DATE: December 29, 2006

In re:

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

Applicant for Security Clearance

CR Case No. 04-05528

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant abused marijuana from about 1972 to 2000 and was arrested several times for illegal possession, most recently in May 2000. He has been abstinent since completing a drug and alcohol education program, but was not candid about his illegal drug arrests or the extent of his abuse when he completed his security clearance application. Applicant also has unresolved delinquent debt that was incurred in part due to his drug abuse. 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, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on May 11, 2005, detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct), Guideline H (Drug Involvement), Guideline F (Financial Considerations), and Guideline J (Criminal Conduct) of the Directive. Applicant's initial answer of May 26, 2005, was incomplete in that he did not respond to two of the financial allegations. On June 23, 2005, Applicant submitted a second response and again requested a hearing before an administrative judge. The case was assigned to me on January 3, 2006, and on June 9, 2006, I scheduled a hearing for June 26, 2006.

With the consent of the parties, I convened the hearing on June 26, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On motion of the government, the SOR was amended to indicate that the debts alleged in ¶ 3.a, ¶ 3.b, ¶ 3.c, and ¶ 3.d were unsatisfied as of August 12, 2003, rather than the dates previously listed. Ten government exhibits (Ex.1-10) and one Applicant exhibit (Ex. A) were admitted and Applicant testified, as reflected in a transcript received on July 14, 2006.

RULINGS ON PROCEDURE

During his direct examination, Applicant testified he had been unemployed since April 2006.[(1)] Under ¶ 4.4 of the Directive, actions pursuant to 5220.6 shall cease upon termination of the Applicant's need for access to classified

information except in those cases in which a hearing has commenced (¶ 4.4.1), a clearance has been issued (¶ 4.4.2) or the applicant's security clearance was suspended and the applicant provided a written request that the case continue. Continued jurisdiction was accepted on assurances from Department Counsel that Applicant had been laid off solely due to DISCO administrative withdrawal of his interim clearance pending adjudication and that Applicant is eligible to be rehired to his previous position if the adjudication was favorable. On June 29, 2006, Department Counsel forwarded by facsimile a copy of a letter from the defense contractor dated June 6, 2006, confirming Applicant was subject to recall. (2)

While a decision was still pending in this case, the DOHA Appeal Board issued a decision in an unrelated matter (ISCR 05-04831, App. Bd. Nov. 29, 2006) finding DOHA lost subject matter jurisdiction to determine the applicant's suitability for access where applicant had terminated his employment voluntarily before the hearing, although the government had not been notified of the termination before the hearing. In the absence of one of the three stated exceptions (hearing commenced, clearance issued, or clearance suspended with a request by an applicant to continue), DOHA's jurisdiction to continue processing terminates on the actual date upon which an applicant's need for access to classified information terminates.

Although Applicant was not in a job that required access as of his hearing, his situation differs from the applicant in ISCR 05-04831 in that Applicant was laid off solely because of the loss of his interim clearance on issuance of the SOR. His situation is akin to a suspension rather than a termination, in that after the adjudicative phase had been initiated, DOHA had determined preliminarily that it could not make the affirmative finding that it was clearly consistent with the national interest to grant Applicant a clearance. Given Applicant's intent to return to his employment with the contractor if his clearance is granted, and the employer's representation that he is subject to rehire to his previous position that requires a clearance, the need for a clearance for this Applicant is not moot.

FINDINGS OF FACT

DOHA alleged under Guideline E that Applicant deliberately falsified his August 2003 security clearance application (SF 86) by failing to disclose drug-related arrests in September 1979, January 1981, August 1984, and May 2000, and by misrepresenting the extent of his marijuana use to about ten times in September 1998. The alleged deliberate falsifications were cross-referenced under Guideline J as Applicant was alleged to have thereby violated 18 U.S.C. § 1001. In addition to the drug offenses, Applicant was alleged under Guideline H to have used marijuana with varying frequency, to include weekly, from approximately the 1970s to at least 2000, to have been treated in 2000 for diagnosed cannabis abuse and for cannabis dependence, in full remission, and to be statutorily disqualified from having a clearance continued or renewed under 10 U.S.C. § 986 because of the diagnosis of cannabis dependence. Under Guideline F, Applicant was alleged to owe four debts totaling $10,928.

Applicant denied the alleged falsifications of his SF 86 as well as the application of 10 U.S.C. § 986 to his case. He admitted the drug offenses, drug treatment, and the debts alleged in ¶¶ 3.a, 3.b, and 3.c when he answered the SOR, but claimed to have no recollection of the debt in ¶ 3.a at his hearing. As for his alleged use of marijuana, Applicant denied using marijuana weekly from about the 1970s to at least 2000. He also indicated the debt in ¶ 3.d had been paid. After a thorough consideration of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 54-year-old divorced male who worked for a defense contractor as a painter mechanic from September 2003 until April 2006 when he was laid off due to lack of a secret-level clearance. He completed training to be a class B commercial truck driver in June 2006, schooling that was paid for by the defense contractor. Applicant intends to return to work for the defense contractor should his clearance be adjudicated favorably.

Drug Involvement

Applicant began to use marijuana while he was in the U.S. Coast Guard in 1972. Following his discharge in June 1977 at the rank of petty officer third class, Applicant continued to smoke marijuana frequently on the weekends. He smoked it to relax during divorce proceedings in 1979, and also used "a little bit of cocaine" in the late 1970s. Just before his divorce, he was living with a roommate who was sought by the police on bad check charges. When the police came to the residence looking for his roommate in September 1979, they saw about an ounce of marijuana on a table. Applicant (3)

was arrested for criminal mischief, third degree, possession of marijuana, and refusal to submit fingerprints.

Applicant used marijuana frequently during the 1980s. He was arrested twice on marijuana charges in the 1980s. In January 1981, he was charged with two counts of operating while under suspension and one count of marijuana possession, for which he was fined $60. During the summer of 1984 she smoked a couple of marijuana cigarettes every weekend at parties. In August 1984, Applicant was smoking marijuana with friends outside of a store when the police drove up. Applicant initially fled on foot but then turned himself in. In January 1985, he was fined $200 for misdemeanor marijuana possession back in August.[(4)]

In 1991, Applicant was living with his sister and her husband in their home. Drinking too much, Applicant entered an inpatient alcohol treatment program where he stayed for five weeks. Applicant testified he was given a diagnosis of alcohol dependence, but does not recall any diagnosis of cannabis dependence. (Tr. 96) He abstained from alcohol for about six years after his discharge.

In March 1993, Applicant went to work as a food and beverage attendant at a local casino. After the death of some family members in 1995, Applicant resumed his marijuana involvement. From about 1995 to 1999, Applicant used marijuana a couple of times per month. During a traffic stop by the state police in mid-October 1999, Applicant was found to be in possession of about one gram of marijuana. He was subsequently arrested in May 2000 and charged with illegal possession, for which he paid a $500 fine in October 2000.[(5)] Applicant believes he was stopped by the police because his companion was known by the police to be a frequent marijuana user. Applicant continued to smoke marijuana, one or two joints per week, to early July 2000.

In or before July 2000, Applicant's supervisor overheard him tell another employee about his recent arrest for marijuana possession. She referred him to the employee assistance program where he met with a licensed clinical social worker (LCSW) affiliated with a local hospital. At his initial meeting with this EAP clinician on July 21, 2000, Applicant acknowledged using marijuana one to two joints per week until about two weeks before his session with the LCSW, and drinking alcohol one case of beer per month before 1990 and one beer per month since. The LCSW diagnosed him with cannabis abuse and possible (rule out) alcohol abuse. During their second session on July 28, 2000, a management plan was established which included six random urine screens over the next four months, substance abuse education sessions with a local licensed marital and family therapist (LMFT), and compliance monitoring by the EAP clinician. Applicant subsequently met with the EAP clinician to monitor his compliance on August 29, 2000, September 15, 2000, and October 2000.

Applicant attended weekly drug and alcohol education sessions with the LMFT as required by his EAP from August 4, 2000 to October 31, 2000. He was cooperative during his sessions, and at discharge, the LMFT rendered a diagnosis of cannabis dependence in full remission on the basis of evidence of dependency 30 years prior when he was in his early 20s. (Ex. 6) Applicant passed all urine screens as well, and on December 20, 2000, his case was successfully closed by the EAP.

As of late June 2006, Applicant was drinking alcohol about once per month, up to six beers per occasion ("I don't drink to get totally drunk. I just occasionally drink some beers." Tr. 99). He consumed as many as six beers at a sitting in about April 2006 and then in mid-July 2006, about two weekends before his hearing. Random drug screens by the contractor in August 2003 and by commercial truck driving school in June 2006 were negative for drugs tested.[(6)] Applicant does not knowingly associate with any individuals who use illegal drugs.

Financial Considerations

Applicant's starting pay as a food service attendant at the casino was $6.50 per hour, although his wage rate gradually increased to $11 per hour by the time he left in 2003. Applicant fell behind on some financial accounts because of too much drinking, partying, smoking illegal drugs, and over extension on credit. (Tr. 50) In March 1998, a bank referred a $773 delinquent balance for collection (¶ 3.a). This is likely for a television that Applicant had purchased in April 1996 and had not paid for (*see* Ex. 2). In July 1997, Applicant financed the purchase of a 1995-model year vehicle, taking out a loan of $16,159, to be repaid at $269 per month for 60 months. Applicant fell behind a couple of months, and the car was involuntarily repossessed in December 1999. After a resale of the car, Applicant owed a deficiency balance of

$8,618. (¶ 3.b). Applicant's credit card account with a nationwide retailer, opened in November 1997, was placed for collection in about February 2000 with a past due balance of $725 (¶ 3.c) In August 1999, Applicant took out a personal loan of $2,000 to pay for repairs on his vehicle. The loan was to be repaid at $96 per month for 24 months. In January 2001, the creditor obtained a judgment against him in the amount of $812 (¶ 3.d).

In August 2003, Applicant started working for the defense contractor at about $13 per hour. When he applied for a security clearance in August 2003, Applicant indicated he owed a $5,000 balance after repossession of his vehicle (¶ 3.b), an unpaid judgment of $1,000 (¶ 3.d), and owed $700 in delinquent debt on a credit card (¶ 3.c). Applicant's credit report of August 12, 2003, listed the balances as $8,618 on ¶ 3.b, $812 on ¶ 3.d, and $725 on ¶ 3.c. A zero balance was listed as owed due to charge off on ¶ 3.a.

On October 3, 2003, Applicant was interviewed about his finances by a contract investigator for the Defense Security Service. Applicant explained that he had owed a $5,000 balance on his automobile loan (¶ 3.b) when the vehicle was repossessed. He indicated he did not intend to pay the debt as the creditor had taken his car. Concerning the unpaid judgment (¶ 3.d), Applicant speculated it might be owed to the creditor in ¶ 3.c, although he was not sure. He admitted owing one $700 debt (¶ 3.c) that he intended to satisfy. He did not recollect a second $700 debt (¶ 3.a), but admitted he owed about $650 for a television he had purchased in April 1996. Credit bureau records reflect the debt in ¶ 3.a was opened in April 1996. Applicant provided a personal financial statement on which he estimated a net monthly remainder of $499 after paying $90 to the creditor originally owed in ¶ 3.c.

Applicant considered filing for bankruptcy to relieve himself of his debts, but the lawyer wanted a $2,000 retainer. Before he was laid off from his defense contractor job in April 2006, Applicant earned between $32,000 and $33,000 annually (about $16.30 per hour). As of June 2006, he had not made any effort to determine whether he was liable for the debt in ¶ 3.a and had not contacted the creditor in ¶ 3.c. He has not made any payments on the deficiency balance in ¶ 3.b, although he now intends to repay the debt. He believed he had paid off all but maybe $100 of the judgment debt (¶ 3.d) with bonus monies when he worked for the casino. A check of Applicant's credit on June 13, 2006, did not confirm satisfaction of the judgment debt.

Applicant has been collecting unemployment compensation since April 2006, about $310 per week after taxes. About $100 behind in his cellular phone payments, Applicant in June 2006 requested that taxes no longer be withheld from his unemployment compensation so that he can get caught up in his obligations. He paid between $300 and $350 for dental costs of between $700 and $750 when he was working for the defense contractor but has paid nothing on the debt since he was laid off. Applicant has $77 in his checking account and $25 in his savings account. Recent checks written in mid-June 2006 for rent and electric utility costs were returned due to insufficient funds.

Applicant covered the checks and was not prosecuted.

Falsification

Needing a clearance for his duties with the defense contractor, Applicant executed a security clearance application (SF 86) on August 5, 2003. He disclosed the unpaid financial judgment, the vehicle repossession, and a delinquent credit card debt. Concerning his arrest record, Applicant responded "Yes" to question 24 ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"] and indicated he had been fined $500 for a September 1998 marijuana possession offense. Concerning any use of illegal drugs in the seven years preceding his clearance application (question 27), Applicant indicated he used marijuana in September 1998 ten times.

Applicant was interviewed by the DSS contract investigator on October 3, 2003, about his most recent marijuana possession charge reflected on his SF 86, which the investigator had with him. Applicant corrected the record to indicate he had been arrested in May 2000 and not September 1998 as indicated on his SF 86. He admitted he had marijuana on him when he was arrested on that occasion and that he had "a few other marijuana arrests" that usually resulted in a small fine. He denied any use of marijuana since he completed his counseling in 2000.

On November 24, 2003, Applicant was reinterviewed for further detail about his marijuana offenses and drug use. Applicant denied any recollection of a couple of offenses, including January 1981, but he provided details of his arrests in September 1979, August 1984, and May 2000. He denied any effort to conceal his arrest history, and explained he

had omitted his earlier arrests "because the application only asked for arrests within the past 5-7 years." (Ex. 4)

In response to allegations of falsification of his SF 86 for failing to accurately disclose his marijuana arrests and the extent of his marijuana use, Applicant indicated that he responded as he did "because the application stated within a 7-year period." At his hearing, he testified initially that he had meant to refer to his most recent arrest for marijuana possession when he disclosed a September 1998 marijuana possession charge; that the year "might not have been clear in [his] mind as to what exactly was the specific date that it took place." He explained his omission of earlier offenses to his understanding that they were outside the scope of the questionnaire ("Because it was saying from the time you fill out the application going back seven years, anything within that seven year period." Tr. 109-110). When confronted with the fact that question 24 does not have a seven-year scope, Applicant responded, "It's not easy to explain. I've been on all kinds of prescription drug medication too for back pain. And one time they even give me that Vioxx." He then went on that he thought he had a "rap sheet" listing his prior offenses that was included with his application, but when questioned further, admitted he had not listed all his offenses because he feared he would not be hired by the defense contractor ("Maybe because I felt that it was going to be infringement or discrimination as to whether I get hired into the job." (Tr. 111) Applicant indicated he could not explain why he had reported that he used marijuana ten times in September 1998 when he had used marijuana in 2000 (Tr. 112). In all likelihood, Applicant misrepresented the extent of his marijuana involvement on his SF 86 because he feared the loss of the job and/or clearance.

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). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. 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).

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

CONCLUSIONS

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. ¶ E2.A5.1.1 Although Applicant disclosed his financial difficulties (repossession, judgment, seriously delinquent credit card debt) on his SF 86, he knowingly misrepresented his drug-related arrest record and illegal drug use as limited to 1998. Even if he did not recall the specific date of his latest arrest, he knew the offense had occurred in 1999 and that he had been arrested several times before on marijuana possession charges. He misrepresented the duration and extent of his marijuana use, which continued to summer 2000. Disqualifying condition (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 clearance eligibility or trustworthiness, or award fiduciary responsibilities*, is implicated in the absence of inadvertent omission, good faith misunderstanding as to whether a given offense fell within the scope of the question, or other cause negating knowing and willful intent.

When interviewed by the DSS contract investigator in October 2003, Applicant corrected the date of his latest arrest, and admitted he had "a few other" marijuana arrests that resulted in small fines. (Ex. 3) His rectification is sufficiently prompt to fall within mitigating condition (MC) ¶ E2.A5.1.3.3. *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*. However, there is no evidence that he was upfront with the investigator during that interview about his illegal drug involvement. During a subsequent interview on November 24, 2003, Applicant detailed his arrests as best as he could recall. As for his use, Applicant admitted smoking marijuana every weekend at parties during summer 1984, as well as for relaxation sporadically around the time of his divorce in 1979. On the other hand, there is no evidence that he was completely candid with the agent about the extent of his more recent marijuana involvement. Furthermore, reform is not demonstrated where he gave several spurious excuses at the hearing for his omission of his earlier drug-related offenses from his SF 86 (he mistakenly dated his most recent arrest as September 1998 due to his recollection being impacted by too much partying; the questionnaire had a seven-year scope; he was taking medications for back pain; his rap sheet should have been sent with the application) before finally admitting that he had not listed his arrests for fear he would not be hired. He remains unwilling to admit that he had lied about his drug use when he completed his SF 86.

Guideline J--Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. ¶ E2.A10.1.1 In addition to raising personal conduct concerns, Applicant's knowing, false responses to questions 24 and 27 on his SF 86 constitute felony violations under 18 U.S.C. § 1001.[(7)] DC ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, is implicated.

While his August 2003 misrepresentations are not recent (¶ E2.A10.1.3.1.), doubts persist as to whether his representations can be relied on (*see* Personal Conduct). Successful rehabilitation depends on taking responsibility for one's misconduct and on a track record of compliance long enough to guarantee against recurrence. An eleventh-hour admission that he had not been completely candid about his arrest record falls far short of the clear evidence of successful rehabilitation required under ¶ E2.A10.1.2.6, especially where he remains unwilling to explain his disclosure of marijuana use only ten times in September 1998.

Guideline H--Drug Involvement

Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1 Applicant experimented with cocaine in the 1970s, but his drug of choice was clearly marijuana. Applicant used marijuana with varying frequency from about 1972 to 2000, despite several arrests for illegal possession. He was referred to his EAP after his employer learned of his arrest for marijuana possession in May 2000. This clinician, a licensed clinical social worker affiliated with a local hospital, gave him a diagnosis of cannabis abuse, and referred him to a local therapist (LMFT) for drug and alcohol education. This clinician, a licensed marital and family therapist, diagnosed Applicant as suffering from cannabis dependence, but she revised that diagnosis to indicate his condition was in full remission. Under Guideline H, DC ¶ E2.A8.1.2.1. *Any drug abuse*, and DC ¶ E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*. are implicated. Not enough is known about the qualifications of the LMFT or of the EAP LCSW's experience in a drug treatment program to apply ¶ E2.A8.1.2.5. *Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*. Regardless of whether ¶ E2.A8.1.2.5 applies, objective indicators (several arrests for possession, association with known drug users, frequency of use to weekly at times) clearly show marijuana was part of his recreational lifestyle for many years. He continued to use marijuana following his last arrest for illegal possession.

While Applicant has a heavy burden to overcome the security concerns raised by his marijuana abuse, there is no evidence of any illegal drug involvement since he completed the drug and alcohol education program with the LMFT in 2000, and he does not intend to use any illicit drug in the future. In demonstration of that intent, he complied with the treatment plan established by his EAP, including abstinence as confirmed by negative drug screens. A recent test administered to him during his schooling for his truck license disclosed no evidence of drugs. There is no evidence that Applicant continues to associate with drug users. Applicant testified credibly to looking forward to acquiring his class B

driving license and then driving trucks. Whether or not he returns to work for the defense contractor, his future career plans are inconsistent with illegal drug involvement. MC ¶ E2.A8.1.3.1. *The drug involvement was not recent* and MC ¶ E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future* apply.

Application of 10 U.S.C. § 986

This case also presents the issue of whether Applicant is--as a matter of law--ineligible for a security clearance based on his illegal drug use. Under 10 U.S.C. § 986, the Defense Department may not grant or renew a security clearance for an applicant who falls under any of four statutory categories. The statutory category at issue here is § 986(c)(2), which provides as follows: "The person is an unlawful user of, or is addicted to, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))."

The Deputy Secretary of Defense issued a June 7, 2001, memorandum implementing the Smith Amendment. Attachment 1 to that memorandum is official policy guidance designed to assist the Department of Defense in implementing the statutory prohibitions. Concerning users of illegal drugs, the policy guidance is that the Smith Amendment did not change the substance of the Guideline H, the adjudicative guideline for drug involvement. In particular, the official policy guidance is as follows: "Anyone who is currently an unlawful user of, or addicted to, a controlled substance is not considered eligible for a security clearance." With his last use occurring in 2000, Applicant is not currently an unlawful user of any illegal drug. Assuming the validity of the LMFT's diagnosis of cannabis dependence, the clinician revised her assessment to indicate that Applicant's dependency was in full remission as of his last session with her in October 2000. In the absence of any evidence that Applicant was psychologically or physiologically addicted to marijuana as of June 2006, I find 10 U.S.C. § 986 does not apply.

Guideline F--Financial Considerations

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. ¶ E2.A6.1.1 As alleged in the SOR, a $773 balance was charged off in April 1998 (¶ 3.a). His credit report no longer lists the creditor in ¶ 3.a, which is likely but not confirmed to be for a television that he had not paid for as of October 2003. After falling behind in two payments, his vehicle was repossessed in December 1999, leaving him with a debt of $8,618 (¶ 3.b). A retailer placed a $725 debt balance for collection in 2000 (¶ 3.c). He also defaulted on a personal loan (¶ 3.d) leading to a judgment award of $812 against him. Applicant contests any current liability for the judgment debt, claiming he paid it off, although he also testified that he might not have paid $100 of the balance. His June 2006 credit report shows a zero balance owed the original lender, but it also does not show that the judgment had been satisfied. His record of financial problems raises concerns under DC ¶ E2.A6.1.2.1. *A history of not meeting financial obligations* and DC ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*. Moreover, where the debts were incurred in part because of "too much drinking, partying, smoking (Tr. 50)," DC ¶ E2.A6.1.2.5. *Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*, must be considered.

Even assuming that he owes only the debts in ¶¶ 3.b and 3.c, his total delinquent debt amounts to $9,343 when he is falling behind on some monthly expenses (cell phone). MC ¶ 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)* applies to the extent that his unemployment since April 2006 has compromised his ability to make any payments on his delinquencies. However, ¶ E2.A6.1.3.3 does not adequately address his failure to make any effort to resolve these debts when he was working for the defense contractor. While Applicant is understandably frustrated with having to pay for a vehicle that he no longer possesses, he remains legally liable for the debt. Furthermore, he made no effort to contact the creditor owed the debt in ¶ 3.c, knowing as of October 2003 that the government was concerned with the debt and that he had enjoyed the benefits of the credit extended to him. Although he now intends to resolve his delinquent debts once he is in a financial position to do so, his past behavior provides little assurance that he will take prompt action.

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. Although not recent, his many years of marijuana abuse in disregard of the law (¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*), especially as an adult (¶ E2.2.1.4.

The individual's age and maturity at the time of the conduct), is still relevant to whether he presents an acceptable security risk. Although Applicant has taken significant steps to address his drug use (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*), he has not shown sufficient reform with respect to addressing the delinquent debts that were caused in part by his drug abuse. Nor has he demonstrated that his representations can be relied on, as he endeavored to conceal the extent of his illegal drug involvement from his employer and the Department of Defense. He is credited with reacting positively to his layoff and taking advantage of the truck driver training, but it is not enough to overcome the questionable judgment he continues to exhibit in other areas.

FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

Subparagraph 2.h: For Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a: Against 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 original notice was sent to Applicant through his employer and a copy was mailed to Applicant at his address of record. His former employer returned the envelope containing the notice, unopened, after the hearing.

2. A second copy was forwarded on December 14, 2006, for inclusion in this applicant's case file.

3. When asked about this offense at his hearing, Applicant provided a very different account than he told the agent in November 2003 (Ex. 4). He indicated he had been out driving and "took off" when an officer tried to pull him over. He was pursued and eventually taken down by five or six officers. (Tr. 85) State police (Ex. 8) and FBI records (Ex. 7) report an arrest in August 1979 for resisting arrest and disorderly conduct, which is likely the offense Applicant was describing at his hearing.

4. Applicant's version of this offense also varies from what he had previously reported to the agent. Applicant had told the agent in November 2003 that he had been smoking marijuana with friends behind a local supermarket when the police drove up and he ran off. (Ex. 4) At his hearing, he testified that his friend had a plant hanging up in his trailer and the police, who executed a warrant against his friend for forged checks, saw the plant when he opened the door. (Tr. 88) Applicant may well have confused the August 1984 offense with the September 1979 offense, as his recent version is akin to what he told the agent had occurred in September 1979. In evaluating what is likely to have happened when, Applicant's more recent recollection is considered less reliable due to the passage of time.

5. Available state police records indicate an arrest date of May 10, 2000, but an offense occurrence date of October 15, 1999. (Ex. 8) Applicant's version of events, that he got arrested on the day he was pulled over, is discrepant with the police record that shows an arrest in May 2000. Given Applicant's testimony that he was driving the vehicle that was later repossessed, evidence showing the repossession was in December 1999, and his testimony that he was sentenced one year after he was stopped, the offense likely occurred in October 1999 as the police records show and not May 2000.

6. Records showing the negative results were not presented in evidence, so it is unclear which drugs were tested for.

7. 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, knowing 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.