

KEYWORD: Criminal Conduct; Alcohol; Drugs; Personal Conduct; Financial

DIGEST: Applicant has a history of alcohol, heroin, and marijuana use to the point of diagnosed dependence with significant relapses following substance abuse treatment in 1995, 1999, 2000, and 2001. Her substance abuse led to several convictions for criminal trespass. Involved in a methadone program off and on from 1997 to 2004, she abused heroin and marijuana as recently as 2003 while employed by a defense contractor, and continued to drink beer on a regular basis. After a year of abstinence from alcohol, she consumed alcohol to intoxication on two occasions in February 2005. She was not fully candid on her security clearance application about her alcohol and drug treatment, her illegal drug use, or her criminal arrest record, and has delinquent debts that remain unresolved. Clearance is denied.

CASENO: 04-05957.h1

DATE: 10/31/2005

DATE: October 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05957

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has a history of alcohol, heroin, and marijuana use to the point of diagnosed dependence with significant relapses following substance abuse treatment in 1995, 1999, 2000, and 2001. Her substance abuse led to several convictions for criminal trespass. Involved in a methadone program off and on from 1997 to 2004, she abused heroin and marijuana as recently as 2003 while employed by a defense contractor, and continued to drink beer on a regular basis. After a year of abstinence from alcohol, she consumed alcohol to intoxication on two occasions in February 2005. She was not fully candid on her security clearance application about her alcohol and drug treatment, her illegal drug use, or her criminal arrest record, and has delinquent debts that remain unresolved. Clearance is denied.

### STATEMENT OF THE CASE

On November 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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. <sup>(1)</sup> DOHA recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked. The SOR was based on criminal conduct (Guideline J), alcohol consumption (Guideline G), drug involvement (Guideline H), personal conduct (Guideline E), and financial considerations (Guideline F).

On December 27, 2004, Applicant responded to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 5, 2005. On May 10, 2005, I scheduled a hearing for May 31, 2005. At the hearing, 13 government exhibits were entered into the record, and Applicant testified, as reflected in a transcript received on June 10, 2005.

### FINDINGS OF FACT

The government alleged under Guideline J that Applicant was arrested for assault 3<sup>rd</sup> degree in June 1998, for issuing a bad check in August 1998, for larceny 6<sup>th</sup> degree in May 1999, for criminal trespass 1<sup>st</sup> degree and criminal mischief 3<sup>rd</sup> degree in late May 1999, for criminal trespass 3<sup>rd</sup> degree in July 1999, for possession of narcotics, drug paraphernalia, and criminal trespass 1<sup>st</sup> degree in July 1999, and for trespass in January 2002, and was convicted of the late May 1999, July 1999, and January 2002 criminal trespass charges. Under Guideline G, Applicant was alleged to have consumed alcohol at times to excess from about 1978 to present despite treatment for alcohol and illegal substance abuse/diagnosed dependence from July 1995 to September 1995, July 1999 to August 1999, November 2000 to January 2001, February 2001 to April 2001, and in June 2001 when she was discharged against medical advice. Guideline H was alleged because of drug abuse (heroin, marijuana, and cocaine) by Applicant from 1978 to approximately November 2003, and treatment, including her involvement in a methadone maintenance program since 1997. The government alleged under Guideline E that Applicant deliberately concealed relevant and material facts concerning her arrest record, illegal drug involvement, and her substance abuse treatment from her security clearance application (SF 86), and she had been discharged from previous employment for willful misconduct. Guideline F was alleged because of four unpaid debts, totaling \$2,426, and her failure to file her federal and state income tax returns for tax year 2002.

In her answer, Applicant admitted the factual allegations with the exception of ¶ 2.a. under Guideline G, consumption of alcohol at times to excess from about 1978 to present, ¶ 3.d. under Guideline H, readmission to a drug treatment program after positive urinalysis tests for heroin in July 2001 and cocaine in November 2003, ¶ 3.e., current involvement with a methadone maintenance program, and ¶ 4.e. under Guideline E, discharge from employment for willful misconduct when she failed to report to work after money had been stolen. Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the evidence of record, I make the following additional findings:

Applicant, 40 years of age, has been employed in the cleaning department by a defense contractor since March 2003. She has held a company-granted confidential clearance since starting her employ. As of her hearing in May 2005, she had been on workmen's compensation since surgery in November 2004.

Applicant has a history of substance abuse from an early age. When she was only 12, she began drinking beer on weekends at friends' homes, generally two to six beers per occasion. At age 13, she started using heroin (by injection) on the weekends, marijuana weekly to daily, and cocaine on occasion. She also tried LSD twice. Her involvement with heroin and cocaine increased gradually until 1981, when her parents had her admitted to a residential drug rehabilitation treatment program. She managed to remain abstinent from alcohol and illegal drugs for about two years while at the facility.

She became pregnant in college at age 19 and had a son, whom she gave up for adoption. She relapsed into alcohol and drug use after meeting her first husband, an alcohol and drug abuser. For about four months, Applicant injected cocaine with him and she began weekly use of marijuana. Although he was abusive toward her, she married him in November 1987, and their daughter was born the following month. She had serious medical problems, and Applicant coped with the stress of her daughter's repeated hospitalizations by drinking.

In the early 1990s, Applicant left her spouse and daughter and went to a shelter. She abstained from alcohol for about six months, but then relapsed into a six-pack of beer every other day. Her drinking negatively affected her work as a hairstylist, and she left for a job in a local casino, where she met her present husband, whom she married in November 1997.

In about 1993, Applicant had back surgery due to an injury. She became addicted to her medication, and in March 1994, underwent 10 days of substance abuse treatment at a drug and alcohol rehabilitation facility (substance abuse program A). She managed only three months of sobriety. From about September 1994 to July 1995, she drank two to six beers plus a pint of vodka on a daily basis, and starting in Spring 1995 abused heroin daily as well. On July 6, 1995, she readmitted herself to substance abuse program A, where she was diagnosed as suffering from alcohol dependence, heroin dependence, and marijuana dependence. She maintained sobriety, actively participated in all therapeutic groups, and was open to accepting feedback while in treatment. On September 26, 1995, she was discharged with a good prognosis, provided she followed through with her planned aftercare, which included five to seven Alcoholics Anonymous (AA)/Narcotics Anonymous (NA) meetings weekly, individual counseling, psychiatric follow-up, and contact with a clinic (psychiatric program B) for medication.

In about October 1995, Applicant and her second husband (then boyfriend), with funds paid from his disability claim, moved to where her first husband and daughter were living. Her first husband had achieved sobriety, and with his help, Applicant earned her certification as a nurse's aide at a local community college.

In Fall 1996, Applicant and her second husband, who was not working at the time, moved back to their former locale. She was shouldering the burden working as an office clerk while he was unemployed. She relapsed into alcohol and heroin abuse, which increased to daily. In addition, she also used cocaine for about two months in 1997, which was provided by her second husband. After using heroin and alcohol one night in mid-June 1997, Applicant was involved in a physical altercation with a teenage female who attacked her with a knife. Applicant was arrested for assault 3<sup>rd</sup> degree, but the charge was later reduced to public disturbance. The disposition is not of record.

In an effort to stop her heroin abuse, Applicant began daily methadone treatment sometime in 1997. After about 14 months in the methadone program, Applicant stopped going to the dispensary. She relapsed into heroin and alcohol abuse, which led to minor criminal involvement. In August 1998, she was arrested on a warrant for issuing a bad check to a store. In May 1999, she shoplifted some cigarettes and shoes from a store and was arrested for larceny 6<sup>th</sup> degree, but the charge was subsequently nolle prossed. Four days after her arrest for larceny, she was arrested for criminal trespass 1<sup>st</sup> degree and criminal mischief 3<sup>rd</sup> degree. She was fined \$235 for the criminal trespass. She maintained abstinence from heroin for only about one month. In mid-July 1999, she was again arrested for criminal trespass 3<sup>rd</sup> degree, but that charge was nolle prossed. One week later, she went to the local housing project to purchase heroin. She was arrested and charged with possession of narcotics, possession of drug paraphernalia, and criminal trespass 1<sup>st</sup> degree. The drug charges were dropped even though she had a small quantity of heroin in her possession, and in January 2002, she was fined \$235 for criminal trespass and placed on two years probation. <sup>(2)</sup>

Four days after her arrest in July 1999, Applicant readmitted herself to substance abuse program A where she had been treated in 1994 and 1995. She was noncompliant with all aspects of treatment (failed to integrate into a support network, felt she did not need the staff's suggestions to maintain sobriety) and was administratively discharged with a guarded prognosis on August 6, 1999. On August 18, 1999, at a friend's referral, Applicant was evaluated at psychiatric clinic B where she was directed for aftercare in 1995. She did not pursue counseling at the clinic at that time. Separated from her spouse since August 1999, she actively abused heroin and alcohol. She also used cocaine sometime in early 2000.

After two weeks of inpatient detoxification, Applicant entered an intensive outpatient program (intensive outpatient program C) on November 16, 2000, for treatment of alcohol and heroin dependence. She relapsed while in the program on November 16, 17, and 19, drinking beer at her estranged husband's residence. Applicant was discharged from the program for non compliance effective January 24, 2001, for failure to show for treatment. Clinical impression at discharge was that Applicant needed inpatient treatment.

Unable to cope with the stress of a separation from her second husband and not taking her medication for depression, Applicant on February 5, 2001, admitted herself for the fourth time to substance abuse program A. Diagnoses on admission were major depressive disorder, recurrent, alcohol dependence, and opioid dependence. She attended AA or NA meetings nightly and was able to work honestly on her addictions. She was clinically discharged on April 9, 2001, sober but with a guarded prognosis. Aftercare plans included followup in intensive outpatient program C, from which she had been discharged in January. In June 2001, Applicant was readmitted to substance abuse program A only to be discharged against medical advice on the fourth day.

From February 22, 2001 to August 28, 2001, Applicant attended 12 sessions of individual counseling at psychiatric clinic B for opioid dependence and major depression, recurrent. Her judgment and insight were assessed as poor, and she was discharged due to inconsistent attendance.

With the help of the methadone program, Applicant remained free of heroin in 2002, but she was drinking alcohol every day. In August 2002, she was fired from her employment as an attendant at a residential home after her boyfriend brought beer into the facility. She also failed to report to work on a day after a resident's money was discovered missing. Applicant stole the money.

Unemployed since August 2002, Applicant applied to work for a defense contractor. She took a pre-employment drug screen that was negative for all substances tested. Needing a security clearance for her job as a housekeeper/janitor, Applicant executed a security clearance application (SF 86) on March 21, 2003. She falsely denied any illegal drug involvement in the preceding seven years, her arrest for narcotics possession, and any alcohol-related counseling as she feared she would lose the job. Concerning her arrest record in the past seven years, Applicant disclosed the 1999 larceny and 1997 public disturbance offenses, but omitted the criminal trespass offenses as she thought they had been dropped after she completed her probation. Applicant listed two debts delinquent more than 180 days, \$225 for car taxes and

\$640 for dental work.

A check of Applicant's credit on March 29, 2003, by the Defense Security Service (DSS) revealed Applicant was indebted in the amounts of \$94 and \$117 for past due utility costs written off by the service providers. Court record checks disclosed an unpaid judgment of \$1,221.64 owed a hospital since November 2000.

After starting her job with the defense contractor, Applicant "slipped" in Fall 2003 and used heroin a couple of times per week for a couple of months. Her boyfriend had received \$50,000 in a lawsuit, and they used some of the money to purchase the drug. Applicant tested positive for cocaine in a drug screen in November 2003. She used heroin that apparently had been laced with cocaine. Applicant also smoked marijuana with friends in 2003.

Applicant returned to the methadone program thereafter, and was on a low dose of methadone and was drug-free as of February 2004. She was drinking a six-pack of beer to relax every couple of weeks while attending AA once or twice a week. Applicant was interviewed by a DSS special agent on February 20, 2004. Applicant admitted a history of illegal drug abuse, which she had no intent to continue as she was on low dose methadone for her heroin problem, did not care for cocaine, and used marijuana infrequently as an adult. Applicant acknowledged she was drinking a six-pack of beer every couple of weeks even as she was going to AA. She was not candid about the circumstances of her termination from her previous job, telling the agent that it was because she did not have a telephone. Applicant did not deny that she owed \$94 for telephone services and \$117 for natural gas, but explained the hospital judgment was for emergency room care for her daughter that was supposed to be paid by the state under a program for uninsured children. Applicant promised to check into the debt. Applicant disclosed that she had not yet filed her federal and state income tax returns for tax year 2002. She expressed her intent to file these belated returns when she filed for tax year 2003.

Her DSS interview led her to reconsider her drinking. She ceased her alcohol consumption, but also stopped going to the methadone program as she no longer wanted to be around persons who were not seeking to recover, did not like the physical effects of the methadone, and because of the stigma of methadone use. As of December 2004, she had not paid the \$94 and \$117 charged off utility debts, her dental bill which had risen to \$940, or the \$1,221.64 hospital judgment.

In about February 2005, Applicant had neck surgery. Feeling isolated and not attending AA, Applicant drank to intoxication on two separate occasions. Applicant met with a counselor and was able to renew her affiliation with AA. As of her hearing in late May 2005, she had attended AA daily for the past 85 days. Applicant has a sponsor in AA, whom she calls daily. Applicant now understands that she cannot consume any alcohol. She intends to work on her problems with the help of AA so that she can hopefully help someone else recover in the future.

## 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 has 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). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [her] security clearance." ISCR Case No. 01-20700 at 3.

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 a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After considering the evidence of record, the following adjudicative guidelines are pertinent to an evaluation of Applicant's security suitability:

**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.)

**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. (¶ E2.A7.1.1.)

**Criminal Conduct.** A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. (¶ E2.A10.1.1.)

**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.)

**Financial Considerations.** 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.A6.1.1.)

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the Government established its case with respect to Guideline H, drug involvement, Guideline G, alcohol consumption, Guideline E, personal conduct, Guideline J, criminal conduct, and Guideline F, financial considerations. While Applicant has made recent positive steps toward recovery from her addictions, they are not enough to overcome her very serious history of polysubstance abuse with repeated relapse after treatment, her criminal conduct, her lack of candor on her SF 86, and her unpaid delinquent debts.

Applicant has a long history of polysubstance abuse (primarily alcohol and heroin) with several failed rehabilitation efforts. At age 12, she started drinking two to six beers per occasion with friends on weekends. At 13, she started injecting heroin and smoking marijuana on weekends, and using cocaine occasionally. Her involvement with cocaine and heroin increased until her parents had her admitted to a residential drug treatment program. After two years of abstinence, Applicant went off to college where she relapsed into cocaine and alcohol use, initially to deal with the stress of giving up a son for adoption and later to cope with spousal abuse and her daughter's medical problems. During the early 1990s, she drank a six-pack of beer every other day with negative impact on her performance as a hairstylist. After back surgery in 1993, Applicant developed an addiction to her pain medication resulted in a 10-day inpatient detoxification stay in March 1994. Three months after her discharge, she relapsed into daily drinking and into heroin abuse. She has since struggled to overcome very serious drug and alcohol dependency.

Three months in substance abuse program A in 1995 gave her the tools to remain sober for about one year. By 1997 she was abusing heroin and alcohol daily, and had also used cocaine. A methadone treatment program helped her to abstain from heroin for 14 months, but she stopped going to the dispensary with negative consequences for her recovery. Her abuse of alcohol and heroin in 1999 led to several criminal arrests, including for larceny. After being arrested on drug charges in July 1999, she showed good judgment in readmitting herself to substance abuse program A. However, she was unable to deal honestly with her addictions at that time, continued to abuse heroin and alcohol with followup in an intensive outpatient program in November 2000 did not prevent her from drinking beer at her estranged husband's residence.

In substance abuse program A for the fourth time, Applicant attended AA/NA nightly and was sober on discharge in



April 2001, but she failed to follow up with recommended aftercare. Back in the methadone program, she remained free of heroin but drank alcohol daily. In August 2002, she was fired from a job when her boyfriend brought beer to the jobsite in violation of company policy and she was suspected, rightly so as she now admits, of stealing money from a resident. While employed by the defense contractor, she "slipped" and used heroin a couple of times weekly for a couple of months, and smoked marijuana in 2003. To her credit, she returned to the methadone program, but continued to drink beer even while going to AA once or twice a week. After about one year alcohol free, she drank to intoxication twice in about February 2005.

Her polysubstance abuse raises very significant security concerns. Under the drug involvement guideline, several disqualifying conditions (DC) apply: ¶ E2.A8.1.2.1. *Any drug abuse*; ¶ E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*; ¶ E2.A8.1.2.4. *Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*; <sup>(3)</sup> and ¶ E2.A8.1.2.5. *Recent drug involvement, especially following the granting of a security clearance*. There is no evidence Applicant has used heroin or any other illegal drug since about November 2003, but that involvement is considered recent given her long history of illegal drug involvement. Moreover, although her involvement with marijuana was occasional and her abuse of cocaine even more limited during her adult years, her abuse of these other drugs cannot be assessed separately from her heroin addiction. The alcohol component of her polysubstance dependency falls within alcohol consumption (Guideline G) disqualifying conditions ¶ DC 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*, and ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*.

Sincere in her desire to leave her drinking and drugging past behind her, Applicant has not used any controlled dangerous substance since November 2003, or any alcohol since February 2005. While illegal drug involvement can be mitigated when there is a demonstrated intent not to abuse any drugs in the future (¶ E2.A8.1.3.3.), and her recent abstention from alcohol with AA is a positive change in behavior supportive of sobriety (¶ E2.A7.1.3.3.), she has a history of relapse after significant periods of abstinence. Her most problematic use of heroin, which led to her criminal trespass and even theft, was from 1998 through 2000, following 14 months of methadone medication. She was assessed as in need of inpatient treatment as of November 2000, and diagnosed with alcohol dependency and opioid dependency on her readmission to substance abuse program A in February 2001. Her prognosis was guarded at discharge from that treatment in April 2001. Clinician assessment was not favorable of her insight and judgment following 12 sessions of individual counseling at a psychiatric clinic in 2001. Even though she remained free of illicit drugs thereafter until her relapse in 2003, she continued to abuse alcohol regularly to about March 2004, and after a year of abstinence, relapsed in February 2005. This relapse has troubling implications for the extent of her recovery, certainly from her alcohol dependency, but also from her opioid dependency. It raises significant doubts about the success of prior substance abuse treatments. Given her more than 30 years of off and on abuse of alcohol and illegal drugs (primarily but not exclusively heroin), her daily involvement with AA for just shy of 90 days is not enough to preclude a recurrence of future illegal drug or alcohol abuse. Applicant is encouraged to work with her AA sponsor, and she deserves credit for all the efforts she has made to overcome her very serious addictions. Yet, it is too soon to conclude that her alcohol and drug abuse are safely of the past. Findings are returned against Applicant as to Guideline G (SOR ¶ 2.a. through ¶ 2.g.) and Guideline H (SOR ¶ 3 a. through ¶ 3.g.).

The criminal trespass concerns under Guideline J are attributable to her illegal drug involvement as she went to the projects to purchase drugs and apparently even attempted to break into someone's house for money. Her issuance of a bad check in about 1998 and shoplifting of shoes and cigarettes from a store in 1999 involve fraudulent behavior, but they were also committed during a time when she was using heroin and/or alcohol heavily. The police record of her

arrest for assault in 1997 indicates she smelled of alcohol. She has only two convictions for criminal trespass, as several of the offenses were nolle. The security significance of criminal activity does not depend on their legal disposition however. The government may consider allegations or admission of criminal conduct, even if the person was not formally charged (§ E2.A10.1.2.1.) In this case, Applicant committed multiple lesser offenses (§ E2.A10.1.2.2.) which raise concerns for her judgment, reliability, and trustworthiness.

The government did not allege any criminal conduct after a 2002 conviction of trespass (SOR ¶ 1.a.). It is not clear whether this represents a separate incident from the criminal trespass offenses committed in 1999 for which he paid \$235. Assuming it was a separate incident, a \$15 fine is so minor as to be of little concern. While the remaining criminal conduct alleged cannot reasonably be construed as recent (*see* ¶ E2.A10.1.3.1. *The criminal behavior was not recent*), doubts persist as to her reform. There remains an unacceptable risk of future alcohol and/or drug abuse, so related criminal conduct cannot be ruled out. Furthermore, I cannot ignore the other evidence in the record that casts doubt on Applicant's rehabilitation. Although alleged only under Guideline E, Applicant admits she stole money from a resident of the home where she was employed until her firing in October 2002, and she made false statements on her SF 86 concerning her illegal drug use and alcohol treatment, in violation of 18 U.S.C. § 1001. SOR ¶ 1.b. through 1.g. is resolved against her, while ¶ 1.a. is found for her for the reasons noted.

Security significant personal conduct (Guideline E) concerns are also raised because Applicant intentionally concealed from the government when she completed her SF 86 her abuse of heroin, marijuana, and cocaine within seven years of her SF 86, her arrest on drug possession and paraphernalia charges in July 1999, and her treatment for alcohol dependence in substance abuse program A and intensive outpatient program C. She admits she chose to omit the information out of fear she would lose the job. 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, applies.* Furthermore, her discharge from a previous job in October 2002 for willful misconduct falls within DC E2.A5.1.2.1., *Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances.*

In mitigation, Applicant was candid about her illegal drug involvement and treatment when she was interviewed by the DSS agent in February 2004. While C ¶ E2.A5.1.3.3., *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts,* is potentially applicable where there is a rectification of an earlier falsification, Applicant has not shown that her admissions against interest were prior to confrontation. Furthermore, she misled the agent with respect to the reasons for her employment termination in October 2002. Applicant presented as very credible at her hearing, and she acknowledged she had lied about the reasons for her firing from her previous job. There is not enough of a track record of compliance with obligations (including complete candor and compliance with rules) to overcome the judgment, reliability, and trustworthiness concerns caused by her false statements to the government and her willful misconduct at her previous job. Adverse findings are returned as to Guideline E (SOR ¶ 4.a through ¶ 4.e.).

The Guideline F allegations are not in dispute, and are based on unpaid debts totaling \$2,426.64 and failure to timely file individual income tax returns for tax year 2002. Under financial considerations, the security eligibility of an applicant is placed into question when she is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her financial obligations (§ E2.A6.1.1). Applicant was aware of the outstanding

dentist bill since at least March 2003, as she listed it on her SF 86. As of her DSS interview in February 2004, she was placed on notice of the two minor utility debts and the hospital judgment. She has not demonstrated any effort to resolve these debts, so ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, apply.

Delinquent debt may be extenuated where it resulted from factors largely beyond the person's control (¶ E2.A6.1.3.3.). The largest of the debts, the hospital judgment, was for emergency services for her daughter which Applicant thought was covered by a state program for uninsured minors. Applicant has an obligation to at least determine whether she is liable for the debt, and she has not made any effort to do so. She has not shown any effort to resolve the dental bill. In her favor, as her credit reports confirm, Applicant does not have a history of overspending on consumer credit. The unpaid debts are not so substantial to warrant on their own denial or revocation of her clearance, even though they remain unpaid. However, they show irresponsibility in another facet of Applicant's life, and compound the concerns raised for her security worthiness. SOR ¶ 5.a. through 5.d. under Guideline F are resolved against her. SOR ¶ 5.e. is found in her favor, as although Applicant did not timely file her federal or state income tax returns for 2002, it was not an act of intentional tax evasion on her part or because she could not afford any taxes owed. Applicant testified she was entitled to refunds for 2002.

## 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 J: AGAINST THE APPLICANT

Subparagraph 1.a: For 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

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2. Guideline G: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Paragraph 3. Guideline H: AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: Against the Applicant

Subparagraph 3.d: Against the Applicant

Subparagraph 3.e: Against the Applicant

Subparagraph 3.f: Against the Applicant

Subparagraph 3.g: Against the Applicant

Paragraph 4. Guideline E: AGAINST THE APPLICANT

Subparagraph 4.a: Against the Applicant

Subparagraph 4.b: Against the Applicant

Subparagraph 4.c: Against the Applicant

Subparagraph 4.d: Against the Applicant

Subparagraph 4.e: Against the Applicant

Paragraph 5. Guideline F: AGAINST THE APPLICANT

Subparagraph 5.a: Against the Applicant

Subparagraph 5.b: Against the Applicant

Subparagraph 5.c.: Against the Applicant

Subparagraph 5.d.: Against the Applicant

Subparagraph 5.e.: For 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 SOR was issued under the authority of 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).
2. The government alleged under criminal conduct that Applicant was found guilty in January 2002 of trespass (SOR ¶ 1.a.). On that same date, Applicant was fined \$235 for the criminal trespass offenses alleged in SOR ¶ 1.b. and ¶ 1.d. The government presented no documentation of a separate incident of criminal trespass in January 2002.
3. The discharge summary of Applicant's treatment from February 5, 2001 to April 9, 2001, reflects Applicant was diagnosed as suffering from, in part, alcohol dependence and opioid dependence. That discharge summary is signed by a clinical director with the credentials "Ph.D, LCSW."

