

DATE: April 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16219

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant abused alcohol from about 1996 to April 2001, failing to moderate his consumption levels after a November 1997 drunk driving offense. Following his arrest for DUI in April 2001 with a blood alcohol content of .236%, Applicant voluntarily completed an intensive outpatient program. While there is no evidence Applicant has consumed alcohol since April 2001, he did not comply with recommended aftercare, and he continues to experience urges to drink and to place himself in situations conducive to alcohol consumption. Applicant also has a record of financially irresponsible behavior, defaulting on his mortgage obligation after he was granted a Chapter 7 discharge in bankruptcy of \$40,748.58 in unsecured debt in May 1998. A Chapter 13 bankruptcy filing of May 1999 was dismissed due to his default and he was forced to sell his home. Although he has no delinquent debts at present, he continues to exercise questionable financial judgment. 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), undated, 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 excessive alcohol consumption (guideline G) with DUI offenses in November 1998 and April 2001, and on financial considerations (guideline F) because of two personal bankruptcies, a chapter 7 filed in 1998 and a chapter 13 filed in 1999.

On October 11, 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 accordingly on December 24, 2002. Pursuant to formal notice dated January 21, 2003, the hearing was scheduled for February 6, 2003.

At the hearing, which was held as scheduled, the Government submitted seven documentary exhibits and the Applicant two exhibits, which were entered into the record. Testimony was also taken from the Applicant, his supervisor, and his girlfriend. With the receipt on February 18, 2003, 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 52-year-old electrical foreman who has worked for the same defense contractor since December 1974. Granted a Department of Defense confidential security clearance in May 1998 for his defense-related job duties, Applicant's clearance was upgraded to secret in October 2000. Applicant seeks to retain that clearance.

Applicant has a recent history of abusive use of alcohol and financial difficulties. Facing the dissolution of his marital relationship and financial pressures related to overextension on credit, Applicant began to drink alcohol on a regular basis in about 1996. Five or six days per week, Applicant consumed six beers or five or six mixed drinks in the evenings. Once every three months on average, Applicant imbibed nine or ten drinks at a local tavern, becoming intoxicated.

On an occasion in November 1997, after drinking four or five beers plus three or four shots of vodka when at his home socializing with friends, Applicant went to a store to purchase a headlight for his truck. En route home, his vehicle was struck while he was stopped at a traffic light. Responding police noticed the odor of alcohol on his breath, and Applicant was administered roadside field sobriety tests, which he failed. Arrested and charged with DUI, Applicant was placed in a pre-trial diversion program for first-time offenders, with the charge to be dismissed after payment of a \$500.00 fine and completion of at least ten sessions in a counseling program.⁽¹⁾ Applicant continued to consume alcohol in the same pattern as he had before the DUI, spending between \$40.00 and \$50.00 per week on intoxicating beverages.

As a condition of his placement in the pre-trial alcohol education program, Applicant was evaluated on June 11, 1998, by a certified alcohol and drug counselor affiliated with an impaired driver intervention program, and assessed as not being a problem drinker. Applicant attended the court-mandated alcohol education program from July 15, 1998 to September 16, 1998. Applicant was cooperative and attentive during his group sessions, exhibiting an understanding of the seriousness of drunk driving, but he continued to consume alcohol in the same pattern, drinking at home and at the nearby tavern.

Divorced in December 1997 after twenty-three years of marriage, Applicant agreed to assume responsibility for repayment of the consumer credit card debt accumulated during the marriage, in return for his ex-spouse relinquishing any share of his retirement assets.⁽²⁾ It was also decided Applicant would remain in the family home with their teenage son, who had elected to stay with him. Applicant became solely responsible for payment of the two mortgages on the home, which were in arrears because his spouse had not made their mortgage payments for a few months. In May 1987, Applicant and his spouse had purchased their residence, securing a thirty-year mortgage in the amount of \$81,000.00 at 8.875 percent interest, to be repaid initially at \$644.48 per month. In September 1994, they had taken out a second mortgage on the property, a fifteen-year mortgage in the amount of \$50,799.79, to try to get ahead of their mounting debt.

In mid-January 1998, Applicant filed for bankruptcy under Chapter 7, listing about \$40,748.58 in unsecured nonpriority claims (\$9,861.98 of which was his spouse's debt which he was obligated to repay following the divorce). In late May 1998, he was granted a discharge under Chapter 7.

Applicant's gross earnings from his defense-related employment amounted to \$65,490.00 in 1998.⁽³⁾ With Applicant late in his mortgage payments, the holder of the primary mortgage pursued foreclosure. In an effort to stay the foreclosure proceedings, Applicant in May 1999 filed a petition in bankruptcy under Chapter 13, listing a mortgage arrearage of \$12,207.55 to the holder of the primary mortgage on his residence, with a proposal to pay the arrearage through the bankruptcy trustee in the amount of \$203.50 per month for sixty months. Applicant listed total assets of \$210,450.00, and liabilities of \$129,820.00, which consisted of the two mortgages. In September 1999, the holder of the first mortgage objected to the plan, as it failed to provide for payment of the arrearage. Five days later, Applicant filed

an amended Chapter 13 plan, proposing payment of \$659.00 per month for thirty-six months to the bankruptcy trustee to repay the mortgage arrearages of \$17,439.87 to the holder of the first mortgage and \$1,486.50 to the holder of the second mortgage. In early October 1999, the plan was confirmed with payments of \$304.15 to be made to the bankruptcy trustee biweekly for 36 months through payroll deduction (garnishment).

Required to make monthly payments of \$795.73 on the first mortgage and \$764.20 on the second mortgage in addition to the \$608.30 being paid to the bankruptcy trustee, Applicant did not meet all his financial obligations. In January 2000, he stopped making any payments on his first mortgage. In March 2000, the holder of the first mortgage moved for relief of stay with the bankruptcy court, citing Applicant's default in making monthly post-petition payments of mortgage principal and interest required by the mortgage note. In mid-April 2000, the secured creditor filed an amended motion for relief of stay, which would allow for foreclosure to proceed, on the basis Applicant had not paid his monthly mortgage obligation for four months (January 2000 -April 2000). In late May 2000, the bankruptcy judge entered an order permitting the holder of the first mortgage to foreclose on its mortgage interest. In June 2000, the Chapter 13 trustee moved to dismiss the bankruptcy proceedings on the basis the primary creditor had been granted relief from automatic stay and all other creditors had been paid in full. In mid-July 2000, the Chapter 13 case was dismissed and the order directing garnishment of Applicant's wages was rescinded. Faced with foreclosure action, Applicant was forced to sell his residence to pay off his mortgage debts.

Applicant failed to moderate his drinking habits following his DUI, and he continued to spend about \$40.00 to \$50.00 per week on alcohol, despite difficulties making his mortgage payments. Circa early 2000, Applicant began dating a woman (his current girlfriend) whom he had met at the local tavern. When Applicant and his girlfriend went out, he imbibed a few drinks, and then consumed more alcohol when he got back home.⁽⁴⁾ On an almost daily basis, he woke up with a hangover. Applicant attempted to stop drinking several times without success, managing to remain abstinent for only a couple of weeks before relapsing into previous patterns.

By April 2001, Applicant had built up a significant tolerance for alcohol. On an occasion in April 2001, Applicant consumed eight to ten beers while working on his truck. Since he was still having mechanical difficulties with his vehicle, Applicant accepted his girlfriend's mother's offer to use her vehicle to drive to work. Applicant and girlfriend drove to her mother's together to pick up the car. En route home driving his girlfriend's vehicle, Applicant was stopped for operating too close to the center of the roadway. After he failed roadside sobriety tests, Applicant was arrested for DUI, and administered a breathalyzer test which indicated a blood alcohol content of .236%. Concerned by the high blood alcohol content, Applicant on his release from custody contacted a drug and alcohol counselor about local alcohol treatment programs.

Seeking voluntary admission to an inpatient alcohol treatment program, Applicant was instead directed to an intensive outpatient program at a local treatment center. On admission, Applicant reported drinking alcohol twenty-three of the last thirty days. Three times per week from April 12, 2001 to May 10, 2001, Applicant received outpatient counseling for a condition diagnosed as alcohol dependence.⁽⁵⁾ Applicant maintained abstinence during the program, but did not attend twelve-step meetings. At discharge, Applicant was referred to outpatient group counseling, which he did not attend for financial reasons, and to Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). Applicant went to three AA meetings after his discharge from the intensive outpatient program, but he did not find them helpful.

In May 2001, Applicant was sentenced on the April 2001 DUI to eighteen months probation, to pay a fine of \$500.00, to perform 100 hours community service, and his driver's license was suspended for one year. Sometime between April 2002 and February 2003, Applicant completed his community service requirement.

On October 3, 2001, Applicant completed a security clearance application (SF 86) on which he disclosed his two DUI offenses (mistakenly dating the first offense as November 1998), his alcohol related counseling in April/May 2001, his bankruptcy filings (in 1998 in the reported amount of \$27,000.00, and in 1999 in the amount of \$96,939.00), as well as four delinquent credit card debts with an aggregate balance of \$23,600.00 as of May 1998.

On April 10, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his alcohol consumption, alcohol-related arrests, and his financial problems. Applicant indicated on the occasion of his April 2001 arrest, he had been driving cautiously because he was in a rural area notorious for collisions with deer. He

denied he was too drunk to operate safely, attributing his driving close to the center of the roadway to his desire to give himself "maximum response & evasion time." Applicant acknowledged he had consumed alcohol five or six days per week for the four to five years preceding his April 2001 DUI, but denied it was to the point where he did not know what he was doing or saying. He admitted imbibing nine or ten drinks to intoxication at a local tavern about once every three months. Applicant related an intent to maintain the abstinence from alcohol which he had enjoyed since his April 2001 DUI. As for his bankruptcy filings, Applicant attributed them to his failure to properly manage his financial situation in the past. Applicant provided a personal financial statement on which reported a monthly net positive remainder of \$480.00, after payment of living expenses and \$400.00 toward the outstanding balances on three current credit card accounts.

Sometime in 2002, Applicant took a \$15,000.00 loan from his retirement account which he used to purchase an automobile for his son. The loan was being repaid through automatic deduction of about \$220.00 per month from his wages. [\(6\)](#)

As of October 2002, Applicant had three consumer credit card accounts, opened in August 1999, July 2001 and October 2001, respectively, which he used primarily for vacations, including trips to Florida with his girlfriend in 2002 and early 2003, and to Vermont, planned for April 2003. [\(7\)](#) The outstanding aggregate debt balance on Applicant's three accounts was about \$6,141.00, some of which was for furniture purchased in late Summer/early Fall 2002. Applicant fell behind more than thirty days on one of the accounts in the last two years. As of Fall 2002, the accounts were current and Applicant was making monthly payments in excess of the minimum on each (averaging around \$500.00 per month total in Fall 2002), but he continued to carry balances from one month to the next rather than pay off the accounts, which he could afford to do on his \$61,000.00 annual salary. He does not operate with a household budget, has not had any financial counseling, and does not have a savings account.

Abstinent from alcohol with occasional urges to drink since April 2001, Applicant does not intend to consume any alcoholic beverage in the future. Not involved in any formal program or organization to assist him in maintaining his sobriety, Applicant relies on the support of his son and girlfriend, and his desire to avoid any alcohol-related health problems to keep him sober. As of February 2003, Applicant's girlfriend was continuing to consume alcohol in Applicant's presence on rare occasion. On their vacation in 2002, Applicant and his girlfriend went to a bar where she drank a couple of alcoholic beverages ("mudslides") and he consumed non-alcoholic drinks. In January 2003, they again vacationed together, where she drank a "rum runner" in his presence. Applicant's abstention has had a positive effect on his girlfriend's alcohol consumption, in that she no longer drinks at the tavern or with the frequency she had in the past. Applicant is aware that his son, with whom he shares an apartment, keeps a six-pack of beer in a refrigerator in their home.

As a salaried foreman involved in the electrical maintenance of submarines, Applicant is responsible for the work of approximately twenty-five defense contractor employees and thirty military electronic technicians. Applicant has exercised good judgement on his job, ensuring tasks are completed as scheduled. Applicant's supervisor, who has known Applicant for the last eighteen months, has not seen any indication of any alcohol abuse or financial irresponsibility on Applicant's part.

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:

Alcohol Consumption

E2.A7.1.1. The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use

E2.A7.1.2.5. Habitual or binge consumption to the point of impaired judgment

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety

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, drug abuse, alcoholism, or other issues of security concern.

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, a business downturn, unexpected medical emergency, or a death, divorce or separation).

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 G and F:

The Directive does not prohibit drinking per se. Rather, it is the excessive consumption of alcohol which raises security concerns, as abusive drinking often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure due to carelessness. Although Applicant started drinking in his late teens/early twenties, his consumption was in moderate amount until about 1996, when he and his spouse were having marital and financial difficulties, the latter due largely to their over reliance on consumer credit. Over about the next six years, until April 2001, Applicant engaged in a pattern of drinking five or six days per week, in quantities of a six-pack or five or six mixed drinks at a sitting. At least once every three months, he imbibed nine or ten alcohol drinks at a local tavern, to the point of intoxication.

A November 1997 DUI offense and subsequent completion of a court-mandated alcohol education program failed to bring about a favorable change in his drinking habits, and in April 2001, Applicant committed his second DUI offense. Clearly, Applicant had developed a high tolerance for alcohol. At his April 2001 arrest, Applicant's blood alcohol content tested at .236% and neither Applicant nor his girlfriend had recognized he was too intoxicated to drive. Under the adjudicative guidelines pertinent to alcohol consumption, disqualifying conditions E2.A7.1.2.1., alcohol-related incidents away from work, and E2.A7.1.2.5., habitual or binge consumption of alcohol to the point of impaired judgment, are most pertinent in evaluating Applicant's current security suitability. Although Applicant was diagnosed as alcohol dependent when he was treated in the intensive outpatient program in April/May 2001, it is not clear the diagnosis was rendered or ratified by a credentialed medical professional or licensed clinical social worker on staff of a recognized alcohol treatment program, which is required for application of E2.A7.1.2.3. (diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional) or E2.A7.1.2.4. (evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker), respectively.

To Applicant's credit, he voluntarily sought alcohol rehabilitation treatment immediately after his April 2001 DUI. Directed into an intensive outpatient program, Applicant remained abstinent while attending his sessions in April and May 2001. The ameliorative impact of this voluntary counseling is undermined by his failure to completely follow treatment recommendations. Applicant resisted involvement in twelve step meetings during his counseling, although he expressed an intent to pursue this support after a rush period at work was past. The evidence reflects Applicant went to only three AA meetings after his discharge, as he did not find them helpful. Discharged from the intensive outpatient program with a formal referral to an outpatient substance abuse treatment program, Applicant also did not pursue the recommended aftercare group counseling due to a lack of insurance coverage.

In the absence of a clear diagnosis of alcohol abuse or dependence by a credentialed medical professional or by a licensed clinical social worker on staff of a recognized treatment program, Applicant is not required to complete the stringent requirements of E2.A7.1.3.4., which include successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, and frequent participation in AA meetings (or other similar support organization). There is no evidence Applicant has consumed any alcohol for almost two years. Confirmed abstinence with an unequivocal intent to forego future alcohol involvement is a favorable change in behavior supportive of sobriety (*see* E2.A7.1.3.3.), but the risk of relapse cannot be ruled out. As recently as April 2002, Applicant exhibited some denial

with regard to his abusive use of alcohol. Notwithstanding the benefits of hindsight and intensive outpatient counseling, when interviewed by a DSS agent, Applicant denied he had been too drunk to operate his car safely on the occasion of the April 2001 DUI.

At his hearing in February 2003, Applicant expressed a credible dislike of, and a strong desire to avoid, the adverse physical effects (hangovers of increasing duration, body aches, feeling ill when drinking and no better the next day when he wasn't drinking) caused by his drinking in the past. Asked whether he had any belief that he could drink socially in the future, Applicant responded, he "wouldn't take that chance" for fear that he would resume drinking where he left off. Over the past year, Applicant acquired some understanding of the symptomatology of alcoholism and of the possible consequences to him should he abuse alcohol in the future. (8) Yet, he also continues to associate with others who use alcohol in his presence. As recently as 2002, he was at a bar with his girlfriend on vacation. While there is no evidence he consumed other than O'Douls or soda on that occasion, he places his sobriety at risk in that situation, especially where he still experience urges to drink alcohol.

The Government's case under guideline F, financial considerations, is established by Applicant's failure to responsibly attend to his financial obligations. Applicant and his ex-wife overextended themselves on credit during their marriage. On their divorce in December 1997, Applicant assumed responsibility for the joint consumer credit debts accumulated during their marriage as well as for at least one unsecured debt of about \$9,861.98 incurred by his ex-spouse. With gross income from employment of \$58,460.00 in 1997, Applicant could not repay the \$40,748.58 in unsecured debt and make the two mortgage payments on his residence, totaling approximately \$1,559.93 per month. Despite being freed of legal responsibility for his consumer credit debt following a Chapter 7 bankruptcy discharge in May 1998 and gross employment earnings of \$65,490.00 for 1998, Applicant was in arrears in the amount of approximately \$12,207.55 on his primary mortgage as of May 1999, largely due to his failure to make his monthly mortgage payments of \$795.73. In order to stay foreclosure action by the creditor, Applicant filed for Chapter 13 bankruptcy in May 1999. By September 1999, he was in arrears in the amounts of \$17,439.87 on his primary mortgage and \$1,486.50 on his second mortgage. Under guideline F, disqualifying conditions E2.A6.1.2.1., a history of meeting financial obligations, E2.A6.1.2.3. inability or unwillingness to satisfy debts, and E2.A6.1.2.5., financial problems that are linked to . . . alcoholism or other issues of security concern, must be taken into account in assessing whether Applicant can be counted on to adhere to his security responsibilities. While it is not clear that his expenditure of \$40.00 to \$50.00 per week on alcohol was the root cause of his financial problems, it was poor judgment on Applicant's part to spend this amount on alcohol when he was in arrears on his mortgage.

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.). Applicant's divorce with consequent loss of his spouse's income is considered an unforeseen circumstance extenuating of his inability to repay in 1998 the consumer credit debt accumulated during their marriage. It does not explain the pattern of over reliance on credit by Applicant and his spouse prior to the dissolution of their marriage, or Applicant's failure to attend to his mortgage obligations following the divorce. Accounting for monthly mortgage obligations of \$1,559.93, Applicant's income still exceeded his expenses by more than \$1,000.00 per month. From the financial information reported in his bankruptcy petition filed in May 1999, Applicant should have been able to afford the \$659.00 payments in the Chapter 13 bankruptcy plan. There is no unforeseen circumstance of record which could justify his default of his mortgage payments for the first four months of 2000. With the foreclosure action allowed to proceed by the bankruptcy court, Applicant was forced to sell his residence to pay off his mortgage lenders. This forced resale is not considered a good faith effort to resolve his debts.

As of February 2003, Applicant was continuing to rely on consumer credit to pay for vacations and home furnishings. The use of consumer credit is no longer discretionary in some circumstances, particularly in reserving leisure lodging and transportation. However, that credit must be managed responsibly, with outstanding balances not excessive in relation to liquid assets and payments made timely. In the last two years, Applicant was more than thirty days late in his payment on one revolving charge account opened in August 1999 when his Chapter 13 bankruptcy was pending confirmation. Applicant, who has the burden of overcoming the concerns engendered by his history of credit

mismanagement, provided no explanation for the delinquency. In his favor, Applicant has brought that account current and has made timely payments on two other credit card accounts opened in 2001. As of October 2002, the three charge cards had an aggregate balance of \$6,141.00. Even with payments of \$1,950.00 in the aggregate on the three credit card accounts in Fall 2002, the outstanding balance on the accounts was about \$7,000.00 as of early February 2003 due to vacation and holiday gift expenditures. While he has managed this level of debt so far, he continues to spend without consideration to his financial future. He testified to an intent to retire within the next three or four years. Yet, in 2002, he took out a \$15,000.00 loan from his retirement fund, which he used to purchase a car for his son. He does not operate within a set budget and has no savings account.

Applicant's record of irresponsible behavior in two distinct areas compounds the doubt as to whether he possesses the requisite degree of good judgment which must be demanded of those with access. While he is to be commended for his abstention from alcohol and for paying his new credit card accounts in a timely manner, I am unable to conclude at this time that it is clearly consistent with the national interest to continue his security clearance. He continues to make decisions which place him at risk for recurrence of serious alcohol and financial problems.

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 G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Paragraph 2. Guideline F: 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. The Government alleged the DUI was committed in November 1998 (see SOR subparagraph 1.b.) , presumably based on Applicant's admission in his April 2002 statement to a November 1998 DUI. According to Applicant, he was placed as a result of that DUI in a pre-trial diversion program, which required his completion of an impaired driver class. The arrest and court records were not submitted by either party. Entered as exhibit 6, however, were the records of the impaired driver education program, which confirm Applicant's participation from July 15, 1998 to September 16, 1998. Since the DUI was the precipitant which led to Applicant's involvement in pre-trial education program, the DUI was committed in all likelihood in November 1997. Applicant's application for participation in the pre-trial alcohol education system, which is included in exhibit 6, is dated January 12, 1998.

2. Applicant indicated to a DSS agent in April 2002 that he filed for bankruptcy in May 1998 under Chapter 13 listing

approximately \$16,000.00 in debt. (Ex. 2). The evidence reflects the discharge was in May 1998 under Chapter 7, and that Applicant's debts were more extensive than \$16,000.00. On his SF 86, Applicant related the bankruptcy was in the amount of \$27,000.00. (Ex. 1). As exhibit 4, the Government submitted a copy of a Schedule F reflecting Applicant had \$40,748.58 in unsecured nonpriority debts. Although this Schedule F was entered into the record at the hearing along with a copy of Applicant's amended filing in September 1999 of his Chapter 13 plan, the Schedule F was in all likelihood submitted to the court in the Chapter 7 filing in January 1998. The bankruptcy record of the Chapter 13 filing, entered in its entirety as exhibit 3, reflects no schedule F creditors, and Applicant testified his May 1999 bankruptcy filing was related solely to the mortgages (*see* Transcript p. 112). The holder of the second mortgage filed in 1999 proof of claims forms indicating Applicant owed \$45,777.39 (\$1,436.50 in arrears) on the second mortgage and \$9,199.07 in unsecured nonpriority claims. Applicant objected to the \$9,199.07 unsecured debt, citing inclusion of that debt in his Chapter 7 filing the year before, and the creditor in December 1999 withdrew its proof of claim with respect to the unsecured debt.

3. On his bankruptcy petition filed in May 1999, Applicant reported gross income from employment of \$58,460.00 for 1997, \$65,490.00 for 1998, and \$25,753.00 from January 1 through May 8, 1999. (Ex. 3).

4. Asked at the hearing to describe what Applicant's drinking pattern was when they first dated, his girlfriend responded, "A lot, when we went out." (Transcript p. 125).

5. The discharge summary which reflects the diagnosis of alcohol dependence is signed by a staff member with "LMFT" credentials. There is no indication that the diagnosis was rendered or adopted by a credentialed medical professional. Nor is it clear that the LMFT qualifies as a licensed clinical social worker. The state in which the facility is located licenses marital and family therapists. The requirements for licensure are (1) completion of a graduate degree program specializing in marital and family therapy from an accredited program; (2) completion of a minimum of twelve months supervised practicum or internship with emphasis in marital and family therapy; (3) completion of a minimum of twelve months of relevant postgraduate experience, including at least 1,000 hours of direct client contact offering marital and family therapy services subsequent to being awarded a master's or doctorate or subsequent to the supervised internship, and one hundred hours of postgraduate clinical supervision provided by a licensed marital and family therapist, and (4) passage of a prescribed examination. Conn. Stat. Chap. 383a, Section 20-195c. There is no indication that licensed marital and family therapists are required to have any specialized training in substance abuse.

6. Applicant characterized this loan as a "small loan." (Transcript p. 98).

7. When asked how he managed to run up the debt on the three charge accounts, Applicant indicated he would charge on the credit cards, pay \$600.00 or \$700.00 for a few months, and then go on vacation again. (Transcript p. 66).

8. The same level of denial present in April 2002 was not evident at the hearing.