DATE: January 31, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-08936

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

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 9, 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 alcohol offenses committed between 1980 and 1997, with a felony conviction for leaving the scene of an alcohol-related accident with personal injury, and illegal drug offenses committed between 1976 and 1984; and 2) personal conduct related to falsification of a February 1999 security clearance application for responding negatively to whether he had ever used illegal drugs while in possession of a security clearance. Applicant's conviction of leaving the scene of an accident with personal injury in May 1981, for which he was sentenced to two years incarceration in the adult correctional institution (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 August 21, 2001, Applicant 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 September 27, 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 twelve exhibits, all of which were entered into the record. Testimony was taken from the Applicant and three witnesses on his behalf. Applicant also requested that Government Exhibit 11 be considered as Applicant Exhibit A as well. The document was marked and entered accordingly. 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 46-year-old welder who has worked for a defense contractor (company A) continuously since 1982. Employed there previously from 1974 until he was laid off in 1981, Applicant progressed to a first class pipe welder by late 1981. On his rehire in December 1982, company A granted Applicant a Confidential security clearance ("a green badge") which he has held since.[(2)]

During his last year of high school (circa 1972), Applicant started using marijuana with his friends. His involvement increased gradually to where by 1975 he was using cannabis, primarily marijuana but sometimes hashish, on a daily basis. In at least 1976, Applicant was residing with a friend who he knew used and sold marijuana. On one occasion in August 1976, the police came by their apartment. Applicant allowed them to search the premises and they found one-half to a pound of marijuana belonging to Applicant's roommate. Applicant was arrested for possession of marijuana. In court he pleaded guilty to an amended charge of breach of peace, for which he was fined $35.00.

Applicant continued to smoke marijuana for the most part daily until his marriage in 1986. Over the 1975 to 1986 time frame, Applicant spent about $30.00 to $35.00 per week for the marijuana he ingested.

Circa 1980, Applicant tried cocaine, which made him feel more alert. Over the next four to five years, he snorted the drug once per month on average, at a cost to him of $40.00 to $50.00 per occasion. In the early 1980s, he used THC five or six times and LSD twice. He did not like the effects of those substances.

A user of alcohol as well, Applicant by the late 1970s was drinking two to three twelve-ounce beers daily during the work week, increasing to five or six beers on Fridays and Saturdays.

Applicant's use of illicit drugs and alcohol led to his arrest on several occasions over the 1980 to 1985 time frame, as follows:

On an occasion in early June 1980, Applicant imbibed ten twelve-ounce beers at a picnic with friends. After dropping some friends off, Applicant had a flat tire. When the police stopped to render assistance, the officer arrested Applicant for operating under the influence (OUI) and operating to endanger. Both counts were continued without a finding, and he was placed on probation to January 1981. Applicant was also ordered to pay costs of $175.00, attend driving school, and his license was suspended for three months.

In early May 1981, Applicant went out drinking with his then girlfriend to a nightclub where he consumed five to six twelve-ounce beers. Applicant struck the rear of another vehicle at a traffic signal, causing the passenger in the other car to sustain a knee injury. Both Applicant and the driver of the other vehicle exited their automobiles and Applicant suggested they could settle without the police becoming involved. When a witness to the accident left to call the police, Applicant took off at a high rate of speed. Apprehended in a neighboring state, Applicant was charged in that jurisdiction with OUI. During a search of Applicant incident to his arrest, the police found cocaine in his jacket pocket and a charge of illegal possession was added. In court in September 1981, he was found guilty of OUI and fined $125.00. The illegal possession of cocaine charge was continued for one year, to be dismissed on payment of $50.00 plus court costs.

In July 1981, Applicant was charged in the jurisdiction in which the accident occurred in May 1981 with leaving the scene of an accident with personal injury, a felony. At his arraignment in August 1981, Applicant pleaded not guilty. In October 1981, he retracted that plea and entered a plea of nolo contendere to the charge. A judgment of conviction was entered and he was sentenced to two years incarceration in the adult correctional institution (suspended), to three years supervised probation, and to pay $30.00 costs. Applicant now regrets leaving the scene, and regards it as "a stupid thing to do."

While walking down the street one evening in August 1984, Applicant was approached by the police who asked him his purpose. The police searched Applicant and found about a quarter to a half gram of cocaine on him as well as a pipe containing hashish. The police then arrested him for possession of cocaine, a felony, and possession of hashish. The charges were subsequently dismissed.

Three days after his arrest for felony possession of cocaine in August 1984, Applicant was caught smoking marijuana with friends while standing next to his car in the parking lot outside company A. During a search of Applicant's vehicle, the police found a plastic bag containing sufficient marijuana for two to three joints and a table steak knife. Applicant was arrested for possession of marijuana, possession of drug paraphernalia, and possession of a dangerous weapon in a motor vehicle. In court, Applicant was found guilty of marijuana possession, for which he was fined about $100.00. The remaining charges were nolle prossed. Applicant ceased his use of cocaine in 1985.

In mid-March 1986, Applicant was married to a woman he had been dating for about a year and a half. With his spouse concerned about his drinking, Applicant reduced the quantity and frequency of alcohol consumed to two to six beers two or three times per week. He gradually reduced his marijuana smoking from daily to an average of two to three times per week, continuing to smoke at that rate after the birth of his first daughter in January 1987. Wanting to have a positive influence on his then two year old daughter, Applicant quit using cannabis in 1989. The following year, in October 1990, Applicant and his spouse had another daughter.

Applicant continued to consume alcohol on average two or three times per week, in quantity varying from two to six beers. On one occasion in mid-December 1997, Applicant consumed twelve to fifteen beers when out with his brother and another friend. At around 2:37 a.m., Applicant was observed driving very slowly and swerving. After Applicant nearly struck the curb, the police pulled him over and began administering field sobriety tests. Applicant proved unable to complete the first test. Of the opinion that Applicant was too intoxicated to perform the remainder of the sobriety testing, the officer placed Applicant under arrest for driving under the influence of intoxicating liquor (DUI) and operating left of center. Applicant passed out in the back of the cruiser en route to the station, where he then refused to submit to a breathalyser. A charge of refusal to submit to chemical test was added. Applicant was then taken to the hospital, as he would not provide the name of a responsible party to whom he could be released. At the county hospital, medical personnel gave him the option of calling someone to pick him up or submit to testing. Applicant continued to refuse to provide the name of someone to whom he could be released, and tests were administered. The hospital subsequently billed him $381.00 for the cost of the testing. Applicant had not paid the bill by February 2000 as he felt the tests were unnecessary. He had no plans to pay the bill unless ordered to do so by a judge.

An administrative hearing was conducted in February 1998 on the refusal charge. The charge was sustained and Applicant was ordered on the DUI and refusal charges to pay a $200.00 fine plus $27.00 court costs and $500.00 highway safety assessment, his driver's license was suspended for three months, and he was ordered to participate in a driving while intoxicated (DWI) program with payment of an assessment fee of $173.00 and to complete ten hours of community service. The left of center charge was dismissed. Applicant was evaluated by a staff member in the state DWI program in June 1998. Applicant was directed to DWI school rather than counseling as he had positive support from his family and employer and did not meet the diagnostic criteria for alcohol abuse.

Following the December 1997 drunk driving, Applicant reduced his alcohol consumption to twice per week, two to three beers per occasion. Over the Labor Day holiday each year thereafter, Applicant had a party at this residence where he consumed as much as twelve to fifteen beers to intoxication. Applicant did not operate a motor vehicle after drinking in this quantity.

In conjunction with a requested upgrade of his security clearance to Secret, Applicant on February 17, 1999, executed a security clearance application (SF 86). In response to inquiries on the form concerning any police record, Applicant responded affirmatively to question 21 regarding any felony offenses, disclosing his arrest and conviction in 1981 of leaving the scene after property damage. He also answered "Yes" to question 24 ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607."]. He listed his 1976 arrest for possession of marijuana, his June 1980 arrest for DWI, his August 1984 arrest for possession of cocaine and marijuana, his May 1981 arrest for DWI and possession of cocaine, and his December 1997 DWI.[(3)] Applicant responded negatively to question 28 ["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."] as he was not sure that his Confidential security clearance, which was granted to him by his employer, qualified as a "Federal"

security clearance warranting an affirmative answer. In response to inquiries into financial delinquencies, Applicant listed on the form a state tax lien filed against his spouse, and the unsatisfied $381.00 debt owed the hospital for testing after his latest DWI.

On February 23, 2000, Applicant was interviewed about his arrest record, drug use, alcohol consumption and financial matters by a special agent of the Defense Security Service (DSS). Applicant acknowledged he might not have been correct on his SF 86 about some of his arrest dates, and detailed his involvement in the offenses. Applicant admitted he did not intend to repay the hospital debt for the testing administered after his December 1997 OUI, unless ordered to do so by a judge. Regarding his use of illegal drugs, Applicant related he stopped using cocaine in 1984 or 1985 and marijuana in 1989. Applicant maintained he reduced his consumption of alcohol following his marriage in 1986, and contended his drinking of twelve to fifteen ounce beers on the occasion of his arrest in December 1997 was an isolated incident. Applicant described his current drinking levels as follows:

Since my Dec 97 arrest, I have been drinking only once to twice weekly, about two to three 12 ounce beers each time over about two hour (sic), which will make me feel relaxed. About once yearly, normally on labor day, I will have a party at my home and consume about twelve to fifteen 12 ounce beers over about 12 to 16 hours of partying. This will make me relaxed and drunk, but I stay home and will not drive. In the future I plan to keep my alcohol consumption to this level. I normally do not consume any alcoholic beverages other than beer.

Applicant met with the same agent two days later to discuss why he responded "No" on his SF 86 to question 28 concerning whether he had ever used an illegal drug while possessing a security clearance. Applicant told the agent he incorrectly assumed the question pertained to only the last seven years and he was not sure when he completed the form whether the "green badge" he was issued constituted a real security clearance since it was not government issued.

Applicant was intoxicated in June 2001 while camping out at a bluegrass festival with his family and friends. No driving was involved on that occasion. Applicant's spouse thought Applicant had a problem with alcohol about ten years ago, but she does not think Applicant has a problem now. When they go out, she feels she can have a few drinks because she has no worries that Applicant will be unable to drive them home. As of October 2001, Applicant was drinking "a couple [of beers] at night" once per week.

The pastor of Applicant's church, who has known Applicant for the last three years, regards him as a very stable family man and hard worker. Applicant recently started teaching literacy in a local volunteer program. Over the years, he has been involved in youth sports in the community, coaching his oldest daughter's basketball team.

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:[(4)]

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[(5)]

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:

None applicable.

* * *

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:

Applicant's involvement with illegal drugs (cocaine and marijuana) and alcohol led to his commission of several criminal acts between 1976 and 1984. Although Applicant was convicted of an amended charge of breach of peace in 1976, the police found marijuana in his residence. While the drug belonged to his roommate, Applicant was himself a drug user at the time and he knew his friend was involved in drug sales. He was convicted of drunk driving in 1980 and again in 1981. In the May 1981 incident, Applicant caused an accident which resulted in a knee injury to a passenger in the other vehicle. Fearing his arrest for his second OUI, Applicant fled from the scene without waiting for the police to arrive. Charged in July 1981 with leaving the scene of an accident resulting in personal injury, Applicant was convicted of this felony offense and sentenced to two years incarceration (suspended) and three years supervised probation. In a three day time span in August 1984, he was arrested twice on drug charges. Stopped while he was walking down the street in the first incident, Applicant was found to have cocaine and hashish in his possession. Applicant was caught later that week smoking marijuana outside his automobile in a parking lot near company A.

By his marriage in March 1986, Applicant had stopped using cocaine. With his spouse concerned about his drinking, Applicant moderated his alcohol consumption, from two to three beers daily with more on weekends to two to three times per week in amount varying from two to six (12 ounce) beers. He also reduced his marijuana use gradually from daily to an average of two to three days per week. While Applicant eventually ceased his marijuana involvement in 1989, he continued to drink alcohol two to three days per week. This drinking pattern did not prevent another drunk driving incident, as Applicant consumed an excessive amount (twelve to fifteen beers) when out with his brother and a friend in December 1997. Under the criminal conduct 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 use and possession and his drunk driving, Applicant must show for successful rehabilitation a track record of compliance with laws and regulations as well as meaningful acknowledgment of responsibility for one's criminal past. While Applicant asserts the marijuana found in his premises in 1976 belonged to his roommate, he has not denied the validity of the remaining criminal charges against him. With a record of more than ten years of abstinence from marijuana and fifteen from cocaine, Applicant has demonstrated his commitment to a drug-free lifestyle. His illegal drug use and possession is not recent. Since his drug-related criminal convictions were all for drug possession when he was an active user and there is no evidence that Applicant has ever dealt or distributed illegal drugs (purchases were for his own use) or that he currently associates with known drug users, there is little likelihood Applicant will engage in drug-related criminal conduct in the future. Subparagraphs 1.a., 1.e., and 1.f. are thus resolved for Applicant.

Applicant does not deny his record of drunk driving, which included an accident with personal injury to the victim in May 1981. Applicant described his leaving the scene of an accident in 1981 as "a stupid thing to do." While his behavior on that occasion was impaired by alcohol, he knew he was leaving the scene. The seriousness of this felonious criminal conduct is reflected in the sentence imposed by the state, which included two years in the custody of the adult correctional institution (albeit suspended) with three years of supervised probation. By virtue of this criminal sentence, Applicant falls within the provisions of Title 10, Section 986 of the United States Code, as amended, which has been implemented within the Department of Defense by a June 7, 2001, Memorandum from the Deputy Secretary of Defense titled Implementation of Restrictions on the Granting or Renewal of Security Clearances as Mandated by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Under the current adjudicative guidelines, Applicant

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.). Subparagraph 1.h. must be found against Applicant. Moreover, based on the circumstances of this case, I cannot recommend further consideration of this case for a waiver of 10 U.S.C. §986.

Applicant's December 1997 DUI is relatively recent criminal conduct which calls into doubt whether Applicant possesses the requisite judgment and reliability which must be demanded of those with access. Applicant admits he drank twelve to fifteen beers prior to that arrest. The degree of Applicant's impairment was such that the arresting officer felt Applicant was too inebriated to complete the field sobriety testing with safety. Applicant passed out in the back of the patrol car. Assuming as Applicant claims that this was an aberration in that he had not drank in similar quantity following his marriage in March 1986 to his arrest, Applicant still has the burden of overcoming the security concerns engendered by a third drunk driving offense, committed after he had made a concerted effort to reduce his drinking. In February 2000, Applicant described his alcohol consumption since his arrest as once to twice weekly, about two to three 12 ounce beers over a two hour period. He admitted that once yearly, usually on Labor Day, he would consume twelve to fifteen beers over the course of twelve to sixteen hours partying. A friend of Applicant's testified she last saw Applicant intoxicated in June 2001 at a bluegrass festival. While there is no evidence Applicant has driven an automobile after drinking to excess since December 1997, the risk of future alcohol-related criminal conduct cannot be discounted. Adverse findings are warranted with respect to subparagraphs 1.b., 1.c., 1.d., and 1.g. of the SOR.

The Government's case under guideline E, personal conduct, is based solely on Applicant's failure to respond affirmatively to question 28 on the SF 86, which he executed on February 17, 1999.[(6)]

Applicant does not dispute that he used both marijuana and cocaine while he had a "green badge." An affirmative response is required to question 28 if one has ever used an illegal drug while possessing a security clearance. Applicant denies any knowing falsification of his SF 86, maintaining that he was unaware that a company granted security clearance was the same as a DoD granted Confidential security clearance. Notwithstanding Applicant back in December 1982 executed a DoD security briefing statement, I am persuaded Applicant did not knowingly falsify his response to question 28 on his 1999 SF 86. Applicant listed on his SF 86 his arrests for illegal drug possession, which lends credence to his claim of no intent to conceal his illicit substance involvement. Subparagraph 2.a. is resolved in his favor, as he did not engage in deliberate misrepresentation when he completed his security clearance application.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

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

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

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

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. 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. Applicant signed an Application and Authorization for Access to Confidential Information (Industrial) on December 22, 1982. (Ex. 7). As reflected on the form, the Department of Defense at that time had delegated to its contractors authority to grant access authorization for access to Confidential information.

3. Applicant mistakenly indicated his June 1976 arrest for possession of marijuana was in June 1977, his June 1980 arrest for DWI was in June 1979, and his ay 1981 arrest for DWI and possession of cocaine was in April 1981.

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

5. 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.

6. Under guideline E, conditions which 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.