



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 09-07800  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kathryn MacKinnon, Esquire, Department Counsel  
For Applicant: Matthew Jeffrey Dyer, Esquire

March 17, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant, 26, has close to a 10-year history of alcohol and illegal drug use, highlighted by three brushes with the law, two for drug offenses and one for driving while under the influence of alcohol. He presented no evidence of a recent diagnosis with a favorable prognosis. He is not participating in alcohol and substance-abuse aftercare treatment. In light of his age, his many years of using alcohol and multiple illegal drugs, and his failure to change his lifestyle, Applicant's behavior continues to cast doubt about his reliability, judgment, and ability and willingness to comply with the law. Clearance denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 10, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On July 22, 2010, DOHA issued Applicant a statement of reasons (SOR), which specified the basis for its decision – security concerns under Guidelines G (Alcohol Consumption), H (Drug Involvement), and J (Criminal Conduct) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant responded to the SOR allegations (undated) and requested a hearing before an administrative judge. The case was assigned to me on October 7, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on October 20, 2010, and the hearing was convened as scheduled on November 9, 2010. The Government offered exhibits (GE) 1 through 9, which were admitted over Applicant's objection. Applicant testified, and he presented exhibits (AE) 1 and 2, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 2010.

### **Findings of Fact**

Applicant admitted in part, and denied in part, the factual allegations under SOR ¶¶ 1.a, 1.c, and 2.q. Concerning SOR ¶ 1.a, he denied he consumed alcohol to the point of intoxication on a weekly basis. Regarding SOR ¶ 1.c, he denied the diagnosis he received for alcohol dependence and marijuana dependence was provided by a "duly qualified medical professional" or a "licensed clinical social worker who was a member of a recognized drug treatment program." Concerning SOR ¶ 2.q, he denied that he tested positive for marijuana between February 2003 and May 2003, while undergoing outpatient treatment. He admitted all remaining SOR allegations: SOR ¶¶ 1.b and 1.d; 2.a through 2.p, 2.r, and 3.a. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 26-year-old mechanical engineer working for a government contractor. He graduated from high school in 2002. He attended college from 2002 until May 2008, when he received his bachelor's degree in mechanical engineering. He has never been married and has no children.

Applicant started consuming alcoholic beverages at age 15 in 1999. While in high school, he consumed beer once in a while with his friends. His alcohol consumption

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<sup>1</sup> Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

<sup>2</sup> Adjudication of this case is controlled by the AGs, implemented by the DoD on September 1, 2006.

increased while he was in college, where he routinely consumed approximately four to six beers two to three times every week.

Applicant also has an extensive history of multiple illegal drug use with varying frequency. He started using marijuana at age 17. He used marijuana on a daily basis, and he purchased and sold marijuana for profit from June 2002 until around February 2009. He used and purchased cocaine from June 2002 until around December 2008. The last time he used cocaine was after one of his band performances. He used and purchased LSD on multiple occasions from June 2002 until around July 2007. The last time he used LSD was at a concert. From June 2002 until around February 2003, Applicant used ecstasy approximately three times, he purchased and used methamphetamines approximately twice, and purchased and resold psilocybin mushrooms for profit. The last time he used methamphetamines was at a concert. He used psilocybin mushrooms from June 2002 until around the fall of 2008.

As a result of his illegal use of drugs, Applicant has been involved in two criminal incidents. He was arrested in February 2003, and charged with CDS: possession of marijuana; CDS: possession – not marijuana (psilocybin mushrooms); CDS: possession of paraphernalia; and possession with intent to distribute drugs. In April 2003, he pled to the first two charges and the other charges were dismissed. The charges were disposed through “Probation Before Judgment,” and he was placed on one year supervised probation. He also paid a fine and was required to attend a drug counseling program. He attended an outpatient drug treatment program from February 2003 until May 2003. While attending the treatment program, he tested positive for alcohol. One week after Applicant’s treatment program ended, he tested positive for marijuana. His probation officer re-enrolled Applicant in another outpatient drug treatment program for another 10 months. His 2003 arrest and criminal record were expunged in 2005.

In May 2007, Applicant was arrested and charged with CDS: possession of marijuana. From May 2007 until March 2008, Applicant was required to attend treatment for substance abuse. The marijuana charge was placed on a “Stet Docket” by the state. Applicant continued to illegally use marijuana daily after his treatment ended in March 2008, until at least February 2009.

Applicant explained he stopped using all illegal drugs, except marijuana, because he no longer had the desire to experiment with the effects of those drugs, and he no longer liked their effects. He stopped using marijuana in February 2009, because he wants to pursue a professional career. He knew that the possession and use of drugs is illegal, and his continued use of marijuana would affect his ability to pursue a career. He stated his intention to never use illegal drugs again. In his free time, Applicant enjoys playing the guitar in his band and watching television. He reiterated his intention never to use illegal drugs again. However, Applicant continues his associations and to live the same lifestyle that led to his use of numerous illegal drugs for a lengthy period.

In April 2009, Applicant drove his car under the influence of alcohol. He was performing with his band at a bar and consumed three 32-ounce beers over the course

of five or six hours. After his arrest for driving while under the influence of alcohol (DWI), he self-enrolled in an outpatient drug and alcohol treatment program. The facility he selected for his alcohol and drug treatment program is licensed and certified by his state. The court's disposition of the charge was probation before judgment, with two years of unsupervised probation. Applicant was required by the court to complete a 26-week treatment program in the facility he selected. As part of his intake into the drug and alcohol counseling facility, Applicant was assessed by the "Alcohol and Other Drug Quick Diagnostic Indicators (DSM-IV)." According to the program director, Applicant was diagnosed with "303.0 Alcohol Dependence and 304.3 Marijuana Dependence." It is not clear from the information provided whether he was diagnosed by a duly qualified medical professional or a licensed clinical social worker, in accordance with AG ¶ 22(d) and (e). However, the program director of the state-certified alcohol and drug counseling program stated his diagnosis and indicated his prognosis was good. Applicant's diagnosis raises security concerns.<sup>3</sup> Applicant successfully completed the counseling program in March 2010. (GE 3)

During his SCA background interview in July 2009, Applicant stated he was alcohol abstinent since his April 2009 DWI. In his February 2010 response to DOHA interrogatories, Applicant corrected that statement. He indicated that his alcohol consumption had "significantly decreased" since he started looking for a full-time job, but that he still consumed alcoholic beverages in moderation. In his response to the DOHA interrogatories and at his hearing, Applicant testified that he currently consumes four to six beers, roughly two to three times a week, and that he intends to do so in the future. (GE 2)

## Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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<sup>3</sup> Addressing a similar issue, the Appeal Board interpreted AG ¶ 22 stating that -- "¶ 22 does not provide an exhaustive and exclusive list of disqualifying conditions; rather the word "include" in the preamble signals that the matters listed are illustrative in nature and do not provide a Judge with a basis to conclude that factors or categories not explicitly described do not raise security concerns." ISCR Case No. 07-00558, at p. 5 (App. Bd. April 7, 2008)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, 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. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline G, Alcohol Consumption

Under Guideline G the Government's concern is that excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. AG ¶ 21.

The Government established its case under Guideline G by showing that Applicant has consumed alcohol, at times to excess, from around 1999 to present. Between 2002 and February 2009, Applicant exercised questionable judgment by consuming alcohol and illegal drugs. In April 2009, Applicant drove his car while under the influence of alcohol.

From 2000 to present, Applicant consumed between four to six beers, two to three times a week, and he intends to do so in the future. The longest period he had been alcohol abstinent was while attending court-ordered alcohol or drug rehabilitation treatment. Applicant continued to consume alcohol after completing several substance abuse counseling programs. He claimed that he has not been diagnosed as alcohol or drug dependent. He is not participating in any aftercare treatment.

Disqualifying conditions AG ¶ 22(a): "alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;" and AG ¶ 22(c): "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;" apply.

There are four Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Considering the record as a whole, including both his alcohol and illegal drug-related behavior, I find that none of the Guideline G mitigating conditions apply. Applicant has consumed alcohol, at times to the point of intoxication from 2000 to present. He participated in substance abuse counseling four times, and he has been involved in three incidents with the law because of his substance abuse. I find that not enough time has passed for me to conclude that his questionable behavior is unlikely to recur. His past questionable behavior still casts serious doubts on Applicant's reliability and judgment.

Applicant is not participating in any counseling or aftercare treatment program. His actions so far do not convince me that he has fully acknowledged his alcohol-related problems. Moreover, there is no evidence of a recent diagnosis and a favorable prognosis. In light of Applicant's age and his history of using alcohol and multiple illegal drugs, and the recency of his questionable behavior, Applicant's promise to drink responsibly and not to use illegal drugs without corroboration and ongoing therapy or counseling is not sufficient to show it is unlikely his questionable behavior will recur.

#### **Guideline H, Drug Involvement**

AG ¶ 24 articulates the security concern about drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant has an extensive history of using multiple illegal drugs with varying frequency. He started using marijuana at age 17, and he used marijuana on a daily basis, except for some periods of abstinence during counseling sessions, until around February 2009. He used, purchased, and sold marijuana for profit. He also used and purchased cocaine, LSD, ecstasy, methamphetamines, and psilocybin mushrooms. He claimed he used the later drugs during a shorter period and not as frequently.

As a result of his illegal use of drugs, Applicant was charged twice with illegal drug-related offenses. Although the state disposed of the charges through probation before judgment and a stet docket, that fact does not diminish the seriousness of

Applicant's drug-related behavior. Applicant was required to attend outpatient substance abuse counseling programs after his drug offenses. While attending one treatment program, he tested positive for alcohol. On another occasion, one week after Applicant's treatment program ended, he tested positive for marijuana. Notwithstanding his participation in four substance abuse counseling programs, Applicant continued to illegally use marijuana daily after his last counseling ended in March 2008 until at least February 2009.

Applicant claimed he stopped using all illegal drugs, except marijuana, because he no longer had the desire to experiment with the effects of those drugs, and he did not like their effects. He stopped using marijuana in February 2009, because he wants to pursue a career. He knew that his use of drugs was illegal, and his continued use of marijuana would affect his ability to pursue a career. He also promised to never use illegal drugs again. Notwithstanding, Applicant continues his associations and to live the same lifestyle that led to his use of numerous illegal drugs for a lengthy period.

AG ¶ 25 describes eight conditions related to drug involvement that could raise a security concern and may be disqualifying. Three drug involvement disqualifying conditions raise a security concern and are disqualifying in this particular case: AG ¶ 25(a): "any drug abuse;"<sup>4</sup> AG ¶ 25(b): "testing positive for illegal drug use;" and AG ¶ 25(c): "illegal drug possession . . . purchase, sale, or distribution."

AG ¶ 26 provides four potentially applicable drug involvement mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and
  - (4) a signed statement of intent with automatic revocation of clearance for any violation.

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<sup>4</sup> AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including: (1) 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 (2) inhalants and other similar substances.



(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

For the same reasons discussed previously under Guideline G, incorporated here, I find that none of the Guideline H mitigating conditions fully apply. Applicant's abuse of drugs spans a lengthy period of time. Not enough time has passed for me to conclude that his questionable behavior is unlikely to recur. His behavior still cast doubts on Applicant's reliability and judgment. AG ¶ 26(a) does not apply.

Applicant continues to play in his band. He continues to associate with his drug-using associates and visits places where he used drugs in the past, or drugs are likely present. He did not demonstrate his intent not to use drugs in the future. Considering that Applicant has participated in four substance abuse counseling programs and that he continued to use illegal drugs and alcohol after each program, I find there has not been an appropriate period of abstinence.

Applicant is currently not attending any alcohol or drug aftercare treatment program, and there is no favorable diagnosis and prognosis by a duly qualified medical professional. Applicant's favorable evidence, at this time, is not sufficient to mitigate the Guideline H security concerns.

### **Guideline J, Criminal Conduct**

Under Guideline J, the security concern is that criminal activity "creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 30.

Applicant's illegal drug use spans from 1999 (at age 17) until February 2009. He used marijuana on a daily basis, except for some periods of abstinence while attending mandatory counseling sessions. He purchased and sold marijuana for profit. He also purchased cocaine, LSD, ecstasy, methamphetamines, and psilocybin mushrooms with varying frequency. He claimed he used the later drugs during a shorter period (until around 2003), and not as frequently.

Because of his illegal use of drugs, Applicant was charged twice with drug-related offenses. Although the state disposed of the charges through probation before judgment and a stet docket, that does not diminish the seriousness of Applicant's drug related behavior. Applicant was required to attend outpatient substance abuse

counseling programs four times. While attending one treatment program, he tested positive for alcohol. On another occasion, one week after Applicant's treatment program ended, he tested positive for marijuana. Notwithstanding his participation in four substance abuse counseling programs, Applicant continued to illegally use marijuana daily after his fourth counseling treatment ended in March 2008. He used marijuana until at least February 2009.

Applicant stated he stopped using all illegal drugs, except marijuana, because he no longer had the desire to experiment with the effects of those drugs, and he did not like their effects. He stopped using marijuana in February 2009, because he wanted to pursue a career. He knew that his use of drugs was illegal, and that his continued use of marijuana would affect his ability to pursue a career. He promised never to use illegal drugs again. Notwithstanding, Applicant continues the same lifestyle and associations that led to his use of numerous illegal drugs during a lengthy period of time.

Applicant's overall behavior raises security concerns under AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32 lists four conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

For the same reasons discussed previously under Guidelines G and H, incorporated here, I find that none of the Guideline J mitigating conditions fully apply. Not enough time has passed for me to conclude that his questionable behavior is unlikely to recur, and there is no clear evidence of successful rehabilitation. His past questionable behavior still cast serious doubts on Applicant's reliability and judgment. Applicant failed to establish that he has the ability and willingness to comply with laws, rules, and regulations.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant worked and put himself through college. Most of his questionable behavior occurred while he was attending college. He stopped using most illegal drugs, except for marijuana, around 2003. He stopped using marijuana and reduced his alcohol consumption in February 2009, because he wants a full-time job and to develop a career. These factors show responsibility, good judgment, and some mitigation.

Applicant has not continued to participate in alcohol and substance abuse aftercare treatment. His behavior and testimony do not convince me that he has fully acknowledged his alcohol-related problems. He presented no evidence of a recent diagnosis and a favorable prognosis. In light of Applicant's age and lengthy period using alcohol and multiple illegal drugs, Applicant's promise to drink responsibly and not to use illegal drugs without corroboration and ongoing therapy or counseling is not sufficient to show it is unlikely his questionable behavior will recur.

On balance, I conclude that Applicant's favorable evidence is insufficient to mitigate the security concerns arising from his alcohol consumption, drug involvement, and criminal conduct. Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance.

## **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 G:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a – 2.r: <sup>5</sup>	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge

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<sup>5</sup> Regarding SOR ¶ 2.q, I find that Applicant tested positive for alcohol while enrolled in outpatient treatment for substance abuse in 2003. He tested positive for marijuana one week after he completed the court-mandated counseling for substance abuse.