

DATE: October 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-07983

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 53-year-old drafter working for a federal defense contractor. He used marijuana from approximately 1968 through 2001, when he was arrested for possession of marijuana and cocaine. Since quitting drugs in 2001, he has demonstrated his commitment to remain drug free by completing a drug treatment, joining a support network, and purposefully separating himself from both his immediate family and others who do not support his detoxified lifestyle. Thus, he mitigated security concerns regarding his criminal conduct and drug involvement. Although he claimed not to have used drugs in the past seven years on a 2004 security clearance application, his showing of contrition and a thorough assessment of him as a "whole person" mitigate personal conduct concerns. Clearance is granted.

STATEMENT OF THE CASE

On February 10, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed reasons why, pursuant to Guideline J (Criminal Conduct), Guideline H (Drug Involvement), and Guideline E (Personal Conduct), it could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant. In his March 8, 2006, response, Applicant admitted to all the allegations raised without comment or explanation. By letter of March 16, 2006, he requested "a personal hearing concerning security clearance issues" be held.

On August 18, 2006, I was assigned the case. A Notice of Hearing was issued on August 31, 2006, setting the hearing for September 19, 2006. The hearing was held as scheduled. At the hearing, the Government submitted four exhibits, marked and accepted into evidence as Exhibits (Ex.) 1-4. Applicant testified, but presented no documents. The transcript (Tr.) of the proceeding was received on September 27, 2006, and the record closed the following day.

FINDINGS OF FACT

Applicant's admissions to the allegations set forth in the SOR are incorporated herein. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 53 years old and has worked for a federal defense contractor as a drafter since April 1, 2004. He has been married for 32 years and he has a 31-year-old son, but is currently estranged from both. He served in the U.S. Air Force from August 1972 through August 1981, when he was honorably discharged at the rank of staff sergeant [E-5], and again in 1983.

When Applicant was 15 years old, his mother died and his father went to prison for murder. He turned to marijuana, which he smoked about three times a week. Four years later, in 1972, he joined the U.S. Air Force. There, he continued using marijuana with more frequency, but did not expand his drug use. While at technical school for electronic avionics in his first year of service, he was charged and punished for possession of marijuana. Due to his superior grades, however, he was allowed to finish school and receive a security clearance.⁽¹⁾ That clearance was ultimately withdrawn about three years later because of the incident, and he was assigned to alternative, non-sensitive duties. That security clearance was eventually restored after he promised to refrain from drugs.

During this tour of service, Applicant was married in 1974. A year later, the couple had a son. Applicant left the Air Force in 1981, but returned in 1983. Within a year, however, he tested positive for marijuana use and, consequently, attended a drug treatment program. Ultimately, however, he received a general discharge from the service and entered into civilian employment. In 1985, he attended community college for a few months and, from 1985 to 1999, he worked as an associate engineer. He became a drafter in 2002.

In 1998, Applicant discovered he had Hepatitis C and underwent chemotherapy for a year. Although he had reduced his marijuana consumption to about once a month by the late 1990s, he used the drug during the chemotherapy to help manage his nausea. Along with the nausea, the chemotherapy and treatment also induced suicidal impulses, for which he sought mental treatment. This treatment was under the guidance of a certified psychologist and featured a detoxification component from all drug use, including the chemotherapy medication, and aftercare requirements.⁽²⁾

Following his detoxification, Applicant returned home. There, he found little support for his detoxified life. Both his wife and son continued to use marijuana in the home. They also drank alcohol, a substance that could adversely affect his form of hepatitis. Within months, he was again smoking marijuana about once a month and, by 2001, he began to use cocaine on occasion.⁽³⁾

On a Saturday night in September 2001, Applicant and his wife returned from an out of town event. They found their apartment in disarray, with items broken and shards of glass on the floor. As they were cleaning up the mess, wondering what had caused it, they heard a crash at the door. They discovered Applicant's son laying on the floor and foaming at the mouth. His son mentioned heroin, confirming Applicant's fear that he was overdosing. Against his son's wishes, Applicant called paramedics, who took the younger man to the hospital.

Early the next day, the son returned and began banging on the apartment door. The younger man wanted to retaliate for his father's having called the paramedics. He tried to provoke a fight, then demanded money. Applicant refused and told his son he could no longer live at home. Physical fighting erupted and the son bit his father severely, leaving a major scar. The police were called. The son alleged that his father had drugs in the home. The police discovered Applicant's marijuana. They also found the son's drug paraphernalia, which had cocaine on it. On the basis that all the drug activity was going on under his roof, Applicant claimed it was all his. He was arrested for possession of marijuana, a misdemeanor, and cocaine, a felony.

Applicant pled guilty to the charges and, on December 2, 2002, he was placed on 12 months probation for possession of marijuana and six years probation (concurrent) for possession of cocaine. He was also ordered to complete 80 hours of community service. He was ordered to complete a drug evaluation or treatment program.⁽⁴⁾

Applicant has not used any illegal or drugs or abused any prescription drugs since before his December 2, 2002, court date. To satisfy the court's requirements, he completed a three month drug and alcohol evaluation program that lasted

for three sessions a week for three months, and included drug screening in 2003.⁽⁵⁾ During this time he also attended Narcotics Anonymous.⁽⁶⁾ His community service requirements were completed in 2005.

Additionally, Applicant started attending Alcoholics Anonymous (AA) on his own initiative, and still attends meetings today.⁽⁷⁾ Those meetings address general support needs and his limited use of alcohol. There is no indication that alcohol abstinence was part of his probation related to his drug conviction. While he does have a beer on some weekends,⁽⁸⁾ he is aware of the effect alcohol abuse would have on his form of Hepatitis and health.⁽⁹⁾

In the interim, on June 21, 2004, Applicant completed a security clearance application, Standard Form 86 (SF-86). In response to "**Question 27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs** *Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescriptions drugs?*," he falsely answered "no." He did so because he feared a positive answer might adversely affect his livelihood.⁽¹⁰⁾ He demonstrated anguish over his answer and contrition for having answered the question in the negative. He similarly answered "no" to "**Question 30. Your Use of Alcohol** *In the last 7 years has your use of alcoholic beverages (such a liquor, beer, or wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in module 21 of form SF86 (Your Medical Record).* Although he was aware that he had attended what was labeled a drug and alcohol abuse program as a result of his drug conviction, he honestly viewed his attendance there as limited to the drug abuse component of the program, and noted that the sessions were comprised of a mixture of people there for various reasons arising from drug and/or alcohol problems.⁽¹¹⁾

In addition to abstaining from drugs for four years, Applicant no longer associates with those who use marijuana or cocaine.⁽¹²⁾ This includes his son, from whom he remains estranged.⁽¹³⁾

Although his wife no longer uses drugs, she continues to abuse alcohol; that abuse in their home environment provided a situation incompatible with Applicant's current efforts toward clean living. In the past year, he concluded that he was not receiving the support he needed at home from his wife⁽¹⁴⁾ and in-laws⁽¹⁵⁾ to maintain his detoxified lifestyle. Consequently, he moved out of his home and physically separated from his wife earlier this year; he now lives independently.⁽¹⁶⁾

Applicant views his four years without drugs as a positive improvement. He admitted it was the hardest thing he has ever done and stated that he never thought he would be drug free after so many years.⁽¹⁷⁾ He considers himself to be truly drug free; he no longer needs to fight an urge for drugs or considers them a major threat in his present life.⁽¹⁸⁾ Furthermore, Applicant is happier and more motivated to do things without drugs in his system.⁽¹⁹⁾ Since quitting drugs four years ago, he has applied himself more to his work and is still trying to find more productive use of his free time.⁽²⁰⁾ He also joined a fitness club and has enjoyed going there since January 2006.⁽²¹⁾ He is committed to staying drug free: "I am not going to backslide."⁽²²⁾

He is also willing to seek support should he again feel vulnerable. He is sufficiently confident regarding his commitment to avoid drugs in the future that he willingly would seek psychiatric counseling or be subject to drug screening if it were required.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation

of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²³⁾ The government has the burden of proving controverted facts.⁽²⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁵⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽²⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁷⁾

No one has a right to a security clearance⁽²⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³¹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following three adjudicative guidelines most pertinent to the evaluation of the facts in this case:

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

Guideline H - Drug Involvement. *The Concern:* Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.⁽³²⁾

That guideline continues with the following definitions:

Drugs are defined as mood and behavior-altering substances, and include:⁽³³⁾ **Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens); and**⁽³⁴⁾ **[i]nhalants and other similar substances.**⁽³⁵⁾ **Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.**⁽³⁶⁾

Moreover, consideration must be given to 10 U.S.C. 986. Under that statute, any person who is an unlawful user of, or is addicted to, a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), is disqualified from being granted a security clearance.

Guideline E - Personal Conduct. *The Concern:* 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.⁽³⁷⁾

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

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, I find the following with respect to the allegations set forth in the SOR:

Criminal Conduct

Criminal conduct poses a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. In the SOR, DOHA alleges that Applicant's 2002 drug conviction and incorrect answers on his SF-86 constitute a history or pattern of criminal activity.⁽³⁸⁾ In this case, Applicant admits that he was convicted of drug possession in 2002 and concedes that his answer to Question 27 (**Your Use of Illegal Drugs and Drug Activity**) was false.⁽³⁹⁾ Consequently, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply.

The two acts at issue are multiple, eliminating application of Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.2 (*The crime was an isolated incident*). Moreover, under the facts presented, neither CC MC E2.A10.1.3.3 (*The person was pressured or coerced into committing the act and those pressures are no longer present in that persons life*), 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*), nor CC MC E2.A10.1.3.5 (*Acquittal*) applies.

The events, however, are not recent. Applicant's drug arrest occurred in September 2001, over five years ago, and he completed his SF-86 nearly two and a half years ago, in June 2004. Consequently, CC MC E2.A10.1.3.1 (*The criminal behavior was not recent*) applies. While the passage of time since either incident is not tremendously remote, Applicant has accomplished much in the interim. After an adult lifetime of drug use, he has stayed drug-free for a significant period of time for the first time in his life: approximately four years. To reenforce his success, he has maintained a support network. He has developed healthy outside activities. He has refocused on his work and his health. Applicant has acknowledged that he never before thought he could be drug-free, has expressed contrition for not previously admitting his problem, and has expressed his intent to stay drug-free. He also took the most extreme and difficult measures he had never before endeavored in the past: He distanced himself from those who use drugs, abuse alcohol, and do not support his efforts or his lifestyle - including his own family. Such efforts raise CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). In light of this turn around, Applicant has mitigated security concerns arising from his past criminal conduct.

Drug Involvement

With respect to Guideline H (Drug Involvement), the Government has established its case. Applicant admits that he possessed and used marijuana up to his arrest in September 2001, and he admits that he did not quit his use of marijuana until just prior to his December 2, 2002, court appearance. Such facts raise security concerns with regard to Drug Involvement Disqualifying Conditions (DI DC) E2.A8.1.2.1 (*Any drug abuse*)⁽⁴⁰⁾ and DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*).

When the Government's initial burden has been met and disqualifying conditions raised, the burden shifted to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. Here, Applicant has not used any drugs since before December 2, 2002,⁽⁴¹⁾ therefore Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*) applies. Prior to that, however, Applicant was a regular abuser of marijuana for many years and an occasional user of cocaine for approximately two years. Consequently, DI MC E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*) does not apply.

Over the past few years, Applicant attended treatment programs to address his drug use. Not until his last program in 2003, after he had already quit using drugs, did any treatment prove successful. Applicant failed, however, to introduce any documentary evidence as to whether he received a favorable prognosis after his last treatment program. Therefore, DI MC E2.A8.1.3.4 (*Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*) cannot be raised.

On the other hand, as discussed in the prior section under Criminal Conduct, Applicant firmly established he has put his drug abuse behind him. He physically separated himself from his immediate family and former friends in pursuit of a healthier and more supportive environment. He has described how his life and outlook has improved since becoming drug free, and he has expressed his willingness to be subject to drug screening or seek counseling to test his resolve. By both his deeds and his words, ⁽⁴²⁾ he has demonstrated his intent not to abuse any drugs in the future. Consequently, DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) applies. Taken together, the facts with which Applicant has raised both DI MC E2.A8.1.3.1 DI MC E2.A8.1.3.3 indicate his resolve to stay drug free now and his commitment to abstain from them in the future. Therefore, Applicant has mitigated security concerns arising under Guideline H.

Personal Conduct

The SOR alleges that Applicant deliberately falsified material facts regarding his drug use on his SF-86. ⁽⁴³⁾ Applicant admits this fact. Consequently, Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts 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.

Applicant confessed that he concealed the facts about his past drug use because he was concerned those facts would adversely affect his employment. He now appreciates that such concealment was wrong and expresses contrition. The concealment of such a fact is an act that demonstrates his past bad judgment and lack of candor; it also obviates application of any of the available Personal Conduct itigating Conditions

"Whole Person" Analysis

I have considered both the record evidence and Applicant in light of the "whole person" concept. Applicant is a mature man with a minimal amount of post-secondary education, but considerable life experience. He began using marijuana at an early age after he was suddenly left parentless, then continued using it on a moderate basis during the 1960s and 1970s as both a civilian and a serviceman. After receiving extreme treatment for a chronic, life-threatening condition, he moderated his behavior in general and reduced his use of marijuana to a monthly habit, but he also started using cocaine. Despite his prior attempts to quit using drugs, he repeatedly failed: Drugs were a part of his life growing up and they later became a part of his environment.

In 2001, Applicant's family's drug use led to his arrest for possession of drugs in their home. Before going to court in December 2002, he successfully quit using drugs. His resolve was fortified by his last, successful, treatment program. He attended support groups and established a support network. He distanced himself from former friends and associates who used drugs or abused alcohol. Over the past year, he physically separated himself from his wife and family, who failed to appreciate his efforts and provide the support he needed. At no time during this stressful process did he relapse. Instead, he forged ahead, removing any and all obstacles impeding his success at staying drug free.

Having been a drug abuser the entirety of his adult life, Applicant's anguish over his years of drug use and over the repercussions of his family's drug use is apparent. He expresses modest accomplishment in the fact he finally quit his habit. Moreover, he speaks favorably of his new found time and energy. He now devotes his free time to improving his work and addressing his health. He speaks of his future in positive terms; he is adamant in his commitment to staying drug free and being responsible. Applicant expresses little doubt in his resolve, is willing to be subjected to drug screening or counseling, and maintains a support system for any potential rough times ahead. Moreover, he recognizes the importance of limiting his alcohol consumption. Further, he has shown that he has transformed his life and now embraces honesty and forthrightness as essential to his new and responsible lifestyle.

Applicant has mitigated security concerns arising from his criminal conduct and drug involvement by his actions. After consideration of the "whole person" that he is today, I conclude that Applicant's resolve and renewed confidence, his contrition regarding his SF-86 answers, and his openness about both his past drug use and his life in general assuage remaining concerns regarding suitability for a security clearance. Consequently, I find that personal conduct security

concerns raised in the SOR also have been mitigated. Clearance is granted.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J (Criminal Conduct) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 1, Guideline H (Drug Involvement) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2, Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: 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 a security clearance for Applicant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. Tr. 17-18.

2. Tr. 24.

3. Tr. 25.

4. The SOR alleges, and Applicant admitted, that he attended a drug and alcohol treatment program. There is no indication in the record, however, that he was considered to have an alcohol problem or that it was either ordered or suggested he attend drug *and* alcohol treatment, as opposed to his having opted to attend a program that served as a combined resource program. *See* Ex. 3 (Case Detail, dated August 20, 2004, for sentencing dated December 2, 2002).

5. Tr. 28. *See also* Tr. 43.

6. Tr. 38.

7. Tr. 29.

8. Applicant is unsure whether alcohol abstinence was part of the court or county probation requirements. Tr.38.

9. Tr. 44.

10. *Id.*

11. Tr. 33-36.
12. Tr. 31, 49.
13. Tr. 49 (" . . . he's not helping my sobriety at all, and he's not doing a thing to help his own.")
14. Tr. 44-45
15. Tr. 50.
16. *Id.*
17. Tr. 39-40.
18. Tr. 40.
19. *Id.*.
20. *Id.*.
21. *Id.*
22. *Id.* See also Tr. 44 (In response to the question "And what is your intent with regards to the use of drugs in the future?" Applicant responded: "Not to use them again.")
23. ISCR Case No. 96-0277 at 2 (App Bd Jul 11, 1997).
24. ISCR Case No. 97-0016 at 3 (App Bd Dec 31, 1997), Directive, Enclosure 3, ¶ E3.1.14.
25. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
26. ISCR Case No. 94-1075 at 3-4 (App Bd Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
27. ISCR Case No. 93-1390 at 7-8 (App Bd Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
28. *Egan*, 484 U.S. at 531.
29. *Id.*
30. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
31. Executive Order 10865 § 7.
32. Directive, Enclosure 2, ¶ E2.A8.1.1.1.
33. Directive, Enclosure 2, ¶ E2.A8.1.1.2.
34. *Id.* at ¶ E2.A8.1.1.2.1.
35. *Id.* at ¶ E2.A8.1.1.2.2.
36. *Id.* at ¶ E2.A8.1.1.3.
37. Directive, Enclosure 2, ¶ E2.A5.1.1.
38. The rendering of false statements during the security clearance process gives rise to a violation under Title 18, United States Code, Section 1001, a felony

39. Applicant stops short of a complete concession that he falsely answered Question 30 (**You Use of Alcohol**), and the facts do not support that his answer was made falsely or is incorrect. The treatment program which Applicant attended after his drug conviction may have been termed a "drug and alcohol" program, but it was the result of his drug conviction. Such programs are often consolidated in order to address a "mixed bag" of attendees as the programs address dependence on both drugs and alcohol. Applicant's testimony reflects that the program he attended was such a mixture of attendees.

40. As noted *supra*, footnote 19, "drug abuse" is defined as the "illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Marijuana is a drug. *See* ¶ E2.A8.1.1.2.1, *supra*, footnote 17.

41. Regarding 10 U.S.C. 986, there is no indication that Applicant is currently an unlawful user of, or is addicted to, a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

42. *See, e.g.*, Tr. 40 and 44.

43. As indicated, *supra*, the facts do not indicate that Applicant was incorrect in his denial to Question 30 (**Your Use of Alcohol**).