DATE: September 28, 2006

In re:

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

Applicant for Security Clearance

CR Case No. 04-10992

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who was caught drinking in public at age 17 in 1980, was arrested and convicted of October 1983 and August 2002 drunk driving offenses. He failed to appear on a July 2000 alcohol-related domestic assault charge that was subsequently filed for one year. Although he no longer drives after drinking, he continues to consume alcohol to excess on occasion when out socially. He was not candid about his arrests or financial record on his security clearance application, and did not timely return workmen's compensation benefits to which he was not entitled. Clearance is denied.

STATEMENT OF THE CASE

On August 10, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline G, alcohol consumption, Guideline E, personal conduct, and Guideline J, criminal conduct, why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.[(1)]

On September 8, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me February 2, 2006, and I convened a hearing on April 21, 2006. Eleven government exhibits (Ex.) were admitted. Six Applicant exhibits were admitted, with two additional exhibits identified for the record (proposed B and C) to be admitted on their post-hearing submission. Testimony was taken from Applicant, his spouse, and his father, as reflected in a transcript received May 5, 2006.

The record was held open for Applicant to submit Ex. B and Ex. C, as well as a complete copy of his 2002 Questionnaire for National Security Positions (QNSP, pages 7 and 8 were admitted as Ex. A), and for Department Counsel to request to reopen if necessary to cross-examine Applicant on the complete QNSP if a copy was forthcoming as Ex. I. The documents were received on May 1, 2006. On ay 8, 2006, Department Counsel indicated he had no objection to the documents and did not ask to reconvene the hearing. The documents were formally admitted.

FINDINGS OF FACT

DOHA alleged under Guideline G that Applicant consumed alcohol at times to excess and to intoxication from approximately 1980 to at least February 2004, was cited in August 1980 for drinking in public, convicted of October 1983 and August 2002 drunk driving offenses, and failed to appear in court on a July 2000 alcohol-related simple assault. The alcohol-related offenses were cross-referenced as criminal conduct under Guideline J. Under Guideline E, Applicant was alleged to have falsified his April 2002 security clearance application (SF 86) by failing to disclose the July 2000 charge, and that he was over 90 days past due on repayment of workmen's compensation benefits, and to have failed to timely repay those benefits after he had returned to work. Applicant admitted the Guideline G allegations, but indicated with respect to failure to appear that he never received notice. He acknowledged there had been "a few occasions" in the past 24 years where he had been intoxicated. Concerning completion of his SF 86, he admitted the information alleged had been omitted but he denied any intentional falsification. He attributed his response to being in a rush at work and trouble reading due to dyslexia. Applicant claimed he was unaware that he was delinquent more than 90 days in repaying the workmen compensation, and averred he owed only about $1,800 rather than the more than $11,000 that he was ordered to repay.

Applicant's admissions are incorporated as findings of fact. After a complete review of the evidence, I make the following additional findings:

Applicant is a 44-year-old high school graduate who has been employed by a defense contractor since October 1982, for the first 20 years as an expediter and most recently, as a senior supply associate. He has held a secret-level security clearance since November 1986, and needs it for his current duties primarily packing classified hardware for shipment. Applicant's operations manager considers him to be an exemplary employee because of his reliability and work ethic. In the manager's experience, Applicant has been "extremely conscientious" in his handling of classified material. Beginning November 5, 2005, Applicant's hourly wage was increased from $16.97 to $18.15 because of his continued outstanding performance.

Applicant has a history of alcohol-related incidents, including underage drinking. At age 17 in August 1980, Applicant was caught drinking beer with friends in a parked car at a local beach. He was detained for about six hours on a charge of drinking alcohol in public before he was released. When he was 19 and 20, there were occasions when he drank as many as 10 to 15 beers at a sitting.

At age 21, Applicant fell asleep at the wheel and rolled his car after drinking at a party in late October 1983. He took a breathalyzer at the hospital and was arrested for operating under the influence (OUI). He pleaded nolo contendere, was found guilty, and sentenced to 30 days loss of license, 12 months probation, and required to attend a driver intervention program, which he completed.

In November 1994, two weeks before the birth of their son, Applicant married his wife. They had a daughter in February 1997. In December 1997, Applicant began working part-time for a package delivery service in addition to maintaining his full-time job with the defense contractor. On April 20, 2000, he sustained a lower back injury while on his part-time job. Awarded workmen's compensation benefits of $149.94 per week from May 10, 2000, Applicant did not realize that he was also entitled to an additional $484.16 per week for his lost time at his primary employment. His workmen's compensation benefit was adjusted to $634.10 per week in early June 2000 and he received $2,420 in retroactive benefits. He returned to work for the defense contractor in June 2000, but did not notify the company handling the benefit payments. Applicant was paid approximately an additional $4,648 before he was notified on July 27, 2000, that his benefits were terminated.[(2)] Available records reflect a final payment to him of $209.92 on July 27, 2000, making a total of $8,452.42 in workmen's compensation paid to him. Applicant knowingly accepted several payments to which he was not entitled.

Applicant did not respond to demands for return of the benefit monies overpaid.[(3)] In late December 2001, he was ordered to appear in court in March 2002 to answer on a complaint of failure to pay. In July 2002, the creditor was issued a judgment of $10,717.89 plus costs and interest ($11,029.73 total).[(4)] Applicant appeared in court in late October 2002 contesting the amount, but he was ordered to repay $11,052.65 at $150 per month. Applicant has missed several payments over the years but has made large payments on occasion to get caught up. No more than one month

late at any time in 2005 and 2006, Applicant had caught up by April 2006. With payments totaling about $6,000, he had reduced the balance to $5,059.65.

In July 2000, Applicant and his spouse got into an argument that escalated into mutual shoving. They had been drinking earlier in the evening when out to dinner with relatives. His spouse called the police, as she thought they would be able to calm Applicant. Applicant was arrested and transported to the police station on a charge of simple assault. Applicant failed to appear in court and a bench warrant was issued for his arrest. In November 2000, the charge was continued for one year without a finding. There have been no subsequent incidents of assaultive behavior.

To renew his secret clearance, Applicant completed a Questionnaire for National Security Positions (QNSP) on March 22, 2002. Because of problems reading and comprehending due to dyslexia,[(5)] Applicant had his spouse assist him with the form. He completed Part 2 himself, and responded "No" to the inquiries into his police record, including question 23.d ("Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?") and 23.f ("In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines or less than $150 unless the violation was alcohol or drug related.)"). He did not list his 1980 drinking in public or 1983 OUI offenses, or his more recent arrest in July 2000 for simple assault. In response to financial record inquiries (question 27), Applicant listed a December 1996 bankruptcy in the amount of $25,000. He answered "No" to any financial delinquencies, including whether he was over 90 days delinquent on any debts, knowing that the payer was demanding return of excess workmen's compensation paid out to him.

The information provided by Applicant on his QNSP was transferred onto a security clearance application (SF 86) dated April 16, 2002, that Applicant signed on March 26, 2002. Applicant did not type the form himself.

On August 21, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his alcohol consumption, his police record, and the omission of arrests from his QNSP. Provided a copy of Part 2 of the form, Applicant explained his failure to list his offenses:

I thought that they only needed seven yours [sic] prior to that date. I forgot about the incident between my wife and I and the outstanding tickets I thought were not felonies. Now that I have read the form I should have ansered [sic] yes to Queston [sic] #23 a, d, f. I really don't know why I missed those Questons [sic]. I not trying to hide anything. Miss [sic] understood the Queston's [sic].

During his interview, Applicant gave "Yes" responses to questions 23.a (any felony offenses), 23.d (any alcohol or drug related charges or convictions), and 23.f (any arrests in the last 7 years), although he was not certain whether the drunk driving incidents were felonies. Acknowledging that alcohol had been involved in his criminal incidents, Applicant denied any problem with alcohol. He detailed drinking for the past 20 years on average four times per week, a couple of beers after work or up to a six-pack on weekends, to intoxication about once a year.

One week after his DSS interview, Applicant consumed beer and shots of liquor when out with a friend late at night after helping his friend with home improvement.[(6)] The police observed Applicant swerve and almost strike a pole with his vehicle. Applicant was stopped and administered field sobriety tests, which he failed. He was arrested for driving under the influence, and refused to submit to a breathalyzer at the station. In late September 2002, he pleaded guilty to a negotiated plea of DUI and was sentenced to 90 days loss of license, a $350 fine plus $70 court costs, and to complete a driver intervention program within 90 days.

Applicant attended an alcohol education program from November 8, 2002, to December 5, 2002, which was required to regain his driver's license. He cooperated fully during the program, but was referred for additional counseling to assess the risk of him re-offending. Between December 30, 2002, and January 4, 2003, Applicant had four hours of individual counseling for diagnosed alcohol abuse. He was also required to attend six Alcoholics Anonymous (AA) meetings. The counselor assessed Applicant's risk for another DUI as low. He gave Applicant a very good prognosis because of his demonstrated commitment to sobriety and participation in AA. Applicant went to an additional five or six AA meetings on his own in the six weeks after he was discharged from the counseling.

On February 5, 2004, Applicant was re-interviewed by the DSS agent to discuss the August 2002 drunk driving offense.

Applicant averred that after drinking two beers and two shots of cinnamon schnapps with a friend, he left the establishment "feeling pretty good." He acknowledged he had failed field sobriety tests, but averred he would have been borderline had he taken the breathalyzer test. On the suggestion of his attorney, he pleaded guilty to the drunk driving offense. He denied any intent to drink and drive in the future, and detailed his current consumption as two to three beers on some nights after work, three to four beers on the weekends.

As of April 2006, Applicant was drinking about a six-pack of beer per week, on occasion to intoxication when out socially, such as after fishing with friends ("I don't get drunk at home, it's got to be like a going out thing"). He drank a couple of mixed drinks when out to dinner in early April 2006 (" I had a couple of mixed drinks, it was a Brazilian drink, and they were really strong . . .") to where he felt close to the legal limit (Tr. 141). He no longer drives after drinking, and had his spouse drive home the night he consumed the Brazilian drinks. He realizes that his drunk driving and temporary loss of license took a "real toll" on his family and does not intend to repeat that behavior. Applicant's spouse and his father do not think he has a drinking problem.

POLICIES

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

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

After considering the evidence of record, the following adjudicative guidelines are pertinent to an evaluation of Applicant's security suitability:

Alcohol Consumption. 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. (¶ E2.A7.1.1)

Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (¶ E2.A5.1.1)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. (¶ E2.A10.1.1)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the government established its case with respect to Guideline G, alcohol consumption, Guideline E, personal conduct, and Guideline J, criminal conduct.

Applicant drank alcohol to excess (up to 10 or 15 beers at a sitting) on occasion during his late teens and early 20s, culminating in a 1983 OUI offense. Applicant's alcohol abuse as a youth would no longer be of security concern were it

not for the more recent alcohol-related assault and DUI offenses. He clearly allowed alcohol to negatively affect his judgment and reliability on the occasion in July 2000 when he got into a physical altercation with his spouse, as well as when he engaged in drunk driving in August 2002. Disqualifying condition ¶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*, under Guideline G applies. Moreover, ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*, under Guideline J, apply. His drunk driving reflects a serious disregard for the law and the public health and safety.

More than three years have passed since his last alcohol-related incident. The Directive provides for mitigation of alcohol consumption concerns where there is no indication of a recent alcohol problem (¶ E2.A7.1.3.2.), but as Applicant's situation shows with the 19 years between drunk driving offenses, the passage of time does not guarantee against recurrence. More is required certainly where there is a diagnosis of alcohol abuse or alcohol dependence because of the seriousness of the problem (*see* ¶ E2.A7.1.3.4. *Following diagnosis or alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of AA or similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.*), and Applicant was given a diagnosis of alcohol abuse in December 2002.

However, it was not shown that the counselor qualifies as a medical professional (physician, clinical psychologist, or psychiatrist) or even a licensed clinical social worker for purposes of assessing whether Applicant should be held to the stringent mitigation standards of ¶ E2.A7.1.3.4. Applicant described the counselor as being "like a psychiatrist" (Tr. 145), but the therapist's credentials are not of record. While it is likely that the counselor has some experience in assessing alcohol problems, based on the referral from an alcohol intervention program recognized by the local courts, I am unable to conclude that ¶E2.A7.1.3.4. applies. Applicant does not have to abstain from alcohol and attend AA to establish mitigation. At the same time, his compliance with his sentence for the 2002 DUI, including the counseling component with a favorable prognosis (low risk of another DUI), does not compel a finding of successful rehabilitation. The prognosis is entitled to little weight given its dated nature and the fact it was rendered by a clinician whose qualifications are not of record. To his credit, Applicant has been careful to not drive after drinking. However, alcohol consumption concerns persist where he continues to consume alcohol frequently, on occasion to intoxication. If his testimony is to be believed, he drank only two beers and two shots before his August 2002 arrest for DUI. It was enough to cause him to swerve on the road and almost strike a pole. He testified he drank two strong mixed drinks when out with his spouse in April 2006 and felt impaired enough ("close to the legal limit") to have her drive home. While he showed good judgment in not operating a motor vehicle himself on that occasion, it is not clear what he will do when out drinking with friends after fishing or in other social contexts. He failed to make a case for application of MC ¶ E2.A7.1.3.3. *Positive changes in behavior supportive of sobriety*. Insight has been limited to drunk driving and has not extended to other problems irresponsible drinking can cause, as evidenced by his minimization of the incident between himself and his spouse that led to his arrest for assault in July 2000 ("it was so mild and dim, I mean it was so like nothing between me and her, she as real apologetic. . . ." Tr. 82).

Applicant's lack of candor about his police record and the workmen compensation debt on his security clearance application and his acceptance of workmen's compensation benefits after he had returned to work present serious personal conduct issues. On the QNSP from which the submitted SF 86 was prepared, Applicant did not report either his July 2000 arrest for simple assault, his 1980 drinking in public, or his 1983 drunk driving offenses. When initially asked about the omissions by the DSS agent, Applicant indicated he forgot about the incident between himself and his spouse. (Ex. 4) When he answered the SOR, Applicant attributed the omission to being in a rush when he filled out the form and to difficulty reading due to dyslexia. At his hearing, he did not deny that he had responded "No" initially to the police record inquiries on his QNSP, and that he should have responded "Yes" to 23.d (alcohol or drug charges) and 23.f (any other offenses within the last seven years). He testified he had not answered the police record inquiries before turned in the QNSP to his employer:

Me and my wife filled it out, she helped me fill it out in the kitchen and home and I think we left that part out because she was confused too, and then when I mailed it in, when I went into security, they called me back and said you didn't

fill this out, so I just went in there and checked them off real quick. (Tr. 56)

Applicant did not testify at his hearing that he had forgotten about the assault charge when he filled out the QNSP. His subsequent testimony suggests he left it off because he considered it minor:

She went to court with me, she, they gave me probation for one year without a hearing, without a finding or something. And that was it, it wasn't, and you know, that's why I think when it said, you know, the last one on my records, police records, have you ever been arrested in seven years, it was so mild and dim, I mean it was so like nothing, well between me and her . . . . (Tr. 82)

The inconsistency in his explanations for the omission of the assault charge, and his failure to report his first drunk driving offense, make it difficult to believe that the omissions were due to misunderstanding or inadvertent mistake, notwithstanding his dyslexia and obvious difficulties with spelling. DC ¶ E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material fact from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,* applies.

As for Applicant's alleged failure to list the workmen's compensation benefit debt as more than 90 days delinquent, Applicant admits he accepted compensation payments that he was not entitled to during the summer of 2000. Sometime after November 2000, Applicant received a notice from the payer requesting return of the overpayment, whereupon he consulted with the attorney representing his spouse in connection with an automobile accident claim. Suit was later filed in December 2001 by the payer to recover the monies. Even if Applicant did not receive timely notice of the lawsuit, he knew he had taken benefit monies beyond what he was entitled to and made no effort to repay them until under court order of October 2002. What he indicated in his answer, that he was late on a few payments but didn't realize it was 90 days late, is not substantiated by the record evidence. His omission of that debt is found to have been knowing and willful as well.

Concerning his acceptance of the workmen's compensation benefits themselves (¶ 2.c.), Applicant sustained a lower back injury on his part-time job in April 2000 that left him temporarily incapacitated for work. He was out of work for six weeks, and entitled to benefits for that time. Applicant testified that after he returned to work, he continued to receive benefits, and that for the first two weeks, he and his spouse figured it was back-pay. After he received "a couple more, you know, checks," he went to see his spouse's lawyer. (Tr. 102) . Claim records (Ex. C) show he was paid about $4,648.62 from June 9, 2000 through July 27, 2000, substantially more than the $1,800 he claims in overpayment, and that he did not consult with a lawyer until after he received a letter demanding repayment, which was several months after the benefits were terminated. His failure to timely inform the state compensation authority of his return to work, and his knowing acceptance of benefits to which he was not entitled, raise very serious doubts for his judgment, reliability, and trustworthiness. From a security standpoint, the concern is the same whether Applicant improperly kept $1,800 or $4,648. DC ¶ E2.A5.1.2.5. *A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*, must also be considered.

None of the Guideline E mitigating conditions (MC) apply. Although Applicant was candid with the DSS agent about his police record when he was interviewed in August 2002, there is no evidence that he volunteered the information before being confronted. To the contrary, it may reasonably be inferred from the agent's inquiry into the omission of his criminal record from his QNSP that the disclosures were prompted. MC ¶ E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*, does not apply.

The DOHA Appeal Board has consistently held that an applicant's conduct and circumstances are not be evaluated in a piecemeal fashion. *See, e.g.*, ISCR Case No. 00-0628 (Feb. 24, 2003, citing ISCR Case No. 99-0601 Jan. 30, 2001, at p. 8 ("'Under the whole person concept, an Administrative Judge must assess the totality of an applicant's conduct and circumstances in order to evaluate the applicant's security eligibility, not just consider an applicant's conduct and circumstances in a piecemeal manner.'"). Under ¶ E2.2.4. of the Directive, even if adverse information pertaining to any given guideline is not sufficient to warrant an adverse security clearance decision, an applicant may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Although not alleged under Guideline J, it is noted that Applicant violated 18 U.S.C. § 1001 by

(7)

deliberately omitting his arrests and workmen's compensation debt from his security clearance application.

His 2002 drunk driving offense occurred only one week after his DSS interview, when he was placed on notice that his alcohol-related conduct was of concern to the Department of Defense. Alcohol consumption, personal conduct, and criminal conduct concerns persist notwithstanding his outstanding performance for the defense contractor and his repayment of about $6,000 of the workmen's compensation debt.

FORMAL FINDINGS

Formal findings as required by Section 3, Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1.

2. This figure is based on Applicant's testimony that he was out of work for six weeks (Tr. 94), so he would have returned to work the week of June 5, 2000.

3. Applicant initially testified he did not know he was getting extra checks until he got a letter, and then he went to see the lawyer who was representing his spouse in an action stemming from an automobile accident which she testified was in November 2000. (Tr. 58, 161) He later testified on cross examination that for the first two weeks after his return to work, he assumed he was receiving retroactive benefits. He then went to the attorney with the letter notifying him of an overpayment of about $1,700 (Tr. 101-02). The record shows Applicant accepted payments until the benefits were terminated, which was months before he would have talked to this lawyer since his spouse's automobile accident had not yet happened.

4. Whether or not Applicant received timely notice of the hearing set for March 2002, he was overpaid far in excess of the amount he and his spouse claim ($1,800 and $1,200 respectively).

5. Applicant's father testified that when Applicant was entering the fifth grade, he read at less than a grade two level. (Tr. 170)

6. Applicant testified he drank "two beers and two shots, and that's all." (Tr. 139)

7. 18 U.S.C. § 1001 provides in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.