DATE: January 29, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-08744

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4 and the implementation of Title 10, Section 986 of the United States Code), issued a Statement of Reasons (SOR), dated August 15, 2001, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on: 1) criminal conduct due to his conviction in 1991 of operating under the influence of alcohol (OUI) and possession of cocaine with intent to sell, and in 1995 of his second drunk driving offense; and 2) personal conduct and criminal conduct related to deliberate falsification of a January 10, 2001, signed, sworn statement provided to a special agent of the Defense Security Service (DSS). Applicant's conviction of the June 1991felony possession of cocaine with intent to sell, for which he was sentenced to five years in jail, suspended, was alleged to disqualify him from having a security clearance granted or renewed pursuant to Title 10, Section 986 of the United States Code.[(1)]

On September 5, 2001, Applicant, acting pro se, responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on October 10, 2001. Pursuant to formal notice dated October 11, 2001, the hearing was scheduled for October 25, 2001. At the hearing, which was held as scheduled, the Government submitted thirteen exhibits and the Applicant seven exhibits, all of which were entered into the record. Testimony was taken from the Applicant. With the receipt of the transcript in this office on November 6, 2001, the case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 43-year-old pipefitter who worked for a defense contractor from November 1978 until late April 1997 when he was laid off.[(2)] He had access to classified information up to the Secret level during his employ.[(3)] Recalled to work for the company in Spring 2000, Applicant in April 2000 was granted an Interim Secret security clearance, which he held until it was withdrawn following the issuance of the SOR. Applicant was terminated from his employ in September 2001, subject to recall if his clearance is adjudicated favorably.

Shortly after he graduated from high school in 1976, Applicant began to smoke marijuana with friends. Over the next six months to a year, he used marijuana once or twice monthly when it was offered to him.

In November 1978, Applicant went to work for company A. He began to drink alcohol two to three times per week, primarily on weekends, in quantity of ten beers per occasion.

Sometime after he commenced his employ, Applicant started playing softball with coworkers. Circa 1990/early 1991, he began to associate with a member of the team [Mr. X] who was involved in illegal drug sales. Introduced to cocaine by this individual, Applicant snorted the drug once a week on weekends for at least six months in 1991. Applicant assisted this individual in his sales of cocaine, carrying around drug paraphernalia for him and referring others to him who wanted to purchase the drug. In return, Applicant was given cocaine for free as well as about $1,000.00 in cash.

On an occasion in June 1991, Applicant played softball with other employees of company A. After the game, Applicant imbibed six or eight beers over a few hours. While en route home, he was pulled over for an equipment violation (light out). The police officer, assigned at that time to a special drug enforcement patrol, detected a strong odor of alcohol about Applicant's person. Applicant failed field sobriety tests, and was arrested for operating under the influence of liquor (OUI). The police then conducted a search of Applicant's vehicle incident to the arrest. A large bundle of currency ($750 total) was found under the floor mat on the passenger's side of the vehicle. Lying on the back seat was a lunch box containing a small amount of cocaine and drug paraphernalia, including a scale, a cutting agent, a swifter, square paper cuts, a plastic baggie, a cut drinking straw, a folding "buck" knife, and a spring-loaded knife. Attached to the rear view mirror was one alligator clip with burned tips which the officers suspected had been used in the smoking of marijuana. Applicant was then booked on charges of possession of drug paraphernalia, possession of cocaine with intent to sell, and carrying a dangerous weapon (spring-loaded knife), in addition to the OUI. Applicant was subsequently found guilty of possession of cocaine with intent to sell, a felony, for which he was sentenced to five years in jail, suspended, three years supervised probation and a $500.00 fine. For the OUI charge, Applicant was ordered to participate in a driving while intoxicated (DWI) program for ten to twelve weeks, with the charge to be dismissed on completion of the course. The remaining counts (possession of drug paraphernalia and carrying a dangerous weapon) were nolle prossed. From September 27, 1991 to January 6, 1992, Applicant attended the DWI class as required, successfully completing it.

Following his arrest, Applicant terminated his association with the drug dealer. He also resolved not to use any illegal drug in the future. After being diagnosed with diabetes in 1992, he reduced his alcohol consumption to five or six beers per sitting three or four times per month. On at least one occasion thereafter, Applicant imbibed as much as eight beers to the point of intoxication. While out playing golf with friends in mid-July 1995, Applicant drank six beers. He had two more beers at a restaurant as he was waiting for a pizza. En route home, he was stopped for speeding. Of the opinion Applicant was under the influence of alcohol, the police requested Applicant perform field sobriety tests. Fearing he might be arrested for drunk driving, Applicant refused repeatedly to exit his vehicle, even after the police informed him he would be arrested if he refused. After the officer opened the door to Applicant's vehicle and informed Applicant he was under arrest, Applicant complied during his handcuffing and subsequent breathalyser testing at the station, which registered .193% and .165% blood alcohol content. Charged with DWI, speeding and interfering with a police officer, Applicant was found guilty in court of DWI and sentenced to six months in jail, all but 48 hours suspended, placed on one year probation, fined $578.00, ordered to complete a DWI program and 100 hours of community service, and his driver's license was suspended for one year. The charge of interfering with a police officer was amended in court to creating a public disturbance, for which Applicant was fined $50.00. The speeding charge was nolle prossed.

In late April 1997, Applicant was laid off from his job as a pipefitter first class for company A. He had difficulty securing steady work thereafter and fell behind on his debts. Circa August 1998, Applicant filed for bankruptcy, listing approximately $47,000.00 in debt.

Recalled to work at company A in Spring 2000, Applicant was required to obtain a security clearance for his duties. In conjunction, he executed a Questionnaire for National Security Positions (SF 86) on April 17, 2000. In response to inquiries on the form concerning any police record, Applicant responded affirmatively to question 23.d. ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"]. He listed his illegal drug possession charge without noting the nature of the drug and mistakenly dated it as 1990. Applicant also reported his most recent DUI, but indicated it occurred in 1994. In response to whether he had engaged in any illegal drug use or activity in the last seven years (question 24.a.), Applicant answered "Yes," and indicated use of cocaine in 1990, number of times used "2." Applicant responded negatively to question 24. b. ["Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety."]. Applicant listed his bankruptcy filing on his SF 86, listing his debt at $35,000.00. After he completed the form, Applicant presented it to a security official who went over the application with him. She annotated the form to indicate that the illegal drug possession charge was for cocaine. The following week, Applicant was granted an Interim Secret security clearance and he returned to work at company A in early May 2000.

In the morning of January 10, 2001, Applicant was interviewed about his arrest record and drug use by a special agent of the Defense Security Service (DSS). Concerning his use of cocaine, Applicant stated:

About the early 1990's I got in with the wrong crowd that was using cocaine and one guy named [Mr. X] was selling cocaine. I don't remember [Mr. X's] actual name. I tried cocaine by "snorting it" which was inhaling it up my nose two or three times over about six months when it was offered to me by those friends. The cocaine made me feel more alert.

Applicant acknowledged to the agent he had been arrested for DWI in June 1991, and that during a search of his vehicle incident to the arrest, the police found about $20.00 worth of cocaine and a scale for weighing cocaine. While he maintained the items belonged to Mr. X, he admitted he had been convicted of possession of cocaine with intent to sell. Convicted also of the DWI, Applicant told the agent the charge had been dropped on his successful completion of the mandated DWI class. Applicant told the agent he did not know why he had forgotten to list his first DWI on his SF 86. With respect to his second DWI, Applicant admitted it may have been in July 1995, and he had consumed six or eight beers before that arrest. As to whether he had used any other illegal drugs, Applicant stated:

Other than using cocaine those two or three times, I have never used any other illegal drug except that I tried marijuana when I was just out of high school when I was about 18 or 19 years old. I used the marijuana when it was offered by friends once or twice monthly for about six months to a year. The marijuana made me feel silly and hungry, but I don't remember much more about that due to the passage of time. I have never bought, sold, transported, manufactured, or distributed any other illegal drug. I have never had any other problems with the police related to illegal drugs and never had any treatment related to illegal drug abuse. I don't plan to use or have anything else to do with illegal drugs in the future.

Concerning his drinking habits, Applicant detailed consumption of ten beers at a time, two to three times weekly, from age 20 or 21 to about 1992 when he found out he was a diabetic. Thereafter, he reduced his consumption to three or four times per month, in quantity of five or six beers at a time.

Applicant executed a signed, sworn statement containing the aforesaid representations.

Applicant met with the agent in the afternoon of January 10, 2001, to execute a sworn statement in which he discussed his finances. Applicant attributed his past financial problems to his layoff from company A and subsequent difficulty finding steady work. With $35,000.00 in credit card debt and $12,000.00 in unpaid personal loan obligations, Applicant disclosed he elected to file for bankruptcy in August 1998 and was granted a discharge that December. During the course of his interview, Applicant executed a Personal Financial Statement on which he reported a net monthly remainder of $860.00.

The agent reinterviewed Applicant two days later. During that interview, Applicant reviewed his security clearance application. Confronted with the fact that he failed to list all the charges filed against him in June 1991, Applicant denied any intentional falsification. He denied any knowledge of who entered on his SF 86 that his arrest for illegal

possession was for cocaine and stated, "Other than the information I provided [the agent] during our interviews, the rest of the information on my 17 Apr 00 hand printed security clearance application looks correct." The agent and Applicant then discussed the June 1991 arrest, with the agent confronting Applicant about the drug paraphernalia found in his vehicle. Claiming his memory had been refreshed by the agent, Applicant admitted possession of papers for packaging cocaine, a bottle of while powder for cutting cocaine, a screen to sift the cocaine when it was mixed, a straw for snorting cocaine, as well as other items for using and distributing the drug. Applicant did not deny possible ownership of the $750.00 found under the front floor mat, but denied any knowledge of why it was there. Applicant indicated he had agreed to carry around Mr. X's drug dealing equipment ("I was sort of a handy-man helping him by carrying the equipment and he paid me for helping out and a few times gave me the cocaine I experimented with."). Applicant admitted receiving about $1,000.00 for helping this drug dealer, which included cutting cocaine and making referrals for drug sales. Late in the interview, Applicant volunteered that he had used cocaine beyond the just two or three times previously admitted to:

After my last interview and my interview today I am now thinking I may have used cocaine for more than just two or three times. For the period of about six months prior to that arrest in 1991 that I was associating with [Mr. X], my use of cocaine was probably more like once a week on weekends. After that arrest, I was really frightened and wanted nothing more to do with illegal drugs. I have not used or had anything to do with any illegal drug since that arrest in Jun 91 and don't intend to use illegal drugs or have anything to do with illegal drugs in the future.

At the end of the interview, Applicant executed a signed, sworn statement containing the aforesaid representations.

On August 15, 2001, DOHA issued an SOR to the Applicant, alleging criminal conduct concerns because of his conviction of possession of cocaine with intent to sell in 1991 and his drunk driving in 1991 and 1995, and criminal conduct and personal conduct concerns related to his lack of candor about his cocaine involvement in his January 10, 2001, signed, sworn statement. On September 5, 2001, Applicant responded to the SOR, denying any intentional falsification.

At his hearing on October 25, 2001, Applicant continued to deny any deliberate misrepresentation. With regard to him reporting only two uses of cocaine on his SF 86, Applicant claimed he misunderstood the question. On cross-examination, Applicant testified, "I just put down two times, because when I did it, I did it a couple times when I did it." [(4)] When asked why he did not tell the agent during his first interview that he had used cocaine more than twice, Applicant responded, "I didn't recollect it, because of how long ago it was and, like I said before, I tried to black it out." Given the extent of his involvement with cocaine, which included not only weekly use but also cutting cocaine for a dealer and carrying around drug paraphernalia, it is simply not credible that he would forget this information when he was interviewed by the DSS agent on January 10, 2001. He reported both on his SF 86 and in his first sworn statement that he used cocaine only twice, which supports a finding of concerted effort to conceal his involvement. Even if I were to assume that Applicant misunderstood when he answered the SF 86 that number of times meant how many puffs or snorts of cocaine one ingested per occasion, there is no indication he had a similar understanding when he met with the DSS agent on January 10, 2001. Applicant told the agent he tried cocaine by snorting it two or three times over about six months. The impression left by Applicant until late in his January 12, 2001, interview is that his use of cocaine was experimental in nature. When asked how he managed to remember two days later (on January 12, 2001) that he had not only snorted cocaine weekly but had also acted as a "handy-man" for a drug dealer, Applicant testified:

Because at the time, when I first went up to [the special agent] I was very nervous. I'm nervous now, but I was even more nervous then thinking I'm going to lose my job. I was just nervous. Sometimes when I get nervous, I don't remember everything. And it's not that I'm lying purposely. If I was, I wouldn't be here today. And then, he had more information. I had a little time to calm down and think about the situation, then he brought this up and I said, you're right. [(5)]

It is more likely that Applicant's fear of losing his job led him to lie about his past illegal drug involvement rather than caused him to forget about it. [(6)]

Applicant enjoys the respect of his peers at company A. During his employment he progressed to a first class pipefitter/mechanic.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, 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 nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. 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. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:[(7)]

GUIDELINE J

Criminal Conduct

The Concern: 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:

a. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

b. A single serious crime or multiple lesser offenses

c. Conviction in a Federal or State court, including a court-marital of a crime and sentenced to imprisonment for a term exceeding one year[(8)]

Conditions that could mitigate security concerns include:

a. The criminal behavior was not recent

g. Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.

GUIDELINE E

PERSONAL CONDUCT

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel

security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

* * *

Under the provisions of Executive Order 10865 as amended 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines J and E:

In the early 1990s, Applicant became involved with a drug dealer. Over at least a six-month period in 1991, Applicant provided assistance to this drug dealer by carrying around drug paraphernalia for him, cutting cocaine for distribution, referring to him individuals wanting to purchase cocaine. Applicant's illegal drug-related activities led to adverse legal involvement on one occasion, when the police searched his vehicle incident to his arrest for drunk driving and discovered cocaine and drug paraphernalia. Charged with OUI, possession of cocaine with intent to sell, possession of drug paraphernalia and carrying a dangerous weapon (spring-loaded knife), Applicant was found guilty of possession of cocaine with intent to sell, for which he was sentenced to five years in jail, suspended, and placed on three years supervised probation. Although the OUI charge was dismissed on his completion of a drunk driving program, Applicant was impaired by alcohol at the time of his arrest. In July 1995, he committed his second drunk driving offense. Furthermore, in deliberately minimizing the extent of his cocaine use and drug-related activity in a January 10, 2001, sworn statement, Applicant violated title 18, Section 1001, of the United States Code. His lack of candor about his actions constitutes recent criminal conduct cognizable under guideline J.[(9)] Under that adjudicative guideline,

disqualifying conditions (DC) a. (allegations or admissions of criminal conduct, regardless of whether the person was formally charged), b. (a single serious crime or multiple lesser offenses), and c. (conviction in a Federal or State court, including a court martial, of a crime and sentenced to imprisonment for a term exceeding one year) are pertinent to an evaluation of Applicant's security suitability.

Cognizant of the criminality of his illegal drug acts and drunk driving, Applicant must show for successful rehabilitation not only a track record of compliance with laws and regulations, but also meaningful acknowledgment of responsibility for one's criminal past. Applicant has not denied his drunk driving behavior. After he was diagnosed with diabetes in 1992, he moderated his consumption somewhat, but this did not preclude another incident of drunk driving in 1995. Applicant bears the burden of demonstrating a sufficient change in circumstances to where one can state with confidence there is little likelihood of recurrence. Applicant continues to drink in quantity of five or six beers per sitting. Yet, he is careful not to drink and drive. There is no evidence Applicant suffers from diagnosed alcohol abuse or dependence or that he has allowed alcohol to negatively impact his judgment and reliability since 1995. A favorable finding is warranted with respect to subparagraph 1.b. of the SOR.

With respect to the illicit substance involvement, Applicant maintains he was so scared following his arrest that he resolved to cease all illicit drug activity and terminate his association with Mr. X. There is no evidence of record connecting Applicant with any illegal drug activity in the last ten years, which lends credibility to his claim of no involvement. Subparagraph 1.a. is found for Applicant, as there is little probability Applicant will associate with known drug users, or possess or sell illicit substances in the future. However, since he was convicted of possession of cocaine with intent to sell, a crime punished by a sentence (albeit suspended) of five years in jail, he cannot be granted a security clearance unless meritorious circumstances exist as determined by the Secretary of Defense. (See mitigating condition g., Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.). Especially where Applicant has not been completely forthright at times when asked about his drug-related activity, I cannot recommend further consideration of this case for a waiver of 10 U.S.C. 986. Subparagraph 1.c. is thus resolved against him.

Applicant's lack of candor engenders personal conduct concerns in addition to the criminal issues related to knowingly providing a false statement to the Government.[(10)]

Applicant reported on his SF 86 that he had used cocaine only twice. Since Applicant had not used any cocaine since June 1991, he was not required to respond affirmatively to question 24.a., as his use was outside the seven-year scope of the inquiry. However, having elected to indicate "Yes," Applicant took on the obligation to report his use accurately. Fearful he would lose his job, Applicant elected to significantly understate the extent of his involvement. Furthermore, since Applicant had a security clearance when he used cocaine, he was required to respond affirmatively to question 24.b. His knowingly false answers to questions 24.a. and 24.b. on the SF 86 were not alleged by the Government, so they cannot form the basis of an adverse decision. Yet, evidence of prior falsification remains relevant to determining which adjudicative factors apply. Applicant's lack of candor in his January 10, 2001, interview and sworn statement cannot reasonably be viewed as isolated, because of the earlier misrepresentations on his SF 86. During his first interview with the DSS agent on January 10, 2001, as reflected in his sworn statement of that date, Applicant significantly under-reported the extent of his cocaine use in 1991, claiming he snorted the drug two or three times when he had in fact used it weekly. He admitted the police had found cocaine and a scale in his automobile following his arrest for OUI in June 1991, but he made no mention of his active aid to the drug dealer, which included cutting cocaine and transporting drug paraphernalia.

During his interview of January 12, 2001, Applicant described his actions facilitating Mr. X's illegal drug sales, and he admitted he had used cocaine more than two or three times. Yet, on review of the conditions under guideline E which could mitigate knowing and willful falsification, none work to Applicant's benefit. MC E2.A5.1.3.3. requires that the disclosures be prompt as well as before confrontation. When he was interviewed during the morning of January 10, 2001, he maintained he had used cocaine only "two or three times," and he concealed the extent of those drug-related activities as a self-described "handy-man" for the drug dealer. Knowing he had not been completely forthright with the agent that morning, Applicant had the opportunity to volunteer the information when he was interviewed about his finances later that same day, but he made no such effort. While he eventually admitted he had snorted cocaine weekly

back in 1991, the disclosure came late in the interview process on January 12, 2001 ["After my last interview and my interview today, I am now thinking I may have used cocaine for (sic) than just two or three times." See Ex. 12] and after confrontation ["And then, he had all the information in front of him and he read off the things and then it like came back to me, and I said, yeah, that's right, that's right." See Transcript p. 43].

At his hearing, Applicant denied any intentional falsification, either of his January 10, 2001, sworn statement or his SF 86. In continuing to claim that he misunderstood the question on the SF 86 and failed to recollect until late in his January 12, 2001 interview that he used cocaine more than two or three times, Applicant shows little meaningful reform. Doubts persist as to whether Applicant can be counted on to place the Government's interests ahead of his own. Subparagraphs 1.d. and 2.a. of the SOR are resolved against him, as he failed to overcome the criminal conduct and personal conduct concerns engendered by acts of deliberate misrepresentation.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.(1): Against the Applicant

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

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

Subparagraph 2.a.(4): Against the Applicant

Subparagraph 2.a.(5): 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. With the issuance of the SOR, Applicant was given a copy of the Federal statute, which states in pertinent part:

§986. Security clearances: limitations

(a) Prohibition.--After the date of the enactment of this section, the Department of Defense may not grant or renew a security clearance for a person to whom this section applies who is described in subsection (c).

(b) Covered Persons.--This section applies to the following persons:

(1) An officer or employee of the Department of Defense

(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

(3) An officer or employee of a contractor of the Department of Defense.

(c) Persons Disqualified From Being Granted Security Clearances.--A person is described in this subsection if any of the following applies to that person;

(1) The person has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year. . .

(d) Waiver Authority--In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.

2. On strike for four or five months in 1988, Applicant worked during that time for a plumber. (Transcript p. 57).

3. Originally granted a Confidential security clearance (company confidential) by his employer, Applicant was granted a Secret clearance in December 1982. That clearance was downgraded without prejudice to Confidential in 1987. Following completion of a Personnel Security Questionnaire in early November 1987, his clearance was upgraded to Secret.

4. See Transcript p. 64.

5. See Transcript pp. 70-71.

6. Applicant's testimony at the hearing with regard to whether he ever purchased cocaine does little to bolster his credibility ("Sometimes I'd buy it, I guess. I really don't remember exactly."). See Transcript p. 63.

7. The adjudicative factors considered most pertinent are identified as set forth in guideline J following the implementation of 10 U.S.C. §986.

8. Under the provisions of 10 U.S.C. 986 (P.L. 106-398) a person who has been convicted in a Federal or State court, including courts marital, and sentenced to imprisonment for a term exceeding one year, may not be granted or have renewed access to classified information. In a meritorious case, the Secretary of Defense or the Secretary of the Military Department concerned, may authorize a waiver of this prohibition.

9. Title 18, Section 1001 of the United States Code provides in pertinent 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.

10. Under guideline E, conditions which may be disqualifying also include:

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.