DATE: May 14, 2002

In Re:

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

Applicant for Security Clearance

ISCR Case No. 01-25564

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A user of marijuana from the early 1980s to September 2000 and of cocaine from 1990 to November 1999, Applicant deliberately falsified his July 1999 security clearance application by denying any drug involvement. In an August 2000 sworn statement, he misrepresented the facts surrounding his arrest for possession of cocaine in July 1993 and falsely claimed complete abstention from the use of illegal drugs throughout his employment with the defense contractor, as he feared he would lose his clearance and/or his job if he reported his drug use. Clearance is denied.

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), issued a Statement of Reasons (SOR), dated January 13, 2002, 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 illegal drug involvement (guideline H), specifically the use of marijuana from the 1980s to September 2000 and cocaine from November 1990 to November 1999, and on guideline E (personal conduct) and guideline J (criminal conduct) related to deliberate falsification of a July 1999 security clearance application and an August 2000 sworn statement.

On January 29, 2002, 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 March 26, 2002. Pursuant to formal notice dated March 29, 2002, the hearing was scheduled for April 23, 2002. At the hearing held as scheduled, the Government submitted eight documentary exhibits. Applicant testified on his own behalf. With the receipt in this office on May 1, 2002, of the transcript of the hearing, this 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 painter/sandblaster employed by a defense contractor since mid-July 1982. He has a company granted confidential security clearance which he has held for most of his employ. Applicant seeks a secret security clearance for his defense-related duties.

Applicant has a history of drunk driving as well as illegal drug use (marijuana and cocaine). On arriving for work for the defense contractor in 1982, Applicant was arrested for driving while intoxicated (DWI). Found to have at least one unopened beer in his back seat, Applicant had been drinking earlier in the day. He was ordered to attend an alcohol education class.

A user of marijuana on average four times per year when socializing with friends from the early 1980s to September 2000, Applicant began to use cocaine in 1990. On average twice per year for the next nine years until November 1999, Applicant inhaled or snorted cocaine while watching sporting events or otherwise socializing with friends, or on special occasions such as holidays or his birthday. Usually provided the cocaine by his friends, Applicant ordinarily paid $20.00 to $50.00 for the cocaine he used. On at least one occasion, which was in mid-July 1993, Applicant purchased cocaine himself from a street dealer. Later that day, Applicant went to a local club where he became involved in an argument with an acquaintance to whom Applicant had lent money. The argument escalated into a physical altercation outside the club. After Applicant threw the acquaintance into a parked car, causing damage to the vehicle, he fled from the scene. Pursued on foot by the police, Applicant attempted several time to elude the officers, who used stun spray on him with no effect. Applicant continued to struggle with the officers on his capture, and it took several officers to subdue him. As Applicant was assisted to his feet for transport to the police station, officers observed on the ground directly underneath where Applicant had been laying a clear plastic baggie containing a white powdery substance which tested positive for cocaine (5.5 grams). Applicant was arrested and charged with breach of peace, criminal mischief third degree, possession of cocaine/possession with intent to sell (a felony) and interfering with a police officer. Convicted of possession of narcotics, Applicant was placed on accelerated rehabilitation with two years of supervised probation and conditions.[(1)] The remaining charges were nolle prossed.

In mid-November 1994, Applicant was observed by a highway patrolman to be driving erratically. Applicant ignored the trooper's signal to stop, and he led the officer on a 7.9 mile pursuit before he eventually pulled over. Arrested for driving while intoxicated, Applicant admitted to the officer he had consumed six beers and a few shots of rum at a friend's home. Applicant submitted to two breathalyser tests with the results .139% blood alcohol content and .123% blood alcohol content, respectively. In mid-December 1994, Applicant's operator's license was suspended because of this arrest.

On an occasion in early January 1995, Applicant consumed four beers and four shots of gin at his home. Following an argument with his wife over his drinking, Applicant proceeded to drive to a friend's home, knowing as he did so that his operator's license had been suspended. Local police on routine patrol attempted to stop Applicant for having an obstructed windshield (windshield iced up). As the officer exited his cruiser to approach Applicant's vehicle, Applicant pulled away. The officer pursued Applicant and placed him under arrest. Detecting the odor of alcohol on Applicant and observing him to have bloodshot eyes and slurred speech, the officer advised Applicant he would be administered breath tests. Applicant refused to submit to any chemical testing and he was booked on charges of windshield obstructed, operating under the influence, failure to submit to test, and failure to renew registration. On the drunk driving charge, Applicant was subsequently sentenced to thirty days in jail and ordered to complete an eleven-week alcohol program. For driving after his license was suspended, his operating privileges were revoked for eighteen months.

In conjunction with his employer's request that he be granted a secret security clearance for his duties, Applicant on July 22, 1999, executed a security clearance application (SF 86). In response to inquiry as to whether he had ever been charged with or convicted of a felony offense, Applicant listed his drug conviction, indicating he was placed on accelerated rehabilitation. Applicant also responded affirmatively to question 24 regarding alcohol/drug offenses ["Have you ever been charged with or convicted of any offenses 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."], and listed his 1995 conviction for drunk driving and driving while suspended.[(2)] Applicant did not disclose his arrest in November 1994 for DWI, but it was not with an intent to conceal his drunk driving record, as he was sentenced at the same time for the 1994 and 1995 drunk driving incidents. He failed to recall the 1982 DWI at the time he completed his SF 86. Concerned he might lose his security clearance and/or job if he disclosed his use of marijuana and cocaine on his SF 86, Applicant responded "No" to inquiries regarding any use of illegal drugs in the last seven years (question 27) and any use ever while in a sensitive position, including while possessing a security clearance (question 28).

On August 24, 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS), in part, about his alcohol usage, alcohol-related arrests, and the drug offense which he listed on his SF 86. Out of concern he might lose his clearance and/or employment, Applicant falsely denied any possession of cocaine on the occasion of his drug arrest, telling the agent the cocaine belonged to the individual with whom he had the altercation. He also falsely claimed he had "completely abstained from the use of all illegal/dangerous drugs, to specifically include cocaine and marijuana throughout [his] period of employment" with the defense contractor.

Applicant executed a signed, sworn statement containing these misrepresentations.

Applicant smoked marijuana on at least one occasion in September 2000 while he was on vacation.

On October 27, 2000, Applicant was reinterviewed by the DSS special agent. Applicant admitted having provided in his August 24, 2000, interview and sworn statement "inaccurate information" regarding his possession of cocaine on the occasion of his arrest in July 1993 and "erroneous data" as to his involvement with illegal drugs. Applicant admitted to the agent he had purchased cocaine earlier on the day of his arrest for possession in July 1993 and he had attempted to elude police because he had cocaine in his shoe. Acknowledging he had lied on August 24, 2000, about his drug use because he was afraid of losing his security clearance and his job, Applicant detailed his involvement with marijuana from the 1980s to September 2000, and with cocaine from approximately 1990 to November 1999. Applicant denied any intent to use any illegal drug in the future, stating as follows:

It is my definite intention to abstain completely from all illegal drug use, to specifically include marijuana and cocaine usage, in the future to avoid to the loss of my security clearance and job. I realize that I was wrong for deliberately providing inaccurate information during my prior DSS interviews and in my DSS Aug 00 statement; however, I did not want to jeopardize my security clearance and/or job, especially since neither cocaine nor marijuana have been significant parts of my life and have no bearing on my job or performance. I now understand that despite the fact that my involvement with marijuana and/or cocaine have been minimal, I must not be involved in their usage or in any activity that is considered improper or illegal.

Applicant does not intend to use any illicit drug in the future and is willing to submit to urinalyses to prove his abstention. Applicant continues to associate with "a lot of friends" who still use illegal drugs, but he has informed them he can no longer use illegal drugs. Applicant was last offered marijuana and cocaine in April 2002, cocaine just a week before his April 23, 2002, hearing.

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:

GUIDELINE H

Drug Involvement

E2.A8.1.1. The Concern:

E2.A8.1.1.1. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

E2.A8.1.1.2. Drugs are defined as mood and behavior-altering substances, and include:

E2.A.8.1.1.2.1. Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

E2.A8.1.1.2.2. Inhalants and other similar substances.

E2.A8.1.1.3. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

E2.A8.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A8.1.2.1. Any drug abuse (see above definition);

E3.A8.1.3. Conditions that could mitigate security concerns include:

None.

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.

GUIDELINE J

Criminal Conduct

E2.A10.1.1. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged

E2.A10.1.2.2. A single serious crime or multiple lesser offenses

E2.A10.1.3. 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, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines H, E and J:

On average four times per year, Applicant smoked marijuana when socializing with friends from the early 1980s to at least September 2000. Over a nine year time span, from 1990 to November 1999, Applicant inhaled or snorted cocaine with friends. Although his abuse was casual and infrequent in nature, his involvement spanned most of his adult life. On an occasion in July 1993, Applicant was caught with possession of cocaine which he had purchased from a street dealer earlier that day. Although there is no evidence of any cocaine use by Applicant since November 1999 or of marijuana

use since sometime in September 2000, this illegal drug involvement has security implications which go beyond the issue of drug-related mental and/or physical impairment which could negatively impact his ability to safeguard classified information. Fearing disclosure of his illegal drug use could cost him his clearance and/or defense-related job, Applicant falsely denied any drug use when he completed his SF 86 in July 1999. Clearly, Applicant recognized the Department of Defense would not look favorably on his off-duty marijuana and cocaine use. His use of cocaine on at least one occasion thereafter, and his continued involvement with marijuana even after he had met with a DSS agent in August 2000, reflect disregard on his part of his obligations as a cleared employee. Disqualifying conditions (DC) E2.A8.1.2.1., any drug abuse, and E2.A8.1.2.2., illegal drug possession, including purchase, under guideline H must be considered in evaluating Applicant's security worthiness.

The Directive provides for mitigation of illegal drug involvement if the drug use was not recent (MC E2.A8.1.3.1.), it was isolated or aberrational (MC E2.A8.1.3.2.), there is demonstrated intent not to abuse any drugs in the future (MC E2.A8.1.3.3.), or satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional (MC E2.A8.1.3.4.). Strictly in terms of the passage of time, his drug involvement is not especially recent. However, a determination as to the risk of relapse must take into account not only the date of last use, but also the extent and duration of involvement and the circumstances of his use. Applicant used both marijuana and cocaine recreationally, in the context of socializing with his friends. He continues to associate with these friends who still use illegal drugs, but maintains he has no intent to use any illegal drug in the future. For MC E2.A8.1.3.3. to apply, it is not enough that one state an intent to forego any future drug involvement; the intent must be demonstrated by concrete actions taken in reform. The more serious or long-term the drug abuse, the stronger the evidence of rehabilitation must be to overcome the negative security implications of that conduct. Applicant's apparent abstention since Fall 2000 is some proof of his ability to abstain. While Applicant testified he told his friends two years ago that he could no longer use illegal drugs, friends continued to offer him cocaine and marijuana as recently as April 2002. To Applicant's credit, he declined the offers, but questions persist about his reform in light of his failure to completely remove himself from situations which pose a risk of relapse. Unable to conclude with a reasonable degree of certainty that Applicant's drug use is safely behind him, adverse findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e. of the SOR.

With respect to guideline E, personal conduct, the Government alleged Applicant failed to disclose material facts about his criminal record and drug abuse history when he completed his SF 86 in July 1999. Applicant disclosed on his SF 86 in response to criminal record inquiries that he had been placed on accelerated rehabilitation for a "drug offense" and been convicted of a 1995 DWI. While he did not list prior arrests for drunk driving in 1982 and November 1994 for drunk driving, his omission of these offenses was not intentional, but rather due to lack of recall of the first and to his understanding that the 1994 offense was adjudicated with the January 1995 incident (which he listed). Subparagraphs 2.a.(1) and 2.a.(2) are resolved in his favor.[(3)] However, Applicant engaged in deliberate falsification within the ambit of guideline E when he responded negatively to both questions 27 (any illegal drug use in the seven years preceding the security application) and 28 (any use of an illegal drug while in a sensitive position). Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities raises serious personal conduct concerns. (See DC E2.A5.1.2.2.). Furthermore, when presented with the opportunity to set the record straight during his first subject interview, Applicant falsely claimed, as reflected in a signed sworn statement, he had "completely abstained from the use of all illegal/dangerous drugs, to specifically include cocaine and marijuana throughout [his] period of [defense-related] employment." He also lied about the circumstances which led to his drug offense, denying any possession of the cocaine found by the police on that occasion. DC E2.A5.1.2.3. (deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination) must be considered as well.

Under the Directive's adjudicative guidelines pertinent to personal conduct, the knowing and willful misrepresentation of material facts is potentially mitigated provided the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability (MC E2.A5.1.3.1.); the falsification was isolated, not recent, and the individual has subsequently presented correct information voluntarily (MC E2.A5.1.3.2.); the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (MC E2.A5.1.3.3.); or the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized

personnel, and the previously omitted information was promptly and fully provided (MC E2.A5.1.3.4.). None of these mitigating conditions apply in this case. Applicant having continued to use both cocaine and marijuana after he completed his SF 86, the information omitted was clearly pertinent to a determination of his judgment, trustworthiness or reliability. In addition to the demonstrated disregard for the laws proscribing involvement with controlled dangerous substances, there is an unacceptable risk of disclosure of classified information when one is under the influence. His eventual disclosure of his illegal drug involvement during a second interview with a DSS agent cannot reasonably be viewed as a prompt, good faith effort at rectification. It is reasonable to infer on this record that the agent conducted the second interview to resolve discrepancies between what Applicant had reported with respect to his drug offense and what was reported in police records of the incident obtained by the agent during the course of his investigation. Applicant testified the agent had the "whole report" in front of him during this second interview, and it was then he decided to tell the agent what he had done.[(4)]

Furthermore, when Applicant signed the SF 86 in July 1999 and his sworn statement in August 2000, he was placed on notice that a knowing and willful false statement could be punished by fine or imprisonment or both pursuant to Title 18, Section 1001 of the United States Code. In choosing to submit to the Government documents which knowingly contained false information about his drug involvement, Applicant committed repeated criminal conduct.[(5)]

Conduct involving false statement has very serious implications, and he bears a heavy burden to demonstrate he is worthy of a security clearance. Under the adjudicative guidelines pertinent to criminal conduct, E2.A10.1.2.1. (allegations of criminal conduct, regardless of whether the person was formally charged) and E2.A10.1.2.2. (a single serious crime or multiple lesser offenses) must be considered in an evaluation of Applicant's current security suitability.

The recency and repeated nature of Applicant's false statements preclude favorable consideration of either mitigating condition E2.A10.1.3.1. (criminal behavior was not recent) or E2.A10.1.3.2. (crime was an isolated incident). Although Applicant during his second interview detailed his marijuana use to September 2000 and his cocaine use to November 1999, and he admitted he had been in possession of the cocaine on the occasion of his arrest in July 1993, the disclosures came only after Applicant realized the Government had records implicating him. Concerns persist as to whether Applicant understands his obligation to be completely candid with the Government. Asked at the hearing why he denied during his first interview that he had ever been involved with cocaine, Applicant testified: "Like I said, I was afraid of losing my job, man. I knew what my record was all about and he had everything sitting right in front of him so, like I said, that was a trick question and I failed that one." (*See* Transcript p. 51). There is nothing in the record which indicates the agent endeavored to confuse Applicant during the interview, or that Applicant did not understand the agent's inquiry. On balance, his evidence in reform is not sufficient to overcome the doubts for his judgment, reliability and trustworthiness caused by his repeated misrepresentations about his illegal drug involvement. Subparagraphs 2.b. (1), 2.b.(2.), 2.c.(1), 2.c.(2), 2.d., and 3.a. are resolved against him.

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 H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

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

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

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

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

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

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

Subparagraph 2.d.: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. The Government alleges Applicant was called back to court in April 1995 for failure to comply with the requirement to participate in a substance abuse program, and that Applicant in July 1995 pleaded guilty to felony possession of cocaine for which he was sentenced to a year in jail, execution suspended after 30 days, and awarded two years probation. The Government did not offer any court records to confirm Applicant failed to comply with the requirements of his accelerated rehabilitation. The Government submitted as Exhibit 4 a record from Applicant's probation officer in which she indicates Applicant received two years probation for possession of narcotics, which was successfully completed in July 1995. However, it is also noted that Applicant provided on the SF 86 an April 1995 date for the drug charge..

2. The dates Applicant provided with respect to the 1995 DWI and 1993 possession of narcotics offenses do not correspond to the arrest dates.

3. When he responded to the SOR, Applicant admitted the allegations set forth in subparagraph 2.a.(1) and 2.a.(2). After considering all the evidence and Applicant's *pro se* status, his admissions appear to have been to the underlying criminal charges rather than to the intentional concealment of those offenses set forth in 2.a.(1) and 2.a.(2). Applicant admitted to the agent in October 2000 that he had lied about his drug use in an effort to protect his job and clearance. There is no similar confession with regard to the criminal charges omitted from his SF 86. Applicant told the agent he forgot about the 1982 incident. While he did not directly address the omission of the November 1994 arrest from his SF 86, he had previously indicated the case had been disposed of "simultaneously" with the 1995 charge, which he did list.

4. *See* transcript p. 39.

5. 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.