

DATE: October 20, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03973

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant has a criminal history involving assault and battery and illegal drug possession committed when she was in abusive personal relationships. Having benefitted from group therapy with other victims of domestic violence, similar conduct is not likely to recur, but criminal conduct and personal conduct concerns persist where she was not candid about her arrest record on her October 2003 security clearance application and has not yet paid her restitution for welfare fraud. Clearance is denied.

**STATEMENT OF THE CASE**

On September 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline J, criminal conduct, and Guideline E, personal conduct, why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(U\)](#)

On October 10, 2005, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 2, 2006, with a motion pending from the government to amend the SOR to add under Guideline J that Applicant was arrested in October 1990 for assault and battery on a police officer and assault with a dangerous weapon. On March 17, 2006, Applicant was ordered to respond by April 7, 2006, or the SOR would be amended and the new allegation admitted. Applicant filed no response by the due date. At the hearing convened on April 21, 2006, Applicant admitted proposed allegation ¶ 1.k, and the SOR was amended accordingly. Three government exhibits (Ex.) and 19 Applicant exhibits were admitted. Synopses of several DOHA decisions, marked collectively as Applicant Ex. T, were accepted for administrative notice. Testimony was taken from Applicant and from an advocate for victims of domestic violence, as reflected in a transcript received May 5, 2006.

**FINDINGS OF FACT**

DOHA alleged under Guideline J, as amended, that Applicant was convicted of operating a motor vehicle in April 1989 after license suspension and disorderly person offenses; arrested for assault and battery on an officer and assault with a dangerous weapon in October 1990; found guilty of a July 1992 public drinking offense; arrested in September 1994 for larceny of property over \$250 and false representation to secure welfare benefits, and then failed to pay court-ordered restitution on time; arrested in March 1998 for assault and battery (dismissed); convicted of possession of class D substance with intent to distribute and possession of drug paraphernalia offenses committed in September 1998; convicted of an August 1998 assault and battery on a police officer, disorderly person, and resisting arrest offenses; arrested in December 1998 for breaking and entering in the daytime with intent to commit mischief, assault and battery, and threatening to commit a crime (none were prosecuted); arrested in August 1999 for violation of protection order and threatening to commit a crime (both dismissed); convicted of February 2000 violation of protection order and two counts of threatening to commit a crime; and violated 18 U.S.C. § 1001 for making false statements on her October 2003 security clearance application (SF 86). Under Guideline E, personal conduct, Applicant was alleged to have deliberately omitted from her October 2003 SF 86 police record information: a pending charge related to her failure to make restitution for the welfare payments, her arrest in 1992 for public drinking and illegal possession of class D substance, violation of her probation in 1995 and 1999 for failure to make timely restitution of the welfare, and her arrest record since March 1998.

In a detailed answer notarized October 10, 2005, Applicant admitted her criminal arrest record, which she attributed to immaturity, to her involvement in two personal relationships with men who abused her, to a custody dispute with the father of her first child. With respect to the welfare, she maintained she reported her wages but could ill afford to take the time off from work to contest it so ended up paying the restitution ordered. As for the alleged falsification of her SF 86, Applicant denied any knowledge of any pending charge against her for failure to make timely restitution of welfare benefits. She attributed the omission of the drug offenses to her failure to recall them, and other offenses to various factors, including good-faith reliance on the advice of her then employer, a temporary agency, that she did not have to report offenses that occurred more than seven years before or those related to the custody battle; oversight; knowing that the government would find out all the information as she had included it on her job applications; focusing on the felony charge and not really thinking about her misdemeanor offenses; being overwhelmed by the questions and failure to take care in filling out the application. Applicant denied any intent to deceive, but she also admitted "on some level [she] didn't want to confess to these things."

The allegations covered in the amended SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. After a complete review of the evidence, I make the following additional findings of fact:

Applicant is a 42-year-old single mother who has worked at a defense contractor facility since October 2003, initially in the employ of a temporary agency. In December 2004, she became an employee of the defense contractor. As a microwave hybrid assembler, she assumed a leadership role on the assembly floor, and maintained a professional attitude. With the withdrawal of interim secret-level clearance on issuance of the SOR, Applicant was given a job in the stockroom where she does not require a clearance. She seeks a secret clearance so that she can return to her previous duties.

From 1985 to 1990, Applicant attended a local community college from which she earned an associate's degree. While en route to school to take an important examination in April 1989, she was pulled over and arrested for operating after license suspended, operating with defective equipment, operating with unnecessary smoke, and disorderly person. She was found guilty of the operating after license suspended and disorderly person offenses and ordered to pay costs and fines of \$75.

In October 1990, Applicant got into a physical altercation outside of a club after she told her boyfriend at the time that she was leaving with some friends. She retaliated against her boyfriend who had hit her, and struck a police officer not in uniform. She was arrested for assault and battery on an officer and assault with a dangerous weapon (her high heeled shoes). The case was continued without a finding. Applicant and her boyfriend had been drinking.

In July 1992, Applicant and a new boyfriend (Mr. X) were at a local beach when the local police observed him pour beer out of her vehicle. The police found a marijuana joint in a cigarette pack in the vehicle. Although the drug belonged

to Mr. X, Applicant was arrested for public drinking and illegal possession of a class D substance (marijuana), as neither she nor Mr. X would admit to possession. She was found guilty of the public drinking charge.

In November 1992, Applicant began cohabiting with Mr. X. A victim of his physical abuse and pregnant with his child, she applied for transitional assistance with the state at his insistence and did not report his paternity.<sup>(2)</sup> After their son was born in May 1993, he refused to sign the birth certificate.

In September 1993, Applicant threw Mr. X out of the home they had shared, although she continued to press him to acknowledge paternity for their son. Applicant secured a temporary job to support herself and her child, and did not immediately inform the welfare department. Following an investigation, she was charged in September 1994 with larceny of property over \$250 and false representation to the department of transitional assistance to secure support. In or before July 1998, she was convicted of felony larceny (welfare fraud) and ordered to pay restitution, \$95 in fees and costs, and placed on six years' probation.<sup>(3)</sup>

In July 1997, she began a relationship with her landlord (Mr. Y) who subsequently abused her. In March 1998, she was charged with assault and battery following a fight with Mr. Y that occurred when she confronted him about using illegal drugs. The charge was dismissed.

In August 1998, Applicant was arrested for assault and battery on a police officer, disorderly person, and resisting arrest following another fight with Mr. Y. She was found guilty and sentenced to one year in jail, suspended for one year, ordered to pursue counseling, and to pay \$35 to the victim witness fund.

Despite her history of being battered by Mr. Y, Applicant continued to help him out after they were no longer together.<sup>(4)</sup> While giving Mr. Y a ride home late one night in September 1998, Applicant was arrested for possession of class D substance (marijuana) with intent to distribute, possession of class D substance with intent to distribute/manufacture/cultivate in a school zone, possession of drug paraphernalia, and operating after license or right to operate suspended. The marijuana, which belonged to Mr. Y, was stashed in the passenger's seat. She contested the charges but was convicted of possession of class D substance and possession of drug paraphernalia and sentenced on the marijuana possession charge to six months in jail (suspended), one year probation, and a drug treatment program. On the paraphernalia possession charge, she was sentenced to ten days (suspended), and one year probation. The other charges were dismissed.

In December 1998, Applicant was charged with breaking and entering in the daytime with intent to commit mischief, assault and battery, and threatening to commit a crime. Unemployed other than helping out Mr. Y who was at the time incarcerated, she was attempting to evict tenants of his and they complained to the police. The charges were dismissed for failure to prosecute, and available evidence does not prove wrongdoing on her part.<sup>(5)</sup>

In February 1999, Applicant was ordered to complete 50 hours of community service for violation of probation. The probation violation was alleged by the government to arise from her failure to repay the state for the welfare benefits. On December 7, 1999, the court issued an order requiring her to pay the \$2,914.68 in restitution. She paid a total of \$499 over the next year but stopped making payments because of other financial obligations, including daycare.

By May 1999, Applicant was involved in a custody battle with Mr. X over their son. He was granted temporary custody and a protective order restricting her contact with her son on accusations (which she claims are false) that she was using illegal drugs. On one occasion in August 1999, after she called her son at an unscheduled time, Mr. X had her arrested for violation of the protection order and threatening to commit a crime. The charges were dismissed.

From Fall 1999 into 2000, Mr. X prematurely cut off her telephone conversations with their son, which led her to calling back in violation of the protection order. Convicted of violating the protection order and two counts of threatening to commit a crime in February 2000, Applicant was sentenced to three months in jail (suspended to April 2001), placed on one year probation, ordered to attend anger management classes, and to pay \$35 to a victim witness fund. Applicant completed an anger management program in late August 2000.

After 16 months being unemployed other than acting as a landlord in Mr. Y's absence, Applicant went to work as an

inspector in October 1999. In December 2000, she left that job and began to fill-in as a substitute teacher for a local school district. She was reliable in reporting timely and in carrying out her assignments with a high degree of accuracy. Applicant had no other job as she focused on getting her life back together. In January 2001, she began group counseling for battered women, which she attended for the next three years.

In August 2001, Applicant gave birth to a daughter. Facing eviction from her apartment in October 2001, Applicant was pressured by Mr. Y to rent a property from him. She turned for help to an advocate for female victims of domestic violence, and after a short period of transitional housing, she and her daughter moved out of the area.

In October 2003, as an employee of a temporary agency, Applicant was assigned to assembler duties with a defense contractor. Needing a secret-level security clearance, Applicant completed an electronically generated security clearance application (SF 86) on October 27, 2003. Applicant responded "Yes" to question 21 concerning any felony offenses, indicated that she had been arrested in August 2002 for being late on a payment, and added:

Back in 1997 I was suppose [sic] to report my earnings to welfare department and I didn't do it in time. I was taken to court back in 1999 and told to pay back some money. I was given to the year 2004 but for some reason it came up in there [sic] computer that I was late on my payments. I am just continuing to pay this fine until it is paid off. I have a short time to go and it will be paid off.

Applicant responded "No" to question 23 concerning any charges currently pending, to question 24 concerning any drug-related offenses ["Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"] and to question 26 concerning any other criminal arrests within the last seven years. Applicant was granted an interim secret-level security clearance.

Applicant denies any intent to mislead the government. While the evidence shows that Applicant had not paid her restitution for welfare fraud as of her SF 86 in October 2003, there was no pending criminal charge against her at the time she applied for a clearance. Her negative response to question 23 was not false. As for her failure to list her drug charges in response to question 24, Applicant claims unpersuasively to have not recalled them when she completed the SF 86 (Tr. 113-14). The September 1998 drug offense is particularly likely to have stood out in her mind, given she was sentenced to a six month jail term (albeit suspended), placed on probation, and ordered to attend a drug program. She posited several explanations for the omission from question 26 of the 1998 assault and battery offenses and 1999 and 2000 violations of protective order: confused as to whether to list charges that had been continued without a finding; unable to recall exact dates and times of her offenses; moved on with her life ("I thought that this all happened well past the time to record it"); assumed the information was either not on record or not relevant since she had been allowed to work as a substitute teacher (Tr. 116); and with respect to the violation of protective orders, told by her employer that "anything relating to the custody battle would not come up." Not a lawyer, Applicant reasonably could have been confused as to whether charges continued without a finding or dismissed were required to be listed in response to question 26. Her denial of any intentional concealment is accepted as to the March 1998, December 1998, and August 1999 criminal charges. Yet, the omission of the August 1998 assault and battery on an officer and February 2000 violation of protective order was knowing and willful. As her listing of the February 2000 violation of protective order offense on her October 2004 employment application confirms, Applicant knew that offense was on her record of October 2003. She had no trouble recalling the August 1998 offense when she was interviewed by the OPM investigator in April 2005, more than one year after she completed her SF 86.

In July 2004, Applicant was involved in a car accident. A check of her operator's license showed she was delinquent in her restitution for the welfare fraud, and a warrant was issued against her for non-payment of the \$2,415.68 balance owed. She appeared in court six days later. The warrant was rescinded and her probation was extended to July 2005 with restitution ordered. Over the next year, she paid \$50 towards the restitution.

On October 20, 2004, after about a year on the job, Applicant applied for an assembler position with the defense contractor. In response to a question on her employment application concerning any criminal convictions, (6) Applicant indicated that she had pleaded guilty to welfare fraud in 1999 for failure to "report earned wages to welfare back in 1994 quick enough;" that in 2002 she had been late on payments so was charged with larceny. She also disclosed the 2000 violation of the restraining order (mistakenly dating it as 2001) while going through a custody battle, and added, "I have

had some brush's [sic] with the law. But that is all in my past and I do not associate myself with that past or anyone in it. I have turned my life around." She was hired on as a full-time employee by the defense contractor in about December 2004.

On April 13, 2005, Applicant was interviewed by an Office of Personnel Management (OPM) special investigator about her legal and financial difficulties. Concerning the welfare fraud, Applicant related that even before she received her first paycheck, she was accused of cheating welfare because she was working. She eventually pleaded guilty in July 1998 and was placed on probation for six years, with \$2,914.68 in restitution to be paid by then. She added that she and Mr. X shared custody of their son; that Mr. X was helping her pay what she owed to the court, and that her affiliation with the center for abused women had showed her "how to live a new life."

At her hearing in April 2006, Applicant gave a somewhat different account of the welfare fraud, testifying that she let the welfare agency know that she was working when she got her job, and was told by her case worker to send in her first three pay stubs, which she did. She was called in by the welfare agency to explain her failure to report her wages sooner, and "[a]t that point, [she] was very frustrated, very aggravated and in no mood to be accused of not doing what I was told to do."

(Tr. 92) She claimed she pleaded guilty because she could not afford to contest the charge. Her culpability is established by the conviction.

In July 2005, Applicant's probation was extended for yet another year to July 2006, and she was ordered to repay the \$2,365.68 balance of the restitution at \$200.00 per month. There is no evidence of any subsequent repayment. As of April 2006, Applicant planned to take out a loan to pay off the balance before July 2006 deadline for repayment. She was unsure as of the date or the amount of her last payment.

Applicant is considered to be a success in surviving domestic abuse. She returned to the group in about February 2006 to help other battered women. As of April 2006, Applicant and Mr. X had resolved their custody issues and she was paying child support for her son.

## 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 her 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 necessarily 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.

Concerning the evidence as a whole, the following adjudicative guidelines are most pertinent to this case:

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

**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)

## 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 following with respect to Guidelines J and E:

Criminal conduct raises security concerns because of the doubts it creates for a person's judgment, reliability and trustworthiness. Someone who has violated state or federal law may disregard security regulations that they disagree with or find personally inconvenient. Applicant has an extensive criminal record from April 1989 to July 2004, when a warrant was issued for her failure to pay court-ordered restitution. Moreover, she committed a felony violation of 18 U.S.C. § 1001, by deliberately omitting relevant and material information concerning her criminal record from her security clearance application. <sup>(7)</sup>

Guideline J disqualifying conditions (DC) ¶ 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*, are raised.

Several of the crimes were committed when she was an abuse victim, most notably the welfare fraud, and the violation of protection orders stem from a protracted custody battle that has since been resolved. Her illegal drug involvement was limited to her association with Mr. Y, who was an active abuser. Given her completion of anger management classes and counseling for battered women, the assaultive behavior and protection order violations are not likely to recur (see ¶ E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*). Yet, her falsification of her SF 86 and her failure to pay her court-ordered restitution for the welfare fraud preclude me from finding successful rehabilitation required under MC ¶ E2.A10.1.3.6. *(There is clear evidence of successful rehabilitation)*. As of her April 2006 hearing, Applicant was still on probation for the welfare fraud because of her failure to make restitution. While an applicant's current probationary status does not bar a favorable security clearance decision, her noncompliance with the court order raises significant doubts for her rehabilitation. Some six years after her conviction, she had paid only \$499 of her restitution. While she understandably does not have the funds available to satisfy her restitution in a lump sum, a good faith effort to comply is not established by her payment of only \$50 in restitution since July 2004, when she knew that it was an issue for her clearance.

Personal conduct, Guideline E, concerns are also raised by Applicant's falsification of her SF 86. She reported her welfare fraud as a felony offense, and since there was no pending charge against her at the time for failure to pay her restitution, her negative response to question 23 (¶ 2.a) was not false. The warrant for her arrest was not issued until July 2004. However, she did not disclose recent criminal convictions (the August 1998 assault and battery, the September 1998 marijuana possession, or the February 2000 violation of protection order). 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* must be considered in evaluating whether she possesses the requisite judgment, reliability, and trustworthiness for classified access.

Applicant made an effort to correct some of the misrepresentations on her SF 86. At the request of her then security officer, she provided address information in February 2004 (Ex. C). When she completed her application for employment with the defense contractor in October 2004, she added her recent violation of protective order and that she had some brushes with the law in the past. (Ex. D). Applicant testified she subsequently provided "a little bit more detail" (Tr. 51), but she was unable to produce any confirming documentation. When interviewed by the OPM investigator in April 2005, Applicant discussed her criminal past (Ex. 3). However, this attempt at rectification is not sufficiently prompt to fall within mitigating condition ¶ E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*. None of the mitigating conditions apply. Concerns remain about Applicant's candor where she told the investigator that she was accused of cheating welfare before she received her first paycheck, but then testified at her hearing that she had reported her income to the welfare department and sent in her first three paychecks (Tr. 91).

In evaluating Applicant's security suitability under the "whole person" concept, she deserves substantial credit for surviving domestic abuse, making a stable home for her daughter, supporting her son who lives with his father, and of late for helping other battered women. She also performed very well on the job for the defense contractor. While she has made pertinent favorable behavioral changes that must be considered under ¶ E2.2.1.6, countering that evidence of stability and maturity is her failure to accept her share of responsibility. She described her criminal past as "things that happened to [her]" (Tr. 117) and continues to make excuses for her failure to pay her restitution:

Q Ma'am, when is the last time you made a payment towards this debt?

A I can't be sure. I have a lot of bills. The problem with that is you can't just write a check to it, you have to either get a money order, which costs \$2 now, and mail it and then you have to have that as your receipt. Or you have to drive into [city omitted] to pay the amount and make sure you keep your receipts. (Tr. 106-07)

Furthermore, Applicant's falsification of her security clearance application diminishes her trustworthiness, reliability, and dependability (*see* Directive ¶¶ E2.2.1.1, E2.2.1.5, E2.2.1.7). Applicant has failed to mitigate the security concerns arising from her history of criminal conduct and her personal conduct.

### **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 J: 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

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

#### Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest

to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. '

2. Applicant denies that she misrepresented the identity of her son's father (Tr. 89-90), even though she was charged with making a false representation to the department of transitional assistance to secure support. When interviewed by a special investigator for the OPM investigations service on April 13, 2005 (Ex. 3), Applicant indicated that since neither she nor Mr. X had insurance, she applied for public assistance and denied Mr. X's paternity at his insistence.

3. The government alleges she was ordered to pay \$2,914.68 in restitution. Applicant testified her restitution was \$3,600 (Tr. 67). The court records of her conviction were not presented. Available payment records from the court show a court ordered amount of \$2,914.68 as of December 7, 1999, for "welfare fraud." (Ex. K).

4. Applicant related that even though she and Mr. Y were no longer together, he continued to "terrorize" her on a daily basis. (Tr. 102)

5. Mr. Y gave Applicant a limited durable power of attorney to handle his financial assets and real estate during his incarceration, although it was not granted until July 1999, after her arrest in December 1998 (Ex. F). While the evidence fails to substantiate Applicant's claim to having legal power to act on his behalf at the time, there is no proof she had committed any of the criminal acts alleged.

6. The question requires reporting of any conviction by plea (including pleas of nolo contendere, no contest, or guilty), bail forfeiture, or verdict or finding of guilt, "regardless of whether adjudication was withheld or any sentence or fine was imposed by the court," with specific exception for traffic violations where the fine paid was \$100 or less, any offense before one's 18<sup>th</sup> birthday and adjudicated in a juvenile court or under a youthful offender law, or misdemeanor marijuana convictions two years from the date of conviction. (Ex. D) Applicant was required to report only those misdemeanor marijuana convictions that were within two years of her employment application.

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.