

KEYWORD: Personal Conduct; Alcohol; Criminal Conduct

DIGEST: As a teenager and young adult, Applicant was arrested numerous times for drinking and driving, underage possession/consumption of alcohol, possession of marijuana or drug paraphernalia, assault, and trespass. He has also been cited many times for motor vehicle violations and a local ordinance violation. He has not been arrested in four years and has not received any traffic or civil violations in two years. He continues to drink, at times to excess. Thus, he has mitigated the government's security concerns under Guidelines E and J, but has failed to overcome the security concerns as to Guideline G. Clearance is denied.

CASENO: 04-04562.h1

DATE: 01/17/2006

DATE: January 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04562

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

As a teenager and young adult, Applicant was arrested numerous times for drinking and driving, underage possession/consumption of alcohol, possession of marijuana or drug paraphernalia, assault, and trespass. He has also been cited many times for motor vehicle violations and a local ordinance violation. He has not been arrested in four years and has not received any traffic or civil violations in two years. He continues to drink, at times to excess. Thus, he has mitigated the government's security concerns under Guidelines E and J, but has failed to overcome the security concerns as to Guideline G. Clearance is denied.

STATEMENT OF THE CASE

On April 13, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial 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 E, Personal Conduct, Guideline J, Criminal Conduct, 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 April 25, 2005, Applicant submitted a notarized response to the allegations and 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. Forty-one Government Exhibits, six Applicant Exhibits, and one Joint Exhibit were admitted into

evidence.⁽¹⁾ The record was held open until October 21, 2005 to allow Applicant to submit an additional document. The document was not received and the record closed on October 21, 2005. Applicant testified. The hearing transcript (Tr.) was received on October 19, 2005.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline E (subparagraphs 2.a. (1) through 2.o.), Guideline J (subparagraph 1.a. through 1.o.), and Guideline G (subparagraph 3.a. and 3.b.) of the SOR.⁽²⁾ Those admissions are incorporated here as findings of fact. He denied allegations 1.q. and 2.a. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is 29 years old.⁽³⁾ He works as a mechanical engineer II for a defense contractor.⁽⁴⁾ He has worked for this contractor for over four years.⁽⁵⁾ He completed a security clearance application (SF 86) in September 2003.⁽⁶⁾

Applicant graduated college in 2001 with a Bachelor of Science degree in aerospace engineering.⁽⁷⁾ His employer recently promoted him from mechanical engineer I to mechanical engineer II.⁽⁸⁾ He is single and lives alone.⁽⁹⁾

Between 1993 and 2001, the police arrested Applicant thirteen times on various charges, including assault, minor in possession of alcohol, Driving While Under the Influence (DUI) plus accompanying moving motor vehicle violations, minor consuming alcohol, trespass, possession of marijuana, possession of drug paraphernalia, and presence in a park after dark. His arrests in March 1993 for assault,⁽¹⁰⁾ May 1993 for curfew violation and possession of marijuana,⁽¹¹⁾ September 1993, minor possessing/ consuming alcohol,⁽¹²⁾ October 1993 for consuming alcohol at a party (17 other teenagers were arrested at the same time),⁽¹³⁾ and July 1994 for being in a park after hours (approximately 300 teenagers were arrested on this evening)⁽¹⁴⁾ occurred while he was age 16 and 17. After each arrest, the police released him to his parents.

At age 18, the police arrested and charged him with third degree criminal trespass based on a complaint filed by the father of a friend who told police that Applicant and his friend did not leave the house when told to leave.⁽¹⁵⁾ Because he thought the complaint had been dropped, Applicant did not appear for the hearing.⁽¹⁶⁾ Since he did not appear to contest the charges, the Court found him guilty and fined him (which he paid).⁽¹⁷⁾ Two months later, in April 1995, the police arrested him for DUI, possession of marijuana, speeding, no proof of insurance, and violation of a promise to appear.⁽¹⁸⁾ The Court found him guilty of DUI, possession of marijuana, and violation of promise to appear; placed him

on nine months of unsupervised probation; and fined him.⁽¹⁹⁾ Three months later, the police arrested him for driving on a suspended license and driving with alcohol in his system.⁽²⁰⁾

In June 1996 at age 19, the police arrested and cited Applicant for reckless driving, then released him.⁽²¹⁾ He pled to a reduced charge of excessive speed. The Court fined him and ordered community service.⁽²²⁾ One year later, in June 1997 when he was 20, he was arrested for unlawful acts related to alcohol and minor in possession of alcohol.⁽²³⁾ The Court dismissed the charges when he completed an alcohol and drug education program.⁽²⁴⁾ Six months later, in January 1998 at age 21, the police arrested him and charged him with DUI and failure to stop.⁽²⁵⁾ The Court dismissed the DUI charge, and he pled guilty to failure to stop.⁽²⁶⁾

In September 2000 at age 23, the police arrested Applicant and charged him with possession of drug paraphernalia.⁽²⁷⁾ The Court found him guilty, fined him and placed him on seven months of unsupervised probation.⁽²⁸⁾ In November 2001, the police arrested and charged him with DUI, failure to stop at a red light, and speeding.⁽²⁹⁾ He pled guilty to DUI and failure to stop.⁽³⁰⁾ The Court sentenced him to one day in jail, fined him \$2,000.00, and ordered alcohol counseling.⁽³¹⁾ Since his DUI arrest in 2001, Applicant has not been arrested or charged with any criminal acts.

Applicant was not arrested on October 11, 2002 for motor vehicle violations; rather, he was cited for no rear license plate and no evidence of insurance.⁽³²⁾ He appeared in traffic court where he pled responsible.⁽³³⁾ The Court fined him and suspended his license until he provided proof of registration and insurance, which he did.⁽³⁴⁾ Likewise, he was not arrested on August 24, 2003,⁽³⁵⁾ but he was cited for an unruly gathering.⁽³⁶⁾

Between 1994 and 2003, Applicant received numerous speeding tickets and other motor vehicle violations, including no evidence of insurance, no current registration, failure to stop, noise violation, and failure to yield.⁽³⁷⁾ He routinely provided proof of insurance and registration, which satisfied the Court.⁽³⁸⁾ Applicant received his most recent speeding ticket in December 2003, for doing "donuts" in an empty public parking lot at the suggestion of a friend.⁽³⁹⁾ In September 2001, he purchased a sports car. Subsequently, in just over two years, he received eight moving motor vehicle violations while driving this car.⁽⁴⁰⁾ He sold the sports car in October 2004, and purchased a pick up truck.⁽⁴¹⁾

Applicant purchased a house in March 2003.⁽⁴²⁾ His friends often visited and parties ensued. On August 17, 2003, the police received a complaint about a loud party at his house.⁽⁴³⁾ The police placed a "red tag" on the front window on the outside of his house, which identified his house as a party house.⁽⁴⁴⁾ The "red tag" was to remain on his house for six months.⁽⁴⁵⁾ The next day the police received a telephone call informing them that the "red tag" was gone.⁽⁴⁶⁾ Upon their arrival at the house, they found no one at home.⁽⁴⁷⁾ They re-tagged the house.⁽⁴⁸⁾ In response to a telephone call from Applicant the same day, the police returned to the house to discuss this matter.⁽⁴⁹⁾ They again noticed that the "red

tag" was gone and cited him. (50) He objected to the citation because he did not remove the "red tag". (51) At his request, the police repositioned the "red tag" on the inside of his front window. (52) His house was not ticketed again. (53) He sold this house in June 2005, and has purchased another house that he does not intend to be a party house. (54)

He continues to drink socially, sometimes to excess, and gets drunk on occasion. (55) Since preparing his signed statement, he has decided that he will not drink and drive. (56) The record contains no evidence reflecting a diagnosis of alcohol abuse or alcohol dependence. In recent years, he has

reevaluated his friendships and the direction of his life. (57) His work is more important, and he has changed the friends with whom associates or what activities he does with his old friends. (58)

Applicant does not remember the circumstances surrounding many of his arrests and citations. (59) He is vague about the facts and/or the penalties. (60) He responded to the questions on the security clearance to the best of his knowledge. He based his answers on whether he was convicted or guilty of the charges, and whether it occurred before he was 18. (61)

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.⁽⁶²⁾ The government has the burden of proving controverted facts.⁽⁶³⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁶⁴⁾ 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.⁽⁶⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁶⁾

No one has a right to a security clearance⁽⁶⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁶⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁶⁹⁾ 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.⁽⁷⁰⁾ 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:

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.

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

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 not established its case under Guideline E as to the issue of deliberate falsification. In subparagraph 2.a and 2.a. (1), the government alleges that Applicant falsified material facts on his security clearance application when he failed to list his three arrests in 1993 for possession of marijuana and underage possession of alcohol, his 1995 DUI arrest, a second arrest in 1995 for underage alcohol consumption, his arrests in 1997 for possession of marijuana and for underage alcohol possession/consumption, and his 1998 DUI arrest. For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire...*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator...*) to apply, the government must establish that Applicant's omission, concealment or falsification in regard to these arrests was a relevant and material fact and was deliberate. ⁽⁷¹⁾ He listed his 2000 marijuana arrest and his 2001 DUI. He did not deny any of the incidents not listed on his application at the hearing; however, it became clear during the hearing that he had little memory of many of these incidents. He could not elaborate on the facts beyond the information contained in the government exhibits. Some incidents he did remember and provided testimony on the facts. He credibly testified that he omitted incidents because he thought that he did not have to identify arrests under the age of 18, and that he need only identify convictions, even though upon a reading of the question at the hearing, he acknowledged it required more than his initial interpretation. He willingly discussed with the investigator what he remembered about the incidents. Because he provided other detrimental information, the government has not established that he intentionally and deliberately failed to provide this information when he completed his security clearance application.

The government has established its case under Guideline E, allegations 2.b. through 2.o. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.5. (*a pattern of ... rule violation, ...*) applies. As a young adult, Applicant has behaved in a manner which reflects a disregard for rules. He routinely drove in excess of the posted speed limits and without proof of financial responsibility and/or car registration papers. He also drove on a suspended license and license plate.

I considered all the Personal Conduct Mitigating Conditions (PC MC). I conclude that PC MC E2.A5.1.3.5. (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies. Many of Applicant's speeding violations occurred after he purchased a Mustang Cobra in 2001. He repeatedly tested the power and speed of this car the first year he owned it, to his detriment. Since the first year, he has received one traffic citation for doing donuts in a parking lot. In October 2004, he sold this car to prevent further motor vehicle violations. He now drives a pick up truck. He has not received a moving motor vehicle violation in two years.

Applicant bought a house in March 2003. Because he was single and owned a house, his friends visited him regularly. Parties with drinking and loud music occurred with some frequency and to the annoyance of his neighbors. Five months after he moved into the house, the police "red tagged" it to indicate that it was a party house. In June 2005, he sold the house and bought a new house, which he intends not to be a party house. He is changing his lifestyle and behavior from

that of his high school and college years. As he matures, he is more focused on work than on partying. He is beginning to recognize and accept that his youthful approach to life was causing him unnecessary motor violations and unneeded encounters with the police over matters which could have been avoided. Although he knows that his past conduct gives a negative impression, he now works better with the rules. He is also eliminating unnecessary problems. With his new attitude and changes in behavior, he has significantly reduced his vulnerability to coercion, exploitation, or duress. I find in favor of applicant under Guideline E.

The government has established its case under Guideline J as to allegations 1.a. through 1.m., and 1.o. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission 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*) apply. As a teenager, Applicant was arrested for a variety of misdemeanor offenses, including assault, possession of marijuana, possession of alcohol and curfew violation. Even after he turned 18, he continued to be arrested for additional alcohol related matters, including DUI, possession of drug paraphernalia and marijuana.

While Applicant has admitted to allegations 1.n., an arrest in October 2000 for no rear license plate and no mandatory insurance and 1.p., an unruly gathering citation in August 2003, his admission is not enough to establish criminal conduct under Guideline J. ⁽⁷²⁾ Under the relevant state law, motor vehicle violations and local ordinance violations, such as these, are not criminal conduct, but rather violations of the public order governed by the civil laws of the state. The government has not established its case in regards to these allegations.

Since I have concluded that Applicant did not intentionally and deliberately fail to disclose his previous arrests when preparing his security clearance application, the government cannot establish that he violated Title 18, United States Code, Section 1001 under allegation 1.q.

I considered all the Criminal Conduct Mitigating Conditions (CC MC). I conclude that CC MC E2.A10.1.3.1. (*The criminal behavior was not recent*); and CC C E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*) apply. Between 1993, when he was 16, and 1998, when he was 21, the police arrested Applicant numerous times, primarily for underage possession and/or consumption of alcohol and for possession of marijuana. Since 1998, he has been arrested twice, in 2000 for possession of marijuana and drug paraphernalia, and in 2001 for DUI. His 1993 and 1994 arrests while a teenager are more than ten years old. His arrests between 1995 and 1998 are seven to ten years old. His most recent arrests are four and five years old. Since he has not been arrested in four years, he has clearly improved his behavior and stayed out of trouble. He graduated college in 2001, and started his current position the same year. He has improved his attitude regarding his social behavior, which has led to more responsible conduct on his part. Accordingly, I find in favor of Applicant under Guideline J.

The government has established its case under Guideline G. Based on all the evidence, Alcohol Consumption Disqualifying Condition (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*), applies. ⁽⁷³⁾ Applicant has three DUI arrests and two convictions, the last in 2001. Between age 16 and 22, he has also been arrested three

times for underage possession and/or consumption of alcohol either while driving or at parties.

I considered all the Alcohol Consumption Mitigating Conditions (AC MC) and conclude that none apply. Although Applicant's last DUI occurred four years ago, he continued to drink and drive after drinking until recently, when he decided that he will not drink and drive. He still drinks to excess on occasions, such as his father's recent wedding. While he is drinking less and he has a positive attitude towards drinking and driving, he has not yet demonstrated that his drinking habits have significantly changed. I find against Applicant under guideline G.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. As a teenager and young adult, he engaged in risky behavior, which led to numerous encounters with the police, both criminal and otherwise. Recently, as he matures, he has begun to change his behavior. He sold his sports car for a truck and his party house. He has changed his attitude towards drinking and driving. Although he has made new friends, he still associates from time to time with his friends from the past and with whom he got into trouble. He clearly has made positive changes in his behavior. These changes are important, but do not outweigh his continued drinking and driving, drinking to excess, and time to time association with old friends who were involved with his previous misconduct. Applicant needs some more time to continue maturing. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant at this time.

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 (Criminal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.i: For Applicant

Subparagraph 2.j: For Applicant

Subparagraph 2.k: For Applicant

Subparagraph 2.l: For Applicant

Subparagraph 2.m: For Applicant

Subparagraph 2.n: For Applicant

Subparagraph 2.o: For Applicant

Paragraph 3, Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. Government Exhibits 39 and 40 were duplicate documents and were not admitted into evidence.

2. Applicant's Response to SOR, dated April 25, 2005, at 1-5.

3. Government Exhibit 1 (Security Clearance Application, dated September 17, 2003) at 1.
4. *Id.* at 2; Tr. at 66.
5. *Id.*
6. Government Exhibit 1, *supra* note 3, at 1.
7. *Id.* at 2; Tr. at 66.
8. Tr. at 66.
9. Government Exhibit 1, *supra* note 3, at 4; Tr. at 149-150.
10. Government Exhibit 3 (Police Report, dated March 30, 1993).
11. Government Exhibit 4 (Police Report, dated May 27, 1993).
12. Government Exhibit 5 (Police Report, dated September 4, 1993).
13. Government Exhibit 6 (Police Report, dated October 2, 1993).
14. Government Exhibit 7 (Police Report, dated July 31, 1994).
15. Government Exhibit 20 (County Court criminal docket sheet dated February 5, 2004); Tr. at 98-100.
16. Tr. at 99-100.
17. *Id.*
18. Government Exhibit 32 (Police Report, dated April 9, 1995); Government Exhibit 33 (Court Facts Database Information sheet, dated December 16, 2003).
19. Government Exhibit 33, *supra* note 18.
20. Government Exhibit 8 (Police Report, dated July 3, 1995).
21. Government Exhibit 34 (Police Report, dated June 2, 1996) at 1 and 3.
22. Government Exhibit 35 (Court Facts Database Case Information sheet, dated December 16, 2003) at 1.
23. Government Exhibit 21 (County Court criminal docket sheet, dated February 5, 2004) at 1-2.
24. *Id.*
25. Government Exhibit 30 (Police Report, dated January 28, 1998),
26. Government Exhibit 31 (Court Facts Database Case Information sheet, dated December 16, 2003) at 1.
27. Government Exhibit 27 (County Court criminal docket sheet, dated February 5, 2004) at 1.
28. *Id.*
29. Government Exhibit 41 (Police Report, dated November 24, 2001).
30. *Id.*

31. *Id.*

32. Government Exhibit 27 (County Court traffic docket sheet, dated February 5, 2004).

33. *Id.* at 3.

34. *Id.*

35. Government Exhibit 36 (Police Report, dated August 24, 2003) at 2, 6; Government Exhibit 37 (Court Facts Database Case Information sheet, dated December 16, 2003).

36. *Id.*

37. Government Exhibits 13 (Court Facts Database Case Information sheet, dated December 16, 2003); 14 (Court Facts Database Case Information sheet, dated December 16, 2003); 15 (Court Facts Database Case Information sheet, dated December 16, 2003); 16 (Court Facts Database Case Information sheet, dated December 16, 2003); 17 (Court Facts Database Case Information sheet, dated December 16, 2003); 18 (Court Facts Database Case Information sheet, dated December 16, 2003); 19 (County Court traffic docket sheet, dated February 5, 2004); 24 (County Court traffic docket sheet, dated February 5, 2004); 25 (County Court traffic docket sheet, dated February 5, 2004); 26 (County Court traffic docket sheet, dated February 5, 2004); 28 (County Court traffic docket sheet, dated February 5, 2004); 29 (County Court traffic docket sheet, dated February 5, 2004); Government Exhibit 42 (Court Facts Database Case Information sheet, dated December 16, 2003); and Government Exhibit 43 (Court Facts Database Case Information sheet, dated December 16, 2003).

38. Government Exhibit 19, *supra* note 37, at 1-2; Government Exhibit 26, *supra* note 37, at 4; Government Exhibit 28, *supra* note 37, at 3; and Government Exhibit 29, *supra* note 37, at 4.

39. Tr. at 127.

40. Government Exhibits 16, 17, 18, 29 42, 43, *supra* note 37; Government Exhibit 41, *supra* note 29.

41. Tr. at 95, 129.

42. Tr. at 133.

43. Applicant believes that his neighbors called the police to complain because, on several occasions, he had requested them to stop parking their van in front of his house. When they didn't, he called the police and asked them to ticket the van. Tr. at 91-93,131-132.

44. Government Exhibit 10 (Police Report, dated August 17, 2003) at 3, Tr. at 91-93.

45. *Id.*

46. Government Exhibit 11 (Police Report, dated August 18, 2003) at 2.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. Tr. at 133.

55. Government Exhibit 2 (Applicant's signed statement, dated February 20, 2004) at 4.

56. Tr. at 111-112, 116-117.

57. *Id.* at 130, 133-136.

58. *Id.* at 134-135.

59. *Id.* 102-103.

60. *Id.* at 68-77, 94, 106, 124.

61. *Id.* at 124-125

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

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

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

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

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

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

68. *Id.*

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

70. Executive Order No. 10865 § 7.

71. Applicant denied that he deliberately falsified his security clearance application. He admitted that he was cited by the police (subparagraph 1.a. (1) through 1.p.). He denied allegations 1.q and 2.a.

72. The security clearance application does not require that Applicant list motor vehicle violations. *See* Government Exhibit 1, *supra* note 3, at 7. His motor vehicle violation occurred in 2000. He paid a fine of \$80 in traffic court. *See* Government Exhibit 28, *supra* note 37, at 1-2. In August 2003, he was cited for a local ordinance violation, not criminal activity. Government Exhibit 36, *supra* note 37, at 6.

73. Applicant did attend court ordered counseling from February 2002 until May 2002. *See* Government Exhibit 38 (Report from counseling Service, dated May 28, 2002). He was not diagnosed as alcohol dependent or as an alcohol abuser. Thus, Alcohol Consumption Disqualifying Conditions E2.A7.1.2.3 (*Diagnosis by a credentialed medical profession... of alcohol abuse or alcohol dependence*) and AC DC E2.A7.1.2.4. (*Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) do not apply.