

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-03849

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Matthew E. Auger, Esq.

SYNOPSIS

Applicant has been successful in dealing with the issues that led him to assault his spouse on three occasions. Criminal conduct and personal conduct concerns persist because he has not been candid about his role in a May 2002 theft of gym membership dues while employed by a military welfare and recreation department, and because he concealed the extent of his spousal abuse when questioned about it by a Defense Security Service (DSS) agent in September 2002. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on December 8, 2004, detailing the basis for its decision-security concerns raised under Guideline J (criminal conduct) and Guideline E (personal conduct) of the adjudicative guidelines. Applicant, acting *pro se*, answered the SOR on January 6, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on January 23, 2006. Pursuant to notice dated June 12, 2006, I scheduled a hearing for June 28, 2006. Counsel for Applicant entered his appearance on June 21, 2006.

At the hearing convened as scheduled on June 28, 2006, five government exhibits (Ex. 1-5) and 14 Applicant exhibits (Ex. A-N) were admitted. Testimony was taken from Applicant, from the manager of the Navy laboratory where Applicant works as a contractor, from Applicant's spouse, and from Applicant's father-in-law. A transcript of the hearing was received on July 17, 2006.

FINDINGS OF FACT

DOHA alleged under Guideline J, criminal conduct, and Guideline E, personal conduct, that Applicant was charged with simple assault in April 2000 and referred to anger management (SOR ¶ 1.a), that he pleaded guilty to a subsequent

May 2001 assault and battery offense involving a family member (SOR ¶ 1.b), and that he resigned from his position at a military base's gymnasium after it was alleged that he had sold two gym passes and pocketed their \$75 cost (SOR ¶ 1.c). Applicant was also alleged under Guideline E to have deliberately omitted material facts concerning his April 2000 arrest when he provided a sworn statement to an investigator for the Department of Defense in September 2002 (SOR ¶ 2.a).

In his Answer, Applicant admitted that he physically assaulted his spouse during an argument in April 2000 and again in May 2001, but completed his probation and counseling for that offense. He denied resigning his position at the gym due to criminal allegations, contending he left the job due to his relocation for a new job. He acknowledged he reimbursed his employer the \$75 for the passes because he did not want to jeopardize his new employment opportunity. Applicant did not deny stating to the DSS in September 2002 that he had experienced no additional arrests other than his May 2001 assault and battery, but he maintained the May 2001 offense was the only one recalled at the time due to its seriousness. After consideration of the pleadings, exhibits, and transcript, I make the following findings of fact.

Born in January 1975, Applicant was raised along with his siblings (two brothers and an older sister) in a rough neighborhood of New York City. His father died when he was 11 and his "middle" brother was violently killed when he was 16. After graduating from high school in June 1993, Applicant entered on active duty in the United States Navy for the opportunities it presented.

During his eight years in the military, Applicant served admirably as a radar operator/operations specialist in the surface and aviation communities. (Ex. H; Ex. K) In September 1994, Applicant met his spouse while he was temporarily assigned to a command at a naval base in his present locale. They got engaged within a month of their first meeting as he was leaving the area, and they married in June 1995. In November 1997, they had their first child, a son. A daughter was born to them in July 2004.

After the birth of their son, Applicant was deployed for six months. Applicant's spouse and his son lived with her father for the six months. On his return in 1998, she rejoined Applicant and was a stay-at-home mom for another six months before beginning her career as an insurance claims adjuster. Applicant and his spouse had problems in their marriage, including difficulties communicating. He pushed her down their steps in November 1999 during an argument. In about February 2000, they separated and he moved to bachelors' quarters while she remained in the home with their son.

One Saturday in April 2000, Applicant's spouse came to his quarters demanding the garage door opener as she did not want him to have access to her home. She presented him with a separation agreement prepared at base legal services, and an argument ensued over who was going to watch their son that day. She wanted to leave their son with him. Applicant grabbed her around the neck but she managed to free herself and ran next door to call the police. The occupant, a shipmate from the squadron and a good friend of Applicant's, refused her the phone at Applicant's request. Applicant's spouse then returned to Applicant's apartment and he again grabbed her around the neck before his friend restrained him. She complained of the assault to base police, who saw visible signs of injury on her neck and biceps. About 25 minutes later, Applicant telephoned base police and informed them of the dispute with his spouse. On the advice of the police, Applicant, accompanied by his shipmate friend, reported to police headquarters where he was taken into custody and issued a summons for assault and battery on a family member, ⁽¹⁾ directing him to appear in court on July 18, 2000. Applicant was released to his command about three hours later. Applicant submits he did not appear in court, but was instead directed by his command into a family advocacy program and anger management counseling. (Tr. 56) Applicant testified he began seeing a licensed clinical social worker at that time (Tr. 80), but there is no corroboration in the record of any counseling until May 2001. (Ex. C)

In about April 2001, Applicant moved back into the family home off base. It was a particularly stressful time for him, as his mother had been diagnosed with cancer. In mid-May 2001, Applicant shoved his spouse during an argument. Applicant left the house taking their son with him, and his spouse filed a complaint with the local police. Applicant was arrested for assault and battery on a family member. ⁽²⁾ In about August 2001, he pleaded guilty, and was sentenced to fines and costs of \$78, two years supervised probation, and anger management counseling. Applicant began anger management counseling with a licensed clinical social worker (LCSW) in May 2001 until September 2001, when he left the area for civilian employment. ⁽³⁾

In June 2001, Applicant was given an honorable discharge from the Navy at the rank of E-5. He elected to not reenlist after he was denied the assignment he wanted. In September 2001, he began working as an operations engineer for a defense contractor at another naval installation located about 2 1/2 hours' drive away from his family. His secret-level clearance was transferred. A "geographic bachelor" (Tr. 64), Applicant shared a house with a coworker. This coworker observed Applicant to be hardworking, considerate, and a person of integrity. (Ex. M)

Applicant began working part-time for the base morale, welfare, and recreation office (MWR) in early 2002. As a recreational aide stationed at the front desk of the gymnasium from 1600 to about 2000, Applicant was responsible for handing out towels and equipment, issuing gym memberships, selling sports drinks and energy bars, and monitoring the gym. As front desk clerk, he entered sales into the cash register. At the end of his shift, he had to tally the cash receipts and complete a daily activity report. In the case of gym passes/memberships, he was required to issue a receipt to the purchaser, and to document the purchase in a receipt book maintained by the gym and on the cash report at the end of his shift. A recreational specialist was tasked with ensuring that the shift's tally of receipts matched the cash received in the register.

During his shift on May 16, 2002, Applicant sold a defense contractor ("gym patron") two prorated gym memberships for herself and her 16-year-old son, at a total cost of \$75. Applicant took the \$75 cash payment but did not give her a receipt for the memberships. (4) Nor did he enter the membership pass sales onto his daily activity report. The cash register tape and his daily activity log showed only \$23.05 in cash receipts. On May 21, 2002, while entering the yearly gym pass memberships in her computer database, a recreational specialist discovered two membership passes (#519 and #520) were missing. After a check of the receipt logs met with no success, she went through the forms and found one membership form with the two passes listed but with no receipt number. The cash register tapes from May 16, 2002, showed no transaction of \$75 on any shift. The gym patron confirmed Applicant had given her two temporary memberships in exchange for \$75 cash but no receipt. He told her to return later for her permanent passes since the laminating machine was broken. When asked about the sale of the family membership, Applicant expressed to the recreational specialist that he believed he had issued a receipt for the \$75 cash payment and that he had rung the sale in the cash register. He responded angrily when the recreational specialist told him the sale had not been rung up, and indicated he would be turning in his two-week notice.

On May 21, 2002, Applicant notified the MWR that May 22, 2002, would be his last day on the job due to "the current situation and [his] sudden relocation." (Ex. 4) On May 24, 2002, Applicant was interviewed by a command criminal investigator. Applicant refused to sign an acknowledgment and waiver of rights. On being advised of his rights, he indicated he sold two gym passes to the gym patron for \$75, issued her a receipt, and put the cash in his cash register drawer. He was shown the receipt book and his daily cash register transaction tape for May 16, 2002, and was asked to explain the absence of any transaction entries showing the \$75 sale. Applicant responded he would return the missing funds. On May 24, 2002, he paid \$75 to the MWR through the investigator. In its final investigative report of June 6, 2002, the command investigations office concluded Applicant accepted \$75 cash payment for two gymnasium passes, failed to issue the patron a receipt or include the amount on his daily activity record, and "instead, he pocketed the money." (Ex. 5)

Applicant has consistently denied that he took the money (Tr. 48, Ex. 1), and explained that he paid the \$75 since he was in the process of relocating and wanted to avoid the hassle of fighting a petty larceny charge in court ("The government was--the NIS officer was--he was actively pursuing that I had pocketed the money and he said that the government was thinking about pressing charges and again I was relocating and I wanted to avoid any prosecution and so I reimbursed and I gave them back the money."). (Tr. 50)

In June 2002, Applicant rejoined his family and started a new job as a systems engineer/senior analyst with a defense contractor. He continued to hold a secret clearance. His mother died of metastatic pancreatic cancer in late June 2002. Applicant returned to individual anger management therapy with the LCSW he had seen in 2001, and began joint marital counseling with his spouse to work on issues of trust and communication. He saw the LCSW jointly with his spouse to about August 2003, and individually to 2004. Applicant achieved his treatment goals. He stopped all abusive and controlling behavior and accepted responsibility for his abusive behavior. On successful completion of his probation in 2003, the assault charge was dismissed.

On September 20, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about the allegations of petty larceny from the MWR, and his arrest for assault and battery in May 2001. Applicant averred that he had given the gym patron a receipt for the \$75 membership, but had been accused of not doing so by the Naval criminal investigator and then keeping the \$75; that after being told that charges would be filed against him if he did not return the money, he paid the \$75 as he wanted to avoid the hassles of fighting the charge in court. Applicant denied to the agent that he had stolen the money. As for his arrest for assault on his spouse, Applicant indicated he had become involved in an argument with his spouse in August/September 2001 that included pushing and shoving. He admitted being placed on two years of probation and required to attend anger management counseling, which he had resumed in May 2002 after moving back to the area. Applicant executed a sworn statement in which he related, "I have experienced no additional arrest other than the previously mentioned assault and battery charge." (Ex. 1)

In 2003 and 2004, Applicant volunteered in a YMCA youth sports department and in his community's youth recreational league, coaching his son's youth basketball teams. He was a positive role model for the children. (Ex. L; Tr. 140) In January 2004, Applicant began studies in aeronautics and management at a local center of an aeronautical university located in another state. A motivated student, he performed well in his academic studies while carrying a demanding work load and working full-time. (Ex. B; Ex. I)

On August 19, 2004, Applicant was interviewed by another DSS agent about the undisclosed assault on his spouse in 2000. Applicant acknowledged striking his spouse during an argument and that he had been charged with assault. He indicated he did not appear in court or at a Captain's Mast as it was resolved through his command's family advocacy program and anger management counseling. Applicant told the agent that the counseling was with the LCSW. (S) As for his failure to report the 2000 assault charge on his security paperwork, Applicant indicated that the agent who interviewed him in 2002 never asked him about it ("S/A [name omitted] never asked me about it or I would have certainly told him."). (Ex. 2)

On December 8, 2004, DOHA issued an SOR to Applicant, alleging in part that he deliberately did not disclose his 2000 assault charge to the first DSS agent in 2002. In his answer dated January 6, 2005, Applicant admitted he had indicated in a sworn statement of September 20, 2002, that he had experienced no additional arrests other than the May 2001 assault and battery. He denied any intentional omission, and claimed that he had recalled only the May 2001 arrest at the time "due to its severity." At his hearing, he indicated he could not recall what the agent asked him in 2002 ("When the agent asked me, he asked me was I--or she, I can't recall. I believe a formal arrest, I did not include the incident that happened on the base." Tr. 58). He went on to explain the circumstances under which the second agent asked him about the 2000 assault charge:

I believe that was the female agent. I was approached about it asking was there any--did I have--she came to me and said was there an incident between me and wife in 2000 and I informed that yes, there was. And she went into well, why didn't I report it to the previous agent and I informed her that being that it happened on a military installation, I didn't think that it was a civilian arrest, so that's why I did not include it. (Tr. 58-59)

On cross-examination, when first asked why he had not told the DSS agent in September 2002 about the 2000 assault charge, Applicant responded, "Because he asked me a recent act of domestic violence." (Tr. 91) He then added, "Again, sir, like I stated, I thought I never was charged. I thought he asked me about arrests" (Tr. 92) Applicant subsequently testified in response to my questions that he did not bring up his first arrest with the agent because he did not consider it to be a civilian arrest and because "it was behind [him]." (Tr. 102)

While Applicant's case was pending adjudication, Applicant began working for his present employer, a defense contractor, in May 2005. His spouse and children joined him a couple of months later in their new locale after they sold their home. In Fall 2005, he started taking flight lessons from an instructor at a local flight school and continued his work with local youth as a basketball coach for his son's team. (Ex. J) Applicant continued his studies while working full-time, and in early June 2006, he was awarded his bachelor of science in professional aeronautics. He was accepted into the university's master's program for aeronautical science.

Applicant holds a secret-level security clearance for his duties in a Navy computer simulation laboratory. As a situation operator, he researches performance characteristics for aircraft models and behaviors, tests software developed at the

command, and conducts simulation operations as experiments or at training events. His position requires him to routinely access classified information. The laboratory manager, who is a Navy civilian employee as well as a Commander in the Naval Reserve, has had the opportunity to work with Applicant on simulation activity deployed from the laboratory. In his experience, Applicant has been very conscientious, thorough, and organized in the performance of his duties

Applicant's spouse no longer fears that Applicant might become violent when they argue. She testified to Applicant maturing when he turned 27 and to dealing appropriately with marital disagreements since his counseling.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline J--Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. ¶ E2.A10.1.1 Applicant physically assaulted his spouse in November 1999, April 2000 (¶ 1.a), and May 2001 (¶ 1.b). Although the first incident was never brought to the attention of law enforcement, it remains relevant in assessing the extent and seriousness of his abusive behavior. The difficult circumstances of his life, to include the loss of his father at a young age, the tragic death of his brother when he was 16, and even his mother's illness do not make his conduct any less egregious. Criminal conduct disqualifying conditions (DC) ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*, are implicated.

As for the alleged theft by Applicant of the \$75 gym membership fee in May 2002 (¶ 1.c), the government presented persuasive evidence that Applicant pocketed the money. The gym patron, who had no apparent motive to lie, told a Naval criminal investigator in May 2002 that she paid \$75 in cash for the gym passes and was not given a receipt. As reflected in his daily activity report of May 16, 2002, Applicant worked the front desk that evening. When questioned by the recreational specialist on May 21, 2002, he recalled accepting the cash for the membership. The cash register tape for his shift confirms the transaction was not rung into the register. Cash receipts tallied by him and entered onto his daily activity report amounted to only \$23.05. A check of the receipt record showed no documentation of the sale. When confronted about the transaction not being documented as required, Applicant resigned effective the following day. The timing of his resignation and the short notice would not alone be enough to establish culpability, but it is also evident that Applicant did not resign solely because of the upcoming job opportunity ("So I quit that job--I mean I was relocating, but I also quit the job because I was tired of going through of being accused of pocketing the money.").⁽⁶⁾ (Tr. 49)

Furthermore, Applicant's failure to record the membership sale makes it very difficult to accept his claim that he repaid

the \$75 to the MWR solely because he was relocating and wanted to put the matter behind him. Applicant has yet to present a credible explanation for his failures to place the funds in the cash register or to document the receipt. At his hearing, he testified that he could have neglected to do so because he "might have been so busy," Navy personnel took over after him and came in before his shift ended, he "had other things going on that particular day." (Tr. 47-48) According to the gym patron, she purchased the passes at around 1830 that day. (Ex. 5) Applicant's shift did not end until 2000 (Tr. 40) or perhaps 2100 (Ex. 1). He also testified that the gym was typically busiest at the start of his shift. (Tr. 41) While this does mean that he could not have been busy at around 1830 on May 16, 2002, it is mere speculation at this point to conclude that Applicant was busy when the patron came in to purchase the gym membership. A transaction of \$75 is not likely something he would have overlooked when filling out his daily activity report. Applicant filed no report of any missing funds. The available record supports the Naval criminal investigator's conclusion that Applicant committed petty larceny. DC ¶ E2.A10.1.2.1 applies to that conduct.

As corroborated by Applicant's spouse, Applicant has not assaulted her since he started his court-ordered anger management counseling in May 2001. Nor is there any evidence of theft-related conduct since May 2002. Criminal conduct may be mitigated where it occurred sufficiently in the past that it is not likely to recur (¶ E2.A10.1.3.1. *The criminal behavior was not recent*), although the passage of time is but one factor to consider in assessing the risk of recidivism. Through counseling with an LCSW, Applicant has come to realize there is no excuse for his spousal abuse. He has accepted his responsibility and worked hard to reform his behavior to the point where he and his spouse are now able to resolve marital disagreements without him resorting to violence. Future incidents of assault are seen as unlikely. Yet, ¶ E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*, is not met where Applicant refuses to acknowledge any wrongdoing with respect to the May 2002 theft of funds from the MWR.

Guideline E--Personal Conduct

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.A5.1.1. There are two issues in this case: Applicant's failure to deal with his anger appropriately, and his veracity. While Applicant exhibited poor judgment in the context of Guideline E when he assaulted his spouse, he has overcome those concerns by successfully addressing his assaultive behavior through counseling for a couple of months in 2001 and then from 2002 to 2004. Yet, when asked about his assaultive behavior by a DSS agent in September 2002, Applicant told the agent that he had no additional arrests beyond the May 2001 incident discussed. The government did not provide evidence of the specific inquiries made of Applicant during his September 2002 interview (e.g., whether he had been otherwise charged or whether he had been otherwise arrested). However, the police report of the 2000 incident shows he was taken into custody and not released to his command until about 0303 in the morning, about three hours after he was issued a federal summons notifying him of the charge of domestic assault. Applicant clearly knew that his assaultive behavior and not just civilian arrest record was of concern to the Department of Defense. His denial of any arrests other than in May 2001 falls within ¶ 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*. Additional, very serious, judgment concerns are raised by the theft of funds from the MWR. Even assuming he did not take the monies, his failure to ring up the sale or record their receipt was in violation of the MWR procedures as he knew them from training and/or experience. He testified that if a sale was made in the normal course of business, the transaction was to be recorded on the cash report. (Tr. 46) DC ¶ E2.A5.1.2.1. *Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*, and ¶ 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*, must be considered.

None of the personal conduct mitigating conditions apply. Although Applicant provided details of his April 2000 assault when he was questioned by a DSS agent in August 2004, the disclosures were in response to specific inquiry from the agent based on Applicant's earlier withholding of that information. Moreover, a rectification almost two years too late is not sufficiently prompt to fall within ¶ E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ¶ E2.2.1. While there is no excuse for spousal abuse or theft (¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*), Applicant's age and immaturity at the time must be considered (¶ E2.2.1.4). Applicant and his spouse married when they were both 20 years old after knowing each other only nine months. He was a new father at only 22 and deployed to sea for six months while his spouse lived with her father, so they did not have a lengthy time together to mature in their relationship together. Subsequent efforts to improve his marriage have been successful (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*). Applicant's spouse testified that Applicant became a changed man when he turned 27. He became a more proactive father and respected his marriage more (Tr. 141). Whether or not the May 16, 2002 incident was the catalyst for change, the reconciliation with his spouse after being a geographic bachelor, his counseling, maturing in age, or a combination of these factors, Applicant has been dedicated to his family, to the youth sports teams that he has coached, and to his work, since mid-2002. Yet, concerns persist about his personal judgment and reliability. He is willing to lie to protect his job, as evidenced by his lack of candor with the agent in September 2002, and his reluctance to acknowledge any wrongdoing in the theft of the gym dues and in the knowing concealment of information from the DSS.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. Applicant's version of the incident differs from the police report (Ex. 3). Applicant testified the Department of Defense civilian police contacted him on his cell phone and told him to come in and make a statement as to what occurred and after he made his statement, he was released to his command (Tr. 54-55). He was ordered by the senior enlisted person in his command to attend anger management counseling and participate in a family advocacy program. (Tr. 56) According to the police report, a patrol officer met with Applicant's spouse at base police headquarters at about 2310. At about 2335, Applicant phoned the base police and informed the base patrol supervisor that he had a dispute with his spouse. Applicant was advised to come in person to headquarters to make a statement. And that Applicant arrived with his shipmate at about 2355. Available evidence shows Applicant was issued a U.S. District Court violation notice ordering him to appear in court on July 18 that he refused to sign. (Ex. 3)

2. Applicant told a Defense Security Service (DSS) special agent in September 2002 that the incident occurred in August/September 2001 (Ex. 1), when he was transitioning to the civilian sector. The government alleged in SOR ¶ 1.b

that the offense took place in May 2001, and the social worker who counseled him indicates he began his sessions in May 2001. (Ex. C)

3. Applicant testified he continued to see the counselor sporadically during his time as a "geographic bachelor." (Tr. 84) However, he told a DSS agent in September 2002 that he received no counseling from her between September 2001 and May 2002. (Ex. 1) Such discrepant accounts undermine his credibility.

4. Applicant gave her \$5.00 change in exchange for \$80 cash as well as a temporary annual gym pass valid to September 30, 2002 (the remainder of the fiscal year). (Ex. 5)

5. There is no evidence of any counseling pursued by Applicant before the May 2001 assault and battery. The LCSW reports Applicant began his sessions with her in May 2001. (Ex. C)

6. At this point, any accusations of him pocketing the money would have been made solely by the recreational specialist as Applicant had not yet been interviewed by the naval investigator. The recreational specialist indicated in her statement of May 22, 2002, to the command investigator that Applicant hung up on her after she confronted him about the sale not being rung up. (Ex. 5) There is no documentation showing she accused Applicant of taking the money, although he could have inferred it from her questioning him.