DATE: January 21, 2003

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In Re:

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

Applicant for Security Clearance

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ISCR Case No. 02-08498

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

**FOR APPLICANT**

***Pro Se***

**SYNOPSIS**

Applicant used marijuana from 1975/76 to the early 1990s and from about 1996 to at least late October 2001. After testing positive for marijuana during a random urinalysis in late November 2001, he was suspended for thirty days without pay from his defense contractor employ. Applicant was not candid about his illegal drug involvement on a January 2001 security clearance application or in two interviews with the Defense Security Service in December 2001. Security concerns persist because of his illegal drug involvement and repeated efforts to conceal his drug use from the Government. 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 May 3, 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: 1) illegal drug involvement (guideline H), because of a history of marijuana use, including after he had been granted an interim secret security clearance; 2) personal conduct (guideline E) and criminal conduct (guideline J) related to deliberate falsification [misrepresentation of his illegal drug use on a January 2001 Questionnaire for National Security Positions (QNSP) and during two Defense Security Service (DSS) interviews in December 2001 and failure to disclose 1992 driving while intoxicated and 1995 assault and battery criminal charges on his QNSP]; and 3) criminal conduct related to failure to timely file state income tax returns.

On May 15, 2002, Applicant filed a response to the SOR in which he answered the allegations in general terms and requested a hearing before a DOHA Administrative Judge. On June 11, 2002, Applicant submitted specific responses to each of the SOR allegations. The case was assigned to me on August 14, 2002, and pursuant to formal notice dated

August 23, 2002, a hearing was scheduled for September 13, 2002. At the hearing held as scheduled, the Government's case consisted of ten documentary exhibits. Applicant submitted eight exhibits. Testimony was taken from the Applicant, a work supervisor and Applicant's "brother-in-law" on Applicant's behalf.[(1)] On motion of the Government, subparagraph 3.d. of the SOR was amended to allege willful failure to file a state income tax return for tax year 1993 vice 1994.[(2)] A transcript of the hearing was received on September 24, 2002. The record was held open for two weeks after the hearing for Applicant to submit documentation of his work record and any filing of state income tax returns for the tax years alleged in the SOR. The record closed on September 27, 2002, with no additional documentation submitted by Applicant.

## 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 48-year-old commercially licensed truck driver who worked as a driver and forklift operator for a defense contractor (company A) most recently from 2001 to mid-June 2002.[(3)]

As a trumpet player touring with a band from 1975 to 1979, Applicant smoked marijuana on occasion while tuning up with other band members. By July 1979, he was separated from his spouse, who he had married in October 1979, and living with his girlfriend. On arriving home from work one day in July 1979, Applicant had an altercation with his spouse outside of his residence, during which he fired a shot at her tire. On his spouse's complaint, Applicant was arrested for aggravated assault, reckless endangerment of another person, violation of the uniform firearms act, and discharging a firearm in the city. Applicant was fined $66.00 for discharging the firearm and the remaining counts were discharged. Applicant and his spouse divorced in October 1979.

Applicant continued to smoke marijuana on an occasional basis throughout the 1980s and into the early 1990s, although he refrained from drug use when on duty as an armed security guard. While working as an armed security guard contracted to the county housing authority in May 1986, Applicant and a partner were called to a dispute at a local housing project. As Applicant was engaged in a physical struggle with a couple of men, his gun discharged, killing one of the men. Charged with felony criminal homicide, Applicant was acquitted of the offense following a jury trial.

By mid-1987, Applicant was working for defense contractor A in state X. In late August 1987, he completed training as a radiation worker, and the following month he was granted a confidential security clearance for his duties. In December 1988, he successfully completed post entry level training as a painter. Circa August 1990, Applicant's mother suffered from a stroke. Applicant, commuting on weekends, cared for his mother until she passed away in April 1991. Around the time of her death, Applicant learned that his sister had terminal cancer. Applicant relocated to state Y and took care of his sister until her death in mid-December 1992. A few days before she died, Applicant was awarded probation before judgment for a drunk driving offense. For about 39 weeks in 1992, Applicant collected $10,000.00 in unemployment compensation from state X.

As of 1993, Applicant was residing with his elderly aunt in state Y while working as a crew chief for a moving company. Following his aunt's death in August 1993, the house was sold and Applicant rented a home in the area. Applicant filed his federal income tax returns while living in state Y, although he underpaid taxes for tax years 1992 and 1993 and refunds for later years were attached in repayment.

In early August 1995, Applicant was arrested for misdemeanor assault and battery after he pushed his then live-in girlfriend during an argument. The charge was placed on the stet docket.

With savings earned from gainful employment, Applicant moved back to state X in about 1996.[(4)] Applicant resumed an involvement with marijuana, using it occasionally during band rehearsals and when socializing at parties until late October 2001. During the 1996 to late October 2001 time frame, Applicant purchased small quantities of marijuana ($10.00 bags) for personal consumption and to share with others.

In November 1997, Applicant was arrested for driving under the influence (DUI) after he failed a field sobriety test at the roadside and a breathalyzer administered at the station. Applicant was placed in a diversion program with the

condition he complete a ten-week program at a local alcohol rehabilitation facility. Applicant complied with the terms, and the charge was dismissed after one year.

While Applicant was working as a truck driver and residing in state X, state Y in March 2000 filed a judgment lien against him for delinquent and unpaid income taxes for tax years 1991 and 1993 totaling $1,269.37, inclusive of interest and penalties. Applicant was unaware of the lien as the notice of the lien was sent to his address of record as of 1993.

In early 2001, Applicant applied to return to work at company A. Required to obtain a secret security clearance, Applicant completed on January 15, 2001, a Questionnaire for National Security Positions (QNSP) on which he listed in response to question 23 concerning his police record his acquittal of criminal homicide in 1986, and a DUI for which he had to attend ten weeks of meetings. After submitting this questionnaire to his employer, Applicant was contacted for additional information several times by security personnel. Information was then added to his handwritten questionnaire, including the names and addresses of his siblings and children, his counseling at the local alcohol treatment facility from November 1997 to January 1998, the 1984 violation of uniform firearms offense, and use of marijuana to April 1990 three times.[(5)] At the time Applicant signed the form, certifying his statements thereon were true, complete and correct to the best of his knowledge and belief, he had forgotten about the 1992 drunk driving, for which he had been awarded probation before judgment, and the 1995 assault and battery, which had been disposed of by being placed on the stet docket. He deliberately did not disclose his continuing involvement with marijuana from 1996 to 2001 as he feared the drug use would negatively impact his chance of obtaining the requested security clearance. A typewritten version of the security clearance application was subsequently completed on February 2, 2001, from the information provided on the QNSP. Three days later, Applicant was granted an interim secret clearance for his duties as a commercially licensed driver for company A.

Applicant continued to smoke marijuana when socializing with friends, including on an occasion in late October 2001 when he took a couple of hits off a marijuana cigarette. On November 26, 2001, he submitted to a random urinalysis at company A, which tested positive on December 2, 2001, for marijuana metabolite. On being notified of the positive result on December 3, 2001, company A immediately suspended Applicant's driving privileges. That same day, Applicant was interviewed by a Defense Security Service (DSS) special agent about the reason for the suspension of his driving privileges. Unaware at that time of the positive urinalysis, Applicant indicated it had nothing to do with illegal drugs.[(6)] He also denied any marijuana use since 1990.

The following day, Applicant was transported because of the positive drug screen to the yard hospital, where he was notified of the positive result. Applicant declined the offer of a split sample repeat analysis because if that test was positive, he would have lost his job. Applicant was suspended from work without pay for thirty days.

On December 12, 2001, Applicant was reinterviewed by the DSS agent. Applicant falsely told the agent that his recent positive urinalysis was due to his ingestion of a prescription drug which he had taken from his sister to prevent nausea.

On January 7, 2002, Applicant submitted to a follow-up drug screen, which was negative for all substances tested, including cannabinoids, and Applicant returned to work at company A. On January 15, 2002, Applicant was interviewed yet again by the DSS special agent. Applicant discussed his arrest record as well as his involvement with marijuana. Applicant disclosed he smoked marijuana from 1975/76 to 1978/79 while playing in a band with occasional use thereafter, abstained from marijuana when taking care of ill family members in the early 1990s, and resumed use in 1995 when he returned to state X. Applicant indicated a last use of marijuana at the end of October 2001, which resulted in his positive drug screen at company A. He denied any intent to use marijuana in the future, as he had learned his lesson and wanted to keep his job. Applicant admitted purchasing marijuana on occasion, the last time "several months" before his interview. Informed by the agent of an outstanding tax lien levied by state Y, Applicant indicated he would contact state Y and make arrangements to pay any amounts owed. As to why he indicated on his QNSP that he had used marijuana only three times from 1980 to 1990, Applicant admitted he had not answered accurately the question concerning the period and frequency of his use of marijuana as he thought if he did so, he would have a problem getting a clearance.

On January 28, 2002, and on June 13, 2002, Applicant took random drug screens, which were negative for all substances tested. On June 20, 2002, Applicant was "discharged" from his job. Applicant's former supervisor "would

take him back in a moment" based on Applicant's past performance as a hard-working, conscientious employee.

At his hearing in September 2002, Applicant maintained he was committed to remain drug-free. He described his past use of marijuana as "very scarce and varied," and attributed his use in late October 2001 to a slip and to too much partying. Initially not candid about why he did not accurately report his drug use on his January 2001 QNSP, Applicant eventually admitted he had deliberately under reported his illegal drug use on the form.[(7)]

## 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.A8.1.1.2.1. 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);

E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

E2.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.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency

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 judgement, 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 admissions of criminal conduct, regardless of whether the person was formally charged

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 those who testified, I conclude the following with respect to guidelines H, E and J:

With respect to guideline H, drug involvement, Applicant smoked marijuana on a social basis from 1975/76 to the early 1990s, and again from about 1996 to at least the end of October 2001. He purchased small quantities of the drug on occasion for his personal use and that of friends. Drug abuse and/or purchase are potentially security disqualifying under the adjudicative guidelines (*see* E2.A8.1.2.1. and E2.A8.1.2.2.) as it raises questions regarding an individual's willingness or ability to protect classified information. When one is under the influence of mood-altering substances such as marijuana, there is an increased risk of unauthorized disclosure of classified information. Given Applicant continued to smoke marijuana while possessing a commercial driver's license and after being granted an interim secret security clearance, knowing as he did so that illegal drug use was prohibited and he was subject to random drug testing, Applicant bears a particularly heavy burden to demonstrate he is security worthy.

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.). There is no evidence Applicant has used any illicit drug since late October 2001. In January 2002 Applicant indicated he had learned his lesson following his recent positive urinalysis, and had committed himself to a drug-free lifestyle. He testified at his hearing that he has no intent whatsoever to use marijuana in the future. In order for MC E2.A8.1.3.3. to apply in his favor, the statement of intent must be accompanied by convincing concrete actions taken in reform. It is all the more necessary that there be independent corroboration of his abstention, given the recency of Applicant's drug involvement as well as his history of falsifying his QNSP and December 2001 interviews with a DSS special agent.

The negative drug screens of late January 2002 and June 2002 confirm his abstention during the weeks immediately preceding the testing.[(8)] Yet, even with those negative drug screens, it is too soon to safely conclude that his marijuana abuse is safely behind him. Applicant abstained from marijuana use for significant periods of time during the first half of the 1990s, when he was caring for ill family members, only to resume use on his return to state X in about 1996. His last reported use in October 2001 was outside of the band context, when he was "going through a few mental changes . . . and maybe partied too much." The record is largely silent as to his current recreational pursuits, or whether he has terminated all associations with individuals who use illegal drugs. Applicant having failed to meet his burden of demonstrating that there is little risk, if any, of future drug abuse on his part, SOR subparagraphs 1.a., 1.b., 1.c. and 1.d. must be resolved against him.

Security significant personal conduct (guideline E) concerns also persist because of Applicant's failure to be completely candid about his marijuana involvement. When Applicant completed his security clearance application in January 2001, he deliberately under-reported the extent of his marijuana use because he did not want his drug use to hinder his chance of obtaining the security clearance needed for his defense job. After completing the QNSP and going back to work for

defense contractor A with an interim secret clearance, Applicant smoked marijuana on occasion to at least late October 2001. Applicant lied during a DSS interview of December 3, 2001, in that he falsely denied any illegal drug use since 1990.[(9)] On December 12, 2001, the agent reinterviewed Applicant about his positive urinalysis in November 2001, and Applicant falsely stated that his positive screen was due to a prescription drug rather than marijuana. To Applicant's credit, he reported on his QNSP his felony arrest for criminal homicide, his firearms violation, as well as his recent 1997 DUI, and his disclosures of these offenses lend credence to his claim that he failed to recall the 1992 drunk driving and 1995 assault charges at the time he completed the security questionnaire. Yet, disqualifying conditions E2.A5.1.2.2. (the deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire) and 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 because of his efforts to conceal his illegal drug involvement. Furthermore, there is a sufficient pattern of dishonesty about his drug use to fall within E2.A5.1.2.5.

Deliberate falsification is potentially mitigated under the Directive where the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability (E2.A5.1.3.1.); the falsification was isolated, not recent, and the individual has subsequently presented correct information voluntarily (E2.A5.1.3.2.); the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts (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 (E2.A5.1.3.4.). Applicant's misrepresentations of his drug use are too recent and repeated to fall within E2.A5.1.3.2. Nor is there any evidence that he relied on the good-faith advice of an authorized person. While Applicant disclosed his history of marijuana involvement during a January 15, 2002, interview, the Government should not have had to interview Applicant three times to learn the truth of his drug use. oreover, the ameliorative impact of his belated candor is undermined by his initial unwillingness at the hearing to admit that he had knowingly misrepresented his drug use on his QNSP and during his December 2001 interviews.

Applicant's knowingly false accounts of his drug use on his security clearance application and in two DSS interviews raise security significant criminal conduct issues as well as personal conduct concerns (*see* E2.A10.1.2.1.).[(10)] Reform of such repeated criminal conduct requires taking responsibility for making the false statements, and demonstrating compliance with laws and regulations for a sufficient period of time to conclude one's representations can be relied on. At his hearing, Applicant showed little appreciation for his obligation to be completely candid with the Government at all times, raising doubts about his reform. Adverse findings are warranted with respect to SOR subparagraphs 2.a., 2.b., 2.c. and 3.a. of the SOR, because of the doubts for his judgment, reliability and trustworthiness raised by his record of deliberate falsification. Subparagraphs 2.d. and 2.e. are found for Applicant, as the omissions of the 1992 DUI and 1995 assault from his January 2001 QNSP were not intentional.

The Government also alleged under criminal conduct that Applicant willfully failed to file individual income tax returns with state Y for tax years 1991, 1992, 1993 and 1995. The burden is on the Government to demonstrate not only that Applicant had an obligation to file state Y returns for those years, but that he was aware of his obligation to file and did not do so. The notice of lien of judgment for unpaid tax for tax years 1991 and 1993 (Ex. 11), dated February 16, 2000, evidences a tax delinquency, not failure to file. Applicant presented a more recent demand for payment by state Y's revenue administration division (Ex. A), which indicates a balance due of $1,069.18 for 1991 on an assessment type listed as "NF." This notation may denote non-filing, but that was not established in the record. It is noted that with respect to tax year 1993, on which Applicant reportedly owes a balance of $375.07, the assessment type is listed as "ORIG." Applicant testified he could not recall whether he filed state returns for the years alleged, and while he presented no state tax returns, he submitted Internal Revenue Service documents which confirm filing of a federal 1040EZ return for tax year 1991 (Ex. D) and a federal 1040A form for tax year 1992 (Exs. B, C, and E). These federal filings are certainly not proof of state filings, but they do show some compliance by Applicant with his income tax obligations. Subparagraphs 3.b., 3.c., 3.d. (as amended), and 3.e. are resolved in Applicant's favor as the Government failed to prove a willful failure to file income tax returns with state Y for the tax years alleged.

## 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: For the Applicant

Subparagraph 3.d. (as amended): For the Applicant

Subparagraph 3.e.: 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. Applicant indicated this witness was his brother-in-law, although it is not clear whether Applicant is presently married. The witness testified that his wife and Applicant's "girl" are sisters. (Transcript p. 31). Applicant listed his status as "divorced" on his QNSP.

2. Department Counsel also moved to amend SOR subparagraph 3.e. to allege willful failure to file a state income tax return for tax year 1994 vice 1995. Since the Government had no evidence to reflect willful failure to file a return for tax year 1994, the motion was not granted with respect to that subparagraph.

3. Applicant indicated he was dismissed from his employment. (Answer; Transcript p. 114). Not having received any formal notification from Applicant's employer of employment termination, it was assumed Applicant is subject to recall if his clearance is adjudicated favorably. Applicant testified he was collecting unemployment as of September 2002. (Transcript p. 98).

4. Applicant reported on his QNSP that he has lived in state X since February 1995. However, he testified at his hearing that he most likely returned to state X in 1996. Police records of the August 1995 assault and battery (Ex. 10) confirm Applicant was residing in state Y as of his arrest.

5. Regarding his disclosed illegal drug use on the QNSP, the year from which Applicant used marijuana is not clearly legible on the form. Applicant's employer read the date as April 1990. (*See* question 28 on the February 2001 SF 86, indicating three times use of marijuana from April 1990 to April 1990 "while possessing a security clearance; or while in a position directly and immediately affecting public safety."). Both the DSS agent and DOHA apparently read the date as April 1980. (*See* January 2002 sworn statement, and SOR subparagraph 2.a. alleging falsification because Applicant listed "marijuana used three times between 1980 and 1990). Irrespective of whether Applicant told company A security personnel that he used marijuana three times in April 1990 or three times from April 1980 to April 1990, it is clear he failed to disclose his involvement after April 1990.

6. Applicant testified that when the agent asked him why his driving privileges had been suspended, his supervisors had not notified him of the reason. (Transcript pp. 117). Given there is no proof Applicant knew of the reason for the suspension before his DSS interview, I find Applicant did not intentionally conceal from the agent that the suspension of his driving privileges was drug-related.

7. After Applicant maintained he was an honest man and had been candid with the agent, he was asked why his QNSP did not contain the same admission to drug use found in his January 2002 statement to the DSS agent. Applicant initially responded, "I really couldn't tell you." It was then pointed out to Applicant that he had told the agent in January 2002 that he had not listed his marijuana use accurately on his QNSP because he thought he would have a problem getting a security clearance. When asked whether or not this was the reason he had not disclosed his marijuana use accurately on his QNSP, Applicant responded, "There's probably some other reason." Applicant then admitted he had not given the full story on his QNSP.

8. Although Applicant did not present documentation confirming the negative results, it stands to reason some action would have been taken against him by his employer if the results had been positive.

9. The Government alleged Applicant also lied during that interview when he denied the suspension of his driving privileges was due to his use of illegal drugs. Applicant has consistently maintained he was unaware of the positive urinalysis until he was brought to the yard hospital, which records reveal was December 4, 2001, one day after his DSS interview. The Government failed to prove that Applicant had been told prior to his December 3, 2001, interview of the reason for the loss of his driving privileges. However, Applicant apparently was also asked during that DSS interview as to whether he used any illegal drugs since 1990, to which he responded no. (*See* Transcript p. 158).

10. 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.