DATE: June 17, 2003

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-12234

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esquire, Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esquire

Adam Hancock, Esquire

SYNOPSIS

Applicant was arrested in 1997 and 1998 on felony charges of child molestation and stalking. He pled guilty to reduced misdemeanor charges in each case. Applicant also used illegal drugs until at least 1995, was fired from a job in 1997, has twice received mental health counseling, and had a car repossessed in 1994. He deliberately omitted this adverse information from a Security Clearance Questionnaire (SF-86) he submitted in February, 2001. Applicant's drug use, criminal and sexual conduct are mitigated by the passage of time and by an overall improvement in his lifestyle. However, he has failed to mitigate personal conduct concerns arising from his falsifications. Clearance is denied.

STATEMENT OF THE CASE

On December 27, 2002, the Defense Office of Hearings and Appeals (SOR) issued a Statement of Reasons (SOR) to Applicant. The SOR informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance.[(1)] On January 13, 2003, Applicant answered the SOR (Answer) and requested a hearing. Thereafter, Applicant retained legal counsel and submitted an Amended Answer on March 17, 2003, and a Second Amended Answer on March 21, 2003. The case was assigned to me on February 25, 2003. On March 7, 2003, I set scheduled the case to be heard on March 28, 2003. The Government presented nine exhibits (GE), eight of which I admitted, one over objection by Applicant's counsel.[(2)] Applicant presented 13 exhibits (AE), all of which were admitted, one over objection of Department Counsel. Applicant also testified and presented the testimony of two witnesses. DOHA received the transcript (Tr) on April 8, 2003.

FINDINGS OF FACT

Applicant admitted with explanation all of the SOR allegations. However, as to SOR subparagraph 3.a, Applicant admits only to using cannabis, but only until June 1994.[(3)] As to SOR subparagraph 4.f, he admits receiving counseling but denies it was directed by his employer.[(4)]

Additionally, after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 34-years-old and employed by a defense contractor. He seeks a Secret clearance as part of his job description. He served in the United States Navy from 1989 until 1994, and held a Top Secret clearance during his service. He received a hardship discharge at his own request so he could help care for his then-father-in-law. At the time of his discharge, he was a Machinist Mate Second Class (E-5) in the submarine service, and had spent most of his five years in the Navy at sea.(5)

Applicant has been married three times. His first marriage began in 1990 and ended in divorce in 1994. Save for a brief, ill-fated attempt at reconciliation in 1994, the couple did not live together after 1992. Applicant had two children with his first wife, one in 1987 before they were married and the other in 1990. Applicant's first wife abused alcohol and essentially abandoned the children while he was at sea. The children were raised by their maternal grandparents, and Applicant has not seen either child since December 1995.(6)

Applicant's second marriage lasted less than a year in 1997. It ended in divorce after Applicant discovered his wife was cheating on him.(7)

Applicant met his current wife in 1998 and they were married in October 1999. The couple recently bought a house and enjoy a happy life together. Applicant is a devoted husband and father to his children, now ages three-years-old and nine months. There is nothing adverse or otherwise remarkable about their domestic situation or the children's relationship with Applicant.(8)

After the Navy, Applicant was hired as a maintenance man for a nearby casino, one of the largest in the country. He worked there until April 1998. Applicant listed on his SF-86 the dates of his employment at the casino as June 1994 until April 1998; however, at the hearing he testified that there was a 10-month break in time from his military discharge until he began work at the casino, which would put his start date at the casino on or about May or June 1995.(9)

On March 9, 1992, Applicant was arrested and charged with assault/domestic violence. He and his first wife got into an argument that escalated into a physical confrontation. Applicant's wife had been drinking and became violent, and Applicant committed assault when he tried to restrain her. The local police arrived and took Applicant into custody, transporting him to the local jail. His Navy supervisor was called and Applicant was released to him on a promise-to-appear bond. The charges were eventually dismissed. Applicant then moved out and did not live with his first wife again until their reconciliation in 1994.(10)

In December 1995, local family services authorities and police began an investigation into the possibility Applicant had sexually abused his two children. They had been living with their grandparents, but Applicant had regular visitation.(11) About the same time the investigation started, Applicant was living with a girlfriend and her children and was trying to improve his financial and domestic circumstances so that he might wrest custody of his children from their grandparents.(12) At issue was whether Applicant had inappropriately touched his older son's genitals and whether he had also engaged in similar conduct with his girlfriend's daughter.(13)

In May 1997, Applicant was arrested and charged with 2nd degree child molestation, a felony. Despite his adamant denials, he accepted a plea agreement whereby he pled guilty to simple assault, a lesser included offense, in April 1998. He was given a one-year jail sentence, which was suspended, and he was placed on probation for one year and ordered to undergo counseling.(14)

On December 15, 1996, while the child molestation charge was being investigated, Applicant was abducted from his parents' home and severely beaten by two men who were later convicted of attempted murder and other charges. While there is no question he was injured and required immediate medical attention, there is some disagreement about the extent of his injuries. The police report reflects Applicant was treated at a nearby hospital and released the same evening. Applicant testified that he suffered a fractured skull and two broken legs that required metal rods to be inserted.

However, the police report reflects that Applicant walked around his parents' house with a detective the next morning to evaluate the path he took the night before when the attackers came to the house.(15)

What is uncontroverted is that he suffered psychological problems after the attack including depression and post-traumatic stress disorder. The attack and its aftermath, combined with the stress he was experiencing over the possibly losing his children for good, led his employer (the casino) to refer him to their employee assistance program (EAP) for counseling. He received outpatient psychological services between April 1997 and October 1997. When he was ordered to get counseling as part of his April 1998 sentence, Applicant returned to the same mental health center.(16)

After he was arrested in April 1997, he was released on his own recognizance pending trial. He was also ordered to have no contact with his in-laws or his girlfriend and her family.(17) That order also barred Applicant from being in the same town as his. In January 1998, Applicant was helping his brother move to the town he was not allowed to enter. He asked his attorney if he could do so and was told it would not be a problem. However, one of his girlfriend's family saw him there and called the police. Applicant was arrested and charged with 1st degree stalking, a felony. In May 1998, he pled guilty to a disorderly conduct, a misdemeanor, and was given a suspended jail sentence, one year probation, and assessed court costs. This was a technical violation of the terms of his pre-trial release and not a deliberate act to contact his girlfriend's family or anyone else he was ordered to stay away from. Applicant adamantly denied the stalking charge as well as the child molestation charge, but decided to accept plea agreements in both cases because of the affects he was suffering after he was attacked.(18)

Applicant has used illegal drugs, but it is unclear from this record when he used what drug. The SOR allegations in paragraph 3 assert he used marijuana, cocaine, amphetamines, and hallucinogens in 1995. It appears this allegation is based on disclosures he made to mental health counselors during court-ordered counseling in 1998.(19) Applicant admits in his initial Answer to using these drugs, but offers that his last use was before he began work at the casino. His 1st Amended Answer reinforces this position by asserting he last used marijuana in June 1994, and that he has not used cocaine, amphetamines, or hallucinogens. At hearing, however, Applicant testified he used marijuana and cocaine during a 10-month period after he left the Navy in June 1994, but before he began work at the casino.(20) In response to interrogatories DOHA sent him before issuing the SOR, Applicant stated he had used marijuana until 1996.(21) Further, at hearing Applicant stated he also used marijuana and cocaine (the latter only once) with his second wife to whom he was married in 1997. He admitted using the other listed drugs, but only when he was in high school.(22) I find Applicant was involved with illegal drugs as alleged until at least April 1995.

Sometime in 1997, Applicant was fired from his job at the casino. He was asked to leave by his supervisor, and his identification badge was taken from him. Applicant waited for the casino to call him back or to tell him why he was being fired, and eventually learned he had been let go because he had failed to tell his employers about the ongoing criminal action related to his children. After a few months he realized the casino would not be asking him to come back to work, so he filed for unemployment and began looking for new work.(23)

After he left the casino in 1997, Applicant found work as a maintenance mechanic at a plastics company. He worked there until January 2001, when he was hired by his current employer. In February 8, 2001, Applicant signed and submitted a Security Clearance Questionnaire (SF-86). Applicant answered "no" to questions 19, 20, 21, 27, and 35 regarding mental health treatment, adverse employment history, felony arrests, illegal drug use in the last seven years, and repossessions in the last seven years, respectively.(24)

As to the felony arrest information requested in Question 21, Applicant claims he was advised by the attorneys who handled his criminal cases in 1997 that he need not report these charges because they were disposed of as misdemeanor convictions; however, he last spoke with those attorneys in 1998. He did not seek anyone's advice about any of the questions when he was filling out the SF-86 in February 2001.(25) Applicant also omitted this information because he was embarrassed by the arrests.(26)

Applicant omitted the information about his mental health counseling solicited through Question 19 because he felt it

was a private matter and did not affect his professional life. (27) As to the court-ordered counseling, Applicant decided not to disclose it for the same reason he did not disclose his arrests for child molestation and stalking arrests - they were disposed of through misdemeanor convictions, which his attorney told him would not be on his record.(28)

In response to Question 20, Applicant decided to omit the fact that he was fired from the casino. He does not dispute that he was fired, but claims he omitted it from the SF-86 because, like the counseling, it was also related to the child molestation charges. Applicant reasoned that if an event was related to the misdemeanor plea bargains in that matter then, because the convictions need not be reported, then the related counseling need not be reported.(29)

Applicant claims he failed to disclose his drug use in response to Question 27 because he thought it had been more than seven years since his last drug use.(30) However, his last drug use was in April or May of 1995, well within the scope of the question.

Applicant's car was repossessed in November 1994. He did not list this information in response to Question 35. He stated he could not remember when this event happened, but thought it was more than seven years before he filled out the questionnaire.(31)

Applicant is well-regarded by his second level manager and has established an outstanding performance record in his current job.(32) He is a valued asset in his company's support of Navy submarine programs. His performance appraisals are consistently outstanding and he has received several awards and other forms of recognition in the two years he has worked there. He also received awards for good conduct and outstanding performance while he was in the Navy.(33)

POLICIES

The Directive sets forth adjudicative guidelines(34) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline D (Sexual Behavior), Guideline E (Personal Conduct), Guideline H (Drug Involvement), and Guideline J (Criminal Conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest(35) for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. (36) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.(37)

CONCLUSIONS

Guideline D (Sexual Conduct). The security concern under this guideline is that sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion.(38) The Government has established its case that Applicant engaged in criminal sexual conduct with one of his children as alleged in SOR subparagraph 2.a. The account contained in the police report,(39) while hearsay in nature, bears sufficient indicia of reliability so that it is reasonable to conclude Applicant improperly touched his child (then nine-years-old).

I admitted GE 7 over Applicant's objections about the hearsay nature of the police report.(40) Specifically, counsel referred to statements of the

child's grandmother relaying what the child purportedly told her about Applicant's actions and argued that even under our relaxed rules of evidence [(41)] such statements should not be admissible. I agree that such second- and third-hand accounts should be given less weight than first hand observations of the police officer making the report; however, GE 7 also contains factual findings made by the investigating officer pursuant to his assigned duties. The investigator does not appear to have interjected any opinion into the report, and the information obtained directly from Applicant's child - a victim in this case - cannot be ignored.

Aside from his adamant denials of misconduct, Applicant offers AE M, admitted over Department Counsel's objection,[(42)] a statement written the day before hearing from his mother recounting a conversation with the child's maternal grandmother from a year ago. The grandmother is purported to have told Applicant's mother that she overheard Applicant's child tell someone else that the charges of child molestation were false. Again, in the interest of developing a complete record of all available relevant information, hearsay such as this is admissible in DOHA hearings, however, there is little weight to be attached to this document. Even accepting that Applicant's testimony is sufficient to authenticate his mother's handwriting,[(43)] it was clearly prepared in anticipation of litigation, and suffers from the same defects to which Applicant objects regarding the aforementioned police report. More to the point, the letter lacks the indicia of reliability found in the police report.

Guideline D Disqualifying Condition (DC) 1[(44)] applies. By contrast, Guideline D Mitigating Conditions (MC) 2[(45)] applies. The actual conduct in this case occurred nearly eight years ago, and there is no available information to suggest he has repeated this conduct since then. Indeed, the evidence shows he has a stable and loving relationship with his new wife and two children, a relationship devoid of any suggestion he may act inappropriately toward his children. Applicant completed counseling as ordered, and there was no clinical indication that Applicant would engage in sexual misconduct in the future.

The Government has failed to establish its case with respect to subparagraph 2.b. The fact that Applicant received court-ordered counseling as part of his sentence is uncontested, however, there was no clinical diagnosis in GE 8 related to any sexual dysfunction, nor does it suggest any compulsive or addictive sexual behavior. At most, the Government's information shows Applicant was counseled regarding ancillary issues of depression and the after-effects of an attack he suffered in 1997 (discussed more fully below). I resolve Guideline D in favor the Applicant.

Guideline E (Personal Conduct). The Government has established its case as alleged in SOR paragraphs 4.a, 4.b, 4.c, 4.d, and 4.e that Applicant deliberately falsified relevant and material information about his mental health counseling, employment history, felony arrests, drug use and financial concerns on his February 8, 2001 SF-86. The security concern here is that Applicant's conduct in deliberately falsifying relevant and material information about these facts indicates he is unable or unwilling to uphold his fiduciary responsibilities attendant to holding a clearance. A person who is unwilling to subordinate his own interests to those of the Government in difficult circumstances may not have the judgment, reliability, or trustworthiness required of one in whom the Government reposes its trust.[(46)]

Applicant generally asserts he did not intentionally falsify the SF-86, but he also told DSS investigators he omitted his arrests because he was embarrassed. He further asserts he omitted his felony arrests (Question 21) because they had been disposed of as misdemeanors, and his attorney had told him those matters would not be on his record and he would not have to disclose them to anyone. Yet Applicant knew he had been arrested based on felony charges and had knowingly accepted a plea bargain to escape the full measure of punishment under those felony charges. Further, the plain language of the question makes clear that such an arrest should be listed even if it had been stricken from the record. Even if I were to accept (which I do not) Applicant's explanation about Question 21,[(47)] I note that he also failed to list his arrests under Question 26, further supporting the Government's case of intentional falsification.

Applicant urges application of Guideline E MC 6[(48)] because the attorney who represented him in 1998 told him his misdemeanor convictions would not be on his record and that he would not have to declare them. Applicant has the ultimate burden of persuasion to refute or mitigate the Government's case, but he has provided nothing to connect his attorney's advice in 1998 to the act of filling out his SF-86 in 2001. Application of MC 6 would require that the attorney was advising him on compliance with security processing requirements. It is also unlikely that Applicant and his attorney knew in 1998 that he would be applying for a clearance in 2001, and Applicant acknowledged that he sought no advice or guidance when he was completing the questionnaire.

With respect to his false answer to Question 19 (Medical History), Applicant decided that the counseling he received through the casino EAP was personal and did not have to be disclosed. As to the court-ordered counseling, Applicant engaged in a twisted rationalization through which he somehow concluded that, because he thought he did not have to disclose his felony arrests and the counseling was part of those cases, he also did not have to disclose his most recent

counseling. Nothing in the language of SF-86 Question 19 provides for an exception when the requested information is connected to a court order.

Applicant claims he omitted the fact he was fired from the casino because he initially did not know why he had been fired. The reason for the firing is not at issue here. He was told to turn in his credentials and asked to leave. He was never asked to come back, and eventually learned that he was fired because he had not told his employer he was involved in a criminal matter. It is reasonable to assume that a large casino through which large sums of money pass each day has a compelling interest in ensuring none of its employees are involved in criminal conduct. Applicant knew then that he was being fired, but used the same misguided rationalization to link his firing to his misdemeanor convictions as justification for not listing this information.

As for his response to Question 27 (Illegal Drugs), Applicant clearly used drugs as recently as 1995. This is within the seven year scope of the question. Further, Applicant's testimony suggests he may have used illegal drugs after 1995. Much of his testimony on this point can best be described as inconsistent, however, it has the effect of being evasive. Therefore, I do not accept his explanations about Question 27. Nor do I accept his explanation regarding his response to Question 35 (Car Repossession). Given his poor credibility, and the deliberate falsification of the other questions at issue in this case, it is likely that Applicant also decided to omit this adverse information as well.

The Government has not established its case with respect to SOR subparagraph 4.f. The fact that Applicant sought mental health counseling, in and of itself, does not have any security significance here. It was reasonable, indeed prudent for Applicant to seek counseling to deal with the trauma and depression resulting from his circumstances at the time. The Government has shown that Applicant's employer referred him to counseling, but has failed to show why, if at all, his employer would have been concerned about his behavior.

I question Applicant's overall credibility because of his conflicting testimony and prior statements about his drug use, his injuries from his beating in 1996, and his employment history. At hearing he asserted that his trouble with remembering dates is an after effect of the injuries he suffered when attacked in 1996.[(49)] However, he made no such claims when responding to the SOR, nor is there sufficient information in the record for me to conclude that Applicant suffers from a medical impediment to his ability to correctly answer simple questions about his past. Indeed, the only information available about his injuries is conflicting at best. Without more information to support this claim, especially in light of his inconsistent statements in response to the Government's allegations, I cannot accept any claim of impairment as a justification for his omissions from the SF-86.[(50)]

Guideline E DC 2[(51)] and DC 5[(52)] apply here. By contrast, in light of Applicant's continued evasiveness on a number of issues, none of the listed Guideline E C's apply. The Applicant's completion of a security questionnaire is the initial step in requesting a security clearance. Because false or incomplete information given in the questionnaire is capable of affecting the way in which Department of Defense personnel perform their official functions in obtaining complete and accurate information about an applicant, it is material. Moreover, a false answer is material even if there is no proof that it actually influenced an agency's investigatory functions.[(53)] Even now, the Government does not have a clear picture of Applicant's involvement with illegal drugs, and the information about his criminal conduct, counseling, employment, and finances should have been disclosed by Applicant in the first place. His explanations clearly demonstrate he is not able or willing to place the Government's interests ahead of his own, a basic tenet of the fiduciary nature of a grant of access to classified information. I conclude Guideline E against Applicant.

Guideline H (Drug Involvement). 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.[(54)] The Government has established its case as alleged in SOR paragraph 3 that Applicant used illegal drugs as recently as 1995. Guideline H Disqualifying Condition (DC) 1[(55)] applies on these facts. By contrast, Guideline H MC 1[(56)] and MC 3 [(57)] also apply. Even accepting that he may have used marijuana as recently as 1997, it has been six years since his last involvement with illegal drugs. His abstinence since then, and his lifestyle changes since 1998 make it likely he will not repeat his drug use in the future. I resolve Guideline H for Applicant.

Guideline J (Criminal Conduct). The Government has established a its case as alleged in SOR paragraph 1 that Applicant engaged in criminal conduct when he was arrested for assault in 1992, for child molestation in 1997, and for stalking in 1998. The security concern under Guideline J is that a person who is willing to disregard the law and risk incarceration may also be willing to disregard rules and regulations governing the protection of classified information. In some cases, the criminal activity does not consist of any serious crimes, but a series of minor offenses. Here, Applicant's 1992 conduct can be deemed minor as it was a case of mutual affray, however, it cannot be overlooked. Applicant chose an unacceptable course of conduct regardless of the circumstances. His conduct in 1995, for which he was arrested in 1997, constitutes an egregious betrayal of trust in that he molested his own child. His arrest in 1998 appears to have been a technical violation, but was deemed serious enough by the local courts to still award him a suspended jail sentence and a year of probation. Guideline J DC 1[(58)] and DC 2[(59)] apply. By contrast, Guideline J MC 1[(60)] also applies. Applicant's criminal conduct occurred at least five years ago and there is no information available to suggest he has engaged in criminal conduct since then. There is also a significant change in his personal circumstances sufficient to conclude he is not likely to engage in criminal conduct in the future. However, he still has not accepted responsibility for his past criminal conduct, precluding application of MC 6.[(61)] Nonetheless, in light of his current circumstances and the positive character references, I conclude Guideline J for Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. In the end, I conclude it is not clearly consistent with the national interest to grant Applicant a security clearance. He has failed to mitigate the questions about his suitability for access raised by the Government's case under Guideline E. An Applicant's candor and trustworthiness are bedrock tenets of the personnel security program. A showing that an Applicant will not be candid with the Government creates an unacceptable risk that classified information may not be properly safeguarded. Applicant has failed to mitigate the Government's doubts about his lack of truthfulness.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Guideline J FOR THE APPLICANT

Subparagraph 1.a For the Applicant

Subparagraph 1.b For the Applicant

Subparagraph 1.c For the Applicant

Paragraph 2, Guideline D FOR THE APPLICANT

Subparagraph 2.a For the Applicant

Subparagraph 2.b For the Applicant

Paragraph 3, Guideline H FOR THE APPLICANT

Subparagraph 3.a For the Applicant

Paragraph 4, Guideline E AGAINST THE APPLICANT

Subparagraph 4.a Against the Applicant

Subparagraph 4.b Against the Applicant

Subparagraph 4.c Against the Applicant

Subparagraph 4.d Against the Applicant

Subparagraph 4.e Against the Applicant

Subparagraph 4.f 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. Applicant's counsel objected to GE 7. Department Counsel objected to AE M. Further, Department Counsel proffered GE 9 for identification only in rebuttal. However, I denied his request to open a rebuttal case because the information in GE 9 did not address any new position or information presented in Applicant's case-in-chief. Department Counsel was on notice through the pleadings before hearing that Applicant would contest the child molestation allegations. Therefore, Department Counsel had the opportunity to submit GE 9 in its case-in-chief, decided not to do so, apparently failed to provide opposing counsel a copy of the document before hearing, and failed to show good cause for opening a case in rebuttal. *See* Tr., p. 181 - 189. At hearing I returned GE 9 to Department Counsel (Tr., p. 189), but later realized I should have included it in the case file. I advised both parties after the hearing that I would include GE 9 for identification only in the case file. Neither counsel voiced any objection to my action.

3. Applicant's First Amended Answer.

4. Applicant's Second Amended Answer.

5. GE1; Tr., p. 75.

6. Tr., p. 65.

7. Tr., p. 64.

8. Tr., p. 51 - 56.

9. Tr., p. 127, 128 - 129.

10. Answer; GE2, GE 3, GE 5; Tr., p. 85 - 87, 137 - 138.

11. There is nothing specific on this issue in the record, but one may reasonably assume from the whole record that Applicant's in-laws were given legal custody of the children due to their parents' absences and the unstable nature of their marriage.

12. Tr., p. 89 - 91.

13. GE 7.

14. Answer; GE 2, GE 3, GE 5, GE 6, GE 7.

15. Tr., p. 99 - 100; GE 7.

16. Tr., p. 115 - 116; GE 8.

17. Applicant had been living a woman who also had two young children. During the investigation he was ordered out of their home. It was this woman's former brother-in-law and a friend of his who attacked Applicant.

18. GE 2, GE 3, GE 5; Tr., p. 101, 120 - 124.

19. GE 8.

20. As noted above, a 10-month break would place his start date at the casino around April / May 1995. AE F shows his date of separation from the Navy as June 29, 1994.

21. GE 3; Tr., p.

22. Tr., p. 127 - 129, 156 - 161.

23. Tr., p. 130 - 132, 165 - 167.

24. GE 1.

25. Tr., p. 178 - 180.

26. GE 2.

27. Tr., p. 115 - 117.

28. Answer; Tr., p. 154 - 155.

29. Tr., p. 130 - 131.

30. Answer.

31. Answer; Tr., p. 132 - 133.

32. Tr., p. 30 - 45.

33. AE A through D, AE G through L.

34. Directive, Enclosure 2.

35. *Department of the Navy v. Egan,* 484 U.S. 518 (1988).

36. *Egan*, 484 U.S. at 528, 531.

37. *Egan*; Directive E2.2.2.

38. Directive, E2.A4.1.1.

39. GE 7.

40. Tr., p. 24 - 25. The DOHA Appeals Board has held police reports are admissible in ISCR hearings as an exception to the general rule against hearsay exception expressed by Federal Rules of Evidence (FRE) Rule 803(8)(B) and 803(8)(C). ISCR Case No. 96-0575, p. 3 (Appeal Board Decision, July 22, 1997).

41. Directive, E3.1.19. The Federal Rules of Evidence (28 U.S.C. 101et seq. (reference (d)) shall serve as a guide. Relevant and material evidence may be received subject to rebuttal, and technical rules of evidence may be relaxed, except as otherwise provided herein, to permit the development of a full and complete record.

42. Tr., p. 102 - 122.

43. FRE 901(b)(2).

44. E2.A4.1.2.1. Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

45. E2.A4.1.3.1. The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;

46. Directive, E2.A5.1.1.

47. "26. Your Police Record - Other Offenses. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?..."

48. E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the

individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

49. Tr., p. 129.

50. *Cf* ISCR Case No. 00-0620 (Appeal Board Decision and Reversal Order, October 19, 2001) (It was reversible error for the Administrative Judge to accept Applicant's uncorroborated claim of memory loss as sufficient to mitigate allegations of falsification).

51. 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;

52. 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;

53. *United States v. Cowden,* 677 F.2d 417, 420 (8th Cir. 1982).

54. Directive, E2.A8.1.1.1.

55. E2.A8.1.2.1 Any drug abuse...;

56. E2.A8.1.3.1. The drug involvement was not recent;

57. E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;

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

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

60. E2.A10.1.3.1. The criminal behavior was not recent;

61. E2.A10.1.3.6. There is clear evidence of successful rehabilitation.