

DATE: October 11, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24356

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant had trouble paying his financial obligations due to a lack of income when he was out of work following an injury on the job. After a Chapter 7 bankruptcy discharge in 1996, he began to gamble frequently at local casinos, primarily for recreation. While he has used some winnings, which have been as high as \$18,000.00 on occasion, to pay debts and expenses, he does not depend on gambling winnings to meet his monthly expenses. Nor has gambling caused him to fall behind in his obligations. Applicant currently owes state and federal back taxes because he claimed excess dependents for tax years 1996 through 2001, and willfully failed to file timely federal and state income tax returns for several years, in protest of corporate policies and the actions of federal agents. Applicant submitted a May 1999 security clearance application indicating he had been delinquent on his federal taxes for 1994, but had since paid the debt. Over the 2001/02 time frame, Applicant filed all his delinquent state and federal returns, but personal conduct concerns persist because of his demonstrated disregard of his tax obligations for several years, and his lack of complete candor on his May 1999 security clearance application. 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 May 17, 2002, 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 financial considerations (guideline F) because of financial difficulties with a Chapter 7 bankruptcy, caused at least in part by gambling, and failure to file income tax returns with back taxes owed. Also alleged were personal conduct (guideline E) concerns related to regular gambling, to the underreporting of taxable income on payroll tax forms, to the falsification of a May 1999 security clearance application (SF 86) ⁽¹⁾ for failure to report income tax debts, and to unsatisfactory conduct on the job.

On June 4, 2002, Applicant responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on July 1, 2002. Pursuant to formal notice dated July 12, 2002, the hearing was scheduled for July 26, 2002. At the hearing which was held as scheduled, the Government submitted fifteen documentary exhibits, which were admitted into the record. Counsel for Applicant presented two exhibits, which were entered without objection, (2) as well as the testimony of the Applicant and the Applicant's landlady. On the Government's motion, SOR subparagraphs 2.c. and 2.d. were amended to reflect Applicant answered "yes" rather than "no" to questions 38 ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and 39 ["Are you currently over 90 days delinquent on any debt(s)?"] on his May 1999 SF 86, although the Government continued to allege Applicant deliberately did not disclose on that form state tax delinquencies for 1995 through 1998 or a federal tax delinquency for tax year 1996.

At Counsel for Applicant's request, the record was held open until August 5, 2002, to allow Applicant to submit documentation from his accountant regarding the status of any filing of a state income tax return for the most recent tax year as well as a complete copy of his March 1, 1998, security clearance application (Exhibit B-2). By facsimile on July 31, 2002, Applicant's counsel forwarded a letter from Applicant's accountant, indicating Applicant had filed all state tax returns through tax year 2001. Department Counsel having no objection thereto, the document was marked and entered as Exhibit C.

On August 6, 2002, this office received a transcript of the proceedings held on July 26, 2002. On review by the undersigned of the file, it was noted Applicant's counsel had failed to forward the complete copy of Exhibit B-2. In response to a request by the undersigned, Applicant's counsel by letter dated September 18, 2002, forwarded the original of Applicant's Questionnaire for National Security Positions, which was completed on March 1, 1998.

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 46-year-old first class carpenter who has been employed by the same defense contractor since September 1978. He seeks a security clearance for his duties. Never married, Applicant has for the last twenty-two years rented a room with limited facilities (a small refrigerator, microwave and bathroom privileges) in a house owned, and inhabited by, an elderly couple.

Circa 1987 or 1988, Applicant shattered his knee at work. Out of work almost eighteen months due to his initial surgery and medical complications, Applicant was without a paycheck for that period of time due to the manner in which his workmen's compensation claim was handled. Applicant's savings were insufficient to cover all his expenses, which included the payments on a then new truck, and he began to fall behind in his financial obligations. By the mid-1990s, Applicant was receiving calls from various creditors demanding payment of his delinquent obligations. Faced with threatened repossession of his 1987 model year pickup and a small claims suit against him by a hospital to collect on a debt, Applicant in June 1996 filed a voluntary petition for bankruptcy under Chapter 7. Applicant listed as liabilities \$3,359.62 in tax debt (\$3,187.57 federal and \$172.05 state), \$7,479.39 in delinquent credit card obligations, and \$368.61 in medical debts. With a reported monthly net income from wages and veterans benefits totaling \$1,867.00 and monthly expenses of \$1,265.00, Applicant indicated to the court there would be no funds available for distribution to unsecured creditors. In October 1996, he was granted a discharge of all but the tax debt.

An occasional gambler at one of the local casinos (casino A) from the early 1990s, Applicant found himself without any credit after his bankruptcy. Needing another source of income beyond his defense-related job, Applicant circa 1997 began to gamble with some regularity at two local casinos, playing the slot machines as well as table games (blackjack and baccarat). Applicant has since frequented primarily casino B, as he objects to the manner in which casino A treats its employees. Since 1997, Applicant has gambled "as often as he can," with a frequency which has varied from five times per week-especially when the casinos have a promotion-to months with no gambling. The funds used to gamble come from his wage earnings as well as from a bankroll (gambling winnings saved) (3) and rotation of monies during the course of his gambling activities. Applicant usually takes \$20.00 to \$70.00 with him to gamble, although on one occasion he started with \$400.00.

Especially when he is playing table games, Applicant is unable to track accurately his gambling winnings and losses. The casinos report his yearly net gain/loss as tracked through a Player's Club card, which Applicant does not always put in the slot machines and never shows when he is playing table games.⁽⁴⁾ Casino A reported Applicant lost an estimated \$1,000.00 for 1997. For those slot and table gaming transactions tracked by his Player's Club card or observed by management, Casino B reported losses by Applicant of \$53.00 in 1996, \$3,352.00 in 1997, \$29,859.00 in 1998, \$15,025.00 in 1999, and \$23,897.00 in 2000.⁽⁵⁾ On at least two occasions in 1999, casino B paid out United States Treasury reportable gambling wins to Applicant-\$17,188.00 in March and \$13,511.00 in September. On one occasion in 1998 or 1999, Applicant parlayed \$20.00 into \$18,000.00 in winnings. He left the casino with \$7,900.00 that day, some of which he saved in his "cookie jar" for gambling and the remainder went to pay bills.⁽⁶⁾

In August 1996, Applicant was notified he owed \$197.86 in state taxes for tax year 1995, and that his account had been referred to a collection agency.

Circa 1996/early 1997, Applicant decided to take a "radical stand" in protest of corporate greed ("They were taking our money and running away and having a good time." *see* Transcript pp. 98, 148); safety issues on the job and what he perceived to be his employer's callous treatment of the workers; and the actions of the federal agents at Ruby Ridge and Waco. For the tax years from 1996 through 2001, Applicant underreported his taxable income by claiming nine dependents on his W-4 payroll tax forms. Applicant also did not file by their respective due dates state individual income tax returns for tax years 1996 through 1999 and federal returns from 1996 through 2001.

On March 1, 1998, Applicant completed a Questionnaire for National Security Positions (SF 86) in application for a security clearance. In response to questions posed regarding his financial record, Applicant listed his 1996 Chapter 7 bankruptcy. He also answered "yes" to whether a lien had been placed against his property in the last 7 years for failure to pay taxes or other debts. Applicant responded affirmatively to both questions 28a ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and 28b ["Are you currently over 90 days delinquent on any debt(s)?"] and added "All debts are pending legal counsel except taxes and I am in the process of making payment arrangements."

Circa May 1999, the SF 86 completed by Applicant's hand in March 1998, reached the attention of his employer's security department. Asked by security personnel about back taxes, Applicant responded he did not know what the tax debt was. Told to put something down, Applicant estimated a \$3,000.00 federal tax debt for 1994 which he indicated was "all paid up." A typewritten version of his SF 86 was then generated on May 6, 1999, by security personnel. Listed on this form in response to inquiries into his financial record were Applicant's 1996 Chapter 7 bankruptcy in the amount of \$10,000.00 and a 1994 tax lien by the IRS for a \$3,000.00 tax debt, reported to be "ALL PAID UP." Listed in response to inquiries into financial delinquencies were the IRS tax debt for 1994 and a \$50.00 medical debt owed a local hospital from 1997. Under general remarks was typed "SUBJECT STATES THAT ALL INFORMATION IS THE BEST TO HIS KNOWLEDGE AND DATES AND AMOUNTS ARE APPROXIMATE." Applicant signed the form on May 6, 1999, without making any changes.

In early September 2000, delinquent state tax returns were filed for tax years 1996, 1997, and 1998. Advised by his certified public accountant he could not deduct gambling losses, Applicant arranged to have state taxes deducted from gambling winnings at the time of payout by the casino. In mid-September 2000, Applicant was informed by the state's department of revenue services that he owed \$2,285.99 for tax year 1997. In mid-December 2000, the state demanded payment of delinquent taxes in the amount of \$2,680.30 for tax year 1996 and \$1,336.16 for tax year 1998.

Out of work for much of the 2000 calendar year due to a medical operation and complications, Applicant earned only \$4,450.58 in total wages that year at the shipyard. He supported himself primarily through disability payments of \$380.00 per month, savings, and money gained through gambling.

Sometime in early 2001, Applicant retained his certified public accountant to prepare his federal individual income tax returns for tax years 1996 through 2000. By letter dated April 2, 2001, Applicant's accountant requested from the IRS a printout of any tax credits or payments on record plus any income reported. In late July 2001, the IRS indicated returns were not present for tax years 1996, 1997, 1998, 1999, or 2000.

In mid-June 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS) regarding his

financial affairs and entries on his security clearance application. Applicant informed the agent he did not want a security clearance, but had been told he had to apply for the clearance or he would be terminated from his employment. Applicant acknowledged he had financial problems in the past, which he attributed to being out of work for eighteen months without compensation. After some "few years" of trouble paying his bills, Applicant filed for Chapter 7 bankruptcy, and his debts, excepting state and federal taxes, were discharged. Applicant admitted he underpaid his taxes for the tax years 1996 through 2000 by claiming nine dependents and he had gambling winnings on which he owed state taxes. Applicant indicated he did not know the extent of his federal and state tax debts, so he estimated a \$3,000.00 IRS debt. Applicant volunteered he had given his accountant a power of attorney to negotiate with the IRS and the state on the back taxes. Other debts incurred since his bankruptcy consisted solely of copay charges to two hospitals, \$50.00 to a local facility which was satisfied, and \$25.00 to another medical institution which had not been paid. Applicant indicated his current net monthly income amounted to \$2,200.00 because he was still claiming nine dependents, and his monthly expenses totaled \$1,940.00.

Following the events of September 11, 2001, Applicant made an effort to ensure that his delinquent returns were filed, as the Nation was "at war" and needed the money. Over the next few months, Applicant's accountant filed those state and federal tax returns for tax years 1996 through 2000 which had not been previously filed.

On February 15, 2002, Applicant was reinterviewed by the DSS agent, this time about his wage and gambling income as reported in IRS records for the tax years 1996 through 1999. Applicant expressed his belief his accountant had filed his delinquent federal and state tax returns for tax years 1996 through 2000, but questioned the accuracy of the income reported. Applicant volunteered he had received, just four days before, six letters from the IRS which he had not yet opened. As for his current gambling habits, Applicant indicated he went as often as he could, "sometimes two times weekly, sometimes five times weekly and sometimes not for months." He reported saving some of his winnings and playing back the rest. Those winnings saved were used to eat, pay rent, for expenses and "maybe save." Applicant denied gambling had any impact on his personal finances.

Sometime in 2002, Applicant changed his tax withholding to where he now claims zero dependents.

On or about July 26, 2002, Applicant's accountant filed Applicant's federal income tax return for tax year 2001. On his 1040 form, Applicant reported \$32,685.00 in wages and \$16,400.00 in gambling winnings to raise his adjusted gross income for that year to \$49,085.00. With \$1,272.00 in tax payments, Applicant owes the IRS \$2,735.00 for tax year 2001. By July 31, 2002, Applicant had filed all his delinquent state tax forms as well. After recent tax payments totaling \$2,000.00 to the state, Applicant owed \$1,950.00 in back taxes to the state as of late July 2002.

Over the June to July 2002 time frame, Applicant went to casino B about fifteen times, taking with him \$20.00 to \$40.00 on each occasion. Applicant intends to continue to gamble in the future, primarily at casino B. Applicant finds it a challenge to "out think" the cards, and it continues to be his primary form of recreation. Applicant might alter his casino activities in the future, but only to the extent of keeping better records.

With his rent at \$70.00 per week, inclusive of heating/air conditioning, Applicant's living expenses are modest. He does not depend on gambling winnings to pay his expenses, but does live paycheck to paycheck. Applicant does not have any credit cards.

Applicant's landlady thinks of him as her second son. Applicant helps to care for her invalid husband on a routine basis.

Between June 1995 and March 2001, Applicant was formally reprimanded at work, primarily for unsatisfactory attendance. The recipient of several recorded verbal warnings and written warnings, Applicant views it as a game played by his employer. On several occasions, Applicant pulled a "no show" when the assigned job was changed after he had committed to work overtime. Some of Applicant's unexcused absences are due to his decision to stay with an ill father or coworker. Of the opinion that his employer accords little respect to the yard worker and takes away benefits such as sick leave while lining corporate pockets, Applicant refuses to work any overtime. Applicant worked substantial hours without pay when he was assigned to a project on the local military base in the past, as he felt he was treated fairly there.

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:

GUIDELINE F

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.A6.1.2.5. Financial problems that are linked to gambling . . . or other issues of security concern.

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

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts

GUIDELINE E

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.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency

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

None applicable

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 those who testified, I conclude the following with respect to guidelines F and E:

Under guideline F, financial considerations, an individual who is overextended is at risk of having to engage in illegal acts to generate funds. Applicant had financial difficulties in the past, as evidenced by a bankruptcy discharge under Chapter 7 in October 1996 of \$7,479.39 in delinquent credit card debt and \$368.61 in medical debt.⁽⁷⁾ After the bankruptcy, Applicant owed federal taxes of \$3,187.57 and state taxes of \$172.05. As of August 1996, an unpaid state tax debt for 1995 of \$197.86 had been referred for collection. While Applicant did not incur any new credit card delinquency following his bankruptcy, he failed to pay his federal and state income tax obligations. By September 2000, he owed back state taxes totaling \$6,302.45 for tax years 1996, 1997 and 1998. While the record is silent as to the extent of Applicant's outstanding federal tax debt for tax years 1996 through 2000, Applicant underpaid his 2001 federal taxes by \$2,735.00. The record also establishes that Applicant has gambled with regularity since about 1997. Applicant does not deny gambling at casinos sometimes up to five days per week, usually starting with \$20.00 to \$70.00. Given the legality of Applicant's casino gambling, his chosen recreational activity is of security concern only if it causes him to fall behind in his financial obligations (*see* E2.A6.1.2.5.). Applicant denies gambling has had a negative impact on his finances.

Characterizing Applicant as a "high stakes" gambler, the Government submits as proof of Applicant's gambling-related financial difficulties: 1) his use of winnings to pay for necessities such as rent, food, and expenses; 2) his inability to keep track of his gambling gains and losses; 3) his filing for bankruptcy in 1996; 4) his failure to timely pay his state income tax obligations for tax years 1995 to 2000; 5) his failure to file or timely pay his federal income tax returns for tax years 1996 to 2000; 6) his posting of annual gambling losses as high as \$29,859.00. Applicant admits the use of winnings to pay for necessities, but only in the sense that he co-mingles gambling monies with wage income which he then uses to pay his financial obligations. There is insufficient evidence to find Applicant relies on gambling winnings

to meet his monthly expenses. Based on the income tax return filed for tax year 2001, Applicant's wage earnings amounted to \$32,685.00. While his adjusted gross income was increased to \$49,085.00 because of gambling winnings, there is no evidence Applicant could not pay his expenses on his wage income alone. Unmarried, Applicant lives modestly, renting a room at \$70.00 per week from an elderly couple. With only a small microwave, he eats out frequently, but he manages to remain in his budget. Even during the calendar year 2000 where his wage earnings amounted only to \$4,450.58, he had disability income of \$380.00 per month. The Government presented no evidence that Applicant fell behind in his rent or utilities during that year. As for the inability to keep track of his gambling winnings and losses, Applicant admitted he had not always used his Player's Club card and never presented it at the gaming tables, so the figures reported by the casinos do not accurately reflect the extent of his annual gain or loss. While he gambled on at least one occasion in the high stakes room, and casino B's records reflect substantial monetary payout to Applicant on two separate occasions in 1999, the \$30,699.00 won does not account for other winnings that year or indeed, Applicant's losses. As Applicant testified, his gambling winnings are often rotated back into slot machines or parlayed at the gaming tables. Applicant testified to taking \$20.00 to \$70.00 with him to the casinos, which does not make him a high stakes gambler. The absence of accurate tracking has an impact on his income as reported for tax purposes, but that is a separate issue raising personal conduct, rather than financial concerns.

Applicant testified credibly his bankruptcy in 1996 was not due to gambling, but rather to a significant delay in his receipt of workmen's compensation benefits. Applicant told the DSS agent in February 2002 he had been gambling in casinos for the last ten years, but there is nothing in his statement taken during that interview which indicates he was gambling extensively during that entire period. At the hearing, Applicant testified he went to casino A on occasion commencing in 1989/90, but only once or twice per year. He did not frequent the casinos until about 1997, after he had been granted the discharge in bankruptcy. The record does not support that Applicant fell behind in his income tax obligations or failed to timely pay his income tax obligations because of his gambling. Rather, Applicant made a deliberate decision to limit his tax withholdings by claiming nine dependents on payroll tax forms, which resulted in an underpayment of his tax obligations, and he willfully failed to file timely state and federal income tax returns, as the following exchange illustrates:

Q In this statement you're saying that your gambling habits didn't have anything to do with your falling behind on your income taxes either.

A That's correct.

Q Is that what you're saying?

A That's correct.

Q How is it that you fell behind on your income taxes?

A I stopped the tax thing when I say how the system stopped working for all of us, it's a collective of many reasons. When I saw the abuse at [his place of employment], when I've seen my coworkers die directly or indirectly as a result of [his employer] that shipyard, it goes against the Constitution, it became corporate gain for them and we were dummies at the bottom. It became, I did it because of many reasons because they didn't respect us, our cries fell on deaf ears in Congress on many issues and watched, I did. And I saw how it didn't work for us, they didn't care, it was only corporate greed, and it still lives to this day.

(Transcript p. 75). Since Applicant did not pay his income tax obligations in a timely manner, there is a demonstrated disregard of his financial obligations which falls within E2.A6.1.2.3. (inability or unwillingness to satisfy debts), but it is not attributable to gambling losses.

As of September 2000, Applicant owed back state taxes of approximately \$6,302.45 and he may well have delinquent federal income tax obligations for tax years 1996 through 2000 as well, especially where he claimed nine dependents during those years. There is documentation of record in his own return that he underpaid his 2001 federal income tax obligation by \$2,735.00. Applicant has taken some steps in mitigation, through recent payments reducing the extent of his state tax debt to \$1,950.00 as of July 2002. By bringing his federal tax filings up to date, he has taken an initial step toward resolving the outstanding federal tax issues. This favorable evidence must be weighed against several years of

financially irresponsible behavior. Applicant claimed nine dependents until sometime in 2002, as an act of protest of his employer's policies and Government agent's actions. When he completed his SF 86 in May 1999, Applicant indicated he owed back taxes, but he had no idea of the amount. He made no effort to determine the extent of the back taxes owed. By September 2000, he had notice of a \$6,302.45 state tax delinquency. Two years later, he has yet to satisfy in full his delinquent state tax debt. Nor is there any evidence he forwarded to the IRS the \$2,735.00 with his 2001 return filed in late July 2002. His expenditure of funds on gambling, when he had these tax debts outstanding, is particularly troubling. Due to the lack of evidence proving gambling caused him to fall behind in his financial obligations, favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c., and 1.d. of the SOR. However, adverse findings are returned with respect to subparagraphs 1.e., 1.f., and 1.g., because of his deliberate disregard of his obligation to timely pay federal and state taxes.

Applicant's handling of his federal and state income tax obligations also raises security significant personal conduct concerns (see E2.A5.1.2.5. a pattern of dishonesty or rule violations). Applicant filed with his employer claims for exemptions from tax withholding to which he was not entitled, not only for the tax years of 1996 to 2000, but for tax year 2001 as well (Transcript p. 99).⁽⁸⁾ Applicant claims not to have known that his filing of false withholding forms was illegal until he was notified by his accountant. (Transcript p. 80). He testified he had been working with his accountant for three or four years, although he did not formally retain his accountant to prepare his delinquent federal returns until the March 2001 time frame (*see* Ex. 15). Yet, he did not correct his tax withholding until 2002. (Transcript p. 99). Applicant deliberately did not file his federal income tax returns when they were due for tax years 1996 through 2000, also as a statement of political protest. Applicant's willful disregard of his obligations as a United States citizen to file returns and pay taxes is not justifiable, however legitimate the concerns about corporate greed or mismanagement. While Applicant has a fundamental right to protest, his choice of an illegal means raises very serious questions for his judgment and reliability.⁽⁹⁾ Although Applicant has corrected his withholdings and has filed all his delinquent returns, doubts persist as to whether he can be counted on to adhere to applicable laws and regulations. There is no meaningful appreciation by him of the impropriety or illegality of his actions. He continues to view his failure to comply with his tax obligations as an exercise of good judgment on his part, and equates his behavior to the tax protests of this Nation's founding fathers ("I want to be like our forefathers, Paul Revere, all them people, even Pewter the horse." Transcript pp. 94, 137). Subparagraphs 2.a. (as to that conduct alleged in 1.f. and 1.g.) and 2.b. are resolved against him.

The Government alleges additional personal conduct concerns because of Applicant's failure to disclose on his May 1999 SF 86 his delinquent state income tax debt for tax years 1995 through 1998 or his \$2,282.00 federal tax debt for tax year 1996. Applicant denies any intentional concealment, citing his affirmative response on the handwritten Questionnaire for National Security Positions, dated March 1, 1998, from which the May 1999 SF 86 was prepared. Although Applicant did not list any specific outstanding tax delinquency on his March 1, 1998 clearance application, he indicated "All debts are pending legal counsel except taxes and I am in the process of making payment arrangements." (Ex. B). Asked at the personal appearance whether he was referring to state or federal taxes, Applicant responded, "Any taxes, any and all." (Transcript p. 117). Although not in the detail the Government expects from applicants for security clearance, there was at least some disclosure by the Applicant that he had tax debts.

However, there was no such disclosure on the May 1999 security clearance application. There is nothing on the May 1999 security clearance application which indicates Applicant had a then outstanding federal or state tax obligation. Given Applicant's representation on the March 1998 form that he was in the process of making arrangements to pay his debts, one could assume on reviewing the May 1999 form that Applicant had paid up whatever delinquent taxes he owed. The reality was that Applicant had elected not to satisfy his back tax obligations over the 1998/99 time frame because of his ongoing concern with the corruption in the system.⁽¹⁰⁾ Since he had not filed his delinquent federal and state returns for tax years 1996 through 1998, he may well not have known the extent of his tax indebtedness. Lack of knowledge of the precise amount owed does not extenuate or mitigate his failure to indicate that he owed back taxes. The only tax debt listed on the May 1999 SF 86 was a federal tax debt for 1994 of \$3,000 reported as "ALL PAID UP." Applicant signed the form certifying that the information provided was the best to his knowledge. Since he was claiming nine dependents on his tax withholding certificates, he knew he was underpaying his taxes. Under these circumstances, his failure to list any tax delinquency on his May 1999 is found to have been deliberate within the context of E2.A5.1.2.2. of the Directive.

The intentional omission of relevant and material information from a personnel security questionnaire is potentially mitigated where the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability (E2.A5.1.3.1.); the falsification was isolated, not recent, and the individual has subsequently presented correct information voluntarily (E2.A5.1.3.2.); the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (E2.A5.1.3.3.); or the 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.). None of these mitigating factors apply in Applicant's favor. Applicant acknowledged tax indebtedness when he was interviewed by a DSS agent in June 2001, although he provided no specifics, despite having been notified by the state in September 2000 at his address of record that he owed \$2,680.30 for tax year 1996, \$2,285.99 for tax year 1997 and \$1,336.16 for tax year 1998. This general admission to tax indebtedness comes two years after his May 1999 SF 86, so it cannot reasonably be construed as prompt. There is no indication of current deception by Applicant with regard to his tax debts. However, he also refuses to acknowledge his lack of candor on his SF 86 about his taxes. The Government cannot allow applicants to dictate the timing and extent of disclosure. Applicant not having yet demonstrated that he understands his obligation to be completely frank at all times, adverse findings are warranted with respect to subparagraphs 2.c. and 2.d. as amended of the SOR.

As alleged in SOR subparagraph 2.e. and documented in exhibit 14, Applicant has been formally reprimanded at his place of employment on several occasions between June 1985 and March 2001, primarily for unauthorized absence. In describing the incidents he could recall, Applicant explained there were occasions where he failed to report for work to stay with an ill or dying coworker or when the employer changed the job after he had already committed to overtime. However, Applicant also displayed a cavalier attitude toward his employer's policies ("Sure, I take time off when I think it's appropriate for me to take it off, not for them." Transcript p. 132; "If I know I'm getting a warning slip, I'll take the four days because they can't fire because they have to give it. I'll take the four, that's where that comes from. If you've got warning slips there with four days on them in a row and the fifth day they can walk you, I would take the four. I'm proud of that." Transcript p. 133). While his absenteeism record alone would not provide sufficient basis on which to deny him a security clearance, it reflects an unacceptable tendency to act in self-interest without regard to regulation or propriety. Subparagraph 2.e. is resolved against him due to the concerns about his judgment and reliability raised by his violations of his employer's rules and regulations.

It is not doubted that Applicant earned the affection of his landlady. Over the last three years, he had provided invaluable care for her invalid husband-care which her biological son appears not willing to give. Applicant also has stood by his friends, even at some personal cost (formal reprimands at work). Yet, given his well-documented history of disregard of rules and regulations, I am unable to conclude that Applicant possesses the requisite good judgment which must be demanded of those with access.

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.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c. (as amended): Against the Applicant

Subparagraph 2.d. (as amended): Against the Applicant

Subparagraph 2.e.: 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. The security clearance application Applicant is alleged to have falsified is improperly identified in the SOR as a Questionnaire for National Security Positions. While Applicant completed by hand a Questionnaire for National Security Positions on March 1, 1998 (Ex. B), he signed a Security Clearance Application EPSQ Version 2.1 on May 6, 1999. (Ex. 1).
2. Applicant's security clearance application dated March 1, 1998, marked and entered as Exhibit B-2, was returned to Applicant's counsel at his request, with the understanding a complete copy would be forthcoming after the hearing for inclusion in the record. A copy of one page of the clearance application was entered as Exhibit B-1 and retained. Exhibits B-1 and B-2 are together considered to be a single exhibit.
3. Applicant testified to \$18,000.00 being the highest amount accumulated in his bankroll in one day at the casino. He went home with \$7,900.00 that day "three or four years ago." (Transcript p. 181).
4. Points, not gambling credits, are accumulated on the Player's Club card which can then be used for shopping in casino stores or eating in a casino restaurant. (Transcript pp. 159-60).
5. Casino documents indicate the casino is unable to account for any gaming activity where a player's club card is not used. The loss figures represent only the total slot activity (total coin deposited in machines less total coin paid out and less jackpots paid by hand with currency) tracked by the Player's Club card and the observed win/loss at the gaming tables. Especially where Applicant does not always use his Player's Club card and also allowed his Player's Club card to be used by a friend on occasion, these figures do not accurately report his gambling activity.
6. Applicant also testified to there being one occasion when he was working on a project at the nearby military base where he went to the casino really early in the morning and played \$20.00 into a \$10,000.00 win in the "high roller" pit. He admitted calling in sick that day. (Transcript p. 55). This may well have been the same occasion on which he reached \$18,000.00 in winnings before rotating the funds. It is noted casino B paid out a substantial sum to Applicant on at least two occasions in 1999, although Applicant also testified to having won "big" at casino A once. Hoping to get the money back, casino A gave Applicant the fanciest accommodations in a hotel onsite.
7. There is a basis to consider disqualifying condition E2.A6.1.2.1., a history of not meeting financial obligations.
8. Applicant's willful filing of fraudulent withholding exemption certificates so that less money would be withheld from his wages falls within Title 26, Section 7205 of the United States Code: Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in

addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

9. Title 26, Section 7203 of the United States Code, provides as follows:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution.

10. Applicant testified his accountant began to straighten out his taxes in 1997 or 1998, but Applicant didn't file anything "because of stuff cropping up." (Transcript p. 145).