

DATE: December 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09856

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Bruce R. Heurlin, Esq.

SYNOPSIS

Applicant is a 45-year-old engineer, who twice inappropriately touched his 14-year-old daughter and once observed her taking a bath. Within a week of his actions, he reported his conduct to the child abuse hotline, child protective services, and the police. He moved out of the family home. He reported his actions to his employer. No charges have been filed against him by the police nor has any other agency taken action against him. He drinks wine nightly. In the past, he drank beer sometimes to excess. He has never been diagnosed as alcohol dependent or as an alcohol abuser. He has mitigated the government's security concerns regarding his sexual behavior and alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On October 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial 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. Specifically, the SOR set forth security concerns arising under Guideline D, Sexual Behavior, and Guideline G, Alcohol Consumption, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 3, 2004, Applicant, through counsel, submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to another administrative judge on September 6, 2005, but reassigned to me on September 13, 2005 because of caseload considerations. A notice of hearing was issued on September 26, 2005, and a hearing was held on October 12, 2005. Joint Exhibit 1 was admitted into evidence. Government Exhibits 1 through 6 and Applicant Exhibit A were admitted into evidence. [\(1\)](#) Applicant testified. The hearing transcript (Tr.) was received on October 24,

2005.

FINDINGS OF FACT

Applicant admitted the allegation in subparagraph 1.b of the SOR.⁽²⁾ This admission is incorporated here as a finding of fact. He admitted in part and denied in part the allegations in subparagraphs 1.a, 1.c, and 1.d.⁽³⁾ He denied the remaining allegations.⁽⁴⁾ After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 45-year-old manager and engineer for a defense contractor.⁽⁵⁾ Applicant has worked for this contractor for nine and one-half years.⁽⁶⁾ His performance evaluations have always been "exceptional," "outstanding," or "exceeds expectations".⁽⁷⁾ He has received commendations and cash bonuses for his work-related problem solving skills.⁽⁸⁾ Applicant completed a security clearance application (SF 86) in February 2001.⁽⁹⁾

Applicant has a Bachelor of Science degree, a Masters of Science degree, and a Ph.D. in electrical engineering.⁽¹⁰⁾ His first wife died in 1992.⁽¹¹⁾ He married his second wife in December 1993 and in a second ceremony in June 1994.⁽¹²⁾ He adopted her son and daughter in 1994.⁽¹³⁾

Beginning in 1998, his relationship with his wife started to deteriorate. During this time, they lived with each other on and off.⁽¹⁴⁾ In early August 2000 in the morning before work, Applicant's adopted daughter, who was 14 years old, was not feeling well, came into his bedroom, and asked to be held.⁽¹⁵⁾ She laid down on his bed as did he.⁽¹⁶⁾ He wrapped his arms around her, holding her tight.⁽¹⁷⁾ He did not pay attention to how he positioned his arms in this hug, which resulted in his arms inadvertently resting against her breasts, causing what he describes as an unexpected "emotional" reaction.⁽¹⁸⁾

Within the next week, two other incidents occurred. He observed his adopted daughter taking a bath without her knowledge.⁽¹⁹⁾ There is no evidence he was drinking at this time. On the evening of August 8, 2000, he consumed too much wine, which impaired his judgment.⁽²⁰⁾ After giving his adopted daughter a goodnight hug and kiss, he laid down on her bed and began to touch and fondle her breasts.⁽²¹⁾ He stopped soon after when he realized that she was almost asleep and that he was doing something terribly wrong.⁽²²⁾

Within a week of these egregious incidents, Applicant admitted his conduct to his wife.⁽²³⁾ He called a local child abuse hotline and reported what he had done, without regard to the possible criminal charges.⁽²⁴⁾ Based on the hotline's advice, he called the police and child protective services.⁽²⁵⁾ He reported his inappropriate conduct to both.⁽²⁶⁾ The police came to his home the same day and talked with him.⁽²⁷⁾ He told the police that he intended to move out of the family home that evening.⁽²⁸⁾ The police remained while he packed his belongings, and until he left.⁽²⁹⁾ He never returned to live in the family home.⁽³⁰⁾ The police did not arrest or charge him with any crime related to the second incident.⁽³¹⁾ No other agency investigated the incidents or recommended action against him. Subsequently, he and his second wife divorced.⁽³²⁾ He has not remarried.⁽³³⁾

At the same time he reported his unacceptable conduct, he sought counseling to understand his behavior as he had never previously engaged in such conduct.⁽³⁴⁾ His started counseling with a licensed psychologist in August 2000 to explore the circumstances, and interpersonal and intrapsychic dynamics surrounding the incident with his adopted daughter.⁽³⁵⁾ One month later, he stopped treatment with her and began treatment with a psychiatrist and licensed counselor specializing in sexual deviance, parenting skills, and anger management.⁽³⁶⁾ With the concurrence of the psychiatrist and licensed counselor, he ceased these counseling sessions in March 2001 after achieving his treatment goals in parenting and anger management, and because after several months in the program, he did not believe that he met the criteria for sexual deviance.⁽³⁷⁾ He then resumed counseling with the licensed psychologist (treating psychologist) and

continues to see her on a regular basis. (38)

The professionals who have treated Applicant state that he never denied his conduct towards his adopted daughter, and always took full responsibility for it. (39) They further opined that he openly explored multiple personal issues to gain an understanding of his conduct, and actively participated in his treatment. (40) None of these professionals diagnosed him as a sexual offender or deviant, nor did they relate his unacceptable sexual conduct to alcohol abuse. (41) His treating psychologist stated that he is not a pedophile, and that he does not fit into the sex offender class. (42) She also opined that she sees no probability of a recurrence of his behavior. (43) Her diagnosis is adjustment disorder following crisis, including anxiety and depression. (44)

Applicant denies any sexual attraction to children. (45) Outside of the August 2000 incidents with his adopted daughter, he has never inappropriately touched another child. (46) He is not, and has never been, interested in child pornography nor is he sexually attracted to children. (47) He has apologized to his adopted daughter for his actions. (48) He provided her with counseling shortly after the incident, and has agreed to provide her with counseling in the future, should she want it. (49) He has continued with his counseling to understand all the issues related to his relationship with his ex-wife and his daughter. (50) In 2002, his adopted children moved to another area with their mother, the custodial parent, because she had a job opportunity. Until this time, his visits with his adopted daughter and her brother were unsupervised. (51) He continues to maintain a relationship with both children. (52) Applicant has told two women (one is a psychiatric nurse) with whom he has developed lengthy close personal relationships about his conduct towards his adopted daughter. (53) His extended family also knows. Finally, he reported the incident to his employer in November 2000. (54)

Applicant tried rum at the age of eighteen, but did not start drinking until the age of twenty-one. (55) Initially, he drank two or three beers at bars while listening to music. (56) When he moved to his own residence, he drank more frequently, up to a twelve-pack of beer a week. (57) During the last two years of his first marriage, he drank over a case of beer a week. (58) After his first wife died, his consumption of beer declined to about a case a week. (59) It increased when his second marriage began to fail. (60) Because his second wife preferred wine, he switched to drinking a bottle of wine each evening until the incident with his adopted daughter. (61) He immediately stopped drinking without difficulty or experiencing symptoms of withdrawal. (62) He has since resumed drinking, and currently may drink up to a bottle of wine in the evening. (63)

Applicant has never been diagnosed as alcohol dependent by a professional. (64) His counselors deny that he has been treated for alcohol abuse or substance abuse, although the summary of the investigator's interview with his treating psychologist indicated a diagnosis of alcohol abuse in remission. (65) His treating psychologist told the investigator that alcohol was no longer an issue and that he was not an alcoholic. (66) In her subsequent medical report, she declined to diagnose alcohol dependence or abuse. (67) She also stated his current drinking is for pleasure and of a different character in the terms of the type, amount, and most importantly, his emotional state. (68) Medical testing in December 2003 did not reveal any physiologic changes, such as liver function abnormalities or elevations in MCV (mean corpuscular volume) or MCH (mean corpuscular hemoglobin), (69) indicative of excessive alcohol consumption. (70) Both women with whom he has had a close personal relationship acknowledge he drinks, but deny seeing him intoxicated or drinking to excess. (71) Rather, he drinks moderately, with food and without any negative impact on his personality or conduct. (72) He has never been charged with any alcohol-related offenses. (73)

Applicant has worked continuously for the last 18 years. He has no major financial problems. He is respected by his co-workers and managers, and has established a stable life.

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. 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 Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁴⁾ The government has the burden of proving controverted facts.⁽⁷⁵⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁷⁶⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽⁷⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷⁸⁾

No one has a right to a security clearance⁽⁷⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁸¹⁾ 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁸²⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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:

Sexual Behavior - Guideline D: Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress or reflects lack of judgment or discretion.

Alcohol Consumption - Guideline G: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline D as to allegations 1.a through 1.d. Based on all the evidence, Sexual Behavior Disqualifying Condition (SB DC) E2.A4.1.2.1. (*Sexual behavior of a criminal nature, whether or not the individual has been prosecuted*), and SB DC E2.A4.1.2.3. (*Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*) apply. Applicant intentionally and inappropriately touched his 14-year-

old adopted daughter on one occasion. On another occasion, he observed her taking a bath without her knowledge. Although he was never charged with a crime, his conduct is a sexual behavior of a criminal nature. Given the seriousness of his actions, he could be vulnerable to coercion, exploitation, or duress.

I considered the Sexual Behavior Mitigating Conditions (SB MC). I conclude that SB MC E2.A4.1.3.2. (*The behavior is not recent and there is no evidence of subsequent conduct of a similar nature*) applies. In a week's time, five years ago, Applicant observed his adopted daughter taking a bath, intentionally fondled her, and inadvertently touched her breasts while hugging her. Prior to this time, he had never touched his daughter or any other child inappropriately. The record lacks any evidence that he has acted inappropriately towards her or any other child since. His treating psychologist specifically states he does not meet the profile of a pedophile or sexual deviant. No medical expert has diagnosed him as a sexual deviant or predator nor has he been treated for this behavior.

SB MC E2.A4.1.3.3. (*There is no other evidence of questionable judgment, irresponsibility, or emotional instability*) applies. Applicant has always taken responsibility for his conduct. On his own initiative, he notified the appropriate authorities of his conduct and removed himself from his home. He immediately sought counseling for himself and his adopted daughter to understand his behavior. Neither his counselors nor his psychiatrist have diagnosed him with any mental illness or indicated that he is emotionally unstable. In fact, their reports reaffirm that while his conduct towards his adopted daughter showed very questionable judgment in a limited time frame, his subsequent actions reflect his sense of responsibility for his unacceptable conduct. He manages his finances well. His work and personal life are stable. On the night of August 8, 2000, he drank too much wine, which impaired his judgment this day, and led to his inappropriate touching of his daughter. At this time, he drank because of the stress in his marriage and related stress at home. His home environment has changed completely and is no longer a source of stress, requiring a need for alcohol. He initially stopped drinking immediately after the incident with his daughter, but has resumed drinking wine for pleasure. Both women with whom he developed a close relationship after his divorce, deny observing him intoxicated and drinking to excess. He has changed his drinking and is cognizant of drinking's impact on his behavior.

SB MC E2.A4.1.3.4. (*The behavior no longer serves as a basis for coercion, exploitation, or duress*) also applies. He reported his inappropriate actions to the child abuse hotline, the police, and his employer. He is open about his conduct with his family. He told two women about his conduct at the risk of ending his relationship with them. While he does not advertise his conduct, he certainly told those individuals who should know about it. Since the incidents five years ago, there has been no repeat of Applicant's conduct. The mental health professionals treating him have declined to diagnose him as a sexual deviant or pedophile. His treating psychologist has stated that she sees no probability of a recurrence of this behavior. He would not be subject to coercion, exploitation or duress because of his inappropriate conduct with his adopted daughter. Applicant has mitigated the government's case under Guideline D. Accordingly, for the reasons stated above, allegations 1.a. through 1.d. of the SOR are concluded in favor of Applicant.

The government has established its case under Guideline G as to allegations 2.a and 2.c. Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*) and AC DC E2.A7.1.2.5. (*Habitual ... consumption to the point of impaired judgment*) apply. Applicant drank beer or wine nightly for many years although not necessarily to impairment. As a consequent of his habitual drinking, one evening in August 2000 after too much wine which impaired his judgment, he inappropriately touched his adopted daughter. He consumed excessive amounts of beer, and occasionally wine, in the past, causing him to act inappropriately towards his adopted daughter once.

The government asserts that AC DC E2.A7.1.2.3. (*Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence*) and AC DC E2.A7.1.2.6. (*Consumption of alcohol subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*) apply. The government cites the notation in the investigative report which states that his treating psychologist diagnosed alcohol abuse. (83) Applicant's treating psychologist submitted a report summarizing her treatment of Applicant and her diagnostic findings. She clearly opines that Applicant has not been diagnosed as alcohol dependent nor has he been treated for it. She also declined to diagnose alcohol abuse, stating there is no indication of an impairment in his life which can be attributed to alcohol. The investigator's notes reflect that she told him/her that alcohol was not an issue, and that Applicant was not an alcoholic. The investigator's notes do not indicate that he underwent treatment for alcohol

abuse. The licensed counselor definitively stated that he was not diagnosed as a substance abuser and that he was not treated for substance dependence or abuse. The evidence as a whole does not establish that Applicant has ever been diagnosed as alcohol dependent or treated for alcohol abuse or dependency. Thus, the government has not established its case as to allegation 2.b of the SOR.

I have considered all the Alcohol Consumption Mitigating Conditions (AC MC) and conclude that AC MC E2.A7.1.3.1. (*The alcohol-related incidents do not indicate a pattern*) applies. At the hearing, the government conceded that since only one alcohol-related incident with his adopted daughter happened, it would be hard to establish a pattern of conduct. In light of this concession, I conclude that the government did not establish that a pattern of inappropriate conduct existed between Applicant and his adopted daughter. Thus, he has mitigated the government's concerns.

AC MC E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*) also apply in this case. It has been more than five years since the incidents with his daughter. Only one of the three incidents involved the use of alcohol. There have been no further incidents with her or any other children for any reason or as a result of drinking. When the incident occurred in August 2000, Applicant immediately stopped drinking without any signs of alcohol withdrawal. Although he has resumed drinking in varying quantities every evening, he drinks for pleasure, and not to cover or hide his feelings as in the past. He developed a lengthy close personal relationships with two women who have frequently observed his more recent alcohol consumption and who have definitively stated that his moderate consumption of alcohol has not led to intoxication or a change in his personality or conduct. He has not been arrested for any alcohol-related matters. He continues to perform at a high level at work and manages his finances well. With his divorce, he has removed himself from a situation which lead to drinking to cover his feelings, a fact supported by the diagnosis of his treating psychologist. He has mitigated the government's concerns under Guideline G.

The note under Guideline D instructs adjudicators to consider Guideline I, Emotional, Mental and Personality Disorders, and Guideline J, Criminal Conduct, when determining how to resolve the security concerns under this Guideline. The adjudicators decided not to allege a security concern under either guideline. The administrative judge has the authority to amend the SOR. Because of the note, I have considered the option to amend the SOR, and have decided against amending the SOR to include Guideline I and Guideline J. The issue of criminal conduct is addressed specifically in Guideline D and has been fully considered. The medical reports of record fail to indicated the presence of an emotional, mental or personality disorder requiring treatment. The contingent emotional and mental issues associated with Applicant's sexual behavior have been reviewed under guideline D.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant's inappropriate sexual behavior occurred within a very narrow time frame and during a time of emotional distress. He realized that he was wrong. He not only notified the proper authorities without regard to the consequences, he also sought professional treatment to understand his conduct. He did everything he should have done at the time of the incident to address his conduct and to reduce the probability of a future occurrence. He has successfully avoided any further problems. He has always taken full responsibility for his actions. He has been forthright about what he did with his employer and others with whom he has developed a close relationship. He continues with regular counseling sessions and should continue to do so. Objective medical testing by his medical doctor does not show any physical problems connected with his consumption of wine. His female companions have not observed alcohol related behavior which would cause them concern. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

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 D (Sexual Behavior): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2, Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Pages 17-1, 17-2, 18-2, 19, 22-1, 22-2, and 22-3 of Applicant Exhibit A were highlighted in yellow by counsel prior to the submission of this evidence into the record. *See also* Tr. at 45-46.
2. Applicant's Answer to SOR, dated December 3, 2004, at 2-3.
3. *Id.*
4. *Id.*
5. Government Exhibit 1 (Security Clearance Application, dated February 21, 2001) at 2; Tr. at 27.
6. *Id.*
7. Applicant Exhibit A at 1 through 13-4 (Performance evaluations/standards from 1996 through 1998 and 2000 through 2003); Tr. at 27-33, 36-37.
8. Applicant Exhibit A at 14 through 16-2 (Commendations/awards and statements on performance); Tr. at 33-35.
9. Government Exhibit 1, *supra* note 5, at 1.
10. *Id.* at 2; Tr. at 23.
11. Government Exhibit 1, *supra* note 5, at 4; Tr. at 64.
12. Government Exhibit 1, *supra* note 5, at 3; Government Exhibit 6 (Court documents regarding Applicant's divorce from his second wife) at 1.
13. *Id.*; Tr. at 41-42.
14. Government Exhibit 2 (Applicant's signed statement, dated January 28, 2003) at 2.
15. *Id.* at 1.
16. *Id.*

17. *Id.* at 1-2.

18. *Id.*

19. Tr. at 66-67; Applicant Exhibit A at 22-4 (investigative notes).

20. *Id.* at 2, 7.

21. *Id.* at 2.

22. *Id.*

23. *Id.*; Tr. at 39-41.

24. *Id.*

25. *Id.*

26. *Id.*

27. Government Exhibit 2, *supra* note 16, at 2; Tr. at 29.

28. Tr. at 29.

29. Government Exhibit 2, *supra* note 16, at 2.

30. *Id.*

31. *Id.*

32. Government Exhibit 1, *supra* note 5, at 3; Government Exhibit 6, *supra* note 12, at 4-6.

33. Government Exhibit 1, *supra* note 5, at 3.

34. Government Exhibit 2, *supra* note 16, at 4; Tr. at 43.

35. Government Exhibit 2, *supra* note 16, at 3; Applicant Exhibit A at 17-1 through 17-2 (Report of licensed psychologist who treated Applicant, dated November 17, 2004); Tr. at 43, 45-46.

36. Applicant Exhibit A, *supra* note 35, at 17-1; Applicant Exhibit A at 18-1 to 18-2 (Report licensed counselor, dated December 21, 2004); Government Exhibit 2, *supra* note 16, at 3; Tr. at 43.

37. Applicant Exhibit A, *supra* note 35 and 36, at 18-2; Government Exhibit 2, *supra* note 16, at 4; Tr. at 51.

38. Applicant Exhibit A, *supra* note 35, at 17-1; Tr. at 43.

39. Applicant A, *supra* note 35 and 36, at 17-1 to 18-2; Government Exhibit 2, *supra* note 16, at 3; Tr. at 41, 45.

40. *Id.*

41. *Id.*; Tr. at 52-53.

42. Applicant Exhibit A, *supra* note 21, at 22-3.

43. Applicant Exhibit A, *supra* note 35, at 17-2.

44. *Id.*
45. Government Exhibit 2, *supra* note 16, at 4.
46. *Id.*
47. *Id.*
48. Government Exhibit 2, *supra* note 16, at 6; Tr. at 43.
49. Government Exhibit 2, *supra* note 16, at 5; Government Exhibit 6, *supra* note 12, at 12.
50. Government Exhibit 2, *supra* note 16, at 4; Applicant Exhibit A, *supra* note 35, at 17-1 to 17-2.
51. Government Exhibit 2, *supra* note 16, at 5.
52. *Id.* at 5.
53. Applicant Exhibit A at 20-1 through 21-3 (two signed witness statements, one dated November 29, 2004 and one undated); Tr. at 54.
54. Government Exhibit 3 (Adverse information report of employer, dated December 5, 2000) at 1-2; Government Exhibit 4 (Applicant's signed self-report statement, dated November 28, 2000).
55. Government Exhibit 2, *supra* note 16, at 7-8.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*; Tr. at 63.
60. *Id.*; Tr. at 62, 64.
61. *Id.*
62. Applicant Exhibit A, *supra* note 35, at 17-2.
63. Government Exhibit 2, *supra* note 5, at 4; Tr. at 65, 67.
64. Applicant Exhibit A, *supra* note 35, at 17-2; Tr. at 52, 57-58, 60, 67-68.
65. Applicant Exhibit A, *supra* note 35 and 36, at 17-2 and 18-2; Applicant Exhibit A, *supra* note 21, at 22-3.
66. Applicant Exhibit A, *supra* note 21, at 22-3.
67. Applicant Exhibit A, *supra* note 35, at 17-2.
68. *Id.*
69. *See* Dorland's Illustrated Medical Dictionary, 28th Edit., 1994.
70. Applicant Exhibit A at 19 (November 19, 2004 letter from his personal physician).

71. Applicant Exhibit A, *supra* note 53, at 20-2, 21-2.

72. *Id.*

73. Tr. at 38; Applicant Exhibit A, *supra* note 21, at 22-1.

74. ISCR Case No. 96-0277 (July 11, 1997) at 2.

75. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

76. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

77. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

78. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

79. *Egan*, 484 U.S. at 531.

80. *Id.*

81. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

82. Executive Order No. 10865 § 7.

83. The government relies on this investigative report notation without authenticating it, as required by Directive, Enclosure 3, ¶ E3.1.20.