

DATE: October 31, 2006

n re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-10019

**DECISION OF ADMINISTRATIVE JUDGE**

**MARK W. HARVEY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Forty-eight-year-old Applicant had two alleged debts listed in the SOR. Applicant established payment of the two SOR debts and a significant overall improvement of his financial situation. He had an alcohol-related driving offense in 1994. He received in-patient alcohol treatment in 1995. He had another alcohol-relating driving offense in 2000. He was not involved in any alcohol-related misconduct after 2000. He mitigated security concerns about financial considerations and alcohol consumption. Clearance is granted.

**STATEMENT OF THE CASE**

On November 17, 2003, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).<sup>(1)</sup> On June 12, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.<sup>(2)</sup> The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption). 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on June 30, 2006, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.<sup>(3)</sup> A complete copy of the file of relevant material (FORM), dated September 8, 2006, was provided to him on September 11, 2006, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>(4)</sup> Any such submissions were due by October 11, 2006.<sup>(5)</sup> Applicant provided additional materials in response to the FORM, which were received on October 10, 2006. Department Counsel did not object to Applicant's additional materials. The case was assigned to me on October 16,

2006.

## PROCEDURAL RULING

On August 17, 2006, Department Counsel made a motion to amend SOR ¶ 1.a, changing the date of Applicant's arrest from "[o]n or about May 24, 2004," to "sometime in May 1994." Department Counsel's basis for the amendment is to conform the allegation to Applicant's statement of October 18, 2004.<sup>(6)</sup> Applicant did not object to the amendment. Department Counsel's motion is granted.

## FINDINGS OF FACT

As to the factual allegations, Applicant made some admissions, and denied other allegations in his response to the SOR.<sup>(7)</sup> His admissions are incorporated herein as findings of fact. Under Guideline F, Applicant admitted that he was aware of and responsible for the debts in SOR ¶¶ 1.a and 1.b, but asserted they were both paid through a debt consolidation plan. For SOR ¶¶ 2.a to 2.d, Applicant admitted the allegations. However, he contended that he had decreased his consumption of alcohol, and does not drive after consuming excessive alcohol. After a complete and thorough review of the evidence of record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 48-year-old<sup>(8)</sup> employee of a defense contractor.<sup>(9)</sup> From 1995 to 2003, he was never unemployed.<sup>(10)</sup> From 1978 to 1979, he attended college, and was awarded an AAS degree.<sup>(11)</sup> Applicant has no prior military service.<sup>(12)</sup> Applicant was married to his current spouse on November 24, 1979.<sup>(13)</sup> Applicant has three children and three stepchildren.<sup>(14)</sup>

### **Financial Considerations**

SOR ¶ 1.a involves a revolving credit card debt of \$630.00 owed to M, and states this debt was delinquent and ultimately charged off.<sup>(15)</sup> Applicant credibly counters that his payments were timely on this debt, and that he paid it using a debt consolidation company, DS.<sup>(16)</sup> M's debt amounted to \$27,241.33, when it was consolidated with three other debts for DS' administration.<sup>(17)</sup> DS subsequently transferred administration or collection of M's debt to W & A.<sup>(18)</sup> There was an arbitration concerning M's debt, followed by negotiations.<sup>(19)</sup> In response to Applicant's post-SOR request for proof of payment, W & A provided a letter dated July 25, 2005, indicating W & A offered to settle M's debt for \$12,193.06 provided Applicant paid an initial sum of \$5,193.06 and \$875.00 per month thereafter.<sup>(20)</sup> A document from DS' website showed that a debt of \$23,499.34 owed to W & A was settled and "Paid In Full."<sup>(21)</sup>

There is no paper trail corroborating Applicant's statement that he paid the debt to C in SOR ¶ 1.b using a debt consolidation loan from DS.<sup>(22)</sup> The documentation Applicant provided has information about debt B,<sup>(23)</sup> but the letter from B does not list C as the source of the debt, nor does it include an account number, or the total amount of the debt being settled. He also received a settlement document from HFC offering to settle a debt for one payment of \$1,750.00 on May 1, 2002.<sup>(24)</sup> The HFC letter did not indicate a particular account number, or whether the loan was related to C. I accept Applicant's statement as credible that he ultimately used a debt consolidation program that DS administered to pay HFC.<sup>(25)</sup> A document from DS' website showed that debts of \$4,981.78 owed to HFC and \$5,225.31 owed to B were settled and "Paid In Full."<sup>(26)</sup>

On June 2, 2004, Applicant provided a personal financial statement (PFS) to a security investigator.<sup>(27)</sup> His PFS indicates his gross salary was \$4,664.64 per month, and net salary was \$3,510.00 per month. His spouse's net salary was \$1,277.00 per month. After making all payments, including mortgage (\$445.00), groceries (\$400.00), car expenses (\$125.00), utilities (\$343.00), clothing (\$100.00) and miscellaneous (\$145.00), \$2,745.00 per month remained.

The debt section of Applicant's PFS does not list either of the SOR debts owed to creditors M and C, but it does include the following debts, and monthly payments:

TYPE DEBT	AMOUNT	MONTHLY PAYMENT
2 <sup>nd</sup> Mortgage	\$20,000.00	\$318.00
Debt Consolidation Loan (DS)	\$58,940.00	\$915.00
Student Loan	\$8,707.00	\$169.00
Visa Credit Card	\$7,383.00	\$160.00
Signature Loan	\$3,429.00	\$70.00
TOTAL DEBTS IN 2004	\$98,459.00	\$1,632.00
DEBT WITHOUT DS LOAN	\$39,519.00	\$717.00

Applicant provided documentation showing that the debt to DS was paid in full, <sup>(28)</sup> reducing his overall debt load from \$98,459.00 to \$39,519.00; and his overall monthly debt payments from \$1,632.00 to \$717.00. He credibly states that he has incurred no new debts since going to DS for debt in 2001, and none of his debts are currently delinquent. <sup>(29)</sup> He has changed his spending habits and no longer uses credit cards. He described working two jobs to ensure that his debts are paid in a timely fashion.

### **Alcohol Consumption**

Applicant began drinking alcohol when he was around the age of 13 years. <sup>(30)</sup> He drinks beer to relax and because he likes its taste. He usually drinks four times a week, and sometimes drinks alcohol to intoxication. However he only gets intoxicated on weekends, which usually involves drinking 8-10 beers. He gets "loud" when he drinks, and on one occasion the police came to his residence in response to a false complaint that he threatened his wife. His step daughter made this complaint to the police, but the police were unable to obtain his wife's cooperation and no action was taken against him. He attended a 30-day inpatient alcohol treatment program in 1995 or 1996 as part of the agreement with his wife to terminate divorce proceedings. <sup>(31)</sup> He subsequently received some outpatient counseling and attended Alcoholics Anonymous meetings for "about a year or so."

In May 1994, Applicant received a ticket for speeding, having an open container of alcohol in his truck, and not having seat belts (SOR ¶ 2.a). Prior to driving, he drank "a few." He was taking "the kids" to get something to eat. <sup>(32)</sup> A police officer stopped him for driving 79 miles per hour in a 55 mile per hour speed zone. <sup>(33)</sup> He passed a sobriety test. He paid a fine, and did not go to court.

On or about July 4, 2000, Applicant was arrested for driving under the influence of alcohol (DUI), and reckless endangerment for having children in his vehicle (SOR ¶ 2.b). <sup>(34)</sup> Applicant was sentenced to 30 days in jail, fined, and his driver's license was suspended. <sup>(35)</sup>

On October 18, 2004, Applicant said he planned to cut down on his drinking, his drinking had no effect on his job, and his financial problems were unrelated to his drinking. <sup>(36)</sup> Applicant still drinks and drives. But he explained, "I do not go to bars or anything. I also use a driver if I have had too much to drive . . . I do not drive when I have had too many as I have a daughter who can drive. I also stay at home and do not go to bars or anything to drink. Therefore would not have anyone to tell anything to." I find his statements about his consumption of alcohol to be credible.

### **POLICIES**

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative

process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision. Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

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:

**Financial Considerations - Guideline F: "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts." Directive ¶ E2.A6.1.1.**

**Alcohol Consumption - Guideline G: "Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Directive ¶ E2.A7.1.1.**

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to these adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."<sup>(37)</sup> The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its initial burden, applicant then has the burden of persuasion, that is to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and ultimately to demonstrate it is clearly consistent with the national interest to grant or continue applicant's clearance.<sup>(38)</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

### **Guideline F (Financial Considerations)**

The government has met its initial burden under Guideline F. Applicant's initial failure to pay two debts is of concern, especially in light of his desire to have access to the nation's secrets. Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a security concern and may be disqualifying in this case. FC DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. FC DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's actions in initially failing to satisfy his outstanding financial obligations give rise to FC DC 1 and 3. The two debts listed in SOR ¶¶ 1.a and 1.b became delinquent as a result of Applicant's poor impulse control and money management.

A security concern based on financial problems can be mitigated by substantial evidence under FC MC 1 "the behavior was not recent" or under FC MC 2 "it was an isolated incident." Directive ¶¶ E2.A6.1.3.1, E2.A6.1.3.2. I considered FC MC 1 and 2, but decided that neither mitigating condition fully applied because there are two debts in SOR ¶¶ 1.a and 1.b, and they were not paid until very recently.

Applicant did not disclose any information to supported consideration of FC MC 3, "the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." Directive ¶ E2.A6.1.3.3. His financial difficulties remain largely unexplained. He remained gainfully employed since 1995. He does not cite any of the enumerated potential conditions that may arise and result in unexpected financial problems. His comments about lacking financial self-discipline explain why the two debts alleged in SOR ¶¶ 1.a and 1.b became or remained delinquent, but they do not warrant application of FC MC 3.

FC MC 6 can mitigate a security concern arising from financial problems when "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," (FC MC 6). Directive ¶ E2.A6.1.3.6. The Appeal Board has defined the concept of good faith, as requiring "a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

I concur with Department Counsel's observation that Applicant "has made great strides in reducing his credit debt." (Brief at 4). He showed overall significant improvement in his financial situation. I found that the debts were transferred, consolidated or merged into other debts, and ultimately paid, I conclude that some credit under FC MC 6 is warranted. *See* ISCR Case No. 04-07360 at 2, 3 (App. Bd. Sep. 26, 2006) (indicating when a mitigating condition cannot be fully applied, "some credit" is still available under that same mitigating condition).

### **Guideline G (Alcohol Consumption)**

The government has met its initial burden under Guideline G. Examination of Applicant's actions reveals conduct involving excessive alcohol consumption. The Directive clearly expresses the government's concern regarding excessive alcohol consumption in provision E2.A7.1.1, which states, "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." Excessive alcohol consumption could indicate that the Applicant may negligently fail to properly safeguard classified information.

Alcohol Consumption Disqualifying Condition (AC DC) 1 may arise from "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)." Directive ¶ E2.A7.1.2.1. Applicant's 1994 driving with an open container of alcohol in his vehicle, his inpatient alcohol treatment in the mid-1990's, his 2000 DUI, his drinking to the level of intoxication, and his continued consumption of alcohol before driving are actions that raise security concerns.

Security concerns based on excessive alcohol consumption can be mitigated by establishing by substantial evidence: Under AC MC 1, the "alcohol-related incidents do not indicate a pattern;" for AC C 2, the "problem occurred a number of years ago and there is no indication of a recent problem;" and in the case of AC MC 3, applicant has shown "positive changes supportive of sobriety."<sup>(39)</sup> However, none of these three mitigating conditions fully apply. The two alcohol-related driving incidents indicate a pattern. He continues to drink to intoxication on weekends; and he drives after consuming alcohol, both indications of an ongoing problem. However, some mitigation is shown because the two alcohol-related incidents involving the police are not in close temporal proximity to each other, and they are not recent. Applicant receives some credit because of the absence of evidence that his alcohol use has recently caused him problems with his family, the police or judicial authorities. There is also some evidence about reduction of factors leading to the incidents, or facts supporting a change in Applicant's life circumstances because he has significantly reduced his alcohol consumption from the 1990s.

### **"Whole Person" Analysis**

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive provision E2.2.1. As noted above, Applicant's history of alcohol abuse, is counterbalanced by his strong desire to avoid judicial intervention, confinement, fines and loss of his driver's license. E2.2.1.1. His actions concerning alcohol consumption and the initial delinquent debt situation were knowledgeable and voluntary. E2.2.1.2. He is 48 years old, sufficiently mature to be fully responsible for his conduct. E2.2.1.4. The likelihood of a future DUI or other alcohol-related driving incident is low because six years have elapsed since the last DUI and Applicant credibly indicates he will not drive after consuming sufficient alcohol to become intoxicated. He credibly stated that he had changed his financial habits and now exercises self-discipline and sound financial practices. E2.2.1.9. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations and alcohol consumption.

Substantial evidence supports Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>(40)</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude Applicant is eligible for access to classified information.

### **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 F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant



Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

### DECISION

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

Mark W. Harvey

Administrative Judge

1. Item 4 (Electronic Security Clearance Application (SF 86)), is dated November 17, 2003 on pages 1 and 9. There is no allegation of falsification of the SF 86.
2. Item 1 (Statement of Reasons (SOR), dated June 12, 2006) at 1-2. Item 1 is the source for the remainder of this paragraph.
3. Item 3 (Applicant's response to SOR with supporting documentation, notarized June 30, 2006, but dated on the first page, June 12, 2006).
4. Defense Office of Hearings and Appeals (DOHA) transmittal letter, dated September 8, 2006.
5. *Id.* The DOHA transmittal letter informed Applicant that he had 30 days after receipt to submit information.
6. *See* Item 5 (Applicant's statement to a Special Investigator for the Office of Personnel Management Investigations Service, dated Oct. 18, 2004) at 1. Applicant's statement indicates he received a ticket for speeding with an open container of alcohol in his truck sometime in May 1994, rather than on May 24, 2004, as alleged in SOR ¶ 1.a.
7. Item 3, *supra* note 3, is the source for all factual findings in this paragraph.
8. Item 4, *supra* note 1, question 1, at 1.
9. From October 1, 1999 to November 17, 2003 (the date of his SF 86), Applicant has been employed as a procurement auditor and technical specialist for a defense contractor. Item 4, *supra* note 1, questions 6.1 and 6.2, at 1-2. The quality of his employment performance was not characterized.
10. *Id.*, questions 6.1 to 6.2, at 1-2.
11. *Id.*, question 5, at 1.
12. *Id.*, question 11, at 5.
13. *Id.*, question 8, at 2.
14. *Id.*, questions 9.3 to 9.8, at 3-4.
15. Applicant's credit report shows a balance of \$630.00, an actual payment amount of \$1,750.00, an amount due of "0," a charge off amount of \$25,063.00, and current status of "CHARGE-OFF." Item 8 (Credit Report, dated May 16, 2006), at 14, 25.
16. Item 3, *supra* note 3, at 1 and Item 6 (statement to a Special Investigator for the Office of Personnel Management, Investigations Service on June 2, 2004), at 2.
17. Item 6 (statement to a Special Investigator for the Office of Personnel Management, Investigations Service on June

2, 2004), at 2.

18. *Id.* at 3-4, 7.

19. *Id.* at 4.

20. Documentation Applicant submitted to DOHA in response to the FORM included five checks payable to W & A for a total of \$8,693.06 (\$5,193.06-dated July 28, 2005; \$875.00-dated August 22, 2005; \$875.00-dated September 21, 2005; \$875.00-dated October 21, 2005; \$875-dated November 21, 2005).

21. Item 8 (DS Client Support Web Page, dated May 16, 2006), at 9.

22. SOR ¶ 1.b alleges a revolving credit card debt owed to C of \$5,883.00 and states this debt was delinquent and ultimately charged off. Applicant's credit report shows a balance for C of \$29,768.00, an actual payment amount of \$0, an amount past due of \$5,883.00, and current status of "CHARGE-OFF." Item 8 (Credit Report, dated May 16, 2006), at 14, 23. Applicant credibly asserts that his payments were not delinquent, and that he paid it using a debt consolidation company, DS. *See* Item 3, *supra* note 3, at 1 and Item 6 (statement to a Special Investigator for the Office of Personnel Management, Investigations Service on June 2, 2004), at 2.

23. In response to Applicant's 2006 request for proof of payment, he received from DS a letter from bank-creditor, B, offering to settle a debt to B for 45% or \$2,119.00 with the first payment due on arch 28, 2002. *See* Documentation Applicant submitted in response to the FORM. Forty-five percent of \$4,708.89 is \$2119.00. The debt in SOR ¶ 1.b is \$5,883.00.

24. *See* Documentation Applicant submitted in response to the FORM.

25. *See* Item 6, at 5 (discussing transfer of HFC debt); Item 8 (DS Client Support Web Page, dated May 16, 2006), at 9.

26. Item 8 (DS Client Support Web Page, dated May 16, 2006), at 9 (showing settlement of HFC debt and "Paid In Full" status).

27. Item 6, Form 154, Personal Financial Statement (PFS), dated June 2, 2004. This PFS is the source for all the information in this paragraph.

28. Item 8 (DS Client Support Web Page, dated May 16, 2006), at 9 (showing "Paid In Full" status).

29. Item 6, at 8-9. Applicant's June 2, 2004, statement is the source for the remainder of this paragraph.

30. Item 5 (Applicant's statement to a Special Investigator for the Office of Personnel Management, Investigations Service, dated October 18, 2004) at 1. Unless otherwise stated, Item 5 is the source for all the information in this paragraph.

31. Item 8 (Applicant's responses to interrogatories, dated May 19, 2006) at 4-5 is the source for the last two sentences in this paragraph.

32. Item 8 (Applicant's responses to interrogatories, dated May 19, 2006) at 5 is the source for the previous three sentences in this paragraph.

33. Item 5 (Applicant's statement to a Special Investigator for the Office of Personnel Management, Investigations Service, dated October 18, 2004) at 1. Item 5 is the source for the remaining sentences in this paragraph.

34. Item 3, *supra* note 3, at 2.

35. Item 4, question 24, at 6. The FORM does not contain any police reports or court records.

36. Item 3, *supra* note 3, at 4-5 is the source for the factual findings in this paragraph.



37. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

38. "The Administrative Judge [] consider[s] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006). The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

39. Directive ¶¶ E2.A7.1.3.1, E2.A7.1.3.2. and E2.A7.1.3.3 is the source for AC DC 1, 2 and 3, respectively.

40. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).