DATE: June 26, 2002

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 01-20902

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In conjunction with his divorce in December 1988, Applicant was ordered by the court to pay the outstanding balances accrued during his marriage on three credit card accounts. Applicant has not made any payments on these debts since 1993, and he has no intent to do so. He did not report the three delinquent accounts on his SF 86 or disclose a 1987 arrest and conviction for operating under the influence of alcohol and a felony charge of carrying a concealed weapon. His failure to resolve some $21,323.00 in debt, in disregard of court order, and his lack of candor on his SF 86 raise significant security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to 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), issued a Statement of Reasons (SOR), dated December 10, 2001, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on unresolved financial indebtedness (guideline F) and on personal conduct (guideline E) related to Applicant's denial on his March 1999 security clearance application of any financial delinquencies or any criminal record.

On January 14, 2002, Applicant responded to the allegations set forth in the SOR and indicated he did not wish to have a hearing unless he could "explain more." Applicant subsequently requested a hearing before a DOHA Administrative Judge, and on March 28, 2002, the case was assigned to me for further proceedings. Pursuant to formal notice dated April 12, 2002, the hearing was scheduled for May 28, 2002. At the hearing held as scheduled, the Government submitted five documentary exhibits. Applicant testified on his own behalf. With the receipt in this office on June 6, 2002, of the transcript of the hearing, this case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 62-year-old male who has worked since March 1999 as a security officer/guard for private security services. In mid-November 2000, Applicant was granted an Interim Secret security clearance for his defense-related duties. He seeks a Secret clearance for his current employment.

During the late 1950s/early 1960s, Applicant served on active duty in a branch of the United States military. Following his discharge from the service, he went to work in the information technology sector as a project manager, and he was married in 1965. A moderate social drinker for the first twenty years of his marriage, Applicant in 1985 began to drink almost daily due to job and family related stress. Over the 1985 to 1988 time frame, while working as a software developer on a missile program where he had access to classified information, Applicant engaged in a pattern of drinking alcohol with coworkers at lunch. On occasion, he went out after work and imbibed a couple of drinks before going home. Several nights per week, he drank one or two alcoholic beverages at home. When faced with a particular stressful situation at work, he had a drink before reporting for work.

After consuming alcohol at a party one evening in March 1987, Applicant drank a couple more alcoholic beverages at his residence before leaving for work at around 5:30 a.m. the next morning. En route to his office, he was stopped for speeding and failure to stay in marked lanes. Unsteady on his feet, he was arrested for operating under the influence of liquor (OUIL). During a search of his vehicle, a K bar military knife was found on the rear floor of the car, and a charge of carrying a dangerous weapon was added. At the police headquarters, Applicant was administered a breathalyser, which tested at .28% blood alcohol content. In late April 1987, Applicant was found guilty of OUIL and sentenced to one year probation, to pay fines and costs totaling $215.00, to complete an alcohol education program and he lost his driver's license for sixty days. Adjudged responsible for the speeding and failure to stay within marked lanes violations, Applicant was fined $25.00 for each offense. The carrying a dangerous weapon charge was dismissed on payment of $50.00.

Sometime in 1988, Applicant received inpatient treatment at a local hospital for his abuse of alcohol. He continued in aftercare with a physician on an outpatient basis for two years following his discharge from the inpatient program. Applicant no longer went out to drink with coworkers, and he managed to remain abstinent until 1990. Circa 1990, Applicant resumed alcohol consumption at the rate of one or two drinks per occasion, four to six times per year.

In December 1988, Applicant and his spouse of twenty-three years divorced. With annual earnings from his job as a project manager of approximately $70,000.00, Applicant was ordered by the court to pay alimony at the rate of $300.00 per week to his ex-spouse, who had been a "non-working mother." As part of the divorce settlement, Applicant was also assigned responsibility for repayment of three credit card accounts on which his ex-spouse had accrued unsatisfied debt during their marriage.[(1)] At the time of their divorce, the marital residence was sold, with his spouse taking 80 percent of the proceeds. Applicant helped her financially with the purchase of a condominium, while he resided in his own townhouse, which he had purchased in November 1988, through a mortgage loan of $108,700.00.[(2)]

While working on a major construction project for an engineering company to October 1993, Applicant's base salary was $70,000.00 per year, excluding bonuses.[(3)] Making monthly mortgage payments on his residence of $1,004.00, Applicant for a couple of years in the early 1990s made minimum payments on the three credit card accounts involved in the divorce settlement. Total payments on his credit card obligations, which included debt accrued by him on at least two credit card accounts, amounted to almost $1,000.00 per month. At least one of the three creditors Applicant was obligated to repay by court order became dissatisfied, and demanded payment in a lump sum of the outstanding balance. Lacking the funds to do so, and wanting to remain in good standing on the credit accounts which he had opened individually after his divorce, Applicant in 1993 stopped payment on all three of the credit card accounts he had been adjudged responsible for in the divorce decree.

From July 1994 to September 1996, Applicant was employed as a project manager in information systems at a base salary of $65,000.00. Applicant made no payments on the three credit card accounts involved in the divorce settlement, and they were subsequently charged off or placed for collection. Applicant ignored collection agency efforts to recover

the debts.

Following a major heart operation in 1996, Applicant was advised to pursue a less stressful occupation.[(4)] With his level of income reduced dramatically, Applicant in 1997, Applicant successfully petitioned the court for a reduction in his alimony obligation to $100.00 per month. Applicant did not seek any relief with respect to his responsibility for the delinquent credit card obligations as the creditors were no longer coming after him for payment.

In conjunction with his employment as a security officer with a protective services company, Applicant executed on March 10, 1999, a security clearance application (SF 86). Applicant responded negatively thereon to question 21 ["Have you ever been charged with or convicted of any felony offense? Include those under the Uniform Code of Military Justice.) For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act, for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607"] and question 24 ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607."], not disclosing his 1987 carrying a dangerous weapon and OUIL offenses. Applicant attributed the omission to him thinking he had to report only those offenses committed within seven years of the date preceding the application.[(5)] After considering the unambiguous nature of the questions, Applicant's experience as an information technology professional, and the time Applicant had to complete the form, it is difficult to believe Applicant failed to understand that he was required to list, if not the carrying a concealed weapon charge, than the drunk driving offense, for which he was placed on probation. Applicant also answered "NO" to whether he had been over 180 delinquent on any debts in the last seven years (question 38) and to whether he was currently over 90 days delinquent on any debts (question 39). With regard to his failure to list those three credit card accounts which had been charged off for nonpayment, Applicant maintained that "as far as [he] knew, they were not outstanding to [him] anymore."[(6)] Although the creditors had apparently ceased efforts at collection due to a lack of response from the Applicant, Applicant was well aware he had been court ordered to repay those accounts and they were still owed. He is found to have knowingly falsified as well his responses to questions 38 and 39 of the SF 86.

During the course of its investigation into Applicant's background, the Defense Security Service (DSS) ran a check of Applicant's credit on June 22, 1999, which revealed three individual accounts which had been charged off, two of which had been placed with the same collection agent in February 1999. The aggregate outstanding balance on these accounts was $21,323.00.

On March 14, 2000, Applicant was interviewed by a DSS special agent about his finances. Presented with the adverse credit information reflected on his credit report, Applicant did not dispute the three debts. Claiming he was simply a cosigner of the accounts which his spouse had used, Applicant indicated he was assessed responsibility for the debts at the time of his divorce.[(7)] He informed the agent he had no intent to contact the creditors, as his income was insufficient to repay the debts. Not asked at that time about any arrest record, Applicant did not volunteer to the agent that he had been convicted of drunk driving in 1987 as he did not think of himself as a criminal.[(8)] Applicant was granted an Interim Secret security clearance in mid-November 2000.

On June 20, 2001, Applicant was interviewed by another DSS special agent. After showing Applicant his credentials, the DSS agent informed Applicant there were some issues the Government was concerned about in its investigation of his background, and asked him whether he had any problems with the law in the past. In response, Applicant indicated he had been arrested once for drunk driving. Applicant then detailed the circumstances surrounding the OUIL and his use of intoxicants, which he had discontinued following his heart operating in 1996. Admitting he had not listed either his criminal conduct or alcohol abuse treatment on his SF 86, Applicant explained he omitted the information because "it was over seven years prior to the submission of the form." He denied any intent to mislead the Government concerning any of his personal history. In response to DSS inquiry into his financial situation, Applicant stated, "I have not made any payments on the three accounts which were joint accounts between my former wife and myself and I have no intentions of doing so in the future." Citing his receipt of pre-approved credit card offers from one of the three

creditors, Applicant indicated he was meeting all his other financial obligations in a timely manner and living within his means.

Since March 1999, he has been working as a security officer/guard earning between $2,200.00 and $2,300.00 per month. He has managed to meet current expenses, which as of May 2002 averaged about $2,100.00 per month. Applicant continues to owe at least $21,323.00 in delinquent credit card debt which he is court ordered to repay. Lacking the funds to resolve the debts, he does not intend to contact the creditors. He has made no effort to seek the assistance of any consumer credit counseling organizations or to borrow money to repay the debts.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

E2.A6.1.1. The Concern: 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.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations

E2.A6.1.2.3. Inability or unwillingness to satisfy debts

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment . . . divorce . . . .)

Personal Conduct

E2.A5.1.1. The Concern: 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.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel

security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in Department of Navy v. Egan, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

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

Applicant owes at least $21,323.00 on three credit card accounts which have been delinquent since 1994. Contrary to Applicant's claims that he was a cosigner or that the accounts were joint, the documents of record reflect the accounts were opened individually in his name. Even assuming his ex-spouse accrued the debt, he is legally responsible for repayment pursuant to court order issued in connection with his divorce. Notwithstanding base earnings of $70,000.00 per year from 1988 to October 1993, Applicant paid only the minimum balances on the accounts in the early 1990s and in late 1993, he stopped all payments. 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, are pertinent to an evaluation of Applicant's security worthiness.

Security significant financial considerations are potentially mitigated under the Directive if the behavior was not recent (E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), the person has received or is receiving counseling for the problem, and there are clear indications that the problem is being resolved or is under control (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay creditors or otherwise resolve debts (E2.A6.1.3.6.). E2.A6.1.3.3. has limited applicability in this case. While Applicant was ordered to pay the debts in settlement of his divorce, the outstanding credit card debt was incurred during their marriage and on Applicant's credit cards. Applicant bears some responsibility for failing to monitor the use of his credit. With an annual base salary of $70,000.00, he was required to pay $300.00 per week in alimony to his ex-spouse. A court of competent jurisdiction considered Applicant's financial resources sufficient to cover these

alimony payments as well as the credit card accounts.[(9)] While Applicant made minimum payments on the accounts for a couple of years in the early 1990s, these efforts are not sufficient to overcome the doubts for his security worthiness which persist because of his longstanding disregard of a court order to repay these debts. The record reflects Applicant earned $65,000.00 per year between July 1994 and September 1996, during which time he made no payments on these accounts. Advised to obtain a less stressful job following heart troubles in 1996, Applicant's failure to attend to these obligations is excused for that time spent in recuperation and employment search. However, by March 1999, Applicant was employed full time as a security guard/officer for a protective services company. The choice of his present career was made with little, if any, consideration of his legal obligation to repay the credit card debts. Even with his reduced income, Applicant has about $100.00 available each month in discretionary funds. Applicant has not inquired of his creditors whether they would be willing to accept small payments on the delinquent accounts. His failure to make a good faith effort to resolve these bad debts is recent evidence of his tendency to place his personal interest before his obligations. Adverse findings are warranted with respect to subparagraphs 1.a., 1.b., and 1.c. of the SOR.

With respect to guideline E, Applicant was found to have intentionally failed to disclose material facts about his criminal record and financial indebtedness when he completed the SF 86 in March 1999. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities raises serious personal conduct (guideline E) concerns. (See DC E2.A5.1.2.2.).

The doubts for Applicant's judgment, reliability and trustworthiness engendered by intentional false statements may be overcome if the falsification was isolated, not recent and corrected voluntarily (E2.A5.1.3.2.); the individual made prompt, good faith efforts to correct the falsification before being confronted (E2.A5.1.3.3.); or omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (E2.A5.1.3.4.). Mitigating condition E2.A5.1.3.3. has potential applicability in cases where an applicant corrects during a DSS interview misrepresentations made on a SF 86. In Applicant's favor, he did not dispute the adverse credit information during his initial DSS interview, although it is not clear that Applicant volunteered the information before being confronted with the adverse credit report. However, Applicant made no effort at that time to disclose he had been arrested in the past for drunk driving. Not asked about any criminal record, Applicant cannot be found to have engaged in any deliberate act of concealment when he did not raise it. Yet, he clearly did not take advantage of an opportunity to set the record straight. Indeed, he admitted the OUIL offense had not slipped his mind during that interview, as he made a decision not to reveal it since he did not view himself as a criminal. His subsequent effort at rectification in June 2001 cannot reasonably be viewed as prompt. While the Government is now aware of Applicant's drunk driving offense and the unresolved indebtedness, Applicant remains unwilling to admit that he intentionally omitted any relevant and material information from his SF 86. Asked directly at the hearing about why he did not disclose any financial delinquencies on his SF 86, Applicant maintained "as far as [he] knew they were not outstanding to [him] anymore." Unable to conclude with a sufficient degree of certainty that Applicant's representations can be relied on, subparagraphs 2.a. and 2.b. of the SOR are concluded against him as well.

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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

DECISION

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 a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

DATE: June 26, 2002

In Re:

SSN: ----------

Applicant for Security Clearance

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SYNOPSIS

In conjunction with his divorce in December 1988, Applicant was ordered by the court to pay the outstanding balances accrued during his marriage on three credit card accounts. Applicant has not made any payments on these debts since 1993, and he has no intent to do so. He did not report the three delinquent accounts on his SF 86 or disclose a 1987 arrest and conviction for operating under the influence of alcohol and a felony charge of carrying a concealed weapon. His failure to resolve some $21,323.00 in debt, in disregard of court order, and his lack of candor on his SF 86 raise significant security concerns. Clearance is denied.

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aftercare with a physician on an outpatient basis for two years following his discharge from the inpatient program. Applicant no longer went out to drink with coworkers, and he managed to remain abstinent until 1990. Circa 1990, Applicant resumed alcohol consumption at the rate of one or two drinks per occasion, four to six times per year.

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While working on a major construction project for an engineering company to October 1993, Applicant's base salary was $70,000.00 per year, excluding bonuses.(12) Making monthly mortgage payments on his residence of $1,004.00, Applicant for a couple of years in the early 1990s made minimum payments on the three credit card accounts involved in the divorce settlement. Total payments on his credit card obligations, which included debt accrued by him on at least two credit card accounts, amounted to almost $1,000.00 per month. At least one of the three creditors Applicant was obligated to repay by court order became dissatisfied, and demanded payment in a lump sum of the outstanding balance. Lacking the funds to do so, and wanting to remain in good standing on the credit accounts which he had opened individually after his divorce, Applicant in 1993 stopped payment on all three of the credit card accounts he had been adjudged responsible for in the divorce decree.

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responses to questions 38 and 39 of the SF 86.

During the course of its investigation into Applicant's background, the Defense Security Service (DSS) ran a check of Applicant's credit on June 22, 1999, which revealed three individual accounts which had been charged off, two of which had been placed with the same collection agent in February 1999. The aggregate outstanding balance on these accounts was $21,323.00.

On March 14, 2000, Applicant was interviewed by a DSS special agent about his finances. Presented with the adverse credit information reflected on his credit report, Applicant did not dispute the three debts. Claiming he was simply a cosigner of the accounts which his spouse had used, Applicant indicated he was assessed responsibility for the debts at the time of his divorce.(16) He informed the agent he had no intent to contact the creditors, as his income was insufficient to repay the debts. Not asked at that time about any arrest record, Applicant did not volunteer to the agent that he had been convicted of drunk driving in 1987 as he did not think of himself as a criminal.(17) Applicant was granted an Interim Secret security clearance in mid-November 2000.

On June 20, 2001, Applicant was interviewed by another DSS special agent. After showing Applicant his credentials, the DSS agent informed Applicant there were some issues the Government was concerned about in its investigation of his background, and asked him whether he had any problems with the law in the past. In response, Applicant indicated he had been arrested once for drunk driving. Applicant then detailed the circumstances surrounding the OUIL and his use of intoxicants, which he had discontinued following his heart operating in 1996. Admitting he had not listed either his criminal conduct or alcohol abuse treatment on his SF 86, Applicant explained he omitted the information because "it was over seven years prior to the submission of the form." He denied any intent to mislead the Government concerning any of his personal history. In response to DSS inquiry into his financial situation, Applicant stated, "I have not made any payments on the three accounts which were joint accounts between my former wife and myself and I have no intentions of doing so in the future." Citing his receipt of pre-approved credit card offers from one of the three creditors, Applicant indicated he was meeting all his other financial obligations in a timely manner and living within his means.

Since March 1999, he has been working as a security officer/guard earning between $2,200.00 and $2,300.00 per month. He has managed to meet current expenses, which as of May 2002 averaged about $2,100.00 per month. Applicant continues to owe at least $21,323.00 in delinquent credit card debt which he is court ordered to repay. Lacking the funds to resolve the debts, he does not intend to contact the creditors. He has made no effort to seek the assistance of any consumer credit counseling organizations or to borrow money to repay the debts.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

E2.A6.1.1. The Concern: 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.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations

E2.A6.1.2.3. Inability or unwillingness to satisfy debts

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment . . . divorce . . . .)

Personal Conduct

E2.A5.1.1. The Concern: 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.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in Department of Navy v. Egan, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will

be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

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

Applicant owes at least $21,323.00 on three credit card accounts which have been delinquent since 1994. Contrary to Applicant's claims that he was a cosigner or that the accounts were joint, the documents of record reflect the accounts were opened individually in his name. Even assuming his ex-spouse accrued the debt, he is legally responsible for repayment pursuant to court order issued in connection with his divorce. Notwithstanding base earnings of $70,000.00 per year from 1988 to October 1993, Applicant paid only the minimum balances on the accounts in the early 1990s and in late 1993, he stopped all payments. 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, are pertinent to an evaluation of Applicant's security worthiness.

Security significant financial considerations are potentially mitigated under the Directive if the behavior was not recent (E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), the person has received or is receiving counseling for the problem, and there are clear indications that the problem is being resolved or is under control (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay creditors or otherwise resolve debts (E2.A6.1.3.6.). E2.A6.1.3.3. has limited applicability in this case. While Applicant was ordered to pay the debts in settlement of his divorce, the outstanding credit card debt was incurred during their marriage and on Applicant's credit cards. Applicant bears some responsibility for failing to monitor the use of his credit. With an annual base salary of $70,000.00, he was required to pay $300.00 per week in alimony to his ex-spouse. A court of competent jurisdiction considered Applicant's financial resources sufficient to cover these alimony payments as well as the credit card accounts.[(18)] While Applicant made minimum payments on the accounts for a couple of years in the early 1990s, these efforts are not sufficient to overcome the doubts for his security worthiness which persist because of his longstanding disregard of a court order to repay these debts. The record reflects Applicant earned $65,000.00 per year between July 1994 and September 1996, during which time he made no payments on these accounts. Advised to obtain a less stressful job following heart troubles in 1996, Applicant's failure to attend to these obligations is excused for that time spent in recuperation and employment search. However, by March 1999, Applicant was employed full time as a security guard/officer for a protective services company. The choice of his present career was made with little, if any, consideration of his legal obligation to repay the credit card debts. Even with his reduced income, Applicant has about $100.00 available each month in discretionary funds. Applicant has not inquired of his creditors whether they would be willing to accept small payments on the delinquent accounts. His failure to make a good faith effort to resolve these bad debts is recent evidence of his tendency to place his personal interest before his obligations. Adverse findings are warranted with respect to subparagraphs 1.a., 1.b., and 1.c. of the SOR.

With respect to guideline E, Applicant was found to have intentionally failed to disclose material facts about his criminal record and financial indebtedness when he completed the SF 86 in March 1999. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities raises serious personal conduct (guideline E) concerns. (See DC E2.A5.1.2.2.).

The doubts for Applicant's judgment, reliability and trustworthiness engendered by intentional false statements may be overcome if the falsification was isolated, not recent and corrected voluntarily (E2.A5.1.3.2.); the individual made prompt, good faith efforts to correct the falsification before being confronted (E2.A5.1.3.3.); or omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (E2.A5.1.3.4.). Mitigating condition E2.A5.1.3.3. has potential applicability in cases where an applicant corrects during a DSS interview misrepresentations made on a SF 86. In Applicant's favor, he did not dispute the adverse credit information during his initial DSS interview, although it is not clear that Applicant volunteered the information before being confronted with the adverse credit report. However, Applicant made no effort at that time to disclose he had been arrested in the past for drunk driving. Not asked about any

criminal record, Applicant cannot be found to have engaged in any deliberate act of concealment when he did not raise it. Yet, he clearly did not take advantage of an opportunity to set the record straight. Indeed, he admitted the OUIL offense had not slipped his mind during that interview, as he made a decision not to reveal it since he did not view himself as a criminal. His subsequent effort at rectification in June 2001 cannot reasonably be viewed as prompt. While the Government is now aware of Applicant's drunk driving offense and the unresolved indebtedness, Applicant remains unwilling to admit that he intentionally omitted any relevant and material information from his SF 86. Asked directly at the hearing about why he did not disclose any financial delinquencies on his SF 86, Applicant maintained "as far as [he] knew they were not outstanding to [him] anymore." Unable to conclude with a sufficient degree of certainty that Applicant's representations can be relied on, subparagraphs 2.a. and 2.b. of the SOR are concluded against him as well.

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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

DECISION

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 a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant claims these were joint accounts ("my name is on these with hers because at that time she was a non-working mother, to a great extent, so she couldn't get her own cards, and so my name is on those cards."). However, on his June 1999 credit report, the three accounts are listed as individual accounts.

2. Applicant testified he was paying his spouse's mortgage as well as his own. (Transcript pp. 56, 60). The record is silent as to the extent of his financial outlay in this regard.

3. Applicant testified initially he made close to $100,000.00 per year as a project manager. (Transcript p. 33). When asked about his income at the time of his divorce, Applicant indicated he earned about $70,000.00 per year. (Transcript p.54). He subsequently explained his base salary was about $70,000.00 per year from 1988 through 1996, exclusive of bonuses received three of the years. (Transcript pp. 66-67).

4. Applicant indicated on his SF 86 he was unemployed from September 1996 to July 1997 and was a student at a training institute thereafter until December 1997. At his hearing, he testified he "did other work, levels of income were reduced dramatically." (Transcript p. 33). The amount of Applicant's earned income, if any, is not clearly established for the period September 1996 to March 1999, although he clearly had some money as he was able to make $100.00 monthly alimony payments to his spouse as well as his monthly mortgage payments.

5. During his subject interview of June 20, 2001, Applicant stated:

I did not list my criminal conduct and alcohol abuse treatment on my security form as it was over seven years prior to the submission of the form. I did not notice the phrase 'ever' relative to my alcohol arrest or treatment.

While question 26 concerning inquiry into other offenses and question 30 regarding use of alcohol have a scope of seven years, both questions 21 and 24 ask whether one has "ever" been charged or convicted. Applicant submits he failed to notice the word "ever." He also testified the form took him the weekend to complete-which suggests he took some time in reviewing the form and answering the questions. It is difficult to believe that Applicant, with extensive project management in the information technology sector, could have misread both questions. Clearly, not all the questions on the form have a seven year time frame. When asked at the hearing about the omission, Applicant indicated "he may have thought" that the questions had a seven year time frame, since a lot of questions on the form have a seven year scope. Applicant had a heavy burden to prove he had no intent to mislead, given he reported neither his arrest record nor his financial delinquencies. His burden is not met by such tentative testimony.

6. *See* transcript p. 52.

7. The credit report does not substantiate that Applicant was merely a cosigner on the accounts. Applicant also told the agent he had been ordered in the divorce to pay child support. At the hearing, he testified he had to pay alimony to his spouse. There is no evidence he had any child support obligation. He also told the agent he had not been contacted by the creditors. However, at the hearing he attributed his failure to repay the debts to creditor demands for lump sum payment of the outstanding balance, which he could not afford. The discrepancies between his sworn statement and hearing testimony undermine his credibility.

8. Applicant admitted at the hearing that he was well aware of his drunk driving offense during his initial interview:

[I]t didn't slip my mind, but I didn't see it-when I think of a criminal, I think of somebody who's done some very serious things-kill people, rob banks or been in jail, okay? I never did any jail time.

(Transcript p.49).

9. Nothing in the record indicates the judge failed to consider Applicant's financial situation when he imposed the obligation of alimony and these credit card payments on the Applicant.

10. Applicant claims these were joint accounts ("my name is on these with hers because at that time she was a non-working mother, to a great extent, so she couldn't get her own cards, and so my name is on those cards."). However, on his June 1999 credit report, the three accounts are listed as individual accounts.

11. Applicant testified he was paying his spouse's mortgage as well as his own. (Transcript pp. 56, 60). The record is silent as to the extent of his financial outlay in this regard.

12. Applicant testified initially he made close to $100,000.00 per year as a project manager. (Transcript p. 33). When asked about his income at the time of his divorce, Applicant indicated he earned about $70,000.00 per year. (Transcript p.54). He subsequently explained his base salary was about $70,000.00 per year from 1988 through 1996, exclusive of bonuses received three of the years. (Transcript pp. 66-67).

13. Applicant indicated on his SF 86 he was unemployed from September 1996 to July 1997 and was a student at a training institute thereafter until December 1997. At his hearing, he testified he "did other work, levels of income were reduced dramatically." (Transcript p. 33). The amount of Applicant's earned income, if any, is not clearly established for the period September 1996 to March 1999, although he clearly had some money as he was able to make $100.00 monthly alimony payments to his spouse as well as his monthly mortgage payments.

14. During his subject interview of June 20, 2001, Applicant stated:

I did not list my criminal conduct and alcohol abuse treatment on my security form as it was over seven years prior to the submission of the form. I did not notice the phrase 'ever' relative to my alcohol arrest or treatment.

While question 26 concerning inquiry into other offenses and question 30 regarding use of alcohol have a scope of seven years, both questions 21 and 24 ask whether one has "ever" been charged or convicted. Applicant submits he failed to notice the word "ever." He also testified the form took him the weekend to complete-which suggests he took some time in reviewing the form and answering the questions. It is difficult to believe that Applicant, with extensive project management in the information technology sector, could have misread both questions. Clearly, not all the questions on the form have a seven year time frame. When asked at the hearing about the omission, Applicant indicated "he may have thought" that the questions had a seven year time frame, since a lot of questions on the form have a seven year scope. Applicant had a heavy burden to prove he had no intent to mislead, given he reported neither his arrest record nor his financial delinquencies. His burden is not met by such tentative testimony.

15. *See* transcript p. 52.

16. The credit report does not substantiate that Applicant was merely a cosigner on the accounts. Applicant also told the agent he had been ordered in the divorce to pay child support. At the hearing, he testified he had to pay alimony to his spouse. There is no evidence he had any child support obligation. He also told the agent he had not been contacted by the creditors. However, at the hearing he attributed his failure to repay the debts to creditor demands for lump sum payment of the outstanding balance, which he could not afford. The discrepancies between his sworn statement and hearing testimony undermine his credibility.

17. Applicant admitted at the hearing that he was well aware of his drunk driving offense during his initial interview:

[I]t didn't slip my mind, but I didn't see it-when I think of a criminal, I think of somebody who's done some very serious things-kill people, rob banks or been in jail, okay? I never did any jail time.

(Transcript p.49).

18. Nothing in the record indicates the judge failed to consider Applicant's financial situation when he imposed the obligation of alimony and these credit card payments on the Applicant.