



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



In the matter of:)
)
) ISCR Case No. 23-02029
)
Applicant for Security Clearance)

Appearances

For Government: John G. Hannink, Esq., Department Counsel
For Applicant: Lauren Fleming, Esq.

06/18/2025

Decision

MASON, Paul J., Administrative Judge:

Applicant's evidence in mitigation is sufficient to overcome the security concerns raised by the foreign influence guideline. Conversely, his evidence is insufficient to mitigate the drug involvement guideline. His application for security clearance eligibility is denied.

Statement of the Case

On August 10, 2022, and July 12, 2012, Applicant submitted certified Electronic Questionnaires for Investigations Processing (e-QIPs) to retain a security clearance required for his position with a defense contractor. On October 25, 2022, he provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (GAS) could not render affirmative findings required

to grant a security clearance and issued to Applicant a Statement of Reasons (SOR), dated October 16, 2023, detailing security concerns raised by the guidelines for foreign influence (Guideline B) and drug involvement (Guideline H). The action was taken under Executive Order (E.O.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992, as amended (Directive), and the adjudicative guidelines (AG), effective in the DOD on June 8, 2017.

Summary of Allegations

Under Guideline B, Applicant's family ties with his wife, his mother, his nephew (SOR ¶ 1.a), and his father-in-law (SOR ¶ 1.b), raise foreign influence concerns based on their Chinese citizenship and residency. On November 1, 2023, Applicant provided a response to the SOR admitting the allegations under the foreign influence guideline.

In his response to the drug involvement allegations, Applicant partially admitted the first allegation in using marijuana from 2020 to February 2022 (SOR ¶ 2.a), while holding a sensitive position, i.e., one in which he held a security clearance. He claimed that he did not know why the SOR indicated marijuana use from November 2008. Applicant contended that the second allegation (SOR ¶ 2.b) of his intention to use marijuana in the future was incorrect. He missed it when he signed the interrogatories on October 5, 2023. (GE 3 at 11) When he used the marijuana in 2020 or 2021, he thought the drug might help him with his anxiety, but it did not. He does not intend to use the illegal drug in the future.

Applicant then discussed the lack of success with fertility treatments that he and his wife have undergone in the last four years in trying to conceive a child. He opined that this period of fertility treatments (which is continuing) has caused much strife in his life and contributed to his use of marijuana.

On January 7, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Teams hearing on January 10, 2025. The hearing was held as scheduled. With no objection, the Government's three exhibits (GE 1, 2, and 3) were admitted into evidence at page seven of the hearing transcript. (Tr. 9) Applicant's six exhibits (AE A through F) were admitted into evidence without objection. (Tr. 8) AE D, E, and F are identical to GE 1, 2 and 3. See Index of Applicant's Exhibits, case file. The record in this case closed when DOHA received the hearing transcript (Tr.) on January 24, 2025.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts concerning the PRC. With no objection raised by Applicant, I have taken administrative notice of certain facts that are supported by source documents from twenty-one (21) U.S. Government publications. The facts are addressed in a separate section of the Findings of fact below.

Findings of Fact

Applicant was born in the Peoples Republic of China (PRC) in March 1982. He is 43 years old. He immigrated to the United States (U.S.) in March 1996. He obtained his certificate of naturalization in March 2002. (GE 1 at 5-7) After receiving academic credits from an American college between September 2001 and May 2002, he earned his Bachelor of Science degree from an American university in April 2006. Following his graduation, he was employed by a sub-contractor as a web maker for a federal agency and then was employed by an insurance company. (GE 1 at 10-14; Tr. 22-24; Response to October 2023 SOR at 2) He has been employed by a defense contractor since September 2010. He received a security clearance in July 2012. (GE 1 at 33) He has been working from home since the COVID-pandemic in March 2020. (Tr. 24) He is currently a principal software developer. (Tr. 23) He married his wife in April 2019. Applicant's four sisters are U.S. citizens and were probably naturalized about same time in 2002 as Applicant. (GE 1 at 14, 20-22; GE 3 at 4-5; Tr. 18, 21)

Foreign Influence

SOR ¶ 1.a - Applicant's wife was born in China in 1977. (GE 1 at 14). She moved to the U.S. in 2016 (Tr. 26). She married Applicant in 2019. (Response to October 2023 SOR at 1). She became a permanent U.S. resident in 2022 (Tr. 56) and a U.S. citizen in 2024. (Tr. 31) She has a college degree in journalism. She worked as an accountant for a structural design company and then she had an office job in city government. (Tr. 56-57) AE C contains two pictures of her during her naturalization ceremony, and one picture of Applicant and his wife. She currently works as an accountant for a non-profit organization whose purpose is to help individuals reach healthy solutions to homelessness, hunger, and drug addiction. (Tr. 62, 111-112) She considers Applicant to be a truthful person, who is also reliable, responsible, and loyal to the U.S. (Tr. 112-113)

After Applicant's wife's father passed away when she was nine months old (circa 1978), her mother remarried when she was five or six years old. She lived with her mother and stepfather from age 7 to age 17. Sometime after age 17, Applicant's wife moved to another location in China about five hours by car away from her mother's and stepfather's residence. During this period, she saw them about once a year and spoke with her mother

by phone about once a month. Even though she immigrated to the U.S. in about 2016 when she was 38 or 39, she maintained telephonic contact with her mother once a month until her mother passed in 2019. (Tr. 118-123)

In addition to her stepfather, a citizen and resident of China, Applicant's wife has two brothers who are Chinese citizens and residents. One brother is employed by a contractor who works for the Chinese government. He is scheduled to retire at the end of 2025. The other brother is a manager at a grocery store. Neither has ever been a member of the Communist Party, and Applicant's wife does not believe they have ever been affiliated with a Chinese intelligence agency or a security organization. Neither brother knows about Applicant's work or that his work is associated with the U.S. Government. (Tr. 67, 125-128)

Applicant's father and mother were born in China and are 72 and 76 years old, respectively. His father was a heavy equipment operator in China. He immigrated to the U.S. in 1996 and is a permanent U.S. resident. Applicant's mother immigrated in 1995 and is a permanent resident. After his arrival, his father worked in a restaurant and still works in a window factory owned by Applicant's sister, a naturalized U.S. citizen. (GE 1 at 17) He is still working there after 15 years. Applicant's mother worked at a diner in the U.S. for 19 years until she retired in 2014. She is a permanent U.S. resident. In the last 29 years, Applicant's father and mother have travelled to China about three times to visit family. He has no formal or informal contacts with the Chinese government. Neither he nor Applicant's mother have financial interests or inheritance rights in the country. They do not speak English. They know that Applicant works but they do not know who he works for or that he has a security clearance. Applicant's father has two sisters who are resident citizens of China. One is a teacher, and one is a nurse. Neither are affiliated with the Chinese government nor the military. (GE 1 at 17, 18; Applicant's response to the SOR; Tr. 33, 62-68, 75-76)

Applicant's nephew is a descendent of his cousin on Applicant's father's side. (Tr. 33-34) He moved to the U.S. in 2017. He is a citizen of China residing in the U.S. as a permanent resident. He visits Applicant occasionally, with his last visit during Thanksgiving 2024. He is a cook at two restaurants and also a taxi driver. (Response to SOR at 1; Tr. 72-74) No additional information appears in the record regarding this relative.

SOR 1.b - Applicant's father-in-law (his wife's stepfather), is 86 years old and a resident citizen of China. Apparently, he is retired from a managerial job he held for a Chinese municipality. Applicant has annual contacts in person with this relative during family visits and he last saw him in May 2019 when he and his wife traveled to China following their wedding in April 2019. (GE 1 at 23) Neither Applicant nor his wife rely on his father-in-law for financial support. None of Applicant's or his wife's relatives who are

citizens and residents of China, have ever worked for the government of that country. (Response to SOR at 2; GE 3 at 5; Tr. 76) No additional information was furnished about the father-in-law.

Applicant and his wife traveled to China in 2019 to visit family. In November 2023, he returned to China with his wife to visit her stepfather (Applicant's father-in-law) and her two brothers. (Tr. 57-60)

Applicant has no financial interests in China. (Tr. 35-37) Regarding his financial interests in the U.S., his investment in the stock market and his 401 (k) retirement account is about \$400,000. The fair market value of his home is approximately \$1,000,000 minus a mortgage. In addition to a rental property in another state that he purchased in 2008 during the COVID-pandemic, Applicant has two rental properties in his state of residence that he estimated to be worth a total of \$1,000,000. (Tr. 36-37, 76-77, 108-109)

Applicant voted in two recent presidential elections but no state or local elections. He does not belong to any neighborhood organizations designed to preserve the quality or security of the community. (Tr. 107)

Applicant's wife has no financial interests in China, but she will be receiving a pension of about \$227 a month, beginning in November 2027, based on her work as an accountant for a Chinese acupuncture company. The real estate that her family controlled was sold in 2019. She is not entitled to an inheritance because her mother gave all the property away. (Tr. 122, 128-129)

Applicant considers himself to be fully committed to the U.S. based on 13 years of dedicated service to his employer, a Department of Defense (DoD) contractor. (Response to October 2023 SOR at 2)

Drug Involvement and Substance Misuse

According to his 2012 e-QIP, Applicant was 30 years old when he answered "yes" to purchasing or using any drug in the last seven (7) years. This affirmative answer was based on his use of marijuana in 2008 and 2009. He also indicated that he would not use marijuana in the future. In response to the identical question in his 2022 e-QIP, he answered "no." On the next page of the e-QIP, he answered "no" to using the drug while holding a security clearance. He conceded that both answers were incorrect. (GE 2 at 41-42; Tr. 91-95)

After Applicant reviewed his response to the SOR and his October 2022 PSI where he claimed that 2020 was the first time he used marijuana, he admitted that his first use of marijuana was not in 2020 but in November 2008 at a frequency of about once a month

or less to April 2009. He noted he had not used the drug for a long time and that his use was so infrequent that he did not remember it. He blamed the omitted period of earlier marijuana use to a "technical error." Additionally, he was distressed at the time and did not closely review the PSI. (Response to SOR at 3, 4; GE 2 at 42; GE 3 at 11; Tr. 41, 45, 49, 78-80)

Applicant resumed using marijuana in 2020 to provide a distraction and to get relief from stress associated with his wife's fertility problems. He was not thinking about his security clearance when he used the marijuana from 2020 to early 2022 and he did not consult a facility security officer or anyone else about using the drug with a security clearance. After vacillating about the effectiveness of the drug to relieve his stress, he concluded the drug did not work. He stopped using the drug because it made him paranoid where he would take a puff and instantly regret it. He continued to use the drug until February 2022 because the drug was available, and he had paid \$50. (Tr. 85-86) He did not place any significance to his statement of future use of the drug (SOR ¶ 2.b), declaring that "people say things they don't mean." (Tr. 47) He did not know why he made the statement other than to say he was not in his correct frame of mind and his communication is "not that good." (Tr. 45-48, 82-84)

After reviewing his subsequent October 2023 responses to interrogatories, specifically his response to the 2022 e-QIP question of misunderstanding the drug use question, Applicant admitted it was incorrect and a false statement, but he was not intentionally trying to lie about his marijuana use. Rather, he was simply not thinking clearly at the time. He was confusing state law (in his state of residence) which permitted marijuana use, with federal law. Applicant did not tell his employer about his drug use because he does not tell people about his personal life. He did not have legal counsel when he signed and certified his 2012 and 2022 e-QIPs, and when he filled out the 2023 interrogatory responses. Based on Department Counsel's representation that recreational marijuana use did not become legal until July 2023 in Applicant's state of residence, an internet search of the issue disclosed that the state legalized marijuana in July 2023. (GE 2 at 41-42; GE 1 at 31-32; Tr. 96-99, 99-101, 105-106)

Applicant never sold drugs. He has never had treatment for any kind of drug use, and no one has suggested that he seek treatment. He currently relieves his stress by traveling with his wife to various locations in the U.S. He does the maintenance on his home rather than hire outside contractors. He has no security violations. (Tr. 51-53)

Administrative Notice- Peoples Republic of China (PRC)

The Peoples Republic of China (PRC) is an authoritarian government administered by the Chinese Communist Party, which also controls the military. The human rights record of the China is poor. The government stifles political dissent and its practices

include arbitrary arrests, detention. Limiting individuals from involvement in civil rights advocacy and public interest issues, is customary.

The PRC is regarded as one of the most active and aggressive collectors of sensitive and protected U.S. technology, and economic intelligence. In China, authorities monitor telephone conversations, facsimile and email transmissions, and other internet communications. All major hotels have a continual security presence, with hotel guestrooms tapped and searched for sensitive and proprietary information.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Foreign Influence

AG ¶ 116 sets forth the security under Guideline B:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Conditions under AG ¶ 7 that could raise a security concern and may be disqualifying include:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Contacts and ties to family members who are citizens of a foreign country do not automatically disqualify an applicant from security clearance access. As set forth under AG ¶¶ 7(a), the contacts are only disqualifying if they create a heightened risk of foreign exploitation. Under AG ¶ 7(b), connections are only disqualifying if they create a potential conflict of interest between Applicant's security duties and his desire to assist his foreign family members. As the foreign influence concern indicates, the country in question should be considered to determine whether it is known to target U.S. citizens to obtain classified information or is associated with the risk of terrorism. AG ¶ 7(e) has some relevance based on the shared living arrangement that Applicant has with his wife and her foreign family members. Even though she became a U.S. citizen in 2024, she still has relatives in the PRC that could create a heightened risk of foreign coercion.

SOR ¶ 1.a - Applicant was born in the PRC. He is 43 years old. He immigrated to the U.S. in March 1996 and was naturalized a U.S. citizen in March 2002. He obtained his Bachelor of Science degree from an American university in April 2006. He has been working for a U.S. defense contractor since 2010. His wife moved to the U.S. in 2016, married Applicant in April 2019, became a permanent U.S. resident in 2022, and a U.S. citizen in 2024.

Applicant's father, mother, and nephew are citizens of the PRC. The PRC is a communist country that has a reputation for collecting U.S. intelligence and sensitive economic information. Due to the PRC's aggressive practices in these areas, there exists a heightened risk for foreign inducement, pressure, and coercion against Applicant through his foreign family members. (AG ¶ 7(a)) The same practices of the

PRC create a potential conflict of interest for Applicant, thereby establishing raising AG ¶ 7(b). The application of AG ¶ 7(e) applies to Applicant's wife's other family members who are citizens and residents of China. Neither Applicant nor his wife have strong connections with their remaining foreign family members. Applicant's wife's two brothers do not know about his work or that his work is associated with the U.S. Government.

Applicant's father and mother are 72 and 76 years old, respectively. The father and mother have lived in the U.S. since 1996, and 1995, respectively, and are permanent U.S. residents. His father has worked in a restaurant. He still works in a window factory after 15 years. Applicant's mother worked at a diner for 19 years before retiring in 2014. Neither parent has any formal or informal ties with the Chinese government nor the communist party and neither have financial interests in the country. Neither relative speaks English. Although they know Applicant works, they do not know who he works for or that he possesses a security clearance.

Applicant's father has two sisters who are citizens and residents of China. Even though one sister is a teacher and the other is a nurse, neither is connected to the Chinese government or military.

Applicant's nephew moved to U.S. and is now a permanent resident. He has no affiliation with a foreign government. He visits Applicant occasionally and last saw him during the Thanksgiving holidays in 2024. He is a cook at two U.S. restaurants and drives a taxi.

Applicant's father-in-law (his wife's stepfather) is 86 years old. He retired from a managerial job with a Chinese municipality. He has annual contact with this in-law and saw him in May 2019 when Applicant and his wife visited China following their marriage. They visited him again in November 2023. None of Applicant's or his wife's relatives who are citizens and residents of China have ever worked for the government of that country.

Conditions under AG ¶ 8 that could mitigate security concerns include:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding

relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) is not applicable because of the PRC's persistent attempts to obtain intelligence information through espionage from U.S. sources. The country also has a serious human rights problem.

AG ¶ 8(b) applies because Applicant's sense of loyalty to China is minimal as opposed to his deep relationships and loyalties to the U.S. He has been living in the U.S. since 1996. He has been a U.S. citizen since 2002. He received his Bachelor of Science degree in 2006. He has been working as a U.S. software developer for a defense contractor since 2010. His wife admires his reliability and dependability. In sum, I conclude that Applicant will be able to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) applies because Applicant has overcome the presumption that his contact with his foreign family members is not casual and infrequent. The record establishes that Applicant's contacts with his foreign family members is - limited as evidence by his less than yearly contacts with his father-in-law. He has no financial interests in China. His wife's financial interest is a pension that is not activated until November 1987.

Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

In my analysis of this case, I have taken administrative notice of Executive Order (E.O.) 12564 signed by the then-President of the United States on September 15, 1986. The primary positions addressed in the E.O. are: (1) federal employees cannot use illegal drugs; (2) illegal drug use by federal employees, on or off duty, is contrary to the efficiency of the service; and (3) persons who use illegal drugs are not suitable for federal employment.

I have also taken administrative notice of the Director of National Intelligence Memorandum (October 25, 2014), Adherence to Federal Laws Prohibiting Marijuana Use, which clearly states that state laws do not authorize persons to violate federal laws, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

On December 21, 2021, the Director of National Intelligence signed the memorandum, Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position. It emphasizes that federal law remains unchanged with respect to illegal use, possession, production, and distribution of marijuana. Disregard of federal law relevant to marijuana use (including prior recreational marijuana use) remains relevant, but not determinative to adjudications of security clearance eligibility. Agencies are required to employ the "whole-person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

AG ¶ 26. Conditions that could mitigate security concerns include:

- (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; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 1. disassociation from drug-using associates and contacts;
 2. changing or avoiding the environment where drugs were used; and
 3. providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's illegal use of marijuana from November 2008 to April 2009, and from 2020 to February 2022, constitutes substance misuse within the purview of AG ¶ 25(a). His use of the drug means that he also purchased and possessed the drug as defined by AG ¶ 25(c). When Applicant illegally used marijuana from 2020 to February 2022, he held a sensitive position, i.e., one in which he possessed a security clearance, that had been granted to him in July 2012. Applicant's use of marijuana before he was granted a security clearance, then from 2020 to February 2022 after he was granted a clearance in July 2012 displays poor judgment, unreliability and untrustworthiness.

AG ¶ 26. Conditions that could mitigate security concerns include:

- (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; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

1. disassociation from drug-using associates and contacts;
2. changing or avoiding the environment where drugs were used; and
3. providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

When Applicant submitted his July 2012 e-QIP, he answered "yes" to using marijuana in the last seven years. He promised not to use the drug again. After receiving his clearance in July 2012, eight years passed, then he illegally used marijuana for two years from 2020 to 2022. He had a security clearance during this two-year period. In August 2022, he certified a second e-QIP. However, he answered "no" to using drugs in the last seven years. He also answered "no" to the other drug questions in the section.

When he supplied his PSI in October 2022, Applicant disclosed his use of marijuana. However, when the investigator asked why he answered "no" in his August 2022 e-QIP to drug use in the last seven years, his explanation was that he misunderstood the question. I conclude that he concealed the drug information because he did not want to place his security clearance in jeopardy. Applicant's use of the drug over the two-year period was not isolated or sporadic but occurred on a regular basis. AG ¶ 26(a) does not apply.

AG ¶ 26(b) must be removed from consideration because Applicant's drug history did not begin in 2020 as he claimed but in November 2008. Though there is insufficient evidence to render a finding for or against Applicant under AG ¶¶ 26(b)(1) or 26(b)(2), his statement to abstain from future drug involvement ¶ 26(b)(3), cannot be evaluated in isolation but with all the other evidence as a whole, including evidence of his previous pledge not use illegal drugs in the future, and statement in his August 2022 e-QIP that he intended to use marijuana in the future if he found the right type.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole person concept listed at AG ¶ 2(d):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 43 years old. He has been married since 2019. He has worked for his current employer since 2010. Having worked for one employer for about 14 years, it would seem that Applicant would submit character endorsements concerning his work record or his lifestyle. None were presented for my review.

After illegally using marijuana from 2020 to February 2022, Applicant demonstrated poor judgment in his August 2022 e-QIP when he answered "no" to illegal drug use in the last seven years. Though he acknowledged that certain of his drug use answers were admittedly incorrect and false, because of the fertility problems that he and his wife were having at the time, he was not thinking clearly. Those problems of conception do not excuse providing false information on official Government documents designed to elicit truthful information during a security clearance investigation. Considering the evidence as a whole; Applicant has mitigated the foreign influence concerns but has not overcome the security concerns under drug involvement and substance misuse.

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 B:	FOR APPLICANT
Subparagraphs 1.a, 1.b:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge