DATE: November 15, 2006

In re:

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

Applicant for Security Clearance

CR Case No. 04-11576

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant willfully disregarded his obligations to timely file federal and state income tax returns for nine years, and incurred a federal tax debt in excess of $42,000. He abused alcohol to the point of medically diagnosed dependence and abused cannabis twice weekly for about 25 years, and was not candid about his tax debt or his drug use on his security clearance application. Alcohol consumption concerns are mitigated because of his successful treatment with sustained abstinence for more than seven years. Delinquent tax returns have been filed, but criminal conduct, personal conduct, and financial considerations persist. 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 July 19, 2005, detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on August 5, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on January 12, 2006, and on April 27, 2006, I scheduled a hearing for May 15, 2006. With the consent of the parties, pursuant to amended notice of May 4, 2006, I convened a hearing on May 16, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Thirteen government exhibits (Ex. 1-13) were admitted and testimony was taken from Applicant, as reflected in a transcript (Tr.) received on May 26, 2006.

The record was held open until June 6, 2006, for Applicant to submit documentation. On June 13, 2006, I was notified by Department Counsel of his receipt of timely correspondence from Applicant and of Applicant's intention to submit documentation on June 13. On July 19, 2006, I received through the government an undated request from Applicant for a one-week extension of the June 6, 2006, deadline (Ex. A), and documentation from the Internal Revenue Service (Ex. B) that Applicant had forwarded to Department Counsel on June 13, 2006. Applicant having complied in good faith, the documents were considered timely and admitted as marked.

FINDINGS OF FACT

DOHA alleged under Guideline E that Applicant deliberately falsified his November 2002 security clearance (SF 86) by denying any illegal drug use in the seven years preceding the application, failing to disclose treatment for alcohol dependence from January 6, 1998 to January 28, 1998, January 15, 1999 to February 1999, and his subsequent stay in a veteran's home and hospital until January 31, 2003, and denying any financial delinquencies over 180 days when he owed the IRS up to $23,000 due to failure to file returns from 1993 to November 2002. Under Guideline J, Applicant was alleged to have been arrested for driving while intoxicated (DWI) in 1990 or 1991, and been arrested and convicted of an October 1993 operating under the influence (OUI); to have willfully failed to file his federal income tax returns for tax years 1996 through 2002 and his state income tax returns for tax years 1993 through 2002; and to have violated 18 U.S.C. § 1001 by falsifying his SF 86. Guideline F was alleged related to unpaid tax debts of about $14,335.29 to the IRS and $565.63 to the state, and a $195 charge off debt for telephone services. The alcohol treatment and drunk driving incidents were cross-alleged under Guideline G.

In his Answer, Applicant admitted the allegations under Guidelines E, J, and F, but did not respond to the Guideline G concerns. At his hearing, he admitted ¶¶ 4.a and 4.b as well, but indicated that he did not intentionally conceal his alcohol treatment when he completed his SF 86. Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, exhibits, and transcript, I make the following additional findings:

Applicant is a 51-year-old first class pipehanger who has worked for a defense contractor most recently since November 2001. He has previously worked for the company as a pipehanger from April 1980 to February 1998 and held a secret-level clearance from May 1980 until he was laid off. He seeks a secret clearance for his present duties.

Applicant served four years in the United States Navy as a rigger from October1973 to September 1977. He was granted an honorable discharge.

Applicant smoked marijuana about twice per week starting in the mid-1970s, and drank alcohol, about a six-pack of beer, on a daily basis from the late 1970s. In December 1988, he and his wife divorced. Applicant was ordered to pay $200 per week child support for their two sons, who were born in August 1983 and October 1984.

In about 1989, Applicant and his ex-wife agreed that as long as he paid child support, he could claim their younger son as a dependent on his income tax return. She remarried in about 1993, and after determining that she and her new husband owed taxes, she claimed both sons on her return. Frustrated with his ex-wife because she would no longer sign the form authorizing him to claim their son on his taxes, Applicant stopped filing his federal and state returns starting with the 1993 tax year through 1998.

Sometime between 1989 and 1991, Applicant was arrested for drunk driving.[(1)] Disposition of the charge is not of record and there is no other evidence proving he was intoxicated. In October 1993, he was arrested and charged with operating under the influence (OUI). He was found guilty, and sentenced to six months in jail, suspended after two days served, one year unsupervised probation, and a $500 fine. He also lost his license and decided not to regain it as he felt he might be a danger to himself or to others if he continued to drink and drive.

Due at least in part to his drinking (Tr. 64, "the boys were at the impressionable age, they didn't need to see dad drunk all the time") and to his failure to make his child support payments, his ex-wife prevented him from seeing his sons starting in 1994. Applicant opted to not force the issue with his ex-wife for his sons' sakes.

Angry over child support that he considered outrageous, and concerned that he could lose his job in an upcoming layoff, Applicant increased his drinking from what had been six or seven beers daily for the past 20 years to as many as 14 beers per day in Fall 1997. In mid-December 1997, he developed a severe depressive syndrome marked by social isolation, suicidal rumination, and no motivation. On January 6, 1998, Applicant presented himself to a local hospital for treatment of major depression, single episode. Cooperative during his brief stay, Applicant was offered "psychoeducation" regarding alcoholism, both as an addictive disorder as well as the medical and psychiatric effects of alcohol. As his mood improved, he desired to enter alcohol rehabilitation, seeing it as a way to improve his ability to function and as a necessary prerequisite to reestablish contact with his sons and regain his driver's license. On January

10, 1998, he was transferred directly to another facility for a 18-day inpatient alcohol rehabilitation stay. Diagnosis at discharge was alcohol dependence, mood disorder secondary to alcohol, and dysthymia.

Applicant received treatment for diagnosed alcohol dependence until January 28, 1998. In February 1998, he was laid off from his job with the defense contractor. He managed to remain abstinent until ay 1998, when he relapsed into daily abusive drinking. His drinking exacerbated the depressive feelings over the loss of his job and apartment, inability to see his sons, and the legal problems related to a child support debt of $8,000 to $9,000. He found temporary work that summer, but was again on unemployment as of July 1998. With his unemployment compensation garnished for child support, he had about $84 per week to live on.

By December 1998, he was drinking 12 to 18 beers per day. Under orders to make a payment toward his delinquent child support, Applicant did not appear for a scheduled court date on December 10, 1998. Facing incarceration for failure to pay his child support, and homeless, Applicant planned his suicide but friends intervened. On December 11, 1998, Applicant went to the emergency room of a local hospital for treatment of depression with suicidal ideation. He had a slight smell of alcohol on his breath, and a breathalyzer test registered .068 % blood alcohol content. A drug screen was positive for alcohol, marijuana, and amphetamines. He was discharged to "Brief Care" in the care of mobile outreach staff where he received treatment for two weeks.

On January 12, 1999, Applicant presented for medical assessment in a Veterans Administration medical center substance abuse outpatient program, having been ordered by a court to receive long term care or he would be jailed for failure to pay child support. He was diagnosed as suffering from alcohol dependence, and three days later, was admitted to the substance abuse day program.[(2)] He underwent a psychiatric evaluation on January 19, 1999, and was diagnosed as suffering from alcohol dependence, cannabis abuse, and depressive disorder not otherwise specified (rule out substance induced mood disorder). Initial treatment plan was for group treatment, especially coping skills group, and individual counseling, with eventual referral to a long term substance abuse residential program. Applicant attended Alcoholics Anonymous (AA) meetings almost daily while in the program and consistently tested negatively for alcohol and marijuana. As of January 25, 1999, he was active and participatory in his therapy sessions, with some improvement in his depression noted. On February 5, 1999, Applicant was accepted into a Veterans Administration long term residential program, having successfully completed the substance abuse day program with insight and judgment much improved. He was discharged from the outpatient day program on February 11, 1999, in need of support in coping with cravings and anger management around the child support and visitation issues.

On admission into the long term residential program in February 1999, Applicant had been abstinent from alcohol and cannabis since December 10, 1998. A mental status examination was conducted by a licensed clinical psychologist on March 1, 1999, who rendered a diagnosis on Axis I of alcohol dependence, cannabis abuse, and adjustment disorder with depressed mood, although Applicant presented with his judgment and insight intact and with few signs of current depression. While at the facility undergoing alcohol rehabilitation treatment, Applicant earned $5 an hour working on the grounds of the facility. In June 1999, Applicant was ordered by the court to pay $40 per week in child support and $10 per week toward his arrearage.

In September 2000, Applicant got a part-time, third-shift job as a boiler operator at a local nursery while continuing to reside on grounds of the veterans facility. In February 2001, he went to work as a store manager for a local service station, initially part-time at $10 per hour, but it became full-time. In October 2001, he moved into transitional housing off grounds to prepare him for his eventual discharge from the facility.

Applicant did not timely file his state or federal income tax returns for tax years 2000, 2001, or 2002. Applicant thought he did not have to report his earnings, which were minimal, from work performed on the grounds while in active treatment. When asked why he did not file a return disclosing his income from his job at the service station, Applicant responded:

The snowball effect with the IRS just got me, I was just, I already knew I was in trouble with them, and there was nothing, at the time there was nothing I could do about it, and I was scared, I just didn't, stupidity I guess. I knew that over the years it had snowballed on me and there was nothing I could do to stop it. (Tr. 67)

In conjunction with his application to return to work for the defense contractor, Applicant executed a security clearance application (SF 86) on November 1, 2002.[(3)] He responded "NO" to question 27 concerning any illegal drug in the preceding seven years for fear of not being accepted if he disclosed his marijuana involvement (Tr. 45). He also denied that he had been delinquent over 180 days on any debt in the past seven years (question 38) even though he owed back federal taxes and had been late in his child support. Applicant elected to not disclose his tax debt because he was worried it would negatively impact his clearance (Tr. 47). Applicant disclosed his 1993 drunk driving offense in answer to question 24 concerning any alcohol or drug offenses. 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?"], Applicant listed his most recent treatment only, the long term residential substance abuse program from February 1999 to September 2001, as he was focused on the program that got him through his dependence (*see* Tr. 46). Applicant was rehired, initially as a pipefitter second class, and given an interim clearance.

A Defense Security Service (DSS) check of Applicant's credit on November 7, 2002, revealed a child support debt of $9,486 that was 60 days past due, and a $195 profit and loss charge off by a utility company. Due to payments, Applicant had reduced his child support debt to $8,516 as of August 2003, but he had not paid the $195 telephone services debt.

In May 2003, the IRS issued a notice of levy to garnish Applicant's wages to recover a delinquent tax debt totaling $22,740.05 for tax years 1993, 1994, and 1995. (Ex. 6) Unable to live with his wages being garnished at $425 per week for the delinquent federal taxes, Applicant sought the assistance of a tax resolution firm in about September 2003. Sometime after October 2003, he filed his delinquent returns.

On October 2, 2003, Applicant was interviewed by a DSS agent. He admitted he had not filed his federal or state income tax returns for tax years 1993 through 2002 due to his inability to claim a tax benefit for his "outrageous child support obligations." Applicant acknowledged that the IRS had assessed his federal tax debt at $22,740, and volunteered he had recently retained the services of an attorney affiliated with a tax resolution firm to assist him in addressing the problem. He estimated his child support delinquency at $2,000, and did not deny the $195 utility debt, but indicated he had no idea of the extent of his state tax liability. Concerning his alcohol use and treatment, Applicant indicated he no longer drinks, but had consumed an amount equal to 12 beers on a daily basis until December 1998. Referring to himself as a "recovering alcoholic," Applicant admitted he had received previously undisclosed treatment for alcohol abuse in January 1998, and detoxification treatment for 21 days before he entered the residential program in February 1999. He maintained he had forgotten about his alcohol treatment in January 1998 when he completed his SF 86, yet admitted he had not listed his "overwhelming" IRS problem as he did not want it to negatively impact his clearance.

Reinterviewed by the agent on October 29, 2003, Applicant was asked about his drug use and failure to disclose it earlier. Applicant described his marijuana involvement as twice weekly for about 25 years with a last use in 1997/98, but indicated that he gave up alcohol and drugs at the same time because he realized one led to the other. Applicant admitted he had not been previously candid with the agent about possible drug use ("When S/A [name omitted] asked me about possible drug use, I answered in the negative because it was another phase of my life that seemed distant beyond 7 years." Ex. 4).

A subsequent check of Applicant's credit by the DSS on June 17, 2004, showed Applicant had not satisfied the $195 utility debt, and he owed $8,166 in child support as of April 2004. On September 8, 2004, Applicant was interviewed yet again. He told the agent nothing had changed with regard to his finances, medical care, or substance/alcohol use since his previous interview.

Applicant's wages were garnished starting in August 2004 to repay his state tax liability. The government alleges Applicant owed $565.23 as of mid-November 2003, but presented no records from the state tax authority confirming the amount. In late February 2005, the defense contractor stopped garnishing Applicant's wages for both federal and state taxes. The state subsequently intercepted his tax refund for tax year 2005. Applicant does not know whether his state tax debt has been satisfied.

Applicant contacted the local IRS office on or about May 12, 2006, and was told he still owed $16,000. Between the monies garnished from his wages for back federal taxes and IRS interception of tax refunds, including for tax year 2005,

he claims he has already paid the IRS about $26,600. On June 1, 2006, Applicant entered into an agreement with the IRS to pay his debt for tax years 1996, 1997, and 2000 at $100 per week through automatic deduction from his wages.

As of May 2006, Applicant was involved in a personal relationship with a woman whom he met in 1999 when both were at the residential treatment facility. Applicant's younger son has been living with him since December 2005, and he contributes $200 per week to the household. Applicant has had his sons back in his life since December 2000, when they contacted him while he was in the long term residential treatment program. Applicant no longer attends AA but finds support in his family, including his sons ("My youngest boy lives with me right now, he keeps it real for me." Tr. 56), and his sober friends. Applicant has not smoked any marijuana since December 6, 1998, or consumed any alcohol since December 10, 1998, and has no intent to use alcohol or illegal drugs in the future.

Since his youngest son is now 22, Applicant is no longer required to pay any child support. His wages are still being garnished at $10 per week toward the arrearage. As of May 2003, Applicant was being paid $20.13 an hour as a pipehanger first class for the defense contractor.

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. When Applicant completed his security clearance application in early November 2002, he listed only his latest alcohol treatment. His failure to disclose his January 1998 inpatient alcohol treatment program and the veterans substance abuse day program in January 1999 is credibly explained by his focus on the long term residential program, which was the only rehabilitation effort successful in bringing about sustained abstinence. Available treatment records (Ex. 11) confirm he had completed the alcohol treatment component, and was already working outside the facility and in the process of transitioning to off-grounds housing in September 2001, which is when he indicated the treatment ended. However, on that same SF 86, he falsely claimed he had not used any illegal drugs (¶ 1.a) and had not been delinquent more than 180 days on any debt within the preceding seven years (¶ 1.c). As he readily admitted, he feared he would not be rehired by the defense contractor and/or not be granted a security clearance if he candidly disclosed that he had used marijuana on a twice weekly basis until December 1998 and that he owed delinquent federal taxes because he had not filed his returns since 1993. His knowing and willful false statements on his SF 86 fall within 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.

During his first interview with the DSS agent on October 2, 2003, Applicant acknowledged his tax debt and failure to file timely state and federal returns, his abuse of alcohol until December 1998, and his treatment efforts. He even admitted he had not disclosed his "IRS problems" on his SF 86 because he feared the negative impact on his clearance. Yet, none of the mitigating conditions apply to his deliberate falsifications. Nothing in Applicant's sworn statement of October 2, 2003, suggests that he volunteered the information up-front, which is required under MC ¶ E2.A5.1.3.3. *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*. Furthermore, his reform is undermined by his false denial of any marijuana involvement when first asked by the DSS agent. In a signed sworn statement of October 29, 2003 (Ex. 4), Applicant indicated, "When S/A [name omitted] asked me about possible drug use, I answered in the negative because it was another phase of my life that seemed distant beyond seven years." Not only did Applicant apparently conceal his marijuana use but he offered an excuse that is not credible, given he did not cease his weekly use of marijuana until December 1998, and he had lied about his drug involvement when he completed his SF 86. Applicant's last use of marijuana was only a few days before his last use of alcohol, and he disclosed his alcohol problem on his SF 86 and to the agent. His false statements to the DSS agent in an effort to conceal his marijuana involvement undermine his credibility.[(4)]

Guideline J--Criminal Conduct

Applicant was arrested twice for drunk driving, sometime between 1989 and 1991, and in October 1993. There is no evidence proving Applicant was intoxicated on the occasion of his first arrest, and a favorable finding is therefore returned as to SOR ¶ 2.a. However, he was found guilty of the October 1993 charge. Applicant also committed repeated misdemeanor violations of federal and state law by willfully failing to timely file his federal and state income tax returns for several tax years from 1993 through 1998, and from 2000 through 2002.[(5)] Applicant was unemployed in 1999 with the exception of work on the grounds of the residential treatment facility where he was receiving active treatment for alcohol dependence. Knowing and willful disregard of his tax filing obligation for tax year 1999 was not proven where he credibly testified he earned so little money that he thought filing wasn't required (Tr. 64).

Moreover, his knowingly false responses to questions 27 and 38 on his SF 86 constitute felonious criminal conduct in violation of 18 U.S.C. § 1001.[(6)] In evaluating Applicant's security suitability, DC ¶ E2.10.1.2.1. *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*, must be considered. Applicant bears a particularly heavy burden to overcome his record of criminal behavior.

The last criminal act alleged is his failure to file his 2002 tax returns, which would have been due on or about April 15, 2003, absent any request for extension. Considering the ten years plus span of Applicant's criminal behavior, neither MC ¶ E2.A10.1.3.1. *The criminal behavior was not recent*, nor MC ¶ E2.A10.1.3.2. *The crime was an isolated incident*, apply. Furthermore, ¶ E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur,* does not fit this case, since Applicant knowingly and willfully disregarded his tax obligations and made material false statements.

In assessing whether MC ¶ E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*, is satisfied, reform of criminal conduct depends in part on whether Applicant accepts responsibility for his actions. At his hearing, Applicant made no effort to minimize the seriousness of his alcohol problem. He admitted he had disregarded his obligation to file timely tax returns as he felt it unjust that he could not claim his children as dependents when he was paying child support. He acknowledged without equivocation that he had lied on his SF 86 as he did not want his drug use or his income tax problems to hinder his employment and/or clearance. Yet, Applicant must also demonstrate a track record of compliance with the law for a period sufficient to reasonably conclude that his criminal behavior is behind him. In his favor, Applicant elected to not reacquire his operator's license after his 1993 OUI because he knew there was a risk of recurrence of drunk driving as long as he was still abusing alcohol. Although he had regained his license by August 2001 (*see* Ex. 11), recurrence of any drunk driving is unlikely since he has been abstinent from alcohol for over seven years and is likely to remain so (*see* Alcohol Consumption, *supra*). The tax and falsification issues are especially troubling because of the knowing and willful intent. Applicant retained a tax resolution firm in September 2003 to negotiate on his behalf with the IRS, and he subsequently filed his delinquent tax returns. He did not provide

documentation showing timely filings for tax years 2003, 2004, and 2005, but testified the IRS intercepted his refunds for tax years 2003, 2004, and 2005, and the state recently intercepted his refund for 2005 as well (*See* Tr. 73, 77). Yet, it is not enough to overcome his nine years of demonstrated disregard ("over the years, I have received a lot of, just for lack of any other words to put with it, I received a lot of hate mail from the IRS." Tr. 78) Similarly, Applicant's candor at his hearing does not completely dispel the security concerns raised by false statements made well after he had stopped abusing alcohol and drugs.

Guideline F--Financial Considerations

The security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The government must consider whether individuals granted access to classified information are, because of financial irresponsibility, in a position where they may be more susceptible to engaging its criminal acts to obtain funds. With penalties and interest charges because of his failure to file returns for several years, Applicant owed $22,740.05 in delinquent taxes for tax years 1993, 1994, and 1995, as of June 2003. He also owed delinquent state taxes as well, alleged to be $565.63 as of November 2003. His credit reports reflect a $195 charged off utility debt. Financial considerations concerns are raised 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*. There is not enough evidence of a link between Applicant's alcoholism and his financial problems to consider ¶ E2.A6.1.2.5. *Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.* It was primarily anger with his spouse and the IRS that led him to not file his returns.

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),* does not apply to his tax indebtedness. Whether their strained personal relationship or her financial reasons led to his ex-wife's refusal to sign the form that would allow him as the noncustodial parent to claim their younger son as a dependent, he caused his own tax problems by not filing timely returns. However, his subsequent job layoff in February 1998 is a factor outside of his control that mitigates his failure to make any payments toward his tax delinquency when he was out of work and for a reasonable time thereafter. Applicant claims to have paid the IRS $26,600 through the wage attachment and intercepted tax refunds. After he returned to work for the defense contractor, the IRS garnished his wages from June 2003 to late February 2005, initially at $425 per week. While repayment under IRS levy does not fall within ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, it removes some of the financial pressure that could lead him to engage in illegal acts.

As of May 2006, the IRS assessed his outstanding federal tax liability at $16,000 (Tr. 50). The Directive does not require that one be debt free, but there must be adequate assurances that the financial problems are being resolved or are under control. Applicant testified credibly that he thought his tax debt had been paid in full when his employer stopped garnishing his wages in February 2005. After his income tax refund for tax year 2005 was intercepted by the IRS, he contacted the IRS and learned he still owed delinquent taxes. In the five months preceding his hearing, he had gone to the local IRS office "a few times" to resolve the issue (Tr. 50, 76), and he only recently arranged to repay his remaining federal tax debt at $400 per month (*see* Ex. B). Per the IRS documentation of June 9, 2006, this agreement covers tax years 1996, 1997, and 2000. It may reasonably be inferred that the monies garnished were applied to his tax delinquency for 1993, 1994, and 1995, as well as any taxes owed for 1998 or 1999, when he was unemployed or working only on the grounds of the residential treatment center. This effort to resolve his federal tax debt falls within ¶ E2.A6.1.3.6 despite its recency, but it is too soon to conclude that his tax problems are safely in the past.

The amount of his state tax delinquency was alleged to be only $565.63, and the state levied on his wages as well to as recently as February 2005. He assumed that he had repaid any delinquency (Tr. 52), as he had heard nothing further from the state. However, his tax refund for 2005 was recently intercepted, which indicates he had an outstanding state tax debt. Applicant's burden of showing he had resolved or was in the process of resolving his state tax debt is not satisfied where he has no idea what he owes. (*See* Tr. 77)

Concerning his management of his financial affairs generally, Applicant's credit reports show no misuse of consumer credit. Applicant suspects the charged off utility debt (¶ 3.b) was a telephone debt in his name that went unpaid when he was forced out of his apartment by his roommate in late 1998. Applicant, who had service with this provider until

recently, has made no effort to determine whether or not he owes the debt.

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 has had a serious problem with drinking since at least the late 1980s. His drinking was a factor in his divorce. His October 1993 drunk driving offense, although now dated, falls within DC ¶ 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.* DC ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment,* concerns are also raised. By December 1998, he was drinking 12 to 18 beers on a daily basis, despite the negative consequence of being unable to see his children. He failed to appear for a court appearance in December 1998 on the child support issue. While this drinking from May 1998 to December 10, 1998, followed his completion of an inpatient treatment program, consideration of DC ¶ E2.A7.1.2.6. *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program,* is not appropriate where it was not proven that Applicant was diagnosed as alcohol dependent by a qualified medical professional in that program. However, DC ¶ E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, applies, as the records of his more recent treatments clearly show he was diagnosed with alcohol dependence by credentialed medical professionals (a physician and a licensed clinical psychologist) affiliated with the Veterans Administration programs.

MCs ¶ E2.A7.1.3.1. *The alcohol related incidents do not indicate a pattern*, ¶ E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem*, and ¶ E2.A7.1.3.3. *Positive changes in behavior supportive of sobriety*, would seem to apply since he has only one DWI conviction and a track record of sustained abstinence for a period in excess of seven years. Yet, since Applicant has been diagnosed with alcohol dependence, MC ¶ E2.A7.1.3.4 must be considered. Failure to meet any of the requirements--successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in Alcoholics Anonymous (AA) meetings or similar organization, abstention for at least 12 months, and a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program--does not preclude a finding of mitigation if there is convincing evidence of rehabilitation.

Following his detoxification in a substance abuse treatment day program in January 1999, Applicant entered a long term residential program where he remained until January 2003. The discharge note on his transfer from the day program reflects Applicant's judgment and insight had greatly improved, he had been able to accept his "alcoholism" and work through many issues during his day treatment, and had "worked hard on maintaining sobriety." His continued abstinence while in treatment was confirmed by toxicology testing, although he was assessed as needing help in aftercare with coping with cravings and with anger management involving support and visitation. (Ex. 10) Available treatment records of Applicant's subsequent long term residential stay (Ex. 11) are not especially detailed, but they show that by August 2001, Applicant completed the alcohol treatment recommended, developed a relationship with his sons, resolved his legal issue concerning the child support, and was actively involved in 12-step work. His lack of any current involvement in AA does not detract from his rehabilitation where he has the support of his fiancée, sober friends, and his sons, he understands that he cannot revert to old behaviors ("if you don't move your feet, it won't happen." Tr. 55), and he has been abstinent for over seven years.

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 years of alcohol abuse, his repeated disregard of his obligation to timely file federal and state income tax returns, and his deliberate false statements concerning his drug use and his tax debts (¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*), must be evaluated in the context of the "whole person." Although he went into treatment in December 1998 under the threat of incarceration for failure to pay child support, he deserves substantial credit for his successful efforts to become a sober, productive member of society (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*). Yet, after he regained his sobriety, he continued to make "stupid poor decisions" (Tr. 64),

motivated by self-interest (¶ E2.2.1.7. *The motivation for the conduct*). After he had reestablished his relationship with his sons and had returned to work for the defense contractor, he did not timely file his state or federal income tax returns for tax year 2002. While his delinquent returns have been filed (¶ E2.2.1.6), he made no effort to do so until the IRS attached his wages in an amount he could ill afford. He put his interest in securing a job and/or clearance ahead of his obligation of candor with the government, even to the point of lying to a government investigator when first asked whether he had been involved with illegal drugs. His 25 years of twice weekly use of marijuana is yet another example of a tendency to act in self-interest that cannot be afforded in those granted access to classified information.

The DOHA Appeal Board has consistently held that an applicant's conduct and circumstances are not to be evaluated in a piecemeal fashion. *See, e.g.*, ISCR Case No. 00-0628 (Feb. 24, 2000, citing ISCR Case No. 99-0601 Jan. 30, 2001, at p. 8 ("Under the whole person concept, an Administrative Judge must assess the totality of an applicant's conduct and circumstances in order to evaluate the applicant's security eligibility, not just consider an applicant's conduct and circumstances in a piecemeal manner."). Under ¶ E2.2.4. of the Directive, even if adverse information pertaining to any given guideline is not sufficient to warrant an adverse security clearance decision, an applicant may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Applicant's repeated exercise of poor judgment cannot be entirely attributed to his alcohol problem. Based on the totality of the evidence, I am unable to conclude that it is clearly consistent with the national interest to grant or continue a clearance for Applicant.

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: For Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Subparagraph 2.j: Against Applicant

Subparagraph 2.k: Against Applicant

Subparagraph 2.l: For Applicant

Subparagraph 2.m: For Applicant

Subparagraph 2.n: Against Applicant

Subparagraph 2.o: Against Applicant

Subparagraph 2.p: Against Applicant

Subparagraph 2.q: Against Applicant

Subparagraph 2.r: Against Applicant

Subparagraph 2.s: Against Applicant

Subparagraph 2.t: Against Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Paragraph 4. Guideline G: FOR APPLICANT

Subparagraph 4.a: For 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. Applicant admitted the government's allegation (¶ 2.a) of his arrest in 1990 or 1991 for DWI. In a sworn statement of October 29, 2003, Applicant indicated he had been arrested "probably in the early 1990's." (Ex. 4). Medical records from the residential treatment program variously report the date of his arrest as 1989 and as 1991.(Ex. 11)

2. The records of the outpatient day substance abuse program (Ex. 10) do not contain three pages of progress notes likely to have been authored January 20, 1999, and likely to contain portions of the contract under which Applicant consented to treatment. It is not clear whether the government intended to submit the three pages, as the document in the record contains 36 pages as identified on the government exhibit list.

3. Department Counsel offered as Ex. 2 an unsigned version of the SF 86, representing that question 38 had been inadvertently omitted from the signed version (Ex. 1). However, Ex. 1 appears to be complete.

4. The government could have alleged the misrepresentation to the DSS agent under Guideline E. (*See* ¶ DC ¶ E2. A5.1.2.3. *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination).*

5. 26 U.S.C. § 7203 provides, in part:

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

While this section merely provides the sanctions for failure to file and does not establish the predicate requirement to file, Applicant was aware of his obligation to file. Similarly, the state penalizes the willful failure to make the return required under Conn. Gen. Stat. § 12-719 ("The income tax return required under this chapter shall be filed on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. A person required to make and file a return shall, without assessment, notice or demand, pay any tax due thereon to the Commissioner of Revenue Services on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return."). Conn. Gen Stat. § 12-737 provides in pertinent part:

(a) Any person required under this chapter to pay any tax, or required under this chapter or by regulations adopted in accordance with the provisions of this chapter to make a return, keep any records or supply any information, who wilfully fails to pay such tax, make such return, keep such records or supply such information, at the time required by law or regulations, shall, in addition to any other penalty provided by law, be fined not more than one thousand dollars or imprisoned not more than one year or both.

Section 53a-26 of Connecticut's penal code defines a misdemeanor offense as an offense for which a person may be sentenced to a term of imprisonment of not more than one year.

6. 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.