

DATE: May 11, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22174

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-four-year old Applicant has a lengthy history of criminal conduct (substance abuse in 1967-80, 1990), drug-related arrests (1977 and 1979), and an arrest for theft (1999). He also has a lengthy history of personal conduct involving questionable judgment and untrustworthiness, including lying on his security clearance application. One of his drug-related arrests resulted in a sentence in part, to confinement for five years, but the sentence was altered to confinement for a period of six months, and the remainder of imprisonment was suspended. Applicant has failed to mitigate the criminal conduct or personal conduct concerns. Moreover, the application of 10 U.S.C. § 986 disqualifies him from eligibility for a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On August 7, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written answer, dated September 2, 2003, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to, and received by, me on November 20, 2003. A notice of hearing was initially issued on November 20, 2003, scheduling the hearing for December 16, 2003, but it was subsequently cancelled. Another notice of hearing was issued on February 23, 2004, and the hearing was held before me on March 16, 2004. During the hearing, 13 government exhibits, two Applicant exhibits, and the testimony of three Applicant witnesses (including the Applicant) were received. The transcript (Tr.) was received on March 22, 2004.

RULINGS ON PROCEDURE

During the hearing, Department Counsel moved to amend subparagraphs 1.b. and 2.f. of the SOR. Specifically, he sought to amend subparagraph 1.b. thereof, to conform to the expected evidence and correct a typing error, by deleting the words "Baton Rouge" from the second line of the first sentence and substituting therefor the words "Washington D.C.," and by deleting the words "Washington D.C." from the third line of the first sentence and substituting therefor the words "Baton Rouge."⁽¹⁾ He also sought to amend subparagraph 2.f. thereof to correct typing errors, by deleting the designation "2.e." on the seventh line of the subparagraph and substituting therefor the designation "2.c.;" and by deleting the designation "2.f." on the eighth line of the subparagraph and substituting therefor the designation "2.e."⁽²⁾ There being no objection by Applicant, I granted the motions.⁽³⁾

FINDINGS OF FACT

Applicant admitted all of the factual allegations (subparagraphs 1.a. through 1.d.) pertaining to criminal conduct under Guideline J as well as the factual allegations (subparagraphs 2.a. through 2.i.) pertaining to personal conduct under Guideline E. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 54-year-old employee of a defense contractor seeking to obtain a security clearance the level of which has not been revealed. He previously held a SECRET security clearance as early as 1970.⁽⁴⁾

Applicant has a lengthy history of criminal conduct and personal conduct involving questionable judgment, untrustworthiness, unreliability, and lack of candor. In addition, he was a substance abuser who purchased, possessed, used, sold, and distributed marijuana; and purchased, possessed, and used hashish.⁽⁵⁾

In 1967, when he was about 18 years old, Applicant started what eventually became a lengthy period of illegal substance abuse when he experimented with marijuana.⁽⁶⁾ In 1968, he was arrested after breaking into a closed gas station and stealing two bags of potato chips.⁽⁷⁾ The judge offered him two options: (1) entering military service or (2) continuing the prosecution. Applicant chose military service.⁽⁸⁾ In 1975, while visiting friends, Applicant was arrested and charged with the purchase and sale of marijuana.⁽⁹⁾ While he was sentenced to probation for three years, the probation was terminated in 1977.⁽¹⁰⁾

Two years later, in 1979, for a cash payment of \$1,000.00, Applicant agreed to fly to another state to return with a motor home which he had reason to believe had marijuana aboard.⁽¹¹⁾ In fact, there were 2,000 pounds of marijuana in the vehicle.⁽¹²⁾ He was arrested by Drug Enforcement Administration (DEA) agents⁽¹³⁾ and charged with conspiracy to sell marijuana and possession with intent to distribute controlled dangerous substances, marijuana.⁽¹⁴⁾ After much legal maneuvering involving the various co-defendants, including Applicant, he was convicted and sentenced in August 1980. On the conspiracy charge, he was sentenced to confinement for six months, confinement for 60 months (suspended), and fined \$3,000.00.⁽¹⁵⁾ The sentence was split--a term not otherwise explained-- and he was ordered to serve confinement for six months, and placed on probation for five years.⁽¹⁶⁾ On the sale charge, he was sentenced to confinement for five years and fined \$5,000.00.⁽¹⁷⁾ On September 8, 1980, Applicant was identified as a "5 years special condition defendant"--once again a term not otherwise explained--and the sentence was altered to confinement for a period of six months, the remainder of imprisonment was suspended, he was placed on probation for five years, and fined \$5,000.00.⁽¹⁸⁾ Applicant entered a federal prison in October 1982,⁽¹⁹⁾ and was released in February 1983.⁽²⁰⁾

Applicant's initial period of substance abuse stopped shortly after his arrest in 1979, and he remained drug free for the next 10 years.⁽²¹⁾ However, in September 1990, while on company business as a government contractor in another country, and while holding a security clearance, Applicant resumed his substance abuse by purchasing and smoking⁽²²⁾

⁽²³⁾

hashish. A co-worker observed him and reported the incident to the employer. As a result, he was suspended for three days without pay, and placed on probation for one year.⁽²⁴⁾ Applicant contends he has abstained from further substance abuse since 1990,⁽²⁵⁾ and there is no government evidence to rebut his contention.

In December 1985, Applicant was arrested for driving while under the influence (DUI).⁽²⁶⁾ He took field sobriety tests but refused to take a breathalyzer.⁽²⁷⁾ In April 1987, after initially contesting the case, upon his plea, Applicant was convicted.⁽²⁸⁾ However, before sentencing, the finding of guilty was stricken and Applicant was placed on supervised probation for 18 months with special conditions.⁽²⁹⁾

In April 1992, during a security clearance investigation into Applicant's background, he was asked to undergo a polygraph examination, but he declined to do so.⁽³⁰⁾

In November 1997, Applicant, a senior electronics technician, was placed on disciplinary suspension by his employer for a pattern of attendance infractions,⁽³¹⁾ and, effective January 1, 1998, because of continuing infractions, his employment was terminated despite his treatment for an illness.⁽³²⁾ He spent the next 10 months unemployed.⁽³³⁾

Applicant found employment as a sales person with a national home improvement retail chain in October 1998, but in March 1999, he failed to clock out for lunch and his employment was terminated.⁽³⁴⁾ He remained unemployed for two more months.

In May 1999, Applicant found employment with a local hardware chain which had already filed for bankruptcy. During a rainy day in July or August 1999, he took a raincoat without paying for it claiming he had intended to pay for it but forgot to do so.⁽³⁵⁾ A security guard found the item in his bag, and Applicant's employment was terminated the following day.⁽³⁶⁾

In August 1999, Applicant stole six to eight packs of cigarettes from a national retail/grocery store.⁽³⁷⁾ He received a police citation charging him with theft under \$300.00.⁽³⁸⁾ Applicant attributed

his actions to emotional problems stemming from financial difficulties.⁽³⁹⁾ He retained an attorney and agreed to pay restitution.⁽⁴⁰⁾ The records were subsequently expunged pursuant to court order.⁽⁴¹⁾

On August 31, 1999, Applicant completed his SF 86,⁽⁴²⁾ and in response to an inquiry pertaining to ever being fired from a job, or leaving a job following allegations of misconduct or unfavorable performance, etc.,⁽⁴³⁾ he acknowledged two such instances as described above.⁽⁴⁴⁾ He did not, however, mention the incident of one or two months earlier when he was terminated for stealing a raincoat. He certified his response was true, complete, and accurate. It was false in that he had concealed and omitted his most recent incident.

In the same SF 86, in response to an inquiry pertaining to ever being charged with or convicted of any felony offenses,⁽⁴⁵⁾ Applicant acknowledged one such offense which he described as "possession," and indicated he was "sentenced."⁽⁴⁶⁾ He did not, however, mention conspiracy to sell marijuana and possession "with intent to distribute controlled dangerous substances, marijuana." He certified his response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed the accurate or complete nature of his true history of felony offenses, as described above.

In the same SF 86, in response to an inquiry pertaining to ever being charged with or convicted of any offenses related to alcohol or drugs,⁽⁴⁷⁾ Applicant answered "no."⁽⁴⁸⁾ He did not disclose that he had been arrested in 1985 and in 1987 placed on supervised probation for 18 months with special conditions. He certified his response was true, complete, and accurate. It was false.

Finally, in the same SF 86, in response to an inquiry pertaining to ever being arrested, charged with, or convicted of any

other offenses not otherwise listed, regardless of whether the information had been expunged or otherwise stricken from the record. (49) Applicant responded "no." (50) He did not disclose that he had been arrested that same month for stealing six to eight packs of cigarettes. He certified his response was true, complete, and accurate. It was false. He had lied, falsified, omitted, and concealed his most recent arrest, as described above.

Applicant was married in 1995, but he and his wife are separated. He has one child born in 1979. (51)

Applicant had been employed by a government contractor for about four and one-half years prior to the hearing. (52) His immediate supervisor and a co-worker both support his application for a security clearance. They have characterized him as an extremely hard and effective worker, as well as trustworthy and honorable. (53) Applicant was terminated from his employment, effective December 15, 2003, pending clearance. (54) He has accepted another position with a different government contractor, effective April 12, 2004, contingent upon receiving a security clearance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Criminal Conduct - Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Personal Conduct - Guideline E: 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to each of the adjudicative guidelines are set forth and discussed in the Conclusions section below.

On June 7, 2001, the Deputy Secretary of Defense issued a Memorandum, *Implementation of Restrictions on the Granting or Renewal of Security Clearances as Mandated by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*. The memorandum provides policy guidance for the implementation of Section 1071 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended Title 10, United States Code, to add a new section (10 U.S.C. § 986) that precludes the initial granting or renewal of a security clearance by the Department of Defense under specific circumstances. The situation described above involves one of those specific

circumstances.

The statutory mandate applies to any DoD officer or employee, officer, director, or employee of a DoD contractor, or member of the Army, Navy, Air Force, or Marine Corps on active duty or in an active status, who is under consideration for the issuance or continuation of eligibility for access to classified information and who falls under one or more of the following provisions of the statute:

- (1) has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year;
- (2) is an unlawful user of, or is addicted to, a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (3) is mentally incompetent, as determined by a mental health professional approved by the Department of Defense; or
- (4) has been discharged or dismissed from the Armed Forces under dishonorable conditions.

The statute also "provides that the Secretary of Defense and the Secretary of the Military Departments concerned may authorize a waiver of the prohibitions concerning convictions, dismissals and dishonorable discharges from the armed forces in meritorious cases."

Implementing guidance attached to the memorandum indicates that provision 1, described above, "disqualifies persons with convictions in both State and Federal courts, including UCMJ offenses, with sentences imposed of *more than* one year, regardless of the amount of time actually served."

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security," [\(55\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations in the SOR:

The government has established its case under Guideline J. By his own admission, Applicant was involved in substantial criminal activity between

1967 and 1999, as described above, with some of that activity resulting in arrests and various court-ordered punishment. During that period, he has abused drugs, attempted to distribute drugs, and stole items. Obviously, the most serious of all of his criminal conduct occurred in 1979 when he knowingly became a "mule" in the illegal distribution of marijuana. On the conspiracy charge, Applicant was, in part, sentenced to confinement for six months and confinement for 60 months (suspended). The sentence was subsequently split and he was ordered to serve confinement for six months and placed on probation for five years. On the sale charge, he was sentenced, in part, to confinement for five years. Applicant was eventually identified as a "5 years special condition defendant," and the sentence was altered to confinement for a period of six months, the remainder of imprisonment was suspended, he was placed on probation for five years, and fined \$5,000.00. Applicant's criminal conduct clearly falls within Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), CC DC E2.A10.1.2.2. (*a single serious crime or multiple lesser offenses*), and CC DC E2.A10.1.2.3. (*conviction in a Federal or State court, including a court-martial of a crime and sentenced to imprisonment for a term exceeding one year*).

The frequency of Applicant's criminal conduct has been such that I fail to see any appreciable period during which he has adhered to the accepted norms of society. The chronology of events is lengthy for his illegal substance abuse started in 1967 and continued until shortly after his arrest in 1979. It continued after his 1975 arrest as well as during the period in which he held a security clearance. After 10 years of abstinence, Applicant resumed his substance abuse in 1990. Despite incarceration in 1982-83, he consumed alcohol to excess and was arrested for DUI in 1985. And finally, in 1999, Applicant was arrested for stealing cigarettes. It is of substantial concern that Applicant had the opportunity to clean up his act following his 1976 arrest and subsequent probation, or even in 1983 when he was released from prison, or after he had been granted a security clearance, but in each instance he failed to seize the opportunity to do so.

It has been approximately five years since his most recent criminal conduct--the theft of cigarettes. Since then, Applicant has not been involved in any additional criminal conduct. Those facts would seem to activate Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1. (*the criminal behavior was not recent*). Applicant has been afforded several opportunities to redirect his life. After each arrest or conviction, he was either punished or given a second chance with probation. However, leniency by the authorities seemingly only facilitated more misconduct or criminal conduct. In this instance, while there is no evidence of criminal conduct since 1999, there is also insufficient clear evidence of successful rehabilitation. The absence of such evidence negates CC MC E2.A10.1.3.6. (*there is clear evidence of successful rehabilitation*).

Some of Applicant's criminal conduct also falls within 10 U.S.C. § 986. He was convicted in a federal court of two crimes and sentenced to terms which obviously exceed the one year period envisioned in the law. On the conspiracy charge, Applicant was, in part, sentenced to confinement for six months and confinement for 60 months (suspended). The sentence was subsequently split and he was ordered to serve confinement for six months and placed on probation for five years. On the sale charge, he was sentenced, in part, to confinement for five years. Applicant was eventually identified as a "5 years special condition defendant," and the sentence was altered to confinement for a period of six months, the remainder of imprisonment was suspended, he was placed on probation for five years, and fined \$5,000.00. While the entire sentencing scheme is somewhat confusing, at some point in the process Applicant was sentenced to confinement for five years. Thus, as noted above, the implementing guidance attached to the memorandum indicates such a sentence would disqualify persons with "sentences imposed of *more than* one year, regardless of the amount of time actually served. In this instance, Applicant was fortunate enough to have his prison terms reduced and partially suspended rather than actually served, but that does not help him in this issue. Consequently, by virtue of 10 U.S.C. § 986, I conclude Applicant is not eligible for a security clearance. Accordingly, allegations 1.a. through 1.d. of the SOR, are concluded against Applicant.

The government has established its case under Guideline E. Applicant's conduct since 1967 has clearly involved questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. In addition to the criminal conduct described above, Applicant has an extensive history of other misconduct or questionable personal conduct. In 1992, he declined to take a polygraph examination which had been requested of him as part of his security clearance investigation. In 1997 he underwent a disciplinary suspension by his employer for a pattern of attendance infractions, and was subsequently terminated, effective January 1998. Another infraction with a new employer resulted with his employment being terminated in 1999. Employment with another employer was terminated that same year when he stole a raincoat. And in 1999, he deliberately provided false or misleading information and concealed material facts from his SF 86. Throughout the entire period, save for brief periods of acceptable conduct, Applicant exhibited a pattern of questionable judgment, irresponsibility, and immature behavior.

Applicant's overall conduct clearly falls within Personal Conduct Disqualifying Condition (PC DC) 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*), and E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*). Furthermore, because of his 1992 refusal to undergo a polygraph which was sought in connection with his security clearance investigation process, the concern set forth in E2.A5.1.1.1. (*refusal to undergo or cooperate with required security processing, including medical and psychological testing*).

Applicant's actions in falsifying material facts, as well as deliberately omitting or concealing relevant or material facts from his SF 86 in 1999, activate PC DC 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*). The four allegations pertaining to falsification have been admitted, but in no instance, has Applicant offered any explanation or justification as to motivation.

It is of substantial concern that Applicant previously had the opportunity to be a law-abiding citizen and remain abstinent after he had been granted a security clearance. He had already been punished twice for his substance abuse activities. Unfortunately, Applicant was not up to the task and failed to seize that opportunity. Instead, while on company business as a government contractor in another country, and while holding a security clearance, Applicant resumed his substance abuse by purchasing and smoking hashish. His actions disregarded his fiduciary relationship with the government. In so doing, he took that special relationship and effectively dashed the trust and confidence that the government had placed in him.

While a person should not be held forever accountable for misconduct from the past, without a clear indication of subsequent reform, remorse, or rehabilitation, I am unable to determine with reasonable certainty the probability that such conduct will not recur in the future. Without more, I simply do not believe that the period of time from the most recent acknowledged conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations--that which occurred in 1999--to the closing of the record, is sufficient to persuade me that recurrence of such conduct is unlikely. Consequently, I conclude that Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 2.a. through 2.i. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline J: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

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.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant

Subparagraph 2.h.: Against the Applicant

Subparagraph 2.i.: 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. Clearance is denied.

Robert Robinson Gales
Chief Administrative Judge

1. Tr., at 65-67.
2. Tr., at 12-13.
3. Tr., at 12-13, 67.
4. Government Exhibit 1 (Security Clearance Application (SF 86), dated August 31, 1999), at 7.
5. Response to SOR, dated September 2, 2003, at 1.
6. Government Exhibit 5 (Statement of Subject, dated October 4, 1990), at 3.
7. *Id.*, at 1; Tr., at 39.
8. *Id.*
9. *Id.*, at 2; Response to SOR, *supra* note 5, at 1.
10. Tr., at 39.
11. Tr., at 40-41.
12. Government Exhibit 7 (Newspaper article, undated).
13. Government Exhibit 5, *supra* note 6, at 2.
14. Government Exhibit 13 (U.S. District Court records, indictment filing date September 12, 1979), at 2.
15. Government Exhibit 8 (U.S. Department of Justice, Federal Bureau of Investigation (FBI) Identification Record, dated February 19, 2000), at 2.
16. *Id.*
17. *Id.*
18. Government Exhibit 13, *supra* note 14, at 15.
19. Government Exhibit 6 (U.S. District Court Order to Surrender, dated September 10, 1982), at 1.
20. Government Exhibit 8, *supra* note 15, at 2.
21. Government Exhibit 5, *supra* note 6, at 3.
22. *Id.*

23. *Id.*, at 3-4.
24. Government Exhibit 10 (Final Warning for Gross Misconduct, dated September 20, 1990).
25. Government Exhibit 4 (Statement of Subject, dated January 15, 1992), at 2.
26. Government Exhibit 12 (Uniform Complaint and Citation, dated December 11, 1985).
27. Government Exhibit 2 (Statement, dated January 23, 2002), at 3.
28. Government Exhibit 12 (Docket Information, as of November 17, 1988), at 1.
29. *Id.*; Response to SOR, *supra* note 5, at 1.
30. Government Exhibit 3 (Statement of Subject, dated April 17, 1992), at 1.
31. Government Exhibit 11 (Employer Personnel Records-Letter to Applicant, dated January 8, 1998).
32. *Id.*: Applicant Exhibit A (Verification of Treatment, dated January 2, 1998).
33. Government Exhibit 1, *supra* note 4, at 2.
34. Government Exhibit 2, *supra* note 27, at 2.
35. *Id.*, at 1.
36. *Id.*
37. *Id.*, at 2.
38. *Id.*
39. *Id.*
40. *Id.*
41. Government Exhibit 9 (Department of Police Criminal Case Expungement, dated September 27, 2000).
42. Government Exhibit 1. It should be noted the SOR erroneously alleged the SF 86 was completed on September 14, 1999 (subparagraphs 2.f. through 2.i.). The correct date should be August 31, 1999.
43. Question 20.
44. Government Exhibit 1, *supra* note 4, at 5.
45. Question 21.
46. Government Exhibit 1, *supra* note 4, at 5.
47. Question 24.
48. Government Exhibit 1, *supra* note 4, at 6.
49. Question 26.
50. Government Exhibit 1, *supra* note 4, at 6.

51. *Id.*, at 3.

52. Tr., at 22.

53. Tr., at 30, 33.

54. Clearance Change Notification (Form 562), dated December 15, 2003.

55. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)