

KEYWORD: Personal Conduct

DIGEST: Applicant is a 50-year-old employee of a defense contractor. When completing the questions on her security clearance application, she answered "no" to four questions when she should have answered "yes", and failed to provide complete information regarding her driving while intoxicated (DWI) arrests and her past treatment for alcohol abuse. The government has not established that she intentionally falsified allegations 1.a.(1)-1.a.(4), 1.b., and 1.e. through 1.g. under Guideline E. She, however, has not mitigated the government's concerns under the remaining personal conduct allegations. In light of the findings under Guideline E, there is no pattern of criminal conduct. Clearance is denied.

CASE NO: 04-07555.h1

DATE:06/09/2006

DATE: June 9, 2006

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In re:

SSN:

Applicant for Security Clearance

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ISCR Case No. 04-07555

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 50-year-old employee of a defense contractor. When completing the questions on her security clearance application, she answered "no" to four questions when she should have answered "yes", and failed to provide complete information regarding her driving while intoxicated (DWI) arrests and her past treatment for alcohol abuse. The government has not established that she intentionally falsified allegations 1.a.(1)-1.a.(4), 1.b., and 1.e. through 1.g. under Guideline E. She, however, has not mitigated the government's concerns under the remaining personal conduct allegations. In light of the findings under Guideline E, there is no pattern of criminal conduct. Clearance is denied.

### STATEMENT OF THE CASE

On June 15, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, . 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) and Guideline J (Criminal Conduct), 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. Applicant submitted a notarized response to the allegations, dated June 29, 2005. She requested a hearing.

This matter was assigned to me on January 23, 2006. A notice of hearing was issued on March 6, 2006, and a hearing was held on March 30, 2006. One Applicant exhibit and five government exhibits were admitted into evidence. Applicant testified. The record was held open until April 21, 2006, for Applicant to submit additional documentation. The additional documentation was received. The government did not object to the admission of this evidence, which has been admitted as Applicant Exhibits C through F. <sup>(1)</sup> The hearing transcript (Tr.) was received on April 10, 2006.

## FINDINGS OF FACT

Applicant admitted, with explanation, the underlying facts of allegations 1.a. through 1.f. under Guideline E of the SOR. (2) Those admissions are incorporated here as findings of fact. She denied the remaining allegations. In addition, she neither admitted nor denied that she deliberately falsified her answers in her security clearance application. Thus, the allegation of deliberate falsification is deemed denied. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 50-year-old installer and on-the-job trainer for a defense contractor. (3) She has worked for this contractor for more than two and one-half years and in the past. (4) She completed a security clearance application (SF 86) in July 2003. (5)

Applicant has been married three times and divorced three times. (6) She is single and lives alone. (7) She has a daughter who is 27, and a son who is 24. (8) Prior to accepting her current position, she worked for five years in the bank of a large casino, handling millions of dollars without incident. (9)

### **Alcohol and drug problems**

Applicant is an alcoholic. (10) She stopped drinking alcohol on June 20, 1998. (11) She acknowledges that she was a functioning alcoholic for many years. (12) Even with her drinking, she always worked. (13) She has never been disciplined at work, although she believes her drinking may have been the reason for the termination of one job. (14)

Because of her drinking, the police arrested Applicant for DWI in 1988, in 1990, and for a third time, date unknown, and in 1996 or 1997 for disturbing the peace. (15) Applicant has little memory of her DWI arrests. (16) She did lose her drivers license for one year and did weekend jail time as a penalty for her actions. (17)

Twice in the 1980s, she voluntarily admitted herself to inpatient alcohol treatment programs, but was unable to totally quit drinking. (18) Twice in the 1990s, specific dates unknown, she received treatment for a week at an alcohol program. (19) In June 1998, she voluntarily admitted herself to an outpatient alcohol treatment program. (20) For approximately two months, she attended group and individual counseling sessions for four hours a day, five days a week. (21)

Subsequent to her completion of the outpatient program, she attended Alcoholic Anonymous meetings up to 10 times. (22)

As a high school student from about 1969 until 1973, Applicant experimented with various drugs, including marijuana, cocaine, speed, and LSD. (23) After high school, she limited her drug use to smoking marijuana on an intermittent basis for many years. (24) She usually shared a marijuana cigarette with others. (25) Her friends generally provided her with the marijuana, although occasionally she would purchase a small quantity for her own use or to share with others, dates unknown. (26) There is no evidence that she purchased marijuana for the purpose of generating a profit for herself or others.

In 1978, she was arrested and charged with possession of a controlled drug. (27) She was found guilty and fined \$100.00. (28) In 1990, she and her then husband drove into a shopping plaza parking lot and observed their landlady being arrested. (29) The police came immediately to their vehicle and arrested both of them, charging them with possession of a kilo of marijuana. (30) The court dismissed the charges, as they were not involved in the incident. (31) After drinking, Applicant and her boyfriend argued in 1996 or 1997. (32) She wanted to talk and he didn't. (33) She then climbed through an open window to talk with him. (34) The police arrested and charged her with breach of the peace. (35) She believes this case was dismissed by the court. (36)

In October 2002, a friend invited her to smoke marijuana to celebrate her birthday. (37) This was the last time she used marijuana. (38) She no longer associates with this person or individuals who use drugs. (39) She does not intend to smoke marijuana in the future. (40) She cannot guarantee that she would never use marijuana or alcohol in the future, but does not intend to use either at this time or in the future. (41)

## Falsification

On July 21, 2003, Applicant completed her security clearance application. She answered "no" to each of the following questions on her application, and attested to the accuracy of her answers. (42)

Question 26. Your Police Record - Other Offenses

In the last 7 years, have you ever been **arrested for, charged with,** or convicted of any offense not listed in modules 21,

22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. (emphasis supplied)

She did not list her arrest in 1996 or 1997 for breach of the peace. She did not think about this incident when completing her security clearance application. [\(43\)](#)

#### Question 27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs

Since the age of 16 or in the last 7 years, whichever is shorter, have you **illegally used any controlled substance**, for example, **marijuana**, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?

She did not list her occasional use of marijuana from high school until 2002. Because she had stopped using marijuana in 2002, she chose not to list her past use because she was afraid that she would not be hired by her employer. [\(44\)](#) She did discuss this response with another individual who works with her. [\(45\)](#) She did not realize the importance of her responses to the questions and her clearance. [\(46\)](#)

#### Question 29. Your Use of Illegal Drugs and Drug Activity - Drug Activity

In the last 7 years, have you been **involved in the illegal purchase**, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis **for your own intended profit or that of another**?

She did not list her purchases of small quantities of marijuana for her own use to share with others. The last marijuana she smoked had been given to her as a birthday present. [\(47\)](#) She could not remember when she last purchased marijuana, which would have been for her own use [\(48\)](#)

### Question 37. Your Financial Record - Unpaid Judgments

In the last 7 years, have you had any judgments against you that have not been paid?

She did not list two unpaid judgments totaling \$567.00 for medical bills. She believed these bills had been paid. <sup>(49)</sup> The court entered a judgment against Applicant in the amount of \$371.00 on June 7, 1999. <sup>(50)</sup> Garnishment proceedings were initiated on October 26, 1999. <sup>(51)</sup> The judgment creditor did not file a Satisfaction of Judgment notice with the court until July 25, 2005. <sup>(52)</sup> The exact date of the final payment is unknown, but the judgment was satisfied some time before the notice of satisfaction was filed with the court. Applicant contacted the other judgment creditor subsequent to the hearing to confirm payment of her bill. The judgment creditor advised that she still owed \$96.00 on the judgment, which she paid in full on April 7, 2006. <sup>(53)</sup>

Applicant answered "yes" to the following questions, and listed a DWI in January 1988 and an alcohol treatment program in 1998:

### Question 24. Your Police Record - Alcohol/Drug Offenses

Have you ever been, **charged with**, or convicted of any offense related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. (emphasis supplied)

She listed her 1988 DWI arrest, but did not list her DWI arrest in 1990 and drug arrests in 1978 and 1990. She did not list the 1978 arrest because she forgot about it. <sup>(54)</sup> She has little memory of the specific dates of her DWI arrests or the disposition of her cases. She did not list two DWI arrests because her present employer knew about the arrests and her jail time, but did list the arrest unknown to her present employer. <sup>(55)</sup> Since her 1990 drug case had been dismissed by the court, she spoke with her security officer about listing it. <sup>(56)</sup> She stated that the security officer advised her not to worry about it, and if she was asked about the arrest, she should then discuss it. <sup>(57)</sup>

### Question 30. Your Use of Alcohol

In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in EPSQ Module 19 (Section 21 from the SF86).

She listed her treatment in 1998 as from June to July, rather than June to August, because she is not good at dates. (58) She did not list additional alcohol treatment received prior to her 1998 treatment.

## **Other**

Applicant's supervisors describe her as a dedicated, hard working employee who is a self starter. (59) Her work is of high quality. (60) She has assumed additional responsibilities and is a reliable employee. (61) Since she has stopped drinking, she indicates that her life has improved and she is a changed person. (62) At the hearing, she had difficulty with identifying dates, and with specific recall on events which occurred when she drank. She relocated geographically within the last two years. She has new friends, who are not interested in drugs and alcohol. (63) Because she was delighted to return to her employment with employer, she hurriedly completed her security clearance application without taking the time necessary to think about many of her answers. (64)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative 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. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and 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. (65)

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. (66) The government has the burden of proving controverted facts. (67) The burden of proof is something less than a preponderance of the evidence. (68) 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 her. (69) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (70)

No one has a right to a security clearance, (71) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (72) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (73) 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. (74) 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.**

## 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:

Under Guideline E, the government alleges that Applicant deliberately falsified material facts on her security clearance application when she answered "no" to Questions 26, 27, 29, and 37. It also alleges that she falsified material facts when she failed to provide complete information in response to Questions 24 and 30. 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 his answers related to a relevant and material fact and was deliberate.

At the hearing, she acknowledged that she did not truthfully answer Question 27. Thus, the government has established its case as to allegation 1.c. under Guideline E. Concerning her admitted failure to disclose her use of marijuana, her fear that she would not be hired by her employer is not a reason to mitigate the government's concern. While Applicant has been forthright about her alcoholism and the problems caused by her drinking, she was less candid about her marijuana use when completing her security clearance application. Her lack of candor raises questions about her trustworthiness. She has failed to mitigate the government's concerns. Guideline E, allegation 1.c., is found against Applicant.

As to allegation 1.d., Applicant frankly stated that she could not "guarantee" that she would not use either in the future as there are no "guarantees" in life. For three and one-half years, she has not smoked marijuana, and does not intend to do so in the future, as with her use of alcohol. Her stated intent, by itself, is not enough to assure the government that she will not use marijuana in the future. This allegation under Guideline E is found against the Applicant.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. [\(75\)](#)

The government has not established its case of deliberate falsification as to allegations 1.a.(1) through 1.a.(3), 1.b., and 1.e. through 1.g. Applicant forgot about her arrest in 1978. Forgetfulness is not indicative of a deliberate attempt to avoid revealing prior negative information which occurred 25 years ago. Forgetfulness, however, can be an issue for someone with a long-time drinking problem. Her memory about events which occurred during the years she drank is vague. She is unclear as to when she was arrested or the details surrounding her arrests, but was clear that she had been arrested three times for DWI. She did not list two of her arrests because she knew her present employer was fully aware of the arrests and subsequent punishments, including weekend jail time and the loss of her driver's licence, as these occurred when she previously worked for this employer. She focused on her present employer's knowledge and her

assumption that this prior knowledge of her present employer was sufficient. She did not focus on the consequences of failing to provide information as to all of her arrests in her security clearance application. While her assumptions were incorrect, they are not indicative of a deliberate attempt to hide this information, particularly since she believed she had identified the one DWI unknown to her employer. Thus, the record contains insufficient evidence to show that Applicant deliberately falsified material facts in response to Question 24. Allegations 1.a.(1) through 1.a.(3) under Guideline E are found in favor of Applicant.

Although Applicant was fully aware, at the time she completed her security clearance application that she had been arrested in August 1990 for possession of 1 kilo of marijuana, she answered "no" to Question 24, which was incorrect. She, however, did not intentionally falsify this answer. Her case had been dismissed and she understood from her security officer that she would need to discuss the incident if questioned by an investigator, but she did not need to list it. This misunderstanding does not equate to intentional falsification. Allegation 1.a.(4) is found in Applicant's favor.

Likewise, the government has not proven that Applicant intentionally falsified her answer to Question 26 when she failed to list her arrest and subsequent charge for breach of the peace. This incident occurred when she was heavily drinking. She has limited memory about much of her conduct when she drank. She does not always remember her alcohol related incidents until reminded. Her faulty memory does not equal intentional misconduct nor is it a security concern since she has ceased her alcohol consumption. Her supervisors find her reliable and dependable. They count on her and praise her job performance. Her ability to perform her duties at an exceptional level indicates that her memory problems connected to her drinking have not continued now that she is not drinking. Allegation 1.b. is found in favor of Applicant.

Applicant has admitted that she occasionally provided money to others to pay for or purchase small quantities of marijuana for her use only. She has never admitted to purchasing marijuana for her own intended profit. The record contains no evidence reflecting when she last purchased marijuana, and she cannot remember a particular time frame when she purchased marijuana. The government has not established its case that she deliberately falsified her answer to Question 29 about . Allegation 1.e. is found in favor of Applicant.

Applicant admitted that she had received alcohol treatment from June to July 1998, when in fact, her treatment ended in early August 1998. Throughout the hearing, she demonstrated problems with date specificity. She admitted to seeking treatment and provided a close proximity for the dates of treatment. Her failure to be exact in her treatment dates does not reflect intentional falsification of a material fact in this case. Likewise, she admitted to alcohol treatment sometime in the 1990s, but has not been able to provide a definite time frame for when this occurred. Her treatment may have been prior to July 21, 1996 or later. The record reflects only that she got treatment sometime in the 1990s. Because the record lacks definitive evidence of the dates for additional treatment, the government has not established that she deliberately falsified her response to Question 30 regarding her alcohol treatment. Allegation 1.f. is found in favor of Applicant.

Applicant believed that the judgments entered against her in 1999 and 2000 had been paid in full at the time she filed out her security clearance application. Her salary was garnished in 1999, and based on this, she believed the debt of

\$371.00 was paid. It had been paid, and the judgment creditor finally filed a notice of satisfaction with the court. When she recently contacted the judgment creditor regarding the status of the \$196.00 debt, she learned that it had not been paid in full, and immediately paid the remaining balance of \$96.00. Applicant did not intentionally falsify her answer to Question 37 because she reasonably believed that the debts had been paid. The government has not established its case.

Finally, the "whole person" concept is the heart of the analysis of whether an applicant is eligible for a security clearance. (76) In evaluating Applicant's risk and vulnerability in protecting our national interests, I have considered her changes in lifestyle. She has stayed sober for almost eight years following alcohol treatment. Because she no longer drinks, she has not been arrested for anything, particularly alcohol related offenses in nine or ten years. She has geographically relocated, thus, distancing herself from her old associates, and developed new friendships with individuals who are a positive influence because they are not interested in drinking and drugs. She is financially stable and well-respected by her supervisors for her work ethic and job skills. Despite all her positive life changes, she continued to use marijuana occasionally until three and one-half years ago. She then lied about her use of this illegal substance out of fear of not getting a job. This decision reflects poor judgment and raises concerns about future judgments she would make if presented with a situation involving national security. She has not overcome the government's case under Guideline E.

Given the finding of only one incident of deliberate falsification, the Guideline J allegation of a history and an ongoing pattern of criminal conduct under Title 18, United States Code § 1001 has not been established. Guideline J is found in favor of Applicant. Accordingly, for the reasons stated, I find that it is not 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 E (Personal Conduct): AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Paragraph 2, Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 1.a: For 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. Applicant Exhibit C is a copy of a letter and money order, dated April 7, 2006. Applicant Exhibit D is a letter from her workplace superintendent, dated April 19, 2006. Applicant Exhibit E is a letter from one of her supervisors, dated April 3, 2006. Applicant Exhibit F is an undated letter from another supervisor.
2. Applicant's Response to SOR, dated June 29, 2005, at 1-2.
3. Government Exhibit 1 (Applicant's security clearance application, dated July 21, 2003) at 1; Tr. at 16-17.
4. *Id.*
5. Government Exhibit 1, *supra* note 3, at 1.
6. *Id.* at 3.

7. *Id.* at 20.
8. *Id.* at 4.
9. Tr. at 18.
10. *Id.* at 10, 17.
11. *Id.* at 10, 30.
12. *Id.* at 18.
13. *Id.* at 19.
14. *Id.*
15. *Id.* at 20, 27-29.
16. *Id.* at 20, 23.
17. *Id.* at 21-22, 44.
18. *Id.* at 34-35.
19. *Id.* at 35; Government Exhibit 3 (Applicant's signed statement, dated March 15, 2004), at 3.
20. *Id.* at 32-34, 42-45.
21. *Id.*
22. *Id.* at 42-45.
23. Government Exhibit 3, *supra* note 19, at 3.
24. *Id.* at 3-4.
25. *Id.*
26. *Id.*; Tr. at 41-42.
27. Government Exhibit 2 (United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division criminal record sheet, dated July 25, 2003) at 2.
28. *Id.*; Tr. at 22.
29. Tr. at 24-25.
30. *Id.* at 25-26.; Government Exhibit 2, *supra* note 27, at 2.
31. Tr. at 25-26.
32. *Id.* at 27-28.
33. *Id.*
34. *Id.*

35. Government Exhibit 3, *supra* note 19, at 2.
36. Tr. at 27-28.
37. *Id.* at 29-31.
38. *Id.*
39. *Id.* at 31.
40. *Id.* at 30-31; Government Exhibit 3, *supra* note 19, at 4.
41. *Id.*
42. Government Exhibit 1, *supra* note 3, at 1, 6-8.
43. Tr. at 27.
44. *Id.* at 29.
45. Applicant's response to SOR, *supra* note 2, at 1.
46. Tr. at 29.
47. *Id.* at 32.
48. *Id.*
49. *Id.* at 36-37.
50. Applicant Exhibit B (Court garnishment documents, dated October 26, 1999) at 1.
51. *Id.*
52. Applicant Exhibit A (Court document, dated July 25, 2005) at 1.
53. Applicant Exhibit C, *supra* note 1, at 1.
54. Tr. at 22.
55. *Id.* at 21.
56. *Id.* at 24-26.
57. *Id.*
58. *Id.* at 34.
59. Applicant Exhibit D, *supra* note 1, at 1.
60. Applicant Exhibit F, *supra* note 1, at 1.
61. Applicant Exhibit E, *supra* note 1, at 1.
62. Tr. at 10.
63. *Id.* at 31.

64. *Id.* at 23.

65. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.

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

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

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

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

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

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

72. *Id.*

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

74. Executive Order No. 10865 § 7.

75. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

76. Directive, Enclosure 2, ¶ E2.2.3.