DATE: February 26, 1997

In re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0788

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Teresa A. Kolb, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) dated October 31, 1996, 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 and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

Applicant filed a response, undated, to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on December 13, 1996, and on January 10, 1997, a hearing was scheduled for January 29, 1997. At the hearing held as scheduled, thirteen Government exhibits and one Applicant exhibit were admitted into evidence, and testimony was taken from the Applicant. On the Government's motion, subparagraphs 4.b. and 4.c. of the Statement of Reasons were amended to add that the willful failure to file federal individual income tax returns for tax years 1994 and 1995 constitutes a violation of Sections 6011 and 6012 in addition to section 7203 of Title 26 of the United States Code. Also, subparagraph 5.a. was amended to allege that Applicant is indebted in the amount of $24,571.00 for unpaid child support. The record was held open following the hearing to provide Applicant the opportunity to submit additional character reference letters. On February 5, 1997, Applicant timely forwarded three additional documents. Department Counsel having no objection to their admission, these three character reference letters were marked and admitted into the record as Applicant's Exhibits B, C and D. A transcript of the hearing was received by this office on February 19, 1997.

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 38 year old ---------- who has worked for his current employer (company A) since April 17, 1989. He seeks to retain a Confidential security clearance which was granted to him on his commencement of that employ.

Applicant first consumed alcohol at age sixteen (circa 1974). He was also introduced to illegal drugs in high school. Between 1975 and 1977, Applicant smoked marijuana with his friends on an average of once every two days, purchasing the drug on approximately two occasions for his personal consumption. On two occasions in July 1980, Applicant used cocaine.

Although he continued to consume alcohol after high school, his drinking did not pose a problem until 1986. Arrested on June 4, 1983, for reveling, for which he was fined $28.50, there is no evidence that Applicant was under the influence of alcohol at the time. Sometime in 1986, he was arrested for driving while intoxicated (DWI). After drinking a few mixed drinks at a local bar, Applicant was stopped while en route to breakfast. Applicant was permitted to enroll in a pre-trial alcohol education program which he attended for eight to ten weeks.

Circa 1987, Applicant and his spouse separated due to marital problems. On February 27, 1987, Applicant went to his spouse's residence where he became involved in a physical altercation with his spouse's boyfriend. In addition to being arrested for assault on the boyfriend, Applicant was charged with malicious damage for kicking the door of the boyfriend's automobile. Convicted of both charges, he was sentenced to pay a $23.50 fine for assault, $400.00 restitution plus costs for malicious destruction, and placed on six months unsupervised probation on both counts.

Applicant dealt with the dissolution of his marriage by going out drinking almost every night where he consumed on average three or four mixed drinks. After drinking five or six mixed drinks at a local bar on or about April 4, 1987, Applicant was stopped en route home and arrested for DWI after he failed the breathalyser. He pleaded guilty and was fined $578.00, sentenced to thirty days in jail, execution suspended after two days served in a correctional center, and he was placed on one year supervised probation. Advised by his probation officer to attend Alcoholics Anonymous (AA), Applicant recalls going to AA for one month. Prescribed the tranquilizer Tranxene to help him in coping with the dissolution of his marriage, Applicant abused the drug by taking higher doses than prescribed.

Also in 1987, Applicant began to use cocaine with friends at parties. Between 1987 and December 1994, Applicant snorted cocaine on approximately fifty occasions and injected it once as it was the "socially acceptable thing to do." He chipped in anywhere from ten to fifty dollars for the cocaine that he snorted with his friends.

Following his divorce in about 1988, Applicant became involved with a married woman. On April 23, 1988, Applicant went to his girlfriend's home where the door was answered by her husband who became upset on finding Applicant there. When Applicant returned later that evening, he was observed by the husband who called the police. Applicant was arrested for trespassing for which he was fined $25.00 plus court costs. On October 15, 1992, this woman filed a complaint charging Applicant with harassment for following her around and making prank phone calls. Applicant was arrested on November 30, 1992, on an outstanding warrant for the crime of stalking. In court he pleaded guilty to an amended charge of disorderly conduct and was sentenced to pay a $108.50 fine, to attend counseling and six months probation.

Over the period 1988 to 1992, Applicant limited his consumption of alcohol to weekends, imbibing on average three or four mixed drinks over the course of Friday evenings. In 1992, his drinking increased to the point where he was consuming a pint of vodka per day. He continued to imbibe alcohol on a daily basis until January 1995, in quantities ranging from a half pint to as much as two quarts of vodka per day.

In about July 1993, Applicant was prescribed Percodan for pain after he broke his back, which on occasion he took a higher dose than medically indicated. When his prescription ran out, he accepted Percodan on the average of once or twice per month from another person until January 1995, on occasion combining the use of alcohol and Percodan. Also during the July 1993/January 1995 time frame, Applicant abused his prescription for codeine by taking a higher dose than prescribed.

Marijuana free since 1977, Applicant took a puff from a "joint" of marijuana passed to him at a holiday party in December 1994.

Applicant's relationship with a significant other suffered, in part, because of his ongoing alcohol and drug abuse.(1) Following an argument with his girlfriend on November 8, 1994, Applicant was arrested for domestic assault. Both he and his girlfriend had been drinking that evening. He filed a nolo contendere plea to the charge and the case was filed by the court on payment of costs and participation in counseling. Depressed and anxious and unable to stop using drugs, Applicant sought admission on January 16, 1995, to a psychiatric institute (treatment facility B) where he was diagnosed by a credentialed medical professional as suffering from, on Axis I, major depression, opioid dependence, alcohol dependence, and on Axis II, personality disorder. Psychiatrically, his depression stabilized significantly during his hospitalization and on January 23, 1995, he was discharged, condition improved, on Prozac and Buspar medications to pursue substance abuse rehabilitation at another facility (treatment facility C).

On January 25, 1995, Applicant was admitted to the daily outpatient program at treatment facility C for treatment of alcohol and prescription drug dependence. Following an evaluation by a staff psychiatrist, Applicant was diagnosed as also suffering from attention deficit hyperactivity disorder for which he was prescribed Prozac and Buspar. During the program, Applicant was advised he should stop using any illegal drugs, to include cocaine. Applicant attended lectures and small group sessions specific to the dynamics of substance abuse where he was able to discuss his life experiences and he received valuable feedback from peers. Applicant was extremely reluctant to attend AA or Narcotics Anonymous (NA) meetings in the evenings and while he went to some step meetings, he exhibited passive resistance and did not obtain a sponsor. Unwilling to develop sobriety and an aftercare plan conducive to recovery, Applicant was administratively discharged on February 9, 1995, due to his failure to attend several sessions and his refusal to participate in the evening aftercare program. His prognosis was assessed as extremely poor.(2)

Applicant terminated his relationship with his girlfriend the week after his discharge and he got his own place.

Shortly after his discharge, Applicant had a couple of drinks while socializing with friends and he "caught a glow." Applicant has continued to consume alcohol on occasion since to January 1997, in quantities of up to three mixed drinks. He attended some AA meetings after his discharge but has not been to AA since mid 1995 as he found them stressful and preferred to stay home after work.

Applicant was requested by his employer to complete a National Agency Questionnaire. On August 2, 1995, he reported to the security office where he was asked questions by a secretary who in turn entered his responses into the computer. In response to inquiry concerning illicit drug abuse (question 23), Applicant admitted use of marijuana once per week from July 1975 to 1977 and cocaine twice only in July 1980. He responded negatively to question 24 concerning any purchase, manufacture, trafficking, production or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis. Applicant admitted his abuse of prescription drugs codeine, Percodan and Tranxene by taking more than medically indicated. He listed his treatment for alcohol abuse during the January/February 1995 time frame. Applicant deliberately misrepresented the extent of his cocaine abuse and did not report his December 1994 involvement with marijuana because he did not want the others in the room to overhear details concerning his abuse of illegal drugs. Applicant responded negatively to question 24 because it covered illicit drug activities in addition to purchase and he had not been involved in trafficking, sale, production or manufacture.

Although Applicant had established his own residence, he continued to have his mail delivered to his mother's home. On March 30, 1996, Applicant physically struck his stepfather in the eye when the latter came over to Applicant's house and informed Applicant that he was no longer willing to accept Applicant's mail at his residence. The police were contacted when the stepfather went to the emergency room for treatment and Applicant was arrested for domestic assault. Applicant pleaded not guilty to the offense and the case was transferred to superior court on May 10, 1996. Following the incident, Applicant had some alcohol to drink as he was upset.

On May 9, 1996, Applicant was interviewed by a Special Agent of the Defense Investigative Service (DIS). Applicant was largely forthcoming about his alcohol abuse and criminal record history. Concerning his involvement with illegal drugs, Applicant submits he was forthright with the Agent once given the opportunity in private to respond to the matters addressed on the NAQ. Applicant indicated that he last used cocaine at a Christmas party in December 1994,

that he had not abused any prescription drugs since January 1995, and that he had no intentions of abusing either cocaine or prescription drugs in the future.

On August 2, 1996, Applicant was reinterviewed by a DIS Special Agent regarding his involvement with illegal drugs. As reflected in a signed, sworn statement prepared on that date, Applicant admitted that since his treatment in January/February 1995, he had used cocaine three or four times, the last time in about June 1996 when he snorted a line given to him by a female companion.(3)

Applicant also reported that he had taken Percodan one time in June 1996 which was given to him by a friend. He admitted to the Agent that he had on one occasion about two months prior acted as an intermediary for friends and purchased about a half ounce of marijuana for them at a cost of $200.00. Applicant stated that he would try to avoid involvement with drugs in the future.

On one occasion since June 1996, Applicant was in the presence of others using cocaine. Applicant did not partake of the drug as he is subject to random drug testing at work and does not want to lose his job.(4)

Currently on Buspar medication for anxiety, Applicant no longer feels the need to drink to calm his anxieties. While he felt he had a drinking problem before he got the medication, he does not think he has an alcohol problem at present. Applicant has a private counselor who he can contact for emotional problems. He has no intention of drinking to intoxication in the future. Applicant does not anticipate he will go out drinking in the future as he presently lacks the desire, but he considers himself capable of drinking in moderation.

Around the time of the marital separation and divorce, Applicant was ordered to pay $60.00 per week for support of his then three minor children. As of November 1996, Applicant owed the state $24,571.00 for unpaid child support, $24,331.00 of which was past due.(5)

Applicant did not file his federal individual income tax returns for tax years 1994 and 1995 because he did not want the state to take his anticipated tax refunds for payment of delinquent child support. Applicant was aware of his obligation to file and that he was violating the law by not filing.

Applicant has proven to be a reliable and conscientious worker at company A. He can be counted on to perform his work in a professional manner.

Since his treatment program, Applicant has demonstrated to at least one acquaintance a sincere desire to straighten out his life.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

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 unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

(a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

(b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

(1) any drug abuse

(2) illegal possession, including cultivation, processing, manufacture, purchase, sale or distribution

(3) failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.

Conditions that could mitigate security concerns include:

None.

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.

Conditions that could raise a security concern and may be disqualifying include:

(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

(3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence

(4) habitual or binge consumption of alcohol to the point of impaired judgment

Conditions that could mitigate security concerns include:

None.

PERSONAL CONDUCT

Conduct involving questionable judgment, untrustworthiness, unreliability or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

(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

(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

Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

(1) any criminal conduct, regardless of whether the person was formally charged

(2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

(1) the criminal behavior was not recent

(2) the crime was an isolated incident

(4) the factors leading to the violation are not likely to recur

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.

Conditions that could raise a security concern and may be disqualifying include:

(1) a history of not meeting financial obligations

(3) inability or unwillingness to satisfy debts

Conditions that could mitigate security concerns include:

None.

*** * ***

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to

demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of the Applicant, this Judge concludes that the Government has established its case with regard to Criteria H, G, E, J, F.

With respect to Criterion H, Applicant presents a history of marijuana use once every two days from 1975 to 1977 and on a single occasion in December 1994; cocaine abuse twice in July 1980, on about fifty occasions between 1987 and December 1994 with three to four times additional abuse between February 1995 and June 1996; misuse of prescription drugs Tranxene over the 1987/88 period, and codeine and Percodan between 1993 and January 1995, with a more recent abuse of Percodan in June 1996. In addition to purchasing marijuana and cocaine for his personal use, Applicant on one occasion in June 1996 acted as an intermediary, purchasing marijuana for friends from a co-worker at a cost of $200.00. Drug abuse is incompatible with retention of a security clearance due to the obvious potential for impairment when one is under the influence and the concerns engendered by such a demonstrated willingness to disregard the laws prescribing such involvement.

In assessing the current security significance of Applicant's abuse of controlled dangerous substances, this Administrative Judge must consider the Adjudicative Guidelines pertaining to drug involvement set forth in Enclosure 2 to the Directive. Disqualifying conditions (DC) 1. and 2. are both apposite, Applicant having abused the illicit drugs marijuana and cocaine, misused the prescription drugs Percodan, codeine and Tranxene, and purchased marijuana and cocaine. DC 3. must also be considered due to Applicant's failure to complete the rehabilitation program at treatment facility C. Medical records reflect Applicant was discharged by a credentialed medical professional at treatment facility B to pursue drug and alcohol rehabilitation treatment at treatment facility C. Applicant was administratively discharged from the latter when he missed several sessions.

Of the corresponding mitigating conditions, none apply to Applicant's benefit. Although the majority of Applicant's marijuana abuse occurred while he was still in high school, he used the drug in December 1994 at a party. Moreover, his involvement as a middleman in procuring marijuana for friends in June 1996 was very recent. Similarly, according to Applicant's testimony, the tranquilizer Tranxene was prescribed for him around the time of his divorce (circa 1987/88). Whereas Applicant abused other prescription drugs heavily during the period July 1993 to January 1995 and as recently as June 1996 took a Percodan which had not been prescribed for him, his abuse of prescription drugs was neither isolated nor infrequent.

Applicant's abuse of controlled dangerous substances is regarded as especially serious due to the fact it continued after he had been to a treatment program and advised to abstain. Furthermore, Applicant used cocaine and ingested Percodan without a prescription after he had told the Department of Defense during a DIS interview of May 9, 1996, that he had no intent to use any illegal drug or to abuse a prescription drug in the future. Applicant's relapse into both cocaine and Percodan abuse in June 1996 is significant for the doubts engendered for his ability to abide by his stated resolve. As proof of his current intention to abstain, Applicant submits that he is subject to random drug testing and he does not want to risk his employment. He testified that when offered cocaine after his last use in summer 1996, he turned it down out of his fear that he would be caught during random testing. However, the specter of possible job loss did not stop Applicant from using cocaine in June 1996 during a sexual liaison or from procuring marijuana for friends at their request. His recent involvement with Percodan also undermines the strength of Applicant's rehabilitative efforts

undertaken in January/February 1995. After considering the extent of Applicant's abuse of cocaine and his misuse of prescription drugs and the recency of his last involvement, this Administrative Judge cannot make the affirmative finding that his illegal or improper drug abuse is safely behind him. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l. are resolved against him.

Applicant, who has also been diagnosed as suffering from alcohol dependence, has abused alcohol within the context of criterion G, but only from about 1986 when he was arrested for driving while intoxicated after consuming mixed drinks at a local bar. The following year, Applicant suffered a second alcohol-related incident when he was again stopped for DWI. DC 1. under the Adjudicative Guidelines pertaining to alcohol consumption applies to these two incidents away from work. In addition to these drunk driving offenses, Applicant was under the influence of alcohol at the time he physically assaulted his then live-in girlfriend in November of 1994. Applicant's criterion G conduct must also be evaluated under DC 3. since he has been diagnosed by a credentialed medical professional as suffering from alcohol dependence. Furthermore, there is sufficient evidence of habitual or binge consumption to consider DC 4. Over the 1987/88 time frame, Applicant abused alcohol at the rate of three or four mixed drinks almost every night. After drinking only once per week for the next four years, Applicant in 1992 relapsed into daily drinking in abusive quantities ranging from a half pint to as much as two quarts of vodka per occasion. DC 5. is to be considered where there is consumption of alcohol subsequent to a diagnosis of alcoholism and completion of an alcohol rehabilitation program. Unable to stop drinking and seeking to resolve interpersonal relationship difficulties caused at least in part by his alcohol and drug abuse, Applicant sought treatment at facility B. With his psychiatric condition improved, Applicant was discharged on January 23, 1995, to follow-up in a substance abuse rehabilitation program. Applicant was only minimally engaged in his treatment there and he was administratively discharged with an extremely poor prognosis for recovery. He has continued to consume alcohol on occasion to at least January 1997, yet DC 5. on its face cannot apply as he did not successfully complete an alcohol rehabilitation program.

On at least one occasion since his treatment in February 1995, Applicant consumed a sufficient quantity of alcohol to "catch a buzz." While he continues to drink in amount up to three or four mixed drinks, his involvement with alcohol is only occasional, and to that extent, it is a positive change from the prior pattern of drinking to abusive levels daily. However, where he has been diagnosed as suffering from alcohol dependence, he is required for mitigation to have successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of AA or similar organization, abstained for at least twelve months, and received a favorable prognosis by a credentialed medical professional. Applicant's voluntary admission to a treatment program is to his credit, but he did not complete the proscribed treatment regimen. Applicant testified that he did not like the atmosphere and instead went to AA meetings for about six months in his local community. There is no evidence that Applicant subscribed to the tenets of the AA program or actively engaged in any step work. For example, he did not obtain a sponsor. Indeed, he stopped going to AA as he found it stressful. This Administrative Judge recognizes that AA is not for everyone and that a private counselor may prove a valuable resource. While Applicant has a private counselor, he testified he does not rely on her for assistance with alcohol-related issues. Applicant submits that with his Buspar medication, he no longer uses alcohol in self-medication for anxiety. However, as recently as March 1996, Applicant drank when he became upset with his stepfather. At his hearing, he admitted he had an alcohol problem in the past, but exhibited no appreciable understanding of that problem. Applicant's efforts in reform are not sufficient to overcome a history of very serious, recent criterion G conduct. Subparagraphs 2.a., 2.b., 2.c., 2.d., 2.e., and 2.f. are concluded against him.

The concerns raised by his extensive drug and alcohol abuse history are compounded by his failure to be forthright on his August 2, 1995, NAQ about the extent of his drug involvement. Applicant significantly under reported his involvement with cocaine and did not reveal his recent abuse of marijuana as he did not want others who were also in the room to hear the details. While Applicant has a reasonable expectation of privacy, this does not justify a blatant lie. With respect to his alleged falsification of question 24 on the form concerning, in part, illegal drug purchase, Applicant responded in the negative as although he had purchased both cocaine and marijuana, the question also pertained to activities which he had not engaged in. His failure to report his drug purchases is not viewed as intentional falsification, but rather is attributed to misunderstanding. DC 2. under the personal conduct guidelines therefore applies, but only to his falsification of question 23 regarding illicit drug abuse. DC 3. must also be considered, inasmuch as Applicant although forthcoming about much of his drug abuse history during a subsequent interview with a DIS Special Agent on May 9, 1996, he falsely indicated during that interview that he had not used any cocaine since December 1994 and that he had stopped using cocaine. Applicant later admitted to a DIS Special Agent on August 2, 1996, that he used cocaine

on three or four occasions after January/February 1995, the last time being in June 1996 during a sexual liaison.(6)

Of the four potentially mitigating conditions which correspond to acts of deliberate falsification, none apply in his favor. Recent abuse of cocaine clearly has the potential for influencing an agency's investigative and/or adjudicative decisions. It is therefore pertinent to a determination of Applicant's judgment, trustworthiness and reliability. The recency of the false statements (August 1995 and May 1996) preclude positive consideration of MC 2. Where Applicant was not completely candid about his cocaine use during his DIS interview of May 9, 1996, it cannot be said that he promptly corrected the misrepresentations made on his NAQ about his cocaine abuse. Nor is there any evidence that Applicant was improperly advised by an authorized person with regard to his responses on the NAQ or during his first interview. The Government can ill afford allowing individuals to dictate the timing and extent of disclosure. The repeated nature and recency of his intentional misrepresentations are not overcome by his unblemished record with respect to handling classified information. Although the Government is now aware of Applicant's June 1996 abuses of cocaine and Percodan, and his involvement that month as a middleman facilitating marijuana purchase for his friends, this Administrative Judge cannot be sanguine that Applicant will not act similarly in the future if faced with a personally disadvantageous situation. At his hearing, Applicant testified that his last use of Percodan was shortly after his 1995 treatment, despite evidence of record which reflects abuse of Percodan in June 1996. His failure to demonstrate reform warrants adverse findings with respect to subparagraphs 3.a.(1), 3.a.(2) and 3.c.(1). Subparagraphs 3.b.(1) and 3.b. (2), in contrast, are found for him as the negative response to question 24 was due to misunderstanding.

Inasmuch as Applicant's misrepresentations on his security clearance application and in his signed, sworn statement taken during his May 9, 1996, DIS interview constitute felonious violations of federal law pursuant to Title 18, Section 1001 of the United States Code,(7)

the adjudicative guidelines pertaining to criminal conduct must also be considered in evaluating his record of deliberate falsification. In addition, he presents a record of criminal behavior ranging from the very minor reveling to repeat domestic incidents and the willful non-filing of his federal individual income tax returns. Both DCs 1. and 2. are therefore pertinent to an assessment of Applicant's security worthiness.

Criminal conduct is subject to mitigation provided it was not recent (MC 1), was isolated (MC 2), the perpetrator was pressured into committing the act (MC 3), the act was not voluntary or the factors which led to the violation are not likely to recur (MC 4), or there is clear evidence of rehabilitation (MC 5). Applicant's reveling offense took place more than thirteen years ago and it was sufficiently minor in nature and not related to any subsequent criminal conduct to where it is mitigated under MCs 1. and 2. The remaining charges for which Applicant has suffered adverse legal consequences to date all relate to domestic problems. With respect to his November 1992 disorderly conduct and 1988 trespassing, there is no evidence Applicant has been involved with the victim since

1992 or has harassed any other person. A similar violation in the future is not likely to occur. Hence, favorable findings are warranted as to subparagraphs 4.f. and 4.g. in addition to 4.i. The February 1987, November 1994 and March 1996 incidents, in contrast, involved domestic physical assault on three separate victims. The dated nature of the February 1987 assault on his ex-spouse's boyfriend notwithstanding, it is part of a pattern of abusive behavior which extended to as recently as March 20, 1996. Given the recency of Applicant's assault on his stepfather, the risk of recurrence cannot be discounted. Adverse findings are returned as to subparagraphs 4.d., 4.e. and 4.h. of the SOR.

Most serious is that criminal conduct for which Applicant has never been formally charged, to wit: his deliberate falsifications and his willful failure to file his federal income tax returns for tax years 1994 and 1995. As noted, Applicant's false statements to the Government in connection with his security clearance application and investigation are punishable as felonies. Under Federal income tax regulations, individuals having a taxable gross income which equals or exceeds the exemption amount are required to file a return except for four enumerated exceptions.(8) For the tax years at issue, Applicant was gainfully employed at company A. While the record is silent with respect to the amount of his earnings during that period, Applicant does not dispute that he was required to file. By his own admission, he deliberately did not file because he did not want the state to take his tax refund monies. His willful failure to file for tax years 1994 and 1995 constitutes misdemeanor conduct under section 7203 of the United States Code.(9) Both his intentional misrepresentations and his willful non-filing reflect an unacceptable tendency to place his interests above

those of his obligations. To date, Applicant had not yet filed his income tax returns. At the hearing, he provided accounts of his recent drug use which are at variance with his prior sworn statement, which raises questions as to whether one can rely on Applicant's representations. Due to the absence of rehabilitation, subparagraphs 4.a., 4.b. and 4.c. under criterion J are resolved against him.

At the hearing, the Government presented evidence to substantiate Applicant's current indebtedness to the state for unpaid child support in the amount of $24,571.00. Applicant admits receiving written correspondence every week from state authorities reflecting a substantial delinquency, although he claims he does not owe the amount since he had paid his ex-spouse some $4,000.00 in cash. Assuming Applicant had paid her that amount directly, that would not be sufficient to fulfill his legal obligation which is ongoing since his ex-spouse has taken no action through the court to have the child support reduced or eliminated. Applicant's failure to pay his court-mandated child support since about 1989 falls within criterion F, specifically DC 1. under the Adjudicative Guidelines pertaining to financial considerations. Moreover, Applicant testified that he was apprised by the state sometime last year of the steps to take to challenge the ongoing obligation. Applicant claims that he was advised by his lawyer that there was no guarantee that the court would find that he did not owe the money. Applicant did not want to pay the lawyer the retainer fee of $1,000.00 and take the chance that he might be adjudged responsible for the debt. Although Applicant admits he is going to have to settle the matter someday, he acknowledges that he is "running from [his] responsibility." (Tr. p. 74). DC 3. (inability or unwillingness to satisfy debts) must be considered because of Applicant's deliberate inaction with respect to his child support obligation to settle the matter. None of the six potentially mitigating conditions work to his benefit. While there is no evidence that Applicant has disregarded his other legitimate financial obligations, concerns persist due to the nature of the debt (support for his minor children), the extent ($24,571.00), and the fact he has not followed through on steps to resolve the matter. Subparagraph 5.a. is found against Applicant due to his irresponsible handling of this matter since 1989.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Paragraph 2. Criterion 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

Paragraph 3. Criterion E: AGAINST THE APPLICANT

Subparagraph 3.a.(1): Against the Applicant

Subparagraph 3.a.(2): Against the Applicant

Subparagraph 3.b.(1): For the Applicant

Subparagraph 3.b.(2): For the Applicant

Subparagraph 3.c.(1): Against the Applicant

Paragraph 4. Criterion J: 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

Subparagraph 4.f.: For the Applicant

Subparagraph 4.g.: For the Applicant

Subparagraph 4.h.: Against the Applicant

Subparagraph 4.i.: For the Applicant

Paragraph 5. Criterion F: AGAINST THE APPLICANT

Subparagraph 5.a.: Against the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. Medical records reflect Applicant had assaulted his girlfriend three times within the year and a half prior to his admission on January 16, 1995.

2. Applicant submits that he left the program because he was uncomfortable, claiming that the facility took all the homeless off the streets in order to keep them warm. (Tr. pp. 32, 72). Applicant's failure to pursue treatment in another program supports the facility's assessment that he was only minimally engaged in the recovery effort.

3. Asked on cross-examination when he last used cocaine, Applicant testified, "That's a hard question. It was one time after I got out of rehab and I don't remember the date. I cannot tell you. And I've been clean since." (Tr. p. 94). With respect to his Percodan use, Applicant indicated that the last time he used the drug it was right after he got out of rehab when he was feeling ill. (Tr. p. 96). In light of his prior admission of August 2, 1996, to use of cocaine three or four times after his rehabilitation treatment, and to use of Percodan in June 1996, his testimony at the hearing on this issue is viewed as not credible.

4. Asked whether the person with whom he had used cocaine in June 1996 had offered him cocaine since, Applicant testified, "I would say I've been around it, but I haven't done it and I'm staying away from it. . .Well, basically, this summer we had a gathering and I said, I can't do it. There's no way I could do that stuff. I said, I'm on a random drug test right now and I'm not gonna get caught and lose my job." (Tr. p. 95). In response to this Judge's questions, Applicant testified the last time he was around anyone using cocaine was summer 1995 at a baseball game. (Tr. pp. 124-25). This variance in testimony further negatively impacts his credibility.

5. According to Government Exhibit 16, the obligation commenced in April 1987. Through November 1996, the aggregate amount of Applicant's obligation ($60.00 per week at 500 weeks) was approximately $30,000.00. He maintains he paid the state directly through an automatic deduction. Initially, he testified that he paid the state for probably five years before he stopped. (Tr. pp. 114-16). Applicant subsequently testified that he paid the state "maybe one, two--about--well, maybe three years," and then his son came to live with him. (Tr. p. 136). By the state's accounting, Applicant owes some $24,571.00, which would mean that he had paid on the obligation for less than two years. Applicant disputes the amount of the debt, claiming that once his son came to live with him, his ex-spouse suspended the obligation. He testified he gave about $4,000.00 to his spouse in cash instead and that apparently she was "double-dipping" by also collecting from the state. (Tr. pp. 74-75). Although he indicates he has receipts for the payments made to his ex-spouse, he did not present them at the hearing. Even assuming he had paid her $4,000.00, that would not be sufficient to cover the extent of his child support obligation. It is noted that Applicant's fourteen year old son has not lived continuously with Applicant for the last five years as he initially claimed. (See Tr. pp. 113, 117). There is also no evidence that Applicant's spouse took any action in court to decrease or eliminate the child support obligation.

6. Applicant was not specific as to the dates on which he used cocaine other than his last use which he indicated occurred some two months prior to the August 1996 interview. Applicant admitted allegation 3.c.(1) which indicates abuse of cocaine from 1980 to at least May 1996. It is reasonable to infer that Applicant abused cocaine on at least one occasion between February 1995 and his earlier interview in May 1996. His claim that he was mistaken about the dates of his cocaine abuse is not viewed as credible. Clearly, Applicant sought to mislead the investigator in May 1996. His signed, sworn statement of that date leaves one with the impression that he stopped using drugs in December 1994 prior to his treatment.

7. 18 U.S.C. §1001 provides in pertinent part: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a. . .material fact. . .shall be fined not more than $10,000 or imprisoned not more than five years, or both."

8. Pursuant to Title 26, Section 6012 of the United States Code:

(a) General rule--Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual--

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined by section 2(a)), is

not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii) who is head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

9. Pertinent portions of §7203 of Title 26, United States Code are as follows: "Any person required under this title to. . .make a return, keep any records, or supply any information, who willfully fails to. . .make such return, keep such records or supply such information, 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 more than 1 year, or both, together with the costs of prosecution.