DATE: December 28, 2006

In re:

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

Applicant for Security Clearance

CR Case No. 03-05733

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Charles R. Hamm, Esquire

SYNOPSIS

Applicant's infrequent and irregular marijuana use during 1973-80 (including a 1977 arrest for possession), and again in 1996-97, and his 1986 DUI have been mitigated by time and subsequent abstinence. However, his 1986 beating, sexual assault, and rape of a coworker/former girlfriend, and his 1992 "attempted" child molestation of his eight year old stepdaughter because of an unfulfilled marriage and the need to have some "control," have not been mitigated despite his continuing therapy. According to his counselor, sexual deviancy is a lifelong issue that requires vigilant management. Applicant's actions especially after he had been granted a security clearance in 1984, reflect a high degree of questionable judgment and irresponsibility. Clearance is denied.

STATEMENT OF THE CASE

On March 27, 2000, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). (1) On April 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons under Guideline J (criminal conduct), Guideline H (drugs) and Guideline E (personal conduct) 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 statement, dated April 18, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on September 6, 2005. The case was initially assigned to another Administrative Judge on September 19, 2005, and then, to consolidate with other cases to be heard at the same location, to a different Administrative Judge on November 22, 2005. A notice of hearing was issued that same date, scheduling the hearing for December 14, 2005. However, on December 5, 2005, Applicant, through his attorney, requested a continuance due to the unavailability of a necessary expert witness and the inaction on Applicant's

previous request for a copy of the investigative file. On December 9, 2005, the continuance was granted. The case was again reassigned to another Administrative Judge on December 20, 2005. It was reassigned to me on March 7, 2006. A notice of hearing was issued that same date, scheduling the hearing for March 30, 2006. It was held as scheduled. During the hearing, 17 Government exhibits, 3 Applicant exhibits, and the testimony of two Applicant witnesses (including Applicant) were received. The transcript (Tr.) was received on April 10, 2006.

RULINGS ON PROCEDURE

Department Counsel requested Official Notice be taken of the contents of Title 21, United States Code (Controlled Substances Act), § 802, *Definitions* and § 812, *Schedules of Controlled Substances*. There being no objection by Applicant, pursuant to Rule 201, *Federal Rules of Evidence* (F.R.E.), I took Official Notice as requested.

Department Counsel waived *voir dire* and did not object to the expertise and qualifications of the licensed professional counselor, a self-styled psychotherapist, tendered as an "expert."[(2)]

FINDINGS OF FACT

Applicant admitted most of the factual allegations pertaining to criminal conduct under Guideline J (subparagraphs 1.a., 1.b., 1.d., and 1.e.), and most of the allegations pertaining to drugs under Guideline H (subparagraphs 2.b., 2.d., and 2.e.). Those admissions are incorporated herein as findings of fact. He denied all of the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 3.a. through 3.c.), as well as the remaining allegations (subparagraphs 1.c., 2.a., and 2.c.). 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 48-year-old employee of a defense contractor. He is seeking to retain the SECRET security clearance which was granted to him in January 1990.[(3)] He was previously granted security clearances at different levels since 1984.[(4)] Applicant has been employed by the same government contractor, or successor company, since August 1983, and currently serves as operations manager.[(5)] The quality of his work performance has not been provided.

He received a B.S. degree in Mechanical Engineering in 1983. He was married in 1988, and separated from his wife in late 1996.[(6)] Despite being separated, Applicant contends he and his wife and two stepsons (born in 1974 and 1975, respectively)[(7)] maintain "a close, loving intimate relationship."[(8)] For reasons discussed below, he and his stepdaughter (born in 1983)[(9)] do not maintain anything but a distant relationship. Applicant's wife and her three children maintain a separate residence from him.

Applicant was a substance abuser whose choice of substances was marijuana, cocaine, and alcohol. He started drinking alcohol moderately at dances and parties when he was about 14 years old.[(10)] Although his alcohol consumption increased over the years, it remained somewhat unremarkable until he started using alcohol to avoid confronting personal problems.[(11)] He generally spent the majority of his free time after work drinking alcohol.[(12)]

On one occasion, in January 1986, at about 1:30 a.m., Applicant was stopped by the police after being observed driving in an erratic manner all over the road.[(13)] The police officer observed Applicant speaking with slurred speech and noted watery and bloodshot eyes and the moderate odor of alcohol coming from his breath.[(14)] After being administered several field sobriety tests most of which he failed, Applicant was arrested and transported to the police service center for further processing. He was charged with driving under the influence of intoxicating liquor (DUI) and driving while blood alcohol level is .10% or higher.[(15)] He declined to answer some questions, but agreed to submit himself to an intoxilizer breath test.[(16)] An hour after he was stopped, the test results registered .159 per cent.[(17)] During the entire incident, Applicant was antagonistic, profane, belligerent, and insulting towards the officer.[(18)] He shrugged off the warning that such continued belligerence would result in his incarceration, and only became apologetic after he was processed for incarceration in the county jail.[(19)]

Applicant entered a plea of guilty to the first count and was sentenced to 12 months probation, community service, 90 days suspension of his operator's license, a fine was imposed, and he was ordered to report to the Reduction of Intoxicated Driver course.(20) The second count was dismissed.(21) He started his three meetings per week beginning June 1989.(22) On October 16, 1986, Applicant had vowed to "cease the use of all mind/mood altering chemicals."(23) He also agreed to attend: three outpatient group meetings weekly, for three hours each night, for a minimum of eight weeks; a minimum of three individual counseling sessions during that same eight weeks; and a minimum of two Alcoholics Anonymous (AA)/Al-Anon meetings weekly.(24) He was found by the counselor to have no knowledge of alcohol or drug issues, and no sober support system outside of AA friends, to be emotionally shaky, and to exhibit sexual dysfunction.(25) Applicant has abstained from further alcohol consumption since November 1986.(26)

Less than a month later, on February 14-15, 1986, another incident occurred. Applicant consumed from 20 to 25 beers between 4:30 p.m. and the following 1:00 a.m.(27) During the early morning on about February 15, 1986, in the parking lot of a local tavern, Applicant approached a coworker/former girlfriend--by then reconciled with her husband after a separation during which she was intimate with Applicant--and savagely beat her throughout her body.(28) He threatened her and gave her the option of either going to her apartment for intercourse or performing fellatio in the car.(29) She did not want to do either, but was too scared to run, so she opted out for the latter.(30) During a two and one-half hour period, she performed the sex act while he was driving on the highway, and when she stopped, he penetrated her vagina with his fingers and subsequently raped her.(31) The victim opined Applicant was drunk as there were beer bottles all over the car interior.(32) He eventually permitted her to leave the car, and she fled to her parents' house.(33) Subsequent medical examination revealed a broken finger and numerous body bruises on the victim.(34) A sexual assault kit was ordered and a variety of swabs, blood, hair, fingernail, and hair samples were collected and examined, and clothes from Applicant and the victim were tested.(35)

Applicant was arrested and charged with kidnaping (a class 2 felony), and three counts of sexual assault (a class 2 felony).(36) He subsequently entered into a plea agreement and plead guilty to the charge of unlawful imprisonment (a felony),(37) and the remaining charges were dismissed.(38) He was sentenced to probation for three years, ordered to successfully complete an alcohol counseling program, incarcerated in the county jail for eight weekends, ordered to participate in mental health counseling, and directed to pay probation costs.(39)

During the presentence interview, Applicant denied that he had forced the victim to engage in sex with him on the night in question. He claimed their meeting was prearranged, but that since she was late and apologetic, she offered to pacify him with fellatio.(40) Applicant contended he did not beat the victim to have sex, and that the sex was consensual.(41) That scenario differs markedly from the recorded comments he made to the victim in a telephone call monitored by the police on the afternoon of the incident when Applicant said "I don't think that it is O.K. that I forced you to have sex with me."(42) After considering all of the material evidence, I conclude Applicant did not have consensual sex with the victim, but instead forced himself on her.

In May 1992, Applicant's eight year old stepdaughter reported that she had been sexually molested by Applicant on a number of occasions beginning in late 1990 and continuing to late April 1992 or early May 1992.(43) The molestation took place as he fondled or rubbed her vagina, over her clothes, except for one such episode when his fingertip actually penetrated her vagina.(44) He "touched" his stepdaughter two to three times per week and sometimes not for a month.(45) Applicant was confronted by his wife and he admitted the facts.(46) The following day, he and his wife went to a counselor.(47) Applicant also acknowledged the facts to the counselor who reported the confession to the police.(48)

Applicant's motivation for his actions was that he felt unfulfilled in his marital relationship and felt in his relationship with his stepdaughter he could have some "control."(49) After he molested his stepdaughter he would feel guilt and remorse over his actions, and he knew what he was doing was wrong, but he continued to do it again.(50) Applicant conceded that had the conduct not been reported, the behavior would have continued and possibly even escalated.(51)

The following July or August of 1992, Applicant, accompanied by his attorney, turned himself in. He was indicted for molestation of child, victim under fourteen, a class two felony, an offense involving a dangerous crime against children.[(52)] In September 1992, he entered into a plea agreement and plead guilty to the charge of attempted molestation of a child, victim under fourteen, a class three felony, a dangerous crime against children.[(53)] He was ordered into life time probation, sentenced to six months incarceration in the county jail (eligible to participate in work furloughs and attend therapy), directed to pay probation costs, ordered not to drink alcohol or have any contact with illegal drugs, ordered to participate in treatment or training programs directed by his probation officer, prohibited from having contact with minor children unless an adult is present, and ordered to comply with the special conditions for sex offenders.[(54)] The initial charge was dismissed.

After Applicant and his wife initially spoke with a counselor in May 1992, Applicant underwent individual therapy with three therapists, group therapy with another therapist, and joint sessions with his wife and stepdaughter (and her own therapist) on a continuing basis.[(55)] The stepdaughter's therapist saw Applicant for some individual counseling and family counseling from May 1992 until September 1999.[(56)] Applicant has been diagnosed with passive-aggressive disorder, deviant sexual interest, and sexual pedophilia.[(57)] Based on therapy progress of the individuals involved, the therapist recommended reunification of the family without supervision of Applicant in November 1993.[(58)] The court approved, and Applicant was permitted to return to the family home to be reunited with the family.[(59)] Applicant continued individual therapy with another counselor in 1992-93.[(60)] As a result of the conviction, he also sees another therapist/probation counselor, and will be required to maintain that professional relationship for the remainder of his life.[(61)] Applicant participates in regular polygraph tests to determine if he is continuing to cooperate in his sexual offender treatment and probation requirements.[(62)] Applicant is "aware that sexual deviancy is a lifelong issue that requires vigilant management."[(63)] He participates in once a month maintenance groups.[(64)] It is the opinion of the counselor that Applicant is in the low risk category for sexual re-offense.[(65)] The counselor based his opinion on test results involving Applicant. He does not believe Applicant should be characterized as a pedophile since his primary sexual attraction was adults.[(66)]

In May 1996, Applicant's wife asked for a separation. Applicant became quite depressed and lonely. He was sufficiently aware that he could not cope with the situation by using alcohol, because alcohol consumption would be a violation of his probation. Instead, he returned to marijuana--another violation of his probation.[(67)] He had initially used marijuana in about 1973 when he was a student in high school,[(68)] and was arrested in 1997 for illegal possession of marijuana,[(69)] but continued using it on an infrequent and irregular basis until 1980.[(70)] He abstained until December 1996. He used marijuana between December 1996 and January 1997, and estimated he smoked it on about a dozen occasions during that period.[(71)] When his probation urinalysis came back positive for the presence of marijuana he was arrested and charged with a probation violation.[(72)] For that violation he was sentenced to the county jail for 48 hours.[(73)]

In June 1987, Applicant declared that he had decided to stop using marijuana when he started attending college, and indicated he had no intentions of using it again.[(74)] He did so. In January 2003, he claimed to have stopped using marijuana in January 1997, and has not used it since that time. He again indicated he had no intentions of ever using it or any other illegal drug in the future.[(75)] There is no evidence to rebut his most recent contention that he has abstained since 1997. During the hearing, he restated his intention to never smoke marijuana again in his life.[(76)]

Applicant used cocaine with varying frequency in about 1978.[(77)]

On March 27, 2000, Applicant completed his Security Clearance Application (SF 86), and in response to an inquiry pertaining to ever having been charged with or convicted of any offenses related to alcohol or drugs, Applicant responded "yes," and purportedly listed his 1977 arrest for possession of marijuana and 1997 use of marijuana in violation of his probation. He certified that his response was true, complete, and accurate. It is the contention of the government that Applicant's response was incomplete and false for he purportedly "deliberately failed to list" his 1986 DUI arrest. Applicant denied the allegation and the government chose not to offer into evidence the complete SF 86

containing the alleged the question and answer.

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 set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

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 that the issuance of the clearance is "clearly consistent with the interests of national security,"[(78)] or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I conclude that both standards are one and the same. In reaching this Decision, I draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I avoid drawing inferences that are 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, that 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 that 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 that 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 that 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 that 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 that 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, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Criminal Conduct Analysis:

Guideline J states that a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Applicant's history of criminal conduct is both lengthy and varied, and would be even more expansive if the government had chosen to include the various collateral criminal issues under Guideline J. In this instance, we are

concerned with his possession and use of marijuana in 1977 and 1996-97, respectively, his DUI in 1986, the sexual assault-related unlawful imprisonment in 1986, and the attempted molestation of a child, victim under fourteen. Applicant's criminal conduct in this regard 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*) and CC DC E2.A10.1.2.2. (*a single serious crime or multiple lesser offenses*).

There is appreciable merit to the argument in favor of Criminal Conduct Mitigating Condition (FC MC) E2.A6.1.3.1. (*the criminal behavior was not recent*), for the substance abuse last occurred nearly 10 years ago, the alcohol abuse last occurred over 20 years ago, the unlawful imprisonment occurred over 20 years ago, and the "attempted" child molestation occurred over 14 years ago. Under the evidence presented, CC MC E2.A6.1.3.2. (*it was an isolated incident*) does not apply, as there are two incidents involving alcohol, two incidents involving marijuana, and two incidents involving sex crimes. Likewise, this matter does not come within CC MC E2.A6.1.3.3. (*the person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) or CC MC E2.A6.1.3.4. (*the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*). Applicant was not pressured or coerced to violate the law. In addition, there is some question as to the success of Applicant's rehabilitation regarding each of those criminal actions, since the marijuana arrest in 1977 was followed by his subsequent use; the DUI in 1986 was followed by excessive drinking and the unlawful imprisonment; and the attempted child molestation was followed by probation violation. Applicant was fortunate enough to have his bargained pleas accepted, the charges reduced, and his sentences lightened.

Drug Involvement Analysis:

Guideline H states that "[i]mproper 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."[(79)] Applicant's relationship with marijuana**,** especially while holding a security clearance, his use of cocaine nearly 29 years ago, and his 1987 promise not to use marijuana in the future, a promise he did not keep, have raised, according to the government, several issues regarding his security clearance eligibility and suitability.

The Directive clearly expresses the government's concern regarding drug involvement in provision E2.A8.1.1.1., quoted above. Provision E2.A8.1.1.2.1. generally identifies and defines drugs, as follows (*drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens*)). Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*), and DI DC E2.A8.1.2.2. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*). However, under the circumstances of this case, and the Appeal Board's recent decision in another case,[(80)] DI DC E2.A8.1.2.5. (*failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination*) does not apply.

Applicant's cocaine use occurred in about 1978--over 28 years ago--and the more extensive marijuana use, continued at least until January 1997--nearly 10 years ago--were not recent, a condition recognized under Drug Involvement Mitigating Condition (DI MC) E2. A8.1.3.1. (*the drug involvement was not recent*). DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*) does not apply.

Applicant asserts he has abstained from using any illegal substances since January 1997. That period of abstinence is substantial. And, as noted, he declared on several occasions, including June 1987, he had no intention of ever using drugs again. His declared intention, however, does not constitute a sworn vow to never do drugs again. It merely expresses a present intention. His period of abstinence and his intentions are positive factors and rise to the level envisioned in DI MC E2.A8.1.3.3. (*a demonstrated intent not to abuse any drugs in the future*).

Personal Conduct Analysis:

Guideline E states that "[c]onduct 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."

Examination of Applicant's actions reveals a pattern of conduct involving questionable judgment, untrustworthiness, and unreliability. He violated criminal laws pertaining to drug and alcohol abuse, he savagely beat, assaulted, and raped a coworker/former girlfriend, he sexually molested his young stepdaughter, and he violated his probation. His actions fall 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*).

However, as it pertains to dishonesty related to his SF 86 in March 2000, Applicant denied the allegation and the government chose not to offer into evidence the complete SF 86 containing the alleged the question and answer. Thus, there is no evidence to support the government's contention. There is merely an unsupported allegation.

Whole Person Analysis:

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 on Applicant's actions and admissions, it appears that his alcohol abuse contributed to some of his criminal actions--his DUI and the savage beating, sexual assault, and rape of one victim. His mental and emotional conditions--passive-aggressive disorder, deviant sexual interest, and sexual pedophilia, as well as his anxiety and depression--may explain motivation for the attempted child molestation, but they do not excuse such conduct. The two sexual issues are extremely serious and involve innocent victims. Applicant was aware of his actions but chose, for whatever reason, to ignore any resistance to continuing his actions. In the beating and rape scenario, he wanted sex, and he get it under any circumstance. In the child molestation scenario, he wanted control, and he achieved it regardless of the victim's age, innocence, and relationship. With his face and name in the national sex offenders' registry, Applicant cannot avoid the embarrassment of being identified publically, but that factor negates any possible pressure, coercion, or exploitation of Applicant. Of course, it does not negate the duress. As for the presence or absence of rehabilitation and other pertinent behavioral changes, as noted above, time without continued misconduct has served to support successful rehabilitation on one hand. On the other hand, Applicant has already violated his probation on at least one occasion. Another matter to be considered is that sexual deviancy is a lifelong issue that requires vigilant management, and Applicant is on a life long probation. Adding to my concerns are the facts that Applicant used marijuana while already holding a security clearance, and that he failed to self-report his misconduct to his employer until the very last opportunity to do so.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors and conditions under the Adjudicative Process, as well as under the whole person concept, I believe Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under drug involvement, three allegations under criminal conduct, and one allegation under personal conduct. The government has failed to make its case in one allegation under personal conduct. However, Applicant has failed to mitigate or overcome the government's case as it pertains to two allegations under criminal conduct and one allegation under personal conduct. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a., 1.b., 1.e., 2.a. through 2.e., 3.a., and 3.b. of the SOR are concluded in favor of Applicant, but allegations 1.c., 1.d., and 3.c. 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.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2., Guideline H: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: For the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: 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. Government Exhibit 1 (Security Clearance Application (SF 86), dated July 7, 2004).

2. Tr. at 88, 91.

3. Government Exhibit 8 (Employer Adverse Information Report, dated February 11, 2000).

4. Government Exhibit 12 (Employer Adverse Information Report, dated March 22, 1987).

5. Tr. at 29.

6. Tr. at 73.

7. Government Exhibit 1, *supra* note 1, at 3.

8. Tr. at 74.

9. Government Exhibit 1, *supra* note 1, at 3.

10. Government Exhibit 11 (Statement of Subject, dated June 15, 1987) at 1.

11. Government Exhibit 15 (Statement of Subject, dated July 31, 1989) at 3-4.

12. *Id.* at 3.

13. Government Exhibit 16 (Police Offense Report/Alcoholic Influence Record, dated January 4, 1986) at 2.

14. *Id.* at 2.

15. *Id.*

16. *Id.* at 3.

17. *Id.*

18. *Id.*

19. *Id.* at 3-4.

20. Response to SOR, dated April 18, 2005.

21. *Id.*

22. Government Exhibit 15, *supra* note 11, at 9.

23. Government Exhibit 13 (Outpatient Commitment/Treatment Plan, dated October 16, 1986) at 1.

24. *Id.*

25. *Id.* at 2.

26. Government Exhibit 15, *supra* note 11, at 3.

27. Government Exhibit 11, *supra* note 10, at 2.

28. Government Exhibit 10 (Police Record-Statement of Victim, dated February 18, 1986) at handwritten page 138.

29. *Id.*

30. *Id.*

31. *Id.* at 139.

32. *Id.* at 138.

33. *Id.* at 139.

34. *Id.* at 140.

35. Government Exhibit 10 (City-County Crime Laboratory Report, dated June 16, 1986) at handwritten page 170.

36. Government Exhibit 4 (Court Records, filed February 26, 1986) at 1-2.

37. *Id*. (Plea Agreement, dated August 4, 1986) at 1.

38. *Id.* (Department of Public Safety Disposition Report, dated September 24, 1986).

39. *Id*. (Sentence of Probation, dated September 24, 1986) at 3.

40. *Id.* (Presentence Report, dated September 3, 1986) at 3.

41. *Id.* at 4.

42. *Id.* at 2.

43. Government Exhibit 5 (Police Records-Supplementary Report, dated July 17, 1992).

44. *Id.*

45. Government Exhibit 9 ((Statement, dated January 23, 2003) at 2.

46. *Id.*

47. *Id.*

48. *Id*.; Government Exhibit 5, *supra* note 43.

49. Government Exhibit 9, *supra* note 45.

50. *Id.*

51. *Id.* at 2-3.

52. Government Exhibit 7 (Court Records-Indictment, dated July 29, 1992).

53. Government Exhibit 7 (Court Records-Plea Agreement, dated September 15, 1992) at 1.

54. Government Exhibit 7 (Court Records-Sentence of Probation, dated October 30, 1992) at 1-6; Government Exhibit 7 (Court Records-Amended Conditions of Probation, dated December 11, 1995).

55. Government Exhibit 7 (Court Records-Psychologist Letter to Judge, dated November 22, 1993) at 1.

56. Applicant Exhibit A (Defense Security Service Records-Report of Investigation, undated) at 4.

57. *Id.*

58. *Id.*

59. Government Exhibit 7 (Court Records-Psychologist Affidavit, undated).

60. Government Exhibit 9, *supra* note 45, at 3.

61. *Id.* at 3-4.

62. Applicant Exhibit E Report of Licensed Professional Counselor, dated December 5, 2005) at 1.

63. *Id.*

64. *Id.*

65. Tr. at 97

66. Tr. at 103-104.

67. Government Exhibit 9, *supra* note 45, at 4.

68. Tr. at 68-69.

69. Response to SOR, *supra* note 20.

70. Tr. at 72.

71. Government Exhibit 9, *supra* note 45, at 4.

72. *Id.*

73. Government Exhibit 7 (Court Records-Commitment Order, dated April 11, 1997).

74. Government Exhibit 11, *supra* note 10, at 2.

75. Government Exhibit 9, *supra* note 45, at 4.

76. Tr. at 55.

77. Response to SOR, *supra* note 20.

78. The Directive, as amended by Change 4, dated April 20, 1999, uses "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.).

79. The Directive, Enclosure 2, Atch 8, Sec. E2.A8.1.1.1.

80. ISCR Case No. 04-09239 at 4 (App. Bd. Dec 20, 2006).