DATE: December 26, 2001

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-17358

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

James B. Krasnoo, 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 6, 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 criminal conduct due to November 1990 breaking and entering and larceny offenses, a March 1990 illegal possession of a class B substance offense, March 1980 breaking and entering and larceny offenses, December 1979 illegal drug possession with intent to sell charges, and his involvement in illegal drug sales from 1974 to 1990. Applicant's convictions of the November 1990 felony breaking and entering and larceny, for which he was sentenced to eighteen months confinement, and of the December 1979 possession with intent to sell charges, for which he received a two-year suspended sentence, were 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 30, 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 2, 2001. Pursuant to formal notice dated October 5, 2001, the hearing was scheduled for October 11, 2001, Applicant having waived the fifteen-day notice requirement. At the hearing, which was held as scheduled, the Government submitted seven exhibits and the Applicant eighteen exhibits, all of which were entered into the record. Testimony was taken from the Applicant and from twelve character witnesses on his behalf. At the close of the evidentiary record, Department Counsel moved to amend subparagraph 1.c. of the SOR to reflect Applicant had been arrested and charged in late March 1980 with two separate criminal offenses, to wit: breaking and entering and larceny. Applicant having no objection thereto, the motion was granted. With the receipt of the transcript in this office on October 26, 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 41-year-old senior manufacturing engineer who has worked for his current employer, a defense contractor, since March 1999. Applicant seeks a Confidential security clearance for his duties.

A recovering alcohol and drug addict, Applicant became involved with mood-altering substances at the age of twelve (circa 1974) when he took a bottle of whiskey from his stepfather and drank with a friend who had come over to stay the night. Around the same time, he started to smoke marijuana with friends. Over the next four years, he imbibed three or four beers on Friday and Saturday nights with his friends, occasionally drinking one or two nights during the week as well. He also smoked marijuana two to four times per week. About four to six times per year, he smoked hashish.

In March 1978, he was married and two children were born of that union: a daughter in August 1978 and a son in January 1980. While living with first wife, his use of alcohol in 1978 became more sporadic. When he did drink, it was in quantity of about twenty-four beers over the course of a three-day weekend. On occasion, he also socialized with friends in a nightclub where he consumed two to four mixed drinks. Applicant's involvement with illegal drugs increased in 1978, both in frequency and variety of drugs ingested. From 1978 to 1990, Applicant smoked marijuana "almost daily," in addition to using hashish on the order of four to six times per year to 1986. Over the 1978 to 1980 time frame, Applicant ingested LSD, speed, and THC 30 to 40 times each. During that same time frame, he abused prescription drugs which had not been prescribed for him (Quaaludes, Valium, Thorazine, Benzodiazepines) ten to twelve times. Once or twice per month from 1978 to 1983, Applicant snorted cocaine. His marriage suffered, due at least in part to his polysubstance abuse, and Applicant and his first wife divorced in March 1981. In 1984 he began to inject cocaine, and over the next two years, he snorted or injected the drug four to six times per month. After managing to remain free from cocaine from 1986 to 1988, Applicant abused the drug four to five times per week over the 1989 to 1990 time frame. On about twelve occasions between 1986 and 1990, Applicant consumed alcohol to the point of blackout.

Applicant financed his drug habit through criminal activity. On occasion from 1974 to 1986, Applicant engaged in the illegal sale of marijuana to others, using the proceeds to obtain the drug for his personal consumption. Between 1978 and 1980, Applicant sold various illegal "pills" (LSD, speed) to obtain his own supply for free. On several occasions over the 1980 to 1990 time period, Applicant tried to sell cocaine to make a little profit, but he had little success as he would normally ingest the drug before he could sell it. In addition to stealing from family members, he broke into homes of local residents and stole items which he sold to obtain the funds to purchase more drugs. While some of his criminal activity went undetected by local police, Applicant was arrested on a number of occasions between 1979 and 1990, as follows:

Under suspicion for illegal drug sales after he had sold marijuana out of his residence to an undercover local cop, the police in December 1979 arrested Applicant for possession of a class C substance with intent to sell and possession of a class D substance with intent to sell after they found marijuana, speed, and LSD on a table in his home. Applicant was sentenced to two years in prison, suspended.

In late March 1980, in return for money or drugs, Applicant served as the driver in the breaking and entering of a local residence by two of his acquaintances. Apprehended near the scene by the police, Applicant was charged with breaking and entering in the daytime and with larceny. Applicant pleaded not guilty to both charges, but was found guilty and sentenced in May 1980 to a term of one year (suspended) on each count.

On an occasion in 1981, Applicant was arrested for drinking in public (a local parking lot). Applicant maintains he had not consumed alcohol and had been falsely implicated by another individual who had been drinking beer, but he was found guilty of the offense in court.

Circa November 1981, Applicant stopped paying child support for his two children because his ex-wife was on welfare and she would not allow him to see their children. A judgment was awarded against him for child support arrearage in the amount of $24,000.00. In about April 1988, Applicant contacted the state department of revenue to make arrangements for repayment of back child support. He made sporadic payments thereafter until 1996 when he arranged

for repayment through automatic deductions from his pay.

In March 1990, Applicant was arrested during a "sting operation" at an apartment house under surveillance by police for illegal drug sales activity. As he entered the apartment building, Applicant was thrown against the wall and arrested for possession of a class B substance (cocaine), which he claims was planted on him by the police officer. Applicant pleaded not guilty in court and the charge was dismissed on payment of $100 court costs.[(2)]

In early November 1990, Applicant and an acquaintance broke into a local residence from which they stole property valued at more than $250.00.[(3)] They were not apprehended at that time. Over the course of the weekend, the acquaintance returned back to the house and removed other items, including an automobile. After he was caught driving this stolen car, Applicant's acquaintance told the police of Applicant's involvement. Arrested on a complaint of breaking and entering in the nighttime with intent to commit a felony, and larceny of property valued at more than $250.00, Applicant pleaded not guilty at his arraignment. While awaiting trial, he was incarcerated in the city jail. Applicant used marijuana and drank alcohol to December 14, 1990, as he was able to obtain the mood-altering substances when he was in jail. On posting bond on December 15, 1990, he was released from confinement. At his appearance in court one week later, sufficient facts were found for guilty findings on both counts, and Applicant was sentenced on each count to eighteen months in the house of correction, execution stayed, and he was ordered to pay $50.00 to the victim witness fund.

With the resolve to remain drug and alcohol free, Applicant entered a local detoxification center on his discharge from jail and he commenced an affiliation with Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). After three weeks at the facility, he was admitted to a residential short-term intensive program for treatment of alcoholism and substance abuse. There Applicant participated in daily group therapy, individual counseling, alcohol education sessions, nightly AA meetings, and recreation activities. At his graduation from the program on February 12, 1991, it was suggested to him that he go to a coed halfway house located next door. Applicant instead chose to continue his recovery efforts at an all-male halfway house where he felt he could better focus on his recovery. For the next six months, Applicant resided in the all-male halfway house where he was an active participant in all aspects of the program and supportive of fellow residents. In addition, he was involved in self-help groups in the local community. About two months into his stay at the halfway house, Applicant began working, initially as a janitor at a gym next door.

Following his discharge from the halfway house in August 1991, Applicant resided in an all-male sober house with others pursuing recovery from substance abuse. He continued aftercare treatment at the halfway house until late November 1991 while attending AA and/or NA on a daily basis. In December 1991, while at a twelve-step meeting, Applicant met the person who would become his first sponsor.

In March 1992, Applicant commenced voluntary individual psychotherapy to help him deal with issues surrounding not having his two children in his life as well as to ensure he would remain drug and alcohol free. He received counseling from a therapist affiliated with a local private practice until July 1994. Over the course of his two years with her, he demonstrated a sufficient pattern of "honest, healthy living" for her to conclude he would maintain positive contact with his children if he were allowed visitation.

In late August 1992, Applicant was stopped for speeding. After a check of his record indicated that his license had been suspended, Applicant was issued citations for operating after suspension as well as for speeding. In court, Applicant paid a fine for speeding. The operating after suspension charge was dismissed as the report of license suspension was a computer error.

In September 1992, Applicant commenced studies in manufacturing engineering technology at a local institute of technology. An older student, Applicant became a mentor for others in his field of study. He was also directly involved with the drug awareness program on campus, giving presentations to incoming freshmen. In 1993, due to school demands Applicant reduced his attendance at self-help fellowship meetings (primarily NA) from daily to two to three days per week. Circa 1994, Applicant's sponsor elected to continue to pursue his personal recovery through AA, so Applicant obtained a new sponsor, with whom he had been acquainted since his early days in recovery. Applicant impressed this individual with his commitment to recovery, as he called his sponsor daily as well as attended NA regularly.

In September 1995, as a co-op student, Applicant went to work as an engineering trainee for company #1. After his year there, Applicant continued a friendship with the process engineer with whom he shared his office. This process engineer considered Applicant sufficiently responsible and trustworthy to invite him to become a member of a small investment club. Provided with the password and account number, Applicant can access the account, which has a current value of about $150,000.00.

In August 1995, Applicant got married to a woman he met through AA/NA fellowship meetings. She is a recovering substance abuser. Applicant spoke at an AA meeting on his five-year anniversary, which was attended by family members including a sister.

Applicant distinguished himself academically in his undergraduate studies, exhibiting a high level of technical aptitude as well as a diligent work ethic. In September 1996, he earned his bachelor of science degree in manufacturing engineering with highest honors. In addition to graduating at the top of his class, he was selected over the top students in all the other departments for the alumni award, which is given by the entire faculty to the student who has demonstrated outstanding academic and overall achievement. On earning his degree, Applicant secured a position as a process engineer with a local corporation (company #2). He began automatic deductions from his paycheck to repay the arrearage due in his child support obligation for his two children by his first wife. In late June 1997, he and his new wife had their first child, a daughter.

While working as a process engineer full-time, Applicant was asked if he would return to the technological institute as an adjunct professor to teach a computer numerical control certificate course in the evenings. Applicant accepted the offer, and since January 1998, he has been teaching two nights per week. Applicant has proven to be one of the school's best technical instructors with student evaluations consistently very favorable.

In October 1998, Applicant and his spouse had a son. He changed jobs that same month, going to work as a senior test engineer for company #3 until early arch 1999, when he commenced his current employment as a senior manufacturing engineer with the defense contractor firm (company #4). Eager to learn, Applicant has proven to be a conscientious, professional employee with a solid work ethic. He has demonstrated technical expertise as well as a willingness to take on new responsibilities.

In conjunction with his employer's request that he be granted a security clearance for his duties, Applicant on March 9, 1999, executed a security clearance application (SF 86) on which he listed his criminal arrests, his child support arrearage, as well as his treatment for substance abuse in 1991, which he described as a "turning point" in his life, and his mental health counseling from March 1992 to July 1994. Applicant provided details about his alcohol and drug abuse during an interview with a Defense Security Service (DSS) special agent in mid-July 2000. In that interview, Applicant claimed with respect to his drug-related arrest in December 1979 that a stranger had come to his apartment to purchase marijuana and he had been arrested after he refused to sell the person any drugs. Regarding his participation in the November 1990 breaking and entering, Applicant told the agent it was limited to driving a friend to the residence. Applicant denied entering the residence itself or taking any items from it.

By October 2000, Applicant had paid off his child support arrearage for his two older children and the wage deduction was stopped on court order. In September 2001, his case was closed as he no longer owed any current child support.

Alcohol and drug free since his last use on December 14, 1990, Applicant does not intend any future use of alcohol or illegal drugs. Actively committed to the NA fellowship particularly, he sponsors others in recovery, speaks at prisons and detoxification facilities once per month, attends meetings two to three times per week and works on the twelve steps and traditions with his sponsor. On invitation, Applicant spoke at a NA convention about his recovery. In the last two years, he has not expressed to his sponsor any craving or desire to use alcohol or illegal drugs. While Applicant and his spouse maintain an alcohol-free house, Applicant has been in situations where alcohol has been consumed by others, including functions with his parents and siblings as well as fishing trips with a former coworker from company #2. Applicant has not partaken of any alcoholic beverages on these occasions. Applicant does not associate with any known drug users.

Family members and friends, including a police officer, who knew the Applicant when he was actively abusing mood-

altering substances, describe Applicant as being a "different" person now than he was then. More upbeat and interactive with his family, Applicant has apologized to his parents and siblings for the pain he caused them in the past.

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.

* * *

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 guideline J:

Primarily to support a significant illegal substance abuse habit, Applicant engaged in repeated serious criminal conduct from 1979 to November 1990. Applicant not only sold illegal drugs (primarily marijuana but also cocaine when he did not use up his supply before he could sell it), but he also broke into residences from which he stole property to sell. In early 1980, he was sentenced to two years (suspended) for possession of class C and class D substances with intent to sell in late December 1979. Five months later, in May 1980, he was sentenced to one year (suspended) for his role in driving two acquaintances who broke into a home in the daytime. In November 1990, he and a companion broke into a residence in the nighttime, stealing property valued over $250.00. For this conduct, committed when he was thirty years of age, Applicant was sentenced to eighteen months of confinement. Under adjudicative guideline J, 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.

There is no evidence he has engaged since November 1990 in any illegal drug use or sales, in any breaking into residences, or in any theft of property to sell for drug money. There is substantial evidence in the testimonies of family members, friends and coworkers and in the documentation corroborating completion of treatment programs, including an intensive residential program and individual psychotherapy, that Applicant has successfully dealt with his substance abuse problem, which contributed to his involvement in criminal acts.[(6)] An attendee at AA or NA fellowship meetings daily from December 15, 1990 to 1993 and two to three days weekly thereafter, Applicant has demonstrated a sincere commitment to maintain a lifestyle free of any mood-altering substances. As confirmed by the credible account of his current sponsor in NA, Applicant is actively working the twelve steps. Once per month, he brings the message of recovery to prisons and other institutions. He socializes primarily with others in recovery and has no current association with any known illegal drug users. Applicant's present circumstances and attitude are sufficiently different from what they were in 1990 to where there is seen little risk of future substance abuse, either drug or alcohol, on his part.

While Applicant is to be commended for the significant strides he has made in the last ten years to recover from a very serious polysubstance abuse problem, abstention from psychoactive substances does not mitigate the underlying judgment concerns raised by felonious criminal behavior. Applicant was cognizant of the nature of his criminal actions at the times they were committed. Rehabilitation from such knowing and willful criminal conduct requires 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 criminal arrests and convictions, and he listed his arrest record on his SF 86. Yet, during the investigation and adjudication of his security clearance, Applicant provided materially inconsistent accounts when describing the extent of his criminal culpability. Regarding his December 1979 illegal possession with

intent to sell, Applicant told the Defense Security Service agent in July 2000 that friends were visiting his apartment and there were two ounces of marijuana, powdered form speed, and two pills of LSD on the table when a stranger came to the door and asked to purchase marijuana. Applicant claimed that after he told the person he would not sell him marijuana, the police came up the stairs and forced open the door. At his hearing, Applicant maintained he had some prior dealings with the "stranger" (who turned out to be a police officer), which included smoking marijuana with him "sometimes." Applicant also testified that the police on the occasion of this arrest took drugs from the pockets of others present and charged him with possession of those substances.[(7)]

As for his role in the November 1990 breaking and entering, Applicant in July 2000 denied to the DSS agent that he had ever entered the house or taken any items from the house. Yet, on cross-examination at his hearing, Applicant admitted he and his companion had entered the home with the intent to burglarize it and that he himself took property valued over $250.00. Applicant's lack of complete candor at times during the investigation and adjudication of his security clearance creates significant doubt as to whether he possesses the requisite degree of judgment, trustworthiness and reliability which must be demanded of those with access. There is also an unacceptable tendency to shift the blame to others for some of his criminal behavior. It is not clear that he is successfully rehabilitated of his criminal conduct.

Furthermore, as reflected in the sentences imposed for his December 1979 possession of class C and class D controlled dangerous substances, and for his November 1990 breaking and entering in the nighttime and larceny of property over $250.00, some of Applicant's criminal violations were especially egregious. Twice convicted of criminal offenses for which he was sentenced to prison terms in excess of one year, 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.). In light of the aforesaid concerns, I cannot recommend further consideration of this case for a wavier of 10 U.S.C. 986.

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.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

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 has consistently maintained the officer planted the drug on him. There is no proof Applicant had cocaine in his possession at the time he entered the apartment building. There is conflicting evidence in the record as to whether Applicant intended to purchase cocaine on that occasion. During his interview with a Defense Security Service special agent in July 2000, Applicant stated, "In Mar 90 one day I went to a known home that sold drugs to purchase drugs." (Ex. 2). At his hearing, Applicant testified on cross-examination he was not there to purchase drugs, but went to the residence "to meet somebody. . .To use drugs." (Transcript p. 229). Whether he was there to buy drugs or to use drugs with an acquaintance, he clearly had the intent to engage in illegal conduct.

3. When interviewed by the Defense Security Service Special Agent in July 2000, Applicant maintained the extent of his involvement in the November 1990 breaking and entering was to drive a friend to a house where the friend robbed the residence. Applicant claimed he drove away after driving the person there. He denied going into the house at any time or taking any items from the house. (See Ex. 2). However, at his hearing in October 2001, Applicant admitted he entered the house with the intent to burglarize it:

Q So let's go back to the beginning. You broke into a home; is that right?

A Yes. There was another individual from [city and state] and I.

Q Okay. And the two of you entered the home and you had the intent to burglarize it?

A Yes.

Q And you took--now I'm talking about what you, with or without this other gentlemen, but that you took property that was valued over $250; is that right?

A Yes.

Q Okay. You pled guilty to that when you were arraigned?

A I may have at the suggestion of my lawyer. Yeah.

Q Okay. In any event, you were found guilty, right?

A Yes, I was.

Q And you were sentenced to 18 months confinement?

A Yes.

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. Whereas Applicant broke into residences and stole property primarily to obtain funds to support his drug habit, his substance abuse problem played a large part in his criminal activity. However, the voluntary commission of criminal acts raises fundamental issues of judgment and character. There is no evidence Applicant was under the influence of alcohol or illicit drugs when he broke into houses with his friends.

7. Applicant testified as follows:

That was another one of [city X's] finest. He used to come to my house to purchase marijuana. I didn't know he was a cop. And the reason I didn't know he was a cop was because he sat there and smoked marijuana with us sometimes. The day that they kicked in the door without a search warrant--you know, I mean, all this stuff, just to relive this, I shouldn't have been doing what I was doing. But you know, it was just--I'd like to point out that--I mean, that was written up in the paper that I was this huge. . .drug pusher, and the headlines alone humiliated my family. And what they found in the apartment was two ounces of pot, a guy sitting at the table--I mean, they were led by the cop that used to buy pot from me, denied ever being in the house. There was a guy sitting at the time that had a couple of pills in his pocket. They took them and put them on the table and said, this belongs to you. Another guy had a little--in the corner of a bag he had some speed, crystal methadone, and they took that out of his pocket and they put it on the table, they told him to leave and that became all mine and I was this big drug pusher. . . . (Transcript pp. 211-12).