾--which he attributed to having to pay the two mortgages on the marital home in 1996 while trying to maintain a separate household. On his divorce, he was held responsible for some of the retail credit debt incurred by his second wife during their marriage. The largest of the consumer credit card debts was incurred by him for automobile repairs. Applicant claimed to have paid \$1,143 on the debt in ¶ 1.d. in September 1998, to bring the account current, but admitted he had paid nothing on the \$476 debt.

On October 22, 1998, Applicant was evaluated at the center for addictive behavior as required by the court. He exhibited some denial and minimization with respect to taking responsibility for the domestic incidents and was directed into a 12-week personal assessment group. Applicant participated in the group between November 3, 1998, and January 19, 1999, and no further treatment was recommended at discharge. On October 27, 1998, Applicant began the batterer's intervention program.

In February 1999, DOHA issued an SOR to Applicant citing personal conduct and criminal conduct concerns, primarily because of the domestic assault incidents. After a hearing in August 1999, a DOHA administrative judge determined Applicant had met his burden of demonstrating rehabilitation, as he had not been involved in any similar incidents since March 1998 and his group batterer's counseling appeared to have been successful.

On October 4, 1999, Applicant completed the batterer's intervention program, having attended 40 of the 42 scheduled sessions. He acknowledged his abusive actions but continued to justify his behavior, and minimized the effects his conduct had on his partner. In documenting Applicant's completion for the district court, an assistant director at the facility indicated Applicant had been involved in an incident where the police were summoned.⁽⁵⁾ He opined it was questionable how much Applicant benefitted from the sessions, as Applicant's involvement in group sessions was limited.

On April 7, 2000, the DOHA Appeal Board determined Applicant's evidence of reform was "limited, sketchy and uncorroborated . . . relatively recent and brief in duration compared to his history of misconduct," and reversed the hearing judge's favorable decision.⁽⁶⁾ Applicant's secret clearance, which he had held since January 1997, was revoked on April 17, 2000.

In reapplication for his secret clearance, Applicant executed a security clearance application (SF 86) on April 10, 2001. Applicant disclosed he had been placed on probation for a March 1998 domestic assault and battery, his clearance had been revoked in April 2000, his wages had been garnished in October 1996 for child support, and he had an outstanding department store debt of \$4,200 (¶ 1.d.).

A check of Applicant's credit on November 6, 2001, by the DSS revealed a mortgage loan opened in the amount of \$47,100 was charged off as a bad debt with a balance of \$40,867 (¶ 1.a.), and Applicant had made little to no progress toward paying those debts alleged in ¶¶ 1.b., 1.c., and 1.d., with their respective balances of \$2,821, \$476, and \$5,340. The second mortgage had been taken out to pay for improvements to the marital home he shared with his second wife. Applicant and his spouse subsequently separated, and in 1996, his pay was attached for child support. Having to pay child support as well as his own living expenses for a one-bedroom unit in a hotel, Applicant got behind on the monthly payments on both his primary and secondary mortgage loans. The primary mortgagor subsequently foreclosed on the home. Applicant's former mother-in-law bought the home at auction for \$110,500. Applicant, who assumed the second mortgagor would pursue the approximately \$21,000 left over after the primary mortgage had been paid off, did not check to see whether he owed anything to the second mortgagor.⁽⁷⁾

On November 14, 2001, Applicant was interviewed by a DSS agent about his court-ordered domestic violence counseling, his use of alcohol, and his outstanding debts. Applicant provided proof of his completion of his probation and the programs. He denied any excessive consumption of alcohol or alcohol-related incidents. As for his debt, Applicant acknowledged owing one department store creditor (¶ 1.d.), but he thought the debt was

\$4,200 as he had paid \$1,100 in September 2000. He acknowledged he had paid nothing on that debt since December 2000, but had just received an offer from a collection agency agreeing to settle for a lump sum payment of \$2,670. Applicant expressed his intent to arrange for repayment of the debt and he indicated he was living within his means.

Credit checks of March 28, 2003, and July 23, 2003, reported no payments on the \$40,867 mortgage debt (¶ 1.a.), the \$2,821 VISA debt (¶ 1.b.), or the department store debts of \$476 (¶ 1.c.) and \$5,340 (¶ 1.d., in collection). Applicant was interviewed by the DSS about these debts on July 25, 2003. He explained that the mortgage debt was for a second mortgage on his residence that had been foreclosed on in August 1998. After he and his second wife had separated, Applicant was unable to cover the two mortgages, his \$357 weekly child support obligation, and his living expenses. The first mortgage was paid in full on auction of the home for \$110,500. He suspected a shortfall of \$15,000 owed the second mortgagor, which he cannot afford. Applicant denied any knowledge of the \$476 department store debt, but admitted owing about \$5,300 on the other. In response to the settlement offer, he asked for an affordable repayment plan but had heard nothing further from the collection agency. He indicated he would contact the collection agency by the end of the month to set up a repayment schedule. On August 1, 2003, Applicant provided a personal financial statement showing a monthly net remainder of \$270 with overtime earnings and after payment of expenses and debts (exclusive of those alleged in the SOR).

An updated credit report of April 22, 2004, disclosed as still outstanding those debts in ¶¶ 1.a., 1.b., 1.c., and 1.d. In addition, Applicant reportedly owed \$5,737 in current credit card debt. In response to collection efforts from the creditors, Applicant had arranged to repay via electronic funds transfers the debts alleged in ¶¶ 1.c. and 1.d.. On the debt in ¶ 1.c., he paid an initial \$126 on April 26, 2004, with subsequent payments to be \$50 per month. He paid an initial \$534 on the debt in ¶ 1.d. on April 22, 2004, with subsequent monthly payments to be \$133.50. Due to lack of available funds, Applicant had been unable to establish a payment plan on the debt in ¶ 1.b. With overtime earnings, he had about \$325 in discretionary funds each month, but also had a new obligation of \$8,000 in annual college tuition costs for the elder of his two daughters.

On August 5, 2004, DOHA issued an SOR to Applicant because of the four unsatisfied delinquent debts, and the domestic violence incidents which led to the revocation of his clearance in 2000. In response to the SOR, Applicant reiterated his belief he was not responsible for the \$40,867 mortgage debt. He admitted the remaining debt, which he intended to satisfy (¶ 1.b. as soon as he is financially able, ¶ 1.c. to be paid off in November 2004, ¶ 1.d. to be satisfied in full in three years). Concerning the personal conduct issues raised by the domestic incidents, Applicant indicated there had been no additional incidents. With a last payment of \$50.00 on November 16, 2004, Applicant paid in full the debt in ¶ 1.c.

Around December 2004, the lender owed the debt in ¶ 1.a. threatened to attach his pay. Over the next four months, Applicant negotiated with the creditor. On arch 9, 2005, the collection agent for the mortgage debt offered to settle the \$40,867.96 balance for a lump sum payment of \$10,000 on or before noon March 14, 2005. By wire transfer of funds drawn from his personal checking account, Applicant paid the \$10,000 to settle the debt in full. Applicant obtained the funds from a \$11,000 loan taken from his retirement account (401K) at work.

As of late March 2005, Applicant owed \$2,892.74 on the debt in ¶ 1.b., which had been placed for collection, and \$3,338 on the debt in ¶1.d. He owed an additional \$7,922 in consumer credit card debt rated as current. On May 27, 2005, the bank owed the VISA credit card debt (¶ 1.b. offered to settle on receipt of a lump sum payment of \$1,446.37 by July 10, 2005. Applicant was trying to secure the funds for the settlement as of June 24, 2005. He continued to make monthly payments of \$133.50 on the debt in ¶ 1.d., bringing the balance down to \$2,937.72. Applicant has managed to make these payments without falling behind in his current expenses. He has about \$500 in savings to draw on in case of an emergency. His present spouse had been paying about half of the household obligations since their marriage in July 1998, but Applicant was assisting her financially as of May 2005 since she had changed employment at some loss in pay. Applicant earns about \$26.50 an hour at his defense contractor job. He drives a 21-year-old truck. His wages are still being attached to pay child support of \$1,428 monthly.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After consideration of the evidence of record, the following adjudicative guidelines are pertinent to this case:

Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. (¶ E2.A6.1.1)

Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (¶ E2.A5.1.1)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines F and E:

Under Guideline F, financial considerations, the security eligibility of an applicant is placed into question when he is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations (¶ E2.A6.1.1) Applicant began to fall behind in his financial obligations in 1996 with the dissolution of his 15-year marriage to his second wife. His wages were attached to pay child support. At the same time, he was ordered to pay the two mortgages on the marital home while having to maintain a separate residence for himself. In the divorce decree of October 1997, he was held responsible for some credit card debt incurred by his ex-wife during their marriage, but \$5,000 of the debt was incurred by him for automobile repairs. With the foreclosure by the primary mortgagor of the marital home and the subsequent sale of the house to his former mother-in-law, the primary mortgage was paid off, but \$40,081 of the \$47,100 second mortgage was still owed.

The available financial records confirm Applicant's financial problems began around the time of the divorce, which can be a mitigating factor (*see* ¶ E2.A6.1.3.3., *The conditions that resulted in the behavior were largely beyond the person's control*). His wages were attached to pay a child support obligation of \$357 weekly when his hourly wage was only \$18-\$19. However, with his marriage to his present spouse in July 1998, his financial situation improved significantly as he could count on her income to cover half of the household expenses. While he disputed his responsibility for any debt on the second mortgage, he acknowledged outstanding indebtedness (¶¶ 1.b., 1.c., and 1.d.), and allowed the accounts to become delinquent. As of March 2003, he owed delinquent debt of \$49,504, due to his failure to pay on the consumer credit debts or to check with the mortgage lender as to the responsibility for the balance of the loan after foreclosure and resale. Guideline F disqualifying conditions ¶ E2.A6.1.2.1., *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3., *Inability or unwillingness to satisfy debts*, apply.

To his credit, Applicant has made efforts to resolve this indebtedness starting in April 2004. He entered into arrangements with the creditors owed the debts in ¶¶ 1.c. and 1.d., and has made the promised payments. He satisfied the \$476 debt in full in November 2004, and has reduced his obligation from \$5,340 to \$2,937.72 on the other debt. With funds borrowed from his 401K plan at work, Applicant recently settled the mortgage debt. ¶ E2.A6.1.3.6., *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts* applies to those debts in ¶¶ 1.a., 1.c., and 1.d. of the SOR.

Applicant has not yet made any payments on the VISA account (¶ 1.b.), which has been delinquent since about 1997. In addition, he owes about \$7,922 in current credit card balances, although in his favor these credit accounts are being repaid as agreed. The terms of repayment of the 401K withdrawal/loan to settle debt ¶ 1.a. are not of record. Yet, the Directive does not require that an applicant be debt free for access to classified information. The security concern is whether Applicant is in a position where he may be susceptible to mishandling or compromising classified information because of his unresolved debt. The \$133.50 monthly payments on the debt in ¶ 1.d. are likely to continue, given they are being withdrawn electronically from his checking account, and the debt will be paid off in another 18 months. It is not clear when Applicant will be able to satisfy the debt in ¶ 1.b., but his handling of his financial matters generally augurs favorably for its eventual repayment. Even with his wages being garnished for child support, he has managed to pay his living expenses and several consumer credit accounts according to agreed upon terms. He does not demonstrate an attitude of disregard or financial mismanagement with respect to the obligations he has incurred during his present marriage. He has a positive cash flow each month, and although he has only about \$500 in personal savings for an emergency, he does not live above his means. He drives a 21-year old truck and has not taken any expensive vacations. The financial considerations concerns raised by the delinquent debts have been sufficiently extenuated by the divorce and mitigated through recent repayment to find for him. SOR ¶ 1.b. is also resolved in his favor, notwithstanding the debt is still owed.

With respect to guideline E, personal conduct, Applicant was involved in six domestic incidents between November 1995 and March 1998, the last four involving his present spouse before their marriage. While some of the disputes did not escalate beyond verbal argument, Applicant admits he physically struck his spouse in March 1998. As the DOHA Appeal Board aptly concluded in its decision of April 7, 2000, "Viewed in their totality, the various incidents in which Applicant was involved as a mature adult demonstrate a pattern of poor judgment and irresponsibility (manifested by Applicant's inability to control his impulses or manage his anger) that resulted in inappropriate and criminal behavior over a period of years."⁽⁸⁾ None of the personal conduct disqualifying conditions are squarely on point. Disqualifying condition ¶ E2.A5.1.2.5, *A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*, refers specifically to violations of rules (as opposed to laws), and criminal violations are otherwise covered under guideline J, which the government did not allege in the SOR at issue. Clearly, however, Applicant's conduct falls within the security concerns underlying guideline E, conduct involving questionable judgment.

Applicant submits in mitigation he completed his counseling as required by the court, and there has been no recurrence since. As of his prior DOHA hearing, he had not yet completed the batterer's intervention program. Clinical documentary evidence which was not available before the DOHA judge in August 1999 (and the Appeal Board on review in April 2000) confirms Applicant participated in a 12-week personal assessment group from November 3, 1998 to January 19, 1999, wherein topics of addiction were discussed. Applicant also attended 40 of the 42 scheduled group sessions of a batterer's intervention program. In documenting for the court that Applicant had met the criteria for program completion, an assistant director at the facility reported Applicant acknowledged his abusive actions but continued to justify his behavior. Applicant was able to discuss the events in the group, but the benefit of the sessions to him was considered "questionable," due to his limited involvement. (Ex. 12)

In its reinvestigation of Applicant, the government did not uncover any evidence of subsequent battery incidents or allegations. (Tr. 147) The report from the batterer's intervention program mentioned Applicant was involved in an incident where the police were summoned but no action was taken. Applicant was not questioned about it at the hearing, and there are no police records confirming there was an incident. Applicant testified he has not physically struck his spouse since March 1998. Assuming Applicant was involved in a domestic incident while he

was in the batterer's program, the fact that no action was taken by the police tends to indicate it did not escalate to physical assault. At his hearing, Applicant did not deny that he had hit his spouse in March 1998. He also testified he has employed techniques (such as taking a walk) learned during the batterer's program to diffuse tensions when they arise during the course of his marriage. The program has had a positive impact on Applicant's behavior as evidenced by the absence of any recurrence of abuse in more than five years. SOR ¶ 2.a. is found for him.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Mass. Ann. Laws Chapter 265, Sections 13A and 13B, respectively.
3. As alleged in the SOR at issue, dated August 5, 2004.
4. Applicant's credit report of July 1998 indicates a debt balance of \$2,860. (Ex. 14) The same account is listed on his November 2001 credit report under the name of the creditor alleged in ¶ 1.b., with a balance due of \$2,821. (Ex. 15)
5. It appears Applicant may have been involved in a domestic incident in 1999, although the government did not produce any evidence or elicit information from Applicant confirming such an incident.
6. The Board's review was limited to the record available to the DOHA hearing judge, which predated Applicant's completion of the batterer's intervention program and did not include the assessment of Applicant's participation in the program.
7. Applicant testified the mortgagor was paid \$22,000 or \$23,000 within 30 days of the foreclosure. (Tr. 131) He failed to present any corroborating documentation, and none of the credit reports show such a payment.

8. Ex. 10, p. 3.