DATE: October 30, 2006

In re:

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

Applicant for Security Clearance

ISCR Case No. 03-20387

ECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant was convicted of a 1992 felony assault with a motor vehicle while intoxicated following an accident in which his young daughter was left a quadriplegic. After five years of abstinence, he resumed drinking and was arrested for drunk driving in May 1999. Alcohol consumption concerns and alcohol-related criminal conduct concerns are mitigated by the absence of any abusive drinking since 1999 and abstinence since March 2004. Financial considerations raised by three bad debts are mitigated since he has satisfied one of the debts and is not incurring new delinquent debt. Personal conduct concerns exist because he falsely denied any alcohol-related offenses when he completed his security clearance application in August 2001. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on August 31, 2005, detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR on September 20, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on January 12, 2006, and a hearing was scheduled for May 18, 2006. With Applicant's agreement, the hearing was convened on May 17, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eleven government exhibits (Ex. 1-11) and two Applicant exhibits (Ex. C and Ex. E) were admitted and Applicant testified. Admission of additional documents marked and identified as Applicant exhibits A, B, and D, was contingent on the post-hearing submission of signed copies, which were received on May 25, 2006. Before the close of the hearing, SOR ¶ 1.d was amended on the government's motion to correct the date of the incident to October 9, 1992.[(1)] DOHA received the hearing transcript (Tr.) on May 30, 2006.

FINDINGS OF FACT

DOHA alleged under Guideline G of the SOR as amended that Applicant consumed alcohol at times to excess and intoxication from 1992 to at least May 1999; was convicted and sentenced to three years in jail, suspended, and three years probation for an October 1992 felony assault with a motor vehicle while intoxicated; received alcohol-related counseling in June 1997; pleaded guilty to a reduced charge of reckless driving after an arrest for DWI in May 1999; and continued to consume alcohol despite his arrests and counseling. The 1992 and 1999 offenses were cross-referenced as well under Guideline J. Applicant was alleged under Guideline F to owe charged off consumer credit card balances totaling $5,402, and under Guideline E to have deliberately falsified his August 2001 security clearance application (SF 86) by not disclosing any alcohol-related offenses or consumer credit delinquencies.

In his answer, Applicant admitted that he had consumed alcohol at times to excess, but was sober following the 1992 accident until six months before his May 1999 DWI. He completed alcohol-related counseling after that arrest and not in 1997 as alleged. Applicant admitted to drinking a glass of wine a few times after his 1999 DWI, but claimed abstinence for the past 18 months since September 20, 2005. In his Answer, Applicant denied that his two alcohol-related arrests constituted criminal activity or that he had deliberately falsified his SF 86. Concerning the debts, he did not deny that he had owed the balances alleged in ¶¶ 3.a and 3.b, although asserted they had been removed from his credit record. He added he had contacted the creditor owed the debt in ¶ 3.c to work out a resolution. Applicant's admissions are incorporated herein by reference. After a thorough review of the pleadings, exhibits, and transcript, I make the following additional findings:

Applicant is a 44-year-old piping designer who has been employed by a defense contractor since August 1986, initially as a pipe hanger. He holds a company-granted confidential-level clearance and seeks a secret clearance for his duties.

Applicant served on active duty in the U.S. Navy from February 1982 until June 1986, when he was given a general discharge under honorable conditions. An unauthorized absence and a 1985 DUI led to him being administratively discharged. He held a top secret-level security clearance while in the military. In August 1986, Applicant got married and he and his spouse had a son in January 1987, and a daughter in May 1991.

As of October 1992, Applicant and his spouse were contemplating divorce, although he was still living at home. After work on October 9, 1992, Applicant drank beer at a bar with a few friends. On arriving home, he told his spouse he had consumed two beers. While an argument ensued over his drinking, she later told the police that Applicant did not appear intoxicated to her. Since his spouse had plans for the evening with her boyfriend, Applicant took his children to a friend's home for about an hour and a half and then they stopped to watch a youth football game. As they headed home, Applicant struck a telephone pole on the left side of his vehicle before hitting a second pole head-on. His son suffered minor injuries, but his daughter, then only about 17 months old, was left a quadriplegic.[(2)] At the hospital, Applicant exhibits signs of being under the influence (strong odor of alcohol, slurred speech, red eyes), but told the police he had consumed only two or three beers. His blood alcohol level tested at .25 % (blood serum test) the night of the accident. Applicant's friend, whom Applicant and his children visited just before the accident, denied to the police that Applicant had consumed any alcohol at his residence. Two empty beer cans were taken from Applicant's truck at the scene of the accident. Applicant denied that he drank alcohol at his friend's home or in his truck, but now admits he consumed "probably 12 to 15, 10 to 12 beers" over his two hours at the bar after work before the accident (Tr. 41).

Following a police investigation into the October 9 accident, Applicant was arrested on November 4, 1992, on charges of assault 2nd with a motor vehicle while intoxicated (Class D felony),[(3)]

operating a motor vehicle while under the influence of alcohol or drugs, two counts of risk of injury to a minor (felony), failure to drive right, and failure to wear seatbelt. Applicant was convicted of assault 2nd with a motor vehicle and sentenced to three years in jail, suspended, and placed on three years probation.

After the accident, Applicant was admitted to a psychiatric ward of a local hospital as he had problems coping with the tragic consequences of his actions. His treating physician at the time told him not to drink alcohol, and Applicant abstained for about five years.

Applicant and his spouse divorced in October 1993, and he moved out of the family residence. In about November 1998, Applicant had a "falling-out" with his girlfriend. He began drinking in clubs once or twice per week. On about

May 14, 1999, after drinking to intoxication at a club, Applicant was observed speeding. By the time the police arrived, he had stopped his car on the side of the road due to mechanical problems. Following a breathalyzer, the results of which are not of record, he was arrested and charged with DWI. On the advice of his lawyer, he attended alcohol counseling at a local health services center for three months, beginning in June 1999. Under a plea agreement, Applicant eventually pleaded guilty to reckless driving, and was fined $503. Although the DWI was dropped, he admits he was intoxicated at the time of his arrest.

Applicant was abstinent from alcohol for about nine months following his arrest. In early 2000, he resumed drinking as he felt he could handle it. From 2000 to arch 2004, Applicant drank a glass or two of wine or beer with dinner, about three or four times per year. In March 2004, Applicant moved out of the residence he had been sharing with his then girlfriend as she had begun to complain about the amount of time he was spending with his daughter. He has not consumed any alcohol since he moved out on his own.

Applicant had insufficient funds withheld from his wages for tax year 1998 and ended up owing about $5,000 to the Internal Revenue Service (IRS). He made arrangements with the IRS to repay the debt at $75 per month. As of late July 2003, the balance owed was $3,102.27. By September 2005, he had paid all but $600.

Applicant remained active in his children's lives after his divorce. He has been timely in his child support payments, which were $546 per month as of July 2003. In addition to coming over to the home and helping his daughter with tasks she cannot do because of her disability, Applicant has made improvements to his ex-wife's home to increase his daughter's accessibility. He also incurred significant out-of-pocket costs in an effort to give his daughter the best life possible through treatments and equipment not covered by insurance. When she was six years old, Applicant took her to Florida for biofeedback sessions. He later bought her a hand-pedal bike.

Applicant's hourly wage for his work with the defense contractor was about $15 as of 1997. To provide for his daughter, Applicant worked a second job at times during the latter half of the 1990s,[(4)] but fell seriously behind on three charge cards opened with the same creditor. About nine months after he opened the first account in July 1997, it was charged off due to nonpayment (¶ 3.b). His second account, opened in November 1997, was charged off in February 1998 (¶ 3.a). As of September 2001, the delinquent balances were $1,675 and $1,204, respectively. Even with these accounts rated as bad debts, he was allowed to open a third account with the creditor in October 2001. One year later, the account was past due 120 days on a $799 balance (¶ 3.c). The debt balances continued to accumulate as he made no payments toward the delinquencies.

Needing a secret-level security clearance for his duties with the defense contractor, Applicant executed a security clearance application (SF 86) on August 28, 2001. He disclosed the 1992 felony assault 2nd with a motor vehicle in response to question 21 concerning any felony charges or convictions but responded "NO" to question 24 concerning any alcohol or drug-related offenses. Aware he had been charged with DWI in May 1999, he did not list the offense as he was concerned it could negatively impact his security clearance (Tr. 52). In response to question 30, "In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" he listed his counseling at the local health services center, but indicated the counseling was in 1997 rather than 1999. Concerning any financial delinquencies, Applicant did not list the two consumer credit card debts that had been charged off (¶¶ 3.a and 3.b), as he thought they were off his credit report, but he reported a $5,000 IRS debt for tax year 1998.

An FBI records check of September 2001 listed only the 1992 criminal charges. A credit check by the Defense Security Service (DSS) on September 7, 2001, revealed the two charged off credit cards with their respective outstanding balances of $1,204 (¶ 3.a) and $1,675 (¶ 3.b). A subsequent credit check of March 29, 2003, revealed the debt balances had risen to $1,483 (¶ 3.a) and $2,044 (¶ 3.b) and he was 120 days past due on the revolving charge opened with the creditor in October 2001.

On June 17, 2003, and July 24 and 29, 2003, Applicant was interviewed by a DSS special agent about his criminal history, financial situation, and use of intoxicants. Applicant provided a signed, sworn statement in which he admitted he had made "a tragic mistake" on October 9, 1992, which he attributed to being tired because of the alcohol he had consumed after work that day and then spending time in a hot tub at his friend's home. Applicant provided a personal

financial statement reflecting a net monthly remainder of $93 after payment of monthly expenses, including child support of $546, and debts, including $75 per month to the IRS but excluding any payment on delinquent credit card debt of about $3,000. He revealed details of his drinking since the 1992 accident which were not incorporated in his written statement, admitting that he had resumed drinking after being sober from 1993 to 1998, and was charged with DWI in May 1999, but pleaded to a charge of reckless driving after he attended counseling. Applicant estimated he had since limited his drinking to a glass of beer or wine with dinner three or four times yearly since his last arrest. As for the $3,000 in delinquent consumer credit debt, Applicant indicated he did not have the financial means to pay it.

A check of Applicant's credit on July 8, 2004, disclosed the credit card account opened in October 2001 had been charged off in May 2002. He was reported to owe $5,402 ($1,773 on ¶ 3.a, $2,471 on ¶ 3.b, $1,158 on ¶ 3.c) on his three delinquent credit cards. By August 15, 2005,¶¶ 3.a and 3.b had dropped off his credit report. He was reported to owe $1,430 on the debt in ¶ 3.c. He was making timely payments on his other revolving accounts, including on a $2,000 debt for a computer he purchased for his daughter in March 2005. As of September 2005, Applicant was working on resolving the debt in ¶ 3.c. In mid-October 2005, he began making monthly payments. By late April 2006, he had paid $1,581 to satisfy the debt.

Applicant does not intend to consume any alcohol in the future. He considers himself an alcoholic, as "[he] just can't deal with it" (Tr. 49), but is not in counseling or involved in Alcoholics Anonymous or a similar organization. The sight of his daughter in a wheelchair serves to remind him daily of the "affects of alcohol and its power to destroy lives" (Tr. 31). As of September 2005, Applicant was his daughter's primary care giver each evening while his ex-spouse worked second shift as a corrections officer. He continues to be an attentive parent, and took his daughter to a father-daughter dance in April 2006. Applicant no longer pays child support for his son who is 19. He gives his ex-wife $100 per week for their daughter's care.

In the opinion of his immediate supervisor, Applicant has proven to be "invaluable" in his current work assignment for the defense contractor. Dependable, he requires little instruction and takes the initiative to go above and beyond what is expected of a designer at his grade level. Applicant was recently rewarded for his dedication and job performance with an early raise to an hourly wage of $22. A coworker who has known Applicant for the past four years has found him to be an hardworking, conscientious designer.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

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

CONCLUSIONS

Guideline G--Alcohol Consumption

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. Applicant abused alcohol within the meaning of Guideline G on October 9, 1992. While he told the police that he had consumed

only about two or three beers after work, and his spouse and friend both told the police he did not appear to be intoxicated when they saw him, a blood serum test taken at the hospital showed his blood alcohol content to be .25%, well above the legal limit. Applicant now admits he had consumed anywhere from 10 to 15 beers after work that day. Furthermore, although he was allowed to plead guilty to reckless driving, he admits he was drunk in May 1999 when he was arrested for DWI. He also had a previously undisclosed drunk driving offense in 1985 that was a factor in his administrative separation from the Navy.[(5)]

The alcohol-related incidents raise Guideline G disqualifying conditions ¶ 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*, and ¶ E2.A7.1.2.5. *Habitual or binge consumption to the point of impaired judgment.*[(6)] Unquestionably, he engaged in binge drinking on October 9, 1992, when his blood alcohol level was more than twice the legal limit a couple of hours after he claims he stopped drinking. However, Applicant's personal belief that he is an alcoholic is not sufficient to warrant consideration of ¶ E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, or ¶ E2.A7.1.2.4. *Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*.

Mitigating condition (MC) ¶ E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem* must be considered. There is no evidence of any drinking by Applicant to intoxication since May 1999. His unrebutted account of drinking a glass or two of beer or wine three or four times per year from 2000 to March 2004 was not to abusive levels. His abstention since March 2004 is a further positive change in his behavior that is supportive of sobriety (*see* MC ¶ E2.A7.1.3.3). Unlike his previous five years of abstinence before the May 1999 drunk driving, this present abstinence follows counseling. Although undertaken with the hope of reducing the severity of the charge and/or sentence, the counseling appears to have benefitted Applicant. When Applicant and the woman with whom he was living terminated their relationship in March 2004, Applicant did not turn to drinking as he had in Fall 1998. Instead, he stopped drinking altogether.

Absent a diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional or qualified licensed clinical social worker, MC ¶ E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized treatment program*) does not apply. Applicant does not attend AA or similar organization, but he is reminded daily of the tragic consequences of his drinking when he puts his daughter to bed at night. While her situation has not changed since 1999-she was wheelchair bound then as well--it is not clear that Applicant had the same responsibilities for the care of his daughter when he was drinking in clubs twice per week. Applicant's maturation in age, understanding that he cannot deal with alcohol, and most significantly his dedication to his daughter, make recurrence of abusive drinking unlikely.

Guideline J-Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Applicant's assault with a motor vehicle while intoxicated in 1992 was a felony offense. While he benefitted in pleading to reckless driving in 1999, there was apparently a basis for the DWI charge. He admits he drove drunk before his car broke down on the side of the road. DCs ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*, apply. Aggravating circumstances are present where he drove drunk with his children as passengers in 1992, and where he committed another DWI after the earlier tragedy.

There is no evidence of any drunk driving, or indeed even of any drinking to intoxication, on Applicant's part since his May 1999 arrest. His drunk driving was not recent (*see* ¶ E2.A10.1.3.1. *The criminal behavior was not recent*). Evidence of rehabilitation as to his drinking makes the recurrence of future drunk driving unlikely, even as ¶E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*) cannot be invoked because of his falsification of his SF 86 (*see* Personal Conduct, *supra*).[(7)]

Guideline F--Financial Considerations

Financial considerations arise where an applicant is financially overextended and thereby at risk of having to engage in illegal acts to generate funds. The evidence shows Applicant does not have a history of extravagance or financial mismanagement of his affairs generally. Yet, he abused credit extended to him by a single lender on three separate accounts, largely in an effort to obtain treatment (such as biofeedback), goods (such as a stair lifter), and services for his daughter. Even the best of motives do not relieve him of his obligation of repayment of the bad debt, which because of interest had reached about $5,647 as of August 2005. DC ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, must be considered.

Applicant's recent repayment of the debt in ¶ 3.c falls within MC ¶ E2.A6.1.3.6. *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*. He has not made any attempt to satisfy the other two debts, apparently because they no longer appear on his credit report. A creditor charge-off is an account transfer made when a creditor no longer expects to be repaid. The debts are legally enforceable even after a charge-off, although it is not clear in this case whether the creditor is likely to pursue him for the remaining two debts. It is noted that the payments of the debt in ¶ 3.c were to a collection agency and there is no evidence the other two debts are in active collection.

As noted by the DOHA Appeal Board (ISCR 01-09691, App. Bd. Mar. 27, 2003), even if a delinquent debt is unenforceable, the federal government is still not precluded from considering the facts surrounding the incurring of the debt, and failure to satisfy it in a timely manner. When interviewed by the DSS agent in June and July 2003, Applicant lacked the financial means to repay the debt. Applicant's financial situation has improved significantly of late, as he is no longer required to pay child support for his son, he has paid his back tax debt for 1998, and received a raise at work due to outstanding performance. Should he be pursued for the debt, he appears to have the funds to make payments, and is likely to do so if collection is pursued, given his satisfaction of ¶ 3.c. There is no recent evidence of misuse of credit or of nonpayment of living expenses. He has been making timely payments for his daughter's computer.

Guideline E--Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Applicant disclosed his most serious criminal offense, the 1992 felony assault with a motor vehicle, and his largest debt, the IRS tax obligation of about $5,000, on August 2001 SF 86. Countering that evidence of candor is his deliberate concealment of alcohol-related offenses. Nowhere did he indicate on his SF 86 that the assault was alcohol-related, or that he had been arrested (albeit convicted of reckless driving) for DWI in May 1999, because he feared the impact on his clearance. It is noted that while he reported his alcohol-related counseling in response to question 30, he indicated it was in 1997 rather than 1999.

He also did not reveal that he had two credit card accounts that had been charged off in 1998, as he believed they had been delinquent more than seven years before and thus removed from his credit report. The accounts were not even opened until 1997, which was well within the seven year scope of question 38, and would support a reasonable inference of intentional omission. Yet, a good faith mistake as to the age of the debts would raise concerns for his financial judgment (failure to keep himself apprized of the status of his accounts) rather than concealment issues. Having admitted at his hearing that "without a doubt" he was concerned that if he listed his May 1999 arrest, it could negatively impact his clearance, he continued to maintain that he thought it had been seven years since the credit card accounts became delinquent ("I thought the seven years might have been up." Tr. 56). It is difficult to see what Applicant would have gained by continuing to lie about his reason for omitting the debts when he had acknowledged he lied about his alcohol-related conduct. Furthermore, he clearly placed the government on notice of his financial problems by reporting the $5,000 tax debt. Under the circumstances, I find he did not intentionally conceal his credit card delinquencies when he completed his SF 86 in August 2001. DC ¶ 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 eligibility or trustworthiness, or award fiduciary responsibilities*, is raised because of his knowingly false answer to question 24, however.

None of the Guideline E mitigating conditions (MC) apply. It is not clear whether the government knew about Applicant's May 1999 arrest before his interviews in June and July 2003. The government presented nothing to indicate a source other than Applicant's admissions. Even assuming that Applicant volunteered the information about his May 1999 arrest up-front, it comes too belated to qualify as a prompt rectification for ¶ E2.A5.1.3.3. *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ¶ E2.2.1. The security risks presented by Applicant's drunk driving, his years of disregard of three consumer credit debts, and his deliberately false denial of any-alcohol-related offenses when he completed his SF 86 (*see* ¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*), must be evaluated in the context of the "whole person." Applicant's ex-wife and his daughter attest to him being an attentive father who provides for his disabled daughter physically, emotionally, and financially. Applicant's dedication to his job and to his daughter, while they reflect very favorably as to his character, they did not preclude him from drinking to intoxication in May 1999. The evidence shows that he got into debt primarily because of expenses incurred in an effort to enhance her quality of life. Concern about being unable to fulfill his obligations to his daughter should he lose his job because of a denial of clearance likely led him to conceal his 1999 arrest for drunk driving when he applied for his clearance. Motivation is a relevant consideration under ¶ E2.2.1.7. At the same time, the government must be assured that those persons who are granted access act solely in the national interest. Making a deliberate false statement to the U.S. government concerning a material matter is a felonious criminal offense under 18 U.S.C. § 1001.[(8)] Applicant's reform of his false statement is undermined by his denial of any intentional falsification when he answered the SOR. He knew he had lied on his SF 86 about his arrest record, and his failure to acknowledge that until his hearing raises considerable doubt as to whether he understands and appreciates the importance of his obligation to be fully candid at all times (*see* ¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*). Under the totality of the facts and circumstances presented, I am unable to conclude that it is clearly consistent with the national interest to grant him access to classified information.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline F: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For Applicant

Subparagraph 3.c: For Applicant

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Subparagraph 4.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The government had alleged the arrest date was January 4, 1992. The police record of the investigation clearly indicates the accident occurred on October 9, 1992, and Applicant was arrested on November 4, 1992 (Ex. 11).

2. The extent of his daughter's disability is not clear. Applicant indicates she is a quadriplegic who urinates through a catheter, and cannot bathe or get to bed on her own. She has made some improvement over the years. Now age 15, she has some movement in her arms (Tr. 66). She was able to sign her reference letter (Ex. D) by using both hands.

3. Applicant was convicted of violating section 53a-60d of the Connecticut criminal statutes, assault in the second degree with a motor vehicle, a Class D felony:

(a) A person is guilty of assault in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, he causes serious physical injury to another person as a consequence of the effect of such liquor or drug.

4. As disclosed by Applicant on his August 2001 SF 86 (Ex. 1), he left his second job at a home improvement store in December 1999 following allegations of misconduct (unauthorized coffee run, failure to report wrongdoing by other employees in his department). The government did not allege these employment problems as raising a security concern and they appear to be isolated to this job.

5. Although the government did not allege Applicant's 1985 DUI, the information can properly be considered in determining whether a particular adjudicative guideline condition is applicable.

6. The Directive does not define binge drinking. The quantity consumed by Applicant on October 9, 1992, would be defined as binge drinking by the U.S. Department of Health and Human Services Substance Abuse & Mental Health Services Administration (SAMHSA), to wit: five or more drinks on the same occasion at least once in the past 30 days.

7. As noted in the analysis of the whole person, criminal conduct concerns are implicated where there is a knowing false statement to the U.S. government about a material fact. However, the government confirmed at the hearing that it was not seeking to revoke Applicant's clearance under Guideline J as it related to any false statements.

8. 18 U.S.C. § 1001 provides in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.