

DATE: April 28, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0739

DECISION OF ADMINISTRATIVE JUDGE

ROBERT R. GALES

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esquire, Department Counsel

FOR APPLICANT

Mark Bockel, Esquire

STATEMENT OF THE CASE

On October 31, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *"Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *"Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated December 5, 1997, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Darlene D. Lokey-Anderson on February 27, 1998 but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on March 2, 1998. A notice of hearing was issued on March 2, 1998, and the hearing was held before me on March 25, 1998. During the course of the hearing, 11 Government exhibits and three Applicant exhibits, and the testimony of five Applicant witnesses (including Applicant), were received. The transcript was received on April 8, 1998.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to drug involvement under Criterion H; personal conduct under Criterion E; criminal conduct under Criterion J; and financial considerations under Criterion F. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 41 year old male employed by a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been specified.

Applicant is a poly-substance abuser whose choice of illegal substances has been primarily marijuana and cocaine, but who also abused hallucinogenic mushrooms, lysergic acid diethylamide (LSD), heroin, and methamphetamine. He commenced using marijuana in about 1970, while he was in high school, and continued doing so, with varying frequency, until at least April 1997.⁽¹⁾ His use varied from one time every few months to daily. Applicant routinely used marijuana with both his ex-wife and his current wife.⁽²⁾ Applicant's motivation for abusing marijuana has never been revealed, except that it made him feel mellow. Likewise, his motivation for quitting such abuse remains unexplained. There is no evidence to rebut Applicant's contention that he has not used marijuana since April 1997, when he used it while attending a concert.

Applicant's marijuana abuse resulted in one incident with legal authorities. In September 1975, he was arrested and charged with possession of marijuana and contributing to the delinquency of a minor. He was incarcerated for 30 days, with an additional 60 days suspended for good behavior. The incident occurred after Applicant had smoked a "joint" earlier in the day and placed the "roach" in the ashtray of his automobile. Later that same day, the police found one-half pint of vodka inside the coat of another passenger who was in the automobile with Applicant and his younger brother, who happened to be a minor. The "roach" was found in the ashtray by the police.⁽³⁾

He commenced using cocaine in about 1974, and continued doing so, with varying frequency, until at least April 1997.⁽⁴⁾ His use varied from one time every week to two times per day. Applicant routinely used cocaine with both his ex-wife and his current wife.⁽⁵⁾ Applicant's sole motivation for abusing cocaine was that it made him feel high or euphoric. He ceased abusing cocaine when he recognized the negative impact it was having on his life: "it was ruining" it.⁽⁶⁾ There is no evidence to rebut Applicant's contention that he has not used cocaine since April 1997, when he used it with some friends at a party.

On an unspecified number of occasions, in about 1971, when he was a freshman in high school, Applicant consumed hallucinogenic mushrooms.⁽⁷⁾ Applicant's motivation for abusing the substance as well as his motivation for quitting such abuse have never been revealed. There is no evidence to rebut Applicant's contention that he has not used hallucinogenic mushrooms since about 1971.

On four or five occasions, during the period 1971-75, when he was in high school, Applicant used LSD.⁽⁸⁾ Applicant's motivation for abusing the substance has never been revealed. His motivation for quitting such abuse was his fear about the impact it had on his friends' minds.⁽⁹⁾ There is no evidence to rebut Applicant's contention that he has not used LSD since that time period.

On one occasion, during the same period, erroneously believing the substance to be cocaine, Applicant used heroin.⁽¹⁰⁾ There is no evidence to rebut Applicant's contention that he has not used heroin since that time period.

On an unspecified number of occasions, during an unspecified period which occurred at least eight years ago, Applicant routinely used methamphetamine.⁽¹¹⁾ His motivation for abusing such substance was to help him stay awake.⁽¹²⁾ His motivation for quitting such abuse was not revealed. There is no evidence to rebut Applicant's contention that he has not used methamphetamine since that time period.

During his period of substance abuse, Applicant periodically purchased varying quantities of marijuana and cocaine.⁽¹³⁾ In addition, on at least two occasions, during 1971-75 and later during 1980-81, Applicant attempted to cultivate marijuana. He was unable to harvest any usable marijuana on either occasion.⁽¹⁴⁾

Applicant has vowed to never use any illegal substance in the future, and he and his wife have taken efforts to avoid their former cocaine-abusing friends.

He has never undergone any drug treatment or rehabilitation.⁽¹⁵⁾

In May 1997, after having consumed five or six beers, Applicant and his fiancée (now his wife) were involved in a domestic dispute which evolved into domestic violence.⁽¹⁶⁾ He was arrested and charged with (1) assault and domestic violence, and (2) disorderly conduct and domestic violence. He was eventually found guilty, and among other court mandates, ordered into probation for 12 months, to end in May 1998, and ordered into an Adult Domestic Violence Program.⁽¹⁷⁾ Applicant successfully completed a six week Domestic Violence Anger Management Program in August 1997.⁽¹⁸⁾

Applicant has been financially overextended since about 1990, and as a consequence, he has established a history of not meeting his financial obligations. In July 1989, Applicant took a buy-out option from his employer and took the opportunity to take vacations with his family. An unanticipated consequence of the buy-out was Applicant's inability to obtain another permanent position until August 1991, although he did manage to hold a position for four months in the fall of 1990. It was the first of what was to become many episodes of unemployment. He eventually left the unemployment line in August 1991, and was gainfully employed until he was injured in a motorcycle accident with a drunken driver in May 1992. His injuries were so severe that he was unable to work, and he remained unemployed for the next 10 months. Applicant finally secured employment again in October 1992, and remained so until December 1995, when he was fired from his position for submitting false leave records and supporting documents and for lying to his supervisor. He obtained another position, and kept it for five months, when he was laid off. Other permanent and temporary employment periods were interrupted by additional periods of unemployment during July 1996 to November 1996, and March 1997 to May 1997.⁽¹⁹⁾ Applicant has been employed by his current employer since May 1997. His supervisor thinks very highly of him.

Applicant's inability to catch up on his finances resulted in accounts being charged off, turned over for collection, and in one instance, a judgment being entered against him. He defaulted on his student loan, in the amount of approximately \$14,420.00; and fell in arrears for court-mandated child support. The student loan was originally for \$9,000.00, and partial payments were made and applied to it. The remaining balance was in dispute, and an arbitrator reduced the balance to \$7,500.00. However, when the collection agency attempted to collect the newly established amount, Applicant refused to make any payments until it could provide proof that it was authorized to do so. As a consequence, Applicant's federal income tax refunds for about three or four years were retained to off-set the amount owed. He has not voluntarily made any payments since he was requested to do so by the collection agency, and intends for the balance to be reduced by continuing off-sets.⁽²⁰⁾

Applicant had been ordered to pay monthly child support in the amount of \$239.22, to be garnished from his weekly paycheck in the amount of \$55.02.⁽²¹⁾ As a result of his periods of unemployment, the garnishment process was unable to collect the full stated amount, and an arrearage developed.⁽²²⁾ Applicant's state income tax refunds were used to off-set a portion of the arrearage, and the amount was eventually reduced to approximately \$1,132.92.⁽²³⁾ While Applicant accepts responsibility for the arrearage, as well as its payment, he has made no voluntary effort, nor taken any action, to reduce the balance.

Applicant's former landlord obtained a judgment against Applicant for back rent, in the amount of \$1,400.00, in February 1995. Applicant has made no effort to satisfy the judgment, and has indicated that he does not intend to do so. He claimed that the residence was not fit to live in, and the landlord had refused to repair it,⁽²⁴⁾ so he felt justified in refusing to pay the judgment.

Applicant utilized the services of an ambulance when he was involved in his accident in May 1992. The original balance of \$197.01 was never paid by him. The account was turned over to a collection agency, but Applicant never made any payments. The account was increased by interest to \$291.25. In August 1997, Applicant stated that he had been unaware that the account had never been satisfied, and indicated that if he kept his current position, he would pay \$20.00 per month towards the balance.⁽²⁵⁾ As of the hearing, some seven months later, Applicant still had made no payments to reduce the balance.

Applicant utilized the services of a local hospital in August 1991 when he had to seek emergency treatment after having

been attacked by a swarm of wasps. The balance of \$369.00 was never paid by him. The account was turned over to a collection agency, but Applicant never made any payments. In August 1997, Applicant stated that he had been unaware that the account had never been satisfied, and indicated that if he kept his current position, he would pay \$20.00 per month towards the balance.⁽²⁶⁾ As of the hearing, some seven months later, Applicant still had made no payments to reduce the balance.

Applicant has attributed his financial problems to his having been unemployed or under-employed, and claims that his credit was destroyed by his divorce, and the fact that he was made responsible for the bills his ex-wife incurred during their period of separation.⁽²⁷⁾

On June 10, 1997, Applicant completed his SF 86, and in response to an inquiry pertaining to ever having used a variety of illegal substances, including cocaine, amphetamines, hallucinogens, or marijuana,⁽²⁸⁾ Applicant responded "no." He certified that his response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his true history of substance abuse, as described above. Applicant subsequently admitted that he "knowingly and willingly falsified" the response because he was afraid he would be denied the clearance and lose his job. He explained that he needed the job very much and that he was trying to put his life back together.⁽²⁹⁾

On August 13, 1997, Applicant was interviewed by an agent of the Defense Security Service, then known as the Defense Investigative Service (DIS), pertaining to his substance abuse. During that interview, Applicant was questioned several times if he had ever used or purchased any illegal substances, and he initially responded "no." After further questioning, and upon being confronted with conflicting information, Applicant refined his responses by acknowledging some limited substance abuse. Subsequent questioning resulted in more complete and accurate responses.

On August 20, 1997, Applicant was again interviewed by an agent of DIS, pertaining to his substance abuse. In his signed, sworn statement, he responded that he wished to correct the information previously provided DIS, and acknowledged that he had not been completely truthful, and explained that he had been reluctant to discuss his substance abuse because he was afraid that his more recent and frequent abuse of cocaine and marijuana might affect his security clearance, and he might lose his job.⁽³⁰⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision--an expansion of the factors set forth in Section F.3. of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[Drug Involvement - Criterion H]: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

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 (see above definition);
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent;
- (2) the drug involvement was an isolated or infrequent event;
- (3) a demonstrated intent not to abuse any drugs in the future.

[Personal Conduct - Criterion E]: 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;
- (4) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure;
- (5) a pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns include:

None apply.

[Criminal Conduct - Criterion J]: 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;

Conditions that could mitigate security concerns include:

None apply.

[Financial Considerations - Criterion F]: 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:

(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).

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽³¹⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Criterion H, the Government has established its case. Applicant's improper and illegal drug abuse, including the purchase, possession, and use of marijuana and cocaine; and the possession and use of hallucinogenic mushrooms, LSD, heroin, and methamphetamine, is of concern, especially in light of his desire to have access to the nation's secrets. Applicant did not simply experiment, as a teenager, out of curiosity and stop. Instead, seemingly motivated by social pleasures, notwithstanding the legal status of his endeavor, he exhibited a pattern of questionable judgment, irresponsibility, and immature behavior, and continued his substance abuse of marijuana, sometimes on a daily basis, for at least 27 years; and his abuse of cocaine, sometimes on a twice-daily basis, for at least 23 years. Applicant's overall conduct pertaining to substance abuse clearly falls within Drug Involvement Disqualifying Factor (DF) 1 and DF 2.

Compared with such substance abuse, his experimental abuse of hallucinogenic mushrooms, LSD, and heroin is relatively insignificant. With respect to his experimentation with hallucinogenic mushrooms, LSD, and heroin, that particular substance abuse occurred only during 1971-75--his high school years, and there is no evidence that it has recurred at any time thereafter. This substance abuse is over 20 years old and is deemed too stale to be of any current security significance. Drug Involvement Mitigating Factor (MF) 1, MF 2, and MF 3 apply. Applicant's abuse of methamphetamine is more difficult to characterize, for while it also occurred during the same period, the frequency remains largely unknown. Nevertheless, as it pertains to the methamphetamines, MF 1 and MF 3 apply. Thus, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to certain SOR allegations. Accordingly, allegations 1.f. through 1.i. of the SOR are concluded in favor of Applicant.

One troubling aspect of this case is that as far back as September 1975, Applicant was given a wake-up call to alert him to the dangers and illegality of his substance abuse. Despite an arrest, conviction, and incarceration, Applicant ignored the call and chose instead to resume his substance abuse for over two decades, seemingly without any remorse.

The presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process. Despite a period of poly-substance abuse, Applicant has not undergone any drug awareness, education, or treatment program, in order to achieve a better self-understanding of the behavioral and psychological effects of his actions and the motivation therefor. Likewise, simply superficially claiming that continued enjoyment and social pleasures were motivators, does not demonstrate true insight into the actual motivation for following the course of conduct which he had chosen. Without the development of countermeasures to the continuation or resumption of substance abuse--relapse prevention, the likelihood of recurrence becomes greater.

In this instance, especially in light of the variety of illegal substances abused, and the lengthy duration of such abuse, as well as the disregard of the experiences of September 1975, despite the presence of a demonstrated intent not to abuse any drugs in the future (MF 3), I believe that both the successful completion of a drug treatment and rehabilitation program, as well as confirmed abstinence for a reasonable period should be required to demonstrate the truly successful transformation from substance abuser to an abstinent, drug-free person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. Under the evidence presented, I possess little confidence that Applicant's substance abuse is a thing of the past, or that it will not recur. Accordingly, allegations 1.a. through 1.e., and 1.j., of the SOR are concluded against Applicant.

With respect to Criterion E, the Government has established its case. Examination of Applicant's actions reveals a pattern of conduct involving questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. There is little dispute surrounding Applicant's pattern of deceptive actions or his purposes, for he has admitted the essential elements of the allegations. Applicant lied, willfully falsified, omitted, concealed, and minimized his history of substance abuse, and eventually, incrementally admitted doing so, and attributed his actions to a fear of being denied a security clearance and losing his job if the truth regarding his substance abuse became known.

Notwithstanding his certifications, oaths, and affirmations that his responses and statements were true and accurate, Applicant succumbed to temptation and embarrassment, and in so doing, repeatedly, willfully falsified, omitted, or concealed material facts pertaining to his history of substance abuse, and intentionally tried to mislead DIS with half truths and lies in an effort to distort the truth and minimize any damage he might have done to himself. I cannot accept those deceptions, or the explanations as justification for same.

In this instance, I have no evidence of inadvertent or accidental oversight, but rather calculated and deliberate omissions of information which Applicant chose not to reveal simply because he felt it necessary to protect his interests. Applicant's concerns for the national security during this period were seemingly as non-existent as they were for the law.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's offenses therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

A pattern of dishonesty, falsification, and deception commenced in December 1995 when Applicant was fired for submitting false leave records and documents and for lying to his supervisor. Similar conduct occurred in 1997 when dealing with the SF 86 and the DIS interview. Applicant's subsequent, incremental forthrightness regarding his history of substance abuse does not lessen or minimize, much less erase or nullify, the impact of his initial and recurring concealments, omissions, and deceptions. Applicant's overall questionable personal conduct clearly falls within Personal Conduct DF 2, DF 3, DF 4, and DF 5. None of the Mitigating Factors apply.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors under the Adjudicative Process, I believe that Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 2.a. and 2.b. of the SOR are concluded against Applicant.

With respect to Criterion J, the Government has established its case. Statements made by an applicant for access to classified information encompass matters within the jurisdiction of the Department of Defense, and are provided for under Title 18, United States Code, Section 1001.⁽³²⁾ Applicant's explanations for failing to accurately relate his entire history of substance abuse simply will not justify or exonerate such actions. I conclude, therefore, that Applicant's felonious conduct --misrepresentations, falsifications, omissions, and concealment (deception) of his substance abuse history, on repeated occasions, were material and made in a knowing and willful manner in contravention of Title 18, United States Code, Section 1001. That criminal conduct clearly falls within Criminal Conduct DF 1. None of the Mitigating Factors apply.

While a person should not be held forever accountable for misconduct from the past without a clear indication of subsequent reform, remorse, or rehabilitation, I am unable to determine with reasonable certainty the probability that such conduct will not recur in the future. Without more, I simply do not believe that the period of time from the most recent acknowledged falsification--that which occurred in August 1997--to the hearing, is sufficient to persuade me that recurrence of such criminal conduct is unlikely. Furthermore, the criminal conduct involving the conviction for domestic violence, and the fact that Applicant currently continues in a probationary status, only serves to reinforce my concerns. Consequently, I conclude that Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 3.a. and 3.b. of the SOR are concluded against Applicant.

With respect to Criterion F, the Government has established its case. Applicant has been characterized as a person who is financially overextended, with a history of accounts having been turned over for collection, child support arrearage, a defaulted student loan, and routine income tax off-sets, and who has displayed an indifference to, or disregard of, those financial obligations, with little or no apparent or voluntary effort to satisfy them. Based on the evidence, I conclude that the characterization is accurate.

Applicant's initial financial difficulty commenced sometime in 1990 after he took a buy-out option from his employer. At that point, without preparing for the future, he apparently started living beyond his means, and eventually depleted his savings. Periods of subsequent employment were punctuated by lengthy periods of unemployment, caused by a variety of reasons: injury, misconduct, and the economy. Applicant's inability to catch up on his finances resulted in accounts being charged off, turned over for collection, and in one instance, a judgment being entered against him. Applicant still fails to appreciate the true causes of his financial dilemma. True, his financial problems were, in part, caused by unemployment, and undoubtedly were exacerbated by his ex-wife. But they were also exacerbated by his

overall cavalier attitude towards his financial responsibility as well as his application of funds to acquire illegal substances to enable him to continue his substance abuse--funds which should have otherwise been applied towards his outstanding financial obligations.

Applicant has made no effort to satisfy those outstanding financial obligations. The amount of his defaulted student loan was reduced following arbitration, but Applicant still avoided making timely payments and, instead, stood by while his federal income tax refunds for three or four years were retained to off-set the amount owed. Likewise, his child support arrearage was reduced by the off-set of state income tax refunds, not by any effort by Applicant. In addition, Applicant made no effort to enter into a payment arrangement with either of his three other creditors, or to set aside money in an escrow account for subsequent payment to those creditors. In fact, he took no steps to resolve his outstanding financial obligations, and exhibited at his hearing indifference to his responsibilities relative thereto, despite promises to do so seven months ago.

Applicant's overall conduct pertaining to his outstanding financial obligations clearly fall within Financial Considerations DF 1 and DF 3. In this instance, because Applicant's actions and behavior suggest a continuing indifference towards his outstanding financial obligations, I must conclude that the behavior does not fall within Financial Considerations MF 1 or MF 2. And while MF 3 seems to apply, it appears that Applicant still could have reasonably taken some effort, despite the periodic periods of unemployment, to resolve those debts. Consequently, I conclude that Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 4.a. through 4.e. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

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.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: Against the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Paragraph 4. Criterion F: 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

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.

Robert R. Gales

Chief Administrative Judge

1. *See* Government Exhibit 2 (Statement of Subject, dated August 20, 1997) at 1-2.

2. *Ibid.*

3. *Id.* at 2 and 6; *see also* Government Exhibit 1 (Standard Form 86, Security Clearance Application (SF 86), dated June 10, 1997) at 9.

4. *See* Government Exhibit 2, *supra* note 1, at 2.

5. *Ibid.*

6. *Ibid.*

7. *Id.* at 3.

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

11. *Ibid.* Applicant stated that he did so while employed in a certain capacity, but a review of his employment history over the seven year period prior to his SF 86, fails to reveal any such capacity during that period. Applicant also claimed that the substance was used while he was in high school. *See* Transcript (Tr.) at 79.

12. *Ibid.*, Government Exhibit 2.

13. *Id.* at 2.

14. *Ibid.*
15. *See* Tr. at 98.
16. *See* Government Exhibit 3 (Police Report); *see also* Government Exhibit 2, *supra* note 1, at 6.
17. *See* Government Exhibit 4 (Court Records); *see also* Government Exhibit 2, *ibid.*
18. *See* Applicant's Exhibit C (Certificate of Completion).
19. *See* Government Exhibit 1, *supra* note 3, at 2-4; *see also* Government Exhibit 2, *supra* note 1, at 3-4.
20. *See* Government Exhibit 2, *supra* note 1, at 5.
21. *See* Government Exhibit 11 (letter from state division of child support enforcement, dated December 10, 1995); *see also id.* at 4.
22. *See* Government Exhibit 5 (state program payment history, dated July 29, 1997); *see also* Government Exhibit 7 (letter from state tax refund intercept project, dated March 28, 1997); Government Exhibit 8 (notification of adjustment to state income tax, dated March 19, 1997); Government Exhibit 9 (state pre-offset notice, dated March 16, 1997); and Government Exhibit 10 (letter from state department of revenue, dated May 9, 1996).
23. *Ibid.*; *see also* Government Exhibit 2, *supra* note 1, at 4.
24. *Id.* Government Exhibit 2 at 4-5.
25. *Id.* at 5.
26. *Id.* at 4.
27. *See* Government Exhibit 1, *supra* note 3, at 11.
28. Question 27.
29. *See* Government Exhibit 2, *supra* note 1, at 6.
30. *Id.* at 1,3, and 6.
31. *See*, Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see*, Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see*, Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).
32. The cited provision provides, in relevant part, as follows: "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."