DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 21-02538
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel P. O'Reilley, Esq., Department Counsel

For Applicant: *Pro se*

03/31/2025

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Decision

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions), Guideline H (Drug Involvement and Substance Misuse), Guideline E (Personal Conduct), and Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on January 14, 2021. On February 11, 2022, the then-named Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines I, H, E, and B. The DCSA CAF acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

On March 11, 2022, Applicant responded to the SOR (Answer) and requested a hearing. The Government was ready to proceed on May 2, 2022. The case was assigned to me on February 16, 2023. On April 13, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant his hearing was scheduled for May 31, 2023, via videoconference. On May 30, 2023, the hearing was rescheduled to June 16, 2023, for good cause. The hearing was convened in person on the rescheduled date.

Applicant and two witnesses testified. Without objection, Applicant Exhibit (AE) A through C, and Government Exhibits (GE) 1 and 2, were admitted in evidence. GE 3 and 4 were admitted in evidence over Applicant's objection. An administrative letter was appended to the record as Hearing Exhibit (HE) 1. Without objection, I took administrative notice of facts set forth in the Diagnostic and Statistical Manual of Mental Disorders 5th Edition (DSM-5) sections on Schizophreniform Disorder, Schizophrenia, and Bipolar I Disorder, as requested by the Government, and appended them to the record as Administrative Exhibits (AX) I and II. Applicant declined the invitation for post-hearing submissions and the record closed upon the adjournment of the hearing. DOHA received the transcript (Tr.) on June 30, 2023.

Post-Hearing Matters

On September 19, 2023, the Government requested I reopen the record and take administrative notice of facts concerning the political conditions in the People's Republic of China (PRC or China), extracted from official U.S. Government publications (Source Documents) (AX III). I afforded the parties reasonable notice and an opportunity to respond. For good cause and over Applicant's objection, I reopened the record, took administrative notice as requested, and appended AX III to the record. The record re-closed on November 8, 2023.

On December 31, 2024, I provided the parties reasonable notice and an opportunity to respond to my intent to, *sua sponte*, reopen the record and take administrative notice of facts in the four updated AX III Source Documents (collectively AX IV) listed below, to consider the current political conditions in the PRC. For good cause and without objection, I reopened the record, took administrative notice as stated, and appended AX IV to the record. The record re-closed on January 14, 2025.

- U.S. Department of State, *2023 Country Reports on Human Rights Practices: PRC*, dated April 22, 2024 https://www.state.gov/reports/2023-country-reports-on-human-rights practices/PRC/

- Office of the Director of National Intelligence, *2024 Annual Threat Assessment of the U.S. Intelligence Community*, dated February 5, 2024 https://www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf

- U.S. Department of State, *PRC Travel Advisory*, dated November 27, 2024 https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/PRC-travel-advisory.html#

- U.S. Department of State, *Country Reports on Terrorism 2023: PRC*, dated December 12, 2024 https://www.state.gov/reports/country-reports-on-terrorism-2023/PRC/

On February 21, 2025, I provided the parties reasonable notice and an opportunity to respond to my intent to, *sua sponte*, reopen the record and take administrative notice of the pertinent federal guidance concerning marijuana and cannabidiol (CBD) listed below (collectively AX V). For good cause and without objection, I reopened the record, took administrative notice as stated, and appended AX V to the record. The record re-closed on March 3, 2025.

- Memorandum from Director of National Intelligence (DNI), *Adherence to Federal Laws Prohibiting Marijuana Use*, dated October 25, 2014 https://chcoc.gov/sites/default/files/ODNI-policy-guidance-adherence-to-federal-laws-prohibiting-marijuana-use_0.pdf

- The Substance Abuse and Mental Health Services Administration (SAMSHA), Use of *Marijuana Oils or Marijuana Infused Commercial Products*, dated November 22, 2017 https://www.samhsa.gov/sites/default/files/workplace/hemp-products-csap-memo-072419.pdf

- Memorandum from DNI, *Security Executive Agent Clarifying Guidance Concerning Marijuana*, dated December 21, 2021 https://www.dni.gov/files/NCSC/documents/Regulations/12-21-21_Memo_SecEA_Clarifying_Guidance_re_Marijuana_21-01529_U_SIGNED-FINAL.pdf

The facts in AX I through V taken under administrative notice will not be repeated verbatim in this decision, but will instead be referenced or summarized, as appropriate.

Findings of Fact

Applicant, age 30, is a Chinese citizen by birth. In 2010, he immigrated to the United States alone on a student visa. He resided in two states before settling in State A in 2012. He earned his high school diploma in 2016. He took college courses from 2017 to 2019, without earning a degree. By his own application, he became a naturalized U.S. citizen in 2019. He has been employed as an automation engineer by his sponsor since February 2021. This is his first application for a security clearance. (GE1; Tr. at 41-52, 97-99)

In December 2016, Applicant relocated to State B for employment. In December 2019, he relocated back to State A. Since then, he has resided with his parents (both age

54) and his sole sibling (age 16) in his family's home in State A. His parents and sister, who are also Chinese citizens by birth, immigrated to the United States in about 2015. During his March 2021 security clearance interview (2021 SI), Applicant reported his father and sister as naturalized U.S. citizens and his mother as a permanent U.S. resident petitioning for U.S. citizenship. (GE 1, 2; GE 3 at 12; Tr. at 5, 20-23, 92, 101-105)

Applicant worked in various information technology (IT) positions, including: Consulting Company X, from December 2012 to December 2016; Consulting Company Y from December 2016 to June 2018, when he transitioned to a direct position with a client; and Consulting Company X, from December 2019 to February 2020. He remained unemployed until February 2021. (GE 1, 2; Tr. at 101-105)

Guideline I

Applicant experienced a psychotic episode for about four or five months, beginning in May 2020, which exhibited characteristics such as: decline in mental functioning; sustained persecutory delusions, confusion, disorganized thought process and behavior, labile affect, auditory hallucinations, severely impaired reality testing, selective mutism, and paranoia; persisting beliefs in his supernatural abilities to communicate telepathically with animals; persisting grandiose delusions of being part of a complex international cooperation between the Uygur and American governments; dense complex delusion with significant functional effect; poor judgment; cannabis abuse; and anti-social traits. He was involuntarily hospitalized three times between May and August 2020. He was arrested for assaulting his father in September 2020. (GE 3 at 2-4, 10, 12, 14, 26-30, 33, 34, 37-38, 44-45, 47-49, 56, 59, 83; GE 4)

Applicant began voluntary outpatient treatment at a community mental health program (Program X) in June 2020. His treating psychiatrist (TP) diagnosed him, in accordance with DSM-5, with Schizophreniform Disorder, acute schizophrenic episode (295.40) and "Cannabis use disorder, Mild" (305.20), in June 2020; and Bipolar I Disorder, current or most recent episode manic, severe (296.43), in December 2020. (GE 3 at 15, 59, 77, 82-83, 85, 88)

Hospitalizations. From May 24 to 26, 2020, law enforcement transported Applicant twice to the emergency room (ER) for assessment, on a voluntary basis, following incidents of concerning behavior. Noting no risk issues, he was released from his first ER visit on a safety plan, with a recommendation to follow up with outpatient services. After exhibiting disturbing behavior during his second ER visit, he was admitted involuntarily to Hospital A. At a commitment hearing on May 27, 2020, he consented to a voluntary admission. In Hospital A, he tested positive for cannabis, and was prescribed an antipsychotic and a mood stabilizer. Because he chose to leave against medical advice on June 8, 2020, he was discharged without medication. (GE 3 at 2, 10, 11)

On June 9, 2020, following an incident of alarming behavior (including telling his family he needed to die or he might kill some people), law enforcement transported Applicant to the ER for assessment, and he was subsequently admitted involuntarily to Hospital B. At a commitment hearing on June 11, 2020, he consented to a voluntary

admission. In Hospital B, he reported he believed he was being tracked by the Chinese and U.S. governments and was involved in a spy ring with code name X [which he reported as an alias on his 2021 SCA]. He was prescribed an antipsychotic while hospitalized and provided a 14-day supply upon his discharge on June 17, 2020. (GE 1 at 8; GE 3 at 3, 11)

On June 27, 2020, Applicant was either voluntarily or involuntarily hospitalized at Hospital A, based, in part, on suicidal ideations he later claimed he fabricated because "he needed to be heard by a professional and make himself a sacrifice to help his people who are in concentration camps." On July 3, 2020, he transitioned, through a step-down process, to a local crisis care program (CCP) for voluntary outpatient treatment. In CCP, he took prescribed medications (an antipsychotic and antidepressant) without incident. On July 6, 2020, he left CCP against medical advice, with after-care recommendations to continue treatment and taking prescribed medications. (Answer; GE 3 at 19-22, 24-26; Tr. at 159-160)

On August 17, 2020, Applicant was involuntarily hospitalized at Hospital C in State B, after he was found wandering in an airport and exhibiting disconcerting behavior. He was discharged on August 27, 2020, and he returned to State A on August 29, 2020. During his psychotic episode, he travelled impulsively and excessively, and accumulated debt totaling $75,000. (GE 3 at 34, 35, 38, 43, 47, 61, 72, 75, 83)

Assault. On September 2, 2020, law enforcement transported Applicant to the ER for assessment after he assaulted his father during an argument about money. As he did not meet the criteria for involuntary commitment, he was released back to law enforcement, who transported him to jail, where he was arrested and charged with misdemeanor assault on a family member. He was assigned a probation officer, to whom he reported regularly in connection with the assault charge. The record did not indicate the duration or status of his probation. He maintained, without proffering corroborating documentation, the charge was dismissed. He testified that records pertaining to the charge had been expunged pursuant to a court order, which he corroborated via a letter dated January 10, 2023. (Answer; AE C at 6; GE 3 at 39, 41, 43-44, 49, 56, 68-69, 80; Tr. at 26-27, 73-74, 108, 111-114, 142-143)

Program X Records. In June 2020, Applicant began voluntary outpatient treatment via a coordinated special care program called "First Episode Psychosis track." He had 12 sessions with TP in 2020 and three in 2021. He attended weekly or bi-weekly therapy sessions, from about June through November 2020, and January through March 2021. Ms. V, a licensed clinic social worker, and Ms. W, a licensed mental health professional, worked closely with TP in his care. From June 2020 to February 2021, TP assessed him as an unreliable narrator with poor insight into his mental illness, manipulative behavior, disinterest in treatment, and persistent denial of his clinical condition. (GE 3 at 3, 5, 8, 11, 29, 32, 43, 47-49, 68, 69, 70, 74-75, 78-81, 85-89)

TP formally diagnosed the Schizophreniform and Cannabis Use Disorders on June 27, 2020. TP raised the possibility of Bipolar I Disorder during his initial assessment, but did not formally diagnose it until December 16, 2020. TP prescribed medications to

address Applicant's Schizophreniform and Bipolar I Disorders, but not his Cannabis Use Disorder. (GE 3 at 11-16, 26-37, 43-66, 71-73, 75-77, 82-84)

From June 26 to August 5, 2020, TP prescribed Applicant an oral antipsychotic (RX 1) to be taken at various intervals and in doses ranging from 10 mg to 30 mg. TP had difficulty determining the effectiveness of RX 1 because he took it "very sporadically" and was an unreliable reporter. On August 5, 2020, TP noted he was not substantially engaged in his treatment plan. On August 26, 2020, TP modified his prescription to a monthly 156 mg injectable antipsychotic (RX 2 injection) and a nighttime 10 mg dose of RX 1. On September 4, 2020, TP noted, "After several months of sustained active treatment with sustained compliance, we will be able to draw more reliable conclusions diagnostically." (GE 3 at 16, 27, 30, 34, 37, 45)

TP assessed Applicant's Schizophreniform Disorder "improved," on September 23, 2020, noting, "Superficially, thought process . . . and judgment has improved since two weeks ago; likely due to medication compliance and loss of income;" and "significantly improved," beginning on September 30, 2020. On September 30, 2020, TP lowered the dose of RX 1, due to excessive sedation. On October 21, 2020, TP assessed his Schizophreniform Disorder for the last time, noting a "dramatic and substantial improvement" in symptoms, attributable to "some or all" of the following: compliance with prescribed medications, legal consequences of his assault charge, and the end of "the natural course of a five-month manic episode." TP noted,

> The abrupt, discrete, and exhaustive loss/recovery of himself and his function fits more with bipolar disorder. He is not demonstrating a persisting thought disorder and impaired reality testing that is causing a progressive downward drift. I strongly recommend continuing [the RX 2 injection] for at least another year at least, even if he has bipolar disorder. (GE 3 at 55-56)

TP assessed Applicant's Bipolar I Disorder as "significantly improved," beginning November 18, 2020, and noted:

> In my opinion, there are two possibilities diagnostically:
>
> 1) he has bipolar disorder; he experienced a very long, very severe psychotic episode, (four months) that resolved in October [2020] because of the natural course, the sustained [RX 2 injections], and the severe consequences. He is currently testing the course of his symptoms by stopping meds. His presentation clinically during his illness fits better with a mixed, manic episode.
>
> The inter-episodic recovery that we believed he is having right now, seems to be limited. He is not clinically depressed, but he is not functioning at his pre-morbid level. If he is suffering from bipolar disorder, and he is entering a second episode, he has a poor prognosis.

> 2) he has schizophrenia and he has been able to hide the persecutory delusions, or they have improved with treatment, and they will re-emerge. If he is experiencing a sustained psychotic illness, he responded to it in a grandiose and manic fashion. He does not have a prominent formal thought disorder.
>
> In either case, the recommendation is clear: he needs to remain on [RX 2], and it should be injectable because he is not a reliable patient.

TP also recommended adding a 6 mg oral dose of RX 2 as a "fall back" in case of a sudden onset of psychosis. Applicant objected to adding the oral dose of RX 2, and requested to cease the RX 2 injection, because he did not need them. He reported feeling more alert since stopping RX 1 (on an unspecified date), and that he believed stopping the RX 2 injection would make him "feel more energetic." (GE 3 at 57, 59)

On December 2, 2020, TP agreed to lower Applicant's RX 2 injection dose by half over the next two months: 78 mg in December 2020 and 39 mg in January 2021, after assessing his Bipolar I Disorder as follows:

> [He is] struggling with the consequences of extended manic episode, has been trying to stop all medications, (because he thinks he can control his mania with will power) but is willing to negotiate, when his mother applies pressure . . . He does not currently have any manic or psychotic symptoms, and has not exhibited any since [September] 2020 . . . He had been taking [the RX 2 injection] monthly for three months . . . He is capable of making medication decisions at this time, despite the fact that his argument relies on blatant denial of the past six months . . . (GE 3 at 61, 63)

Applicant stopped the RX 2 injection after taking the 156 mg dose on November 25, 2020. On December 16, 2020, TP noted he had "no signs of developing insight" about his Bipolar I Disorder," which he assessed as follows:

> [He is] treatment ambivalent - he appears to be engaged as a means to gratify his [mother] and the courts - but not meaningfully . . . still insists on stopping the [RX 2 injection] and [RX 1] because he does not believe he has a mental illness . . . no signs of an impending episode . . . four-month period (4/2020 - 8/2020) of sustained psychosis, impulsivity, persecutory delusions . . . but it ended. He has returned to baseline level of thinking, feeling, acting - after he was medicated with [RX 2 injection] for three months, (8/2020 - 11/2020) . . . (GE 3 at 61, 64, 66, 72-73, 77, 84)

In a December 17, 2020 "Service Plan Review," Ms. V noted:

> [He] is recommended to continue engag[ing] in services . . . to continue working in individual therapy for processing the episode of psychosis he experienced, symptom monitoring to prevent relapse episode . . . [he] is

> recommended to continue engag[ing] in medication management services even though his plan is to discontinue the medication . . . (GE 3 at 68)

On January 13, 2021, TP noted, "no evidence of cannabis abuse," and assessed Applicant's Bipolar I Disorder as "clinically stable since September 2020" with "No signs of mania or psychosis. No thought disorder or residual paranoia." TP also noted, "he understands the rationale [for continuing medications] for maintenance/prophylaxis but does not recognize the need." On February 24, 2021, TP noted:

> He has missed several appointments with [Ms. W] over the course of the past two months . . . has expressed uncertainty about the ongoing need for treatment . . . has not had [medications] since Thanksgiving 2020 and has not been meaningfully engaged since that time . . . has not had . . . symptoms, or interest in treatment since Thanksgiving 2020. It is not uncommon for individuals with Bipolar Disorder to dismiss the seriousness of their first, (few) episodes. He is at substantial risk of relapse, but it is impossible to predict the course of his illness at this point . . . his lack of interest or insight limits the benefit that he will obtain from treatment, and is not a threat to himself or the community at this time from illness. He could potentially benefit from outpatient treatment to better manage his illness, but it is not medically necessary. (GE 3 at 71, 73, 75, 77)

On March 24, 2021, the last session reflected in Program X records, TP noted:

> [Applicant] has not attended the outpatient therapy appointments since November 2020 - but he has developed a renewed interest since he was given a court date in April [2020] . . . was unexpectedly eager to participate in treatment given his prolonged indifference and denial . . . engagement in treatment is sporadic at best - now he is motivated . . . has been better able to acknowledge the severity of [his psychotic episode] - but he cannot grasp the potential recurrence. (GE 3 at 82, 84)

Ms. W updated Applicant's "Service Plan" on March 18, 2021, for proposed continued treatment from March 21 to June 19, 2021, noting, his status would be "continuously evaluated and discussion will be held around current needs, progress made towards goals, and transition/discharge planning." He reported he would be ready for discharge when he secures a full-time position in his field of interest and resolves outstanding court issues. During a quarterly review on April 15, 2021, covering the period December 21, 2020 to March 21, 2021, he reported that he "never" took his medication as prescribed; and that he prepared a written relapse plan and shared it with others (a copy of which was not proffered for the record). (GE 3 at 78, 80-81, 85-86)

DSM-5. According to DSM-5, both Schizophreniform and Bipolar I (manic) Disorders include the similar diagnostic criterion regarding the impact of substance abuse: disturbance/episode is "not attributable to the physiological effects of a substance" (e.g., a drug of abuse or medication)." Regarding Bipolar 1 Disorder, 1) "[m]ore than 90% of individuals who have a single manic episode go on to have recurrent mood episodes;"

and "After an individual has a manic episode with psychotic features, subsequent manic episodes are more likely to include psychotic features." Regarding Schizophreniform Disorder: 1) characteristic symptoms of schizophreniform disorder are identical to those of schizophrenia, except as to the duration of the symptoms; 2) the duration requirement for schizophreniform disorder is between one and six months, while schizophrenia is more than six months; and 3) "[a]bout one-third of individuals with an initial diagnosis of schizophreniform disorder" recover within the six-month period and schizophreniform disorder is their final diagnosis, while the "majority of the remaining two-thirds of individuals" will eventually receive a diagnosis of schizophrenia or schizoaffective disorder. (AE I at 124, 130; AE II at 97, 98)

SOR Allegations. Applicant disputed all three diagnoses on the basis that TP incorrectly assessed his symptoms, which he denied resulted from any psychiatric disorders. He attributed his psychotic episode to "just stress, regular stress" associated with his 2019 relocation from State B to State A and loss of his grandmother, the COVID-19 pandemic, and pandemic-related unemployment. His mother testified that, despite placing her "trust" in his doctors at the time, in hindsight, she similarly attributed his psychotic episode to "regular stress" and disagreed with the diagnoses. (Answer; GE 2 at 3; Tr. at 17-18, 36-37, 140, 145)

Applicant asserted he continued taking the RX 2 Injection, as prescribed, through his January 2021 dose (which his mother corroborated), after which he stopped taking all medications, with the approval of his treatment providers. He characterized his compliance with taking his prescribed medications as involuntary, which his mother corroborated. He described his providers physically opening his mouth to insert oral medication, to which he attributed his acquiescence to the injectable form of RX 2. He believed his medication compliance "was the only way out" to ensure he would be able to discharge from Program X and ease his parents' worries. He stated he never took medications prior to his psychotic episode, had no desire to resume taking medications, and felt much better since he stopped. He believed he never needed medication and never had a "brain problem." He attributed his diagnoses and prescribed medications to the power imbalance and profit-driven focus of drug manufacturers and the medical industry, stating, "They see a perfectly groomed man . . . they're trying to do everything that they can . . . to prove that I have some problem." (Answer; GE 2 at 3; Tr. at 17-19, 23-24, 34-37, 66-68, 81-83, 115-116, 143, 145)

Applicant maintained that, despite having the choice to discharge himself from Program X (on a date not specified), he chose to continue treatment, about twice a week, until his discharge on April 11, 2022. He provided a document meant to corroborate the discharge, but it did not. Through Program X, he learned about his "disorders," and ways to "cope," stay on "track," control his behaviors, and manage symptoms without medication. He stated he was "one of [Program X's] role models," due to his quick recovery and return to gainful employment. (Answer; AE D; GE 2 at 3; Tr. at 36-37, 66-67, 74-76, 78-81, 86, 117, 122)

In his Answer, without corroborating evidence, Applicant referenced the following quote from a note purportedly made by TP on September 22, 2021: "He has been

asymptomatic for 11 months off of [medications]. His psychiatric symptoms have been in complete sustained remissions without [medications] for 11 months." He stated he was "agreeable to work on relapse prevention planning." At the hearing, he reiterated he was fully recovered and was no longer experiencing any symptoms, which his mother and sister corroborated. He acknowledged he neither sought treatment nor engaged in therapy since April 2022, as he did not believe it was necessary. Neither party proffered a recent opinion from a duly qualified mental health professional. (Answer; Tr. at 17-19, 23-24, 34-37, 66-68, 81-83, 115-116, 122, 135, 154, 163-164)

Guideline H

Applicant was treated for cannabis use disorder at Program X. He started smoking marijuana at age 15, when he first arrived in the United States, and had been using marijuana with a frequency of about "a few times" or "one to two times" per week in the "couple of years" prior to the onset of his psychotic episode. (GE 3 at 3, 5, 15, 17, 21-22, 24-25)

Applicant actively used cannabis on a regular basis from at least June 26 through September 4, 2020. From June 26 to July 29, 2020, he reported he did not intend to stop using cannabis and "sees no difficulties related to it." On September 4, 2020, TP noted, "he has been abusing cannabis heavily for an unknown period of time. Up to this point, he has been pre-contemplative in all areas involving change." On September 23, 2020, TP noted he "minimized drug use utterly," and recommended he be drug tested as part of his probation. On October 21, 2020, TP noted he "should be tested routinely" by his probation officer. On November 18, 2020, he self-reported he was "clean," but TP was not able to confirm via urinalysis results. On December 2, 2020, TP noted, "I suspect that [Applicant] continues to use . . . He should be drug tested randomly by [Program X]." (GE 3 at 12, 28, 29, 31, 34, 35, 37, 45, 47, 49, 56, 59, 61, 63)

TP noted Applicant's "cannabis abuse" plan as "monitor," "surveillance," "unknown," on December 16, 2020, February 24 and March 24, 2021, respectively. TP assessed Applicant's cannabis use disorder as: "stable," beginning September 4, 2020; "significantly improved," beginning October 21, 2020, "improved," beginning November 18, 2020; "significantly improved," beginning January 27, 2021; and "stable," beginning February 24, 2021. The records do not reflect TP or any other provider proffered a prognosis. (GE 3 at 35, 56, 59, 66, 73, 77, 84)

Applicant did not disclose his marijuana use, cannabis use disorder diagnosis, or cannabis abuse treatment on his 2021 SCA, as discussed further below, or during his 2021 SI. In his 2022 Answer, he admitted he used marijuana from March 2019 to August 2020 with a frequency of "not very often (once a month)." He asserted he disagreed with the diagnosis because "I wasn't a daily smoker, and I was able to perform my daily tasks." He denied he "continued to use marijuana despite being diagnosed with cannabis abuse disorder," (SOR ¶ 2.c) stating, "I continued to use CBD, but not the THC because I know lots of people benefit from CBD. I used CBD that may contain a little amount of THC so my drug test showed that it was positive for THC in August 2020." He did not proffer any evidence to specify or corroborate the amount of THC present in any of the CBD he used,

nor was it otherwise indicated in the record. He denied he "intend[ed] to continue to use Marijuana in the future" (SOR ¶ 2.d). He asserted, "I have stopped use of THC now and do not intend to use in the future," and attached evidence of a negative result on a September 2021 pre-employment drug test for marijuana and other illegal drugs. (Answer; AE A)

During the hearing, Applicant repeatedly denied he ever used illegal marijuana. He distinguished CBD use from marijuana use. He indicated he understood the use of marijuana was illegal under federal law. He testified that his references to marijuana in his Answer related solely to his legal use of CBD. He acknowledged he used CBD "probably every single day during [the] pandemic" because he was bored. He indicated he primarily smoked CBD but may have also used it in edible form. He claimed he only used CBD he purchased legally from "smoke shops." He denied he ever knowingly purchased CBD containing THC. He maintained he carefully read labels to ensure he only purchased CBD that did not contain THC, while also acknowledging he "probably by accident" used CBD that contained THC in quantities he estimated as "couple percentage, .1 or [.]2, but I don't know." (Tr. at 61-65, 79-81, 124-125)

Applicant believed he was misdiagnosed with "cannabis abuse." He initially attributed the diagnosis to his deliberate consumption of marijuana in edible form while he was on a trip in State C (on dates not specified in the record). He did not indicate the amount or frequency of his consumption during the trip. He stated, "some edibles can . . . trip you up for a . . . long, long time." He later attributed the diagnosis to his use of CBD. He denied he used cannabis regularly, abused cannabis heavily, or used cannabis by vape daily, as noted by TP on August 5 and September 4, 2020. He suggested TP may have obtained that information from his parents, despite TP's notes indicating the information was obtained from him. (Tr. at 61-63, 79-81)

Applicant asserted he stopped his legal use of CBD due to construing his "cannabis abuse" diagnosis as a sign that CBD use could be harmful (without specifying the date of his last use). He recalled TP warned him of the harm associated with his CBD use and advised him to stop using CBD. He later testified, "I just want to confess that I have not touched [CBD] since after I got discharged [from Program X] in April [2022]." He attributed his CBD use to stress. He described various stress management techniques he implemented since he stopped using CBD, including caring for his cat and managing his 100 gallon fish tank. (Tr. at 64; 126, 136, 167)

Applicant's mother testified she never observed Applicant use marijuana or smelled it emanating in their shared home; rather, she smelled it emanating from his car at unspecified times between about July and December 2020. His sister testified she had "never seen [him] smoke marijuana," but she smelled it emanating in their shared home at unspecified times. She attributed the smell solely to Applicant. His mother and sister both testified he stopped smoking marijuana, without specifying the date of his last use. He claimed they were smelling CBD, and not marijuana. (Tr. at 137-139, 163, 167)

Guideline E

In Applicant's 2022 Answer, he responded "I admit" in response to each of the Guideline E falsification allegations, which involved his responses to questions on his 2021 SCA about his psychological and emotional health (section 21), police record (section 22), and illegal use of drugs or drug activity (section 23). (Answer) However, he otherwise denied the admitted falsifications were deliberate.

Section 21. Applicant responded "no" to "Has a court or administrative agency **EVER** issued an order declaring you mentally incompetent" (SOR ¶ 3.a); and "Has a court or administrative agency EVER ordered you to consult with a mental health professional . . ." (SOR ¶ 3.b). He responded "Yes" to "Have you EVER been hospitalized for a mental health condition." (SOR ¶ 3.c). He disclosed he was voluntarily "hospitalized due to my mental health problem" from about June 2020 to August 2020, and identified the address and location of the service provider for Program X. (GE 3)

Applicant also responded negatively to two other questions that were not alleged in the SOR: "Do you have an additional instance where you have EVER been hospitalized for a mental health condition;" and "Have you EVER been diagnosed by a physician or other health professional . . . with psychotic disorder, schizophrenia, schizoaffective disorder, delusional disorder, bipolar mood disorder, borderline personality disorder, or antisocial personality disorder." (GE 1)

During Applicant's 2021 SI, he acknowledged he had been diagnosed with a bi-polar mood disorder by a doctor he could not recall, who referred him to the service provider for Program X for additional aid. He did not specifically address his responses in section 21, but he attributed any inaccuracies on his SCA about his psychological and emotional health to oversight. (GE 2)

Regarding SOR ¶ 3.a, Applicant admitted in his Answer that a court issued "an order declaring me mentally incompetent" in 2019. He asserted he "misread the question" at the time of his SCA response. He stated, "I thought the question was asking if I was currently mentally incompetent which I believe[d] was false." At the hearing, he maintained his "no" response was correct because he believed the order declaring him mentally incompetent was "performative." (Answer; Tr. at 85)

Regarding SOR ¶ 3.b, Applicant admitted in his Answer that a court or administrative agency "ordered me to consult with a mental health professional." While he did not specially address his negative SCA response, he indicated he "wasn't clear about how everything worked." He explained he was unconscious when he was brought to Hospital A. He stated that, only after working with Program X, did he "[come] to an understanding of what happened." At the hearing, he maintained his "no" response was correct based on "my knowledge, my understanding, at that time . . . ." (Answer; Tr. at 86)

Regarding SOR ¶ 3.c, Applicant stated in his Answer, "At the time of [my] hospitalization, I believe I went in for voluntary treatment. Then I found I was there for

involuntary hospitalization. I wasn't clear with how everything worked and the mental health system." He did not address SOR ¶ 3.c during the hearing. (Answer; GE 2)

Section 22. Applicant responded "no" to whether he had, "**In the last seven (7) years**," been "arrested by any police officer, sheriff, marshal, or any other type of law enforcement official." (SOR ¶ 3.d) He also responded negatively to two other questions that were not alleged in the SOR: "**In the last seven (7) years** have you been charged, convicted, or sentenced of a crime in any court;" and 2) "Have you EVER been convicted of an offense involving domestic violence or a crime of violence (such as battery or assault) against your . . . cohabitant . . . ." (GE 1)

Applicant disclosed his September 2020 arrest in his 2021 SI and attributed his failure to list it on his SCA to oversight. He maintained the court case was dropped, no charges were filed, and there were no additional court requirements. In his Answer, he indicated he "misunderstood the question[]" at the time of his SCA response. He explained, "There was a lot that happened last year. I was not aware of how the system worked . . . ." (GE 2 at 2-3; Answer)

At the hearing, Applicant stated he did not serve jail time beyond the 24 hours he spent in jail following his arrest, the case was dismissed, and he was assigned a probation officer. During questioning about how he answered the SCA arrest question (SOR ¶ 3.d), he had the following exchanges:

> APPLICANT: At that time, I was probably under the medication influence, so some of the questions I answered maybe wrong, maybe inaccurate, but at that time, I [answered to the best of my knowledge].
>
> DEPARTMENT COUNSEL: So you think you were just on medication and that made you put down the wrong information?
>
> APPLICANT: Possibly, yes.
>
> DEPARTMENT COUNSEL: Or were you worried that if you put down, yes, you wouldn't be able to get a security clearance?
>
> APPLICANT: Eighty percent of it, yes . . .
>
> ADMINISTRATIVE JUDGE: You indicated to Department Counsel that you attributed about 80 percent of the reason why you weren't filling out the [2021 SCA] to concerns of what you would say might affect your clearance. Is that why you're not wanting to answer some of these questions today, because you're concerned about how that might affect your ability to get a security clearance?
>
> APPLICANT: Not much today. Not as much as when I'm filling [the 2021 SCA] out . . . (GE 1, 2; Answer, Tr. at 87-88, 109-114, 124, 141-142)

Section 23. Applicant responded "no" to "**In the last seven (7) years,** have you illegally used any drugs or controlled substances?" (SOR ¶ 3.e) He also responded negatively to three other questions that were not alleged in the SOR: "**In the last seven (7) years**, have you been involved in the illegal purchase . . . of any drug or controlled substance);" "Have you **EVER** been ordered, advised, or asked to seek counseling or treatment as a result of your illegal use of drugs or controlled substances;" and "Have you **EVER** voluntarily sought counseling or treatment as a result of your use of a drug or controlled substance." (GE 1)

Applicant did not disclose any drug use during his 2021 SI. In his Answer to SOR ¶ 3.e, he admitted, "The last time[] I used THC i[s] May 2020 and I have stopped. I used CBD that may contain[] little amounts of THC. I did a drug test in October 2021 for a company . . . and the results came back as negative." He did not address his negative SCA response. At the hearing, he affirmed his "no" response. (GE 1, 2; Answer; Tr. at 87-88, 99-101,124)

Guideline B

On Applicant's 2021 SCA, he did not report any foreign contacts. During his 2021 SI, he reported his mother maintained monthly telephonic contact with her two sisters (a twin and an elder), who are citizens and residents of China. He had short five to ten minute conversations with them whenever he was home during his mother's calls, but denied he maintained close and continuing contact with them. (GE 1, 2; Tr. at 146) In Applicant's Answer, he admitted:

> I have family members in China, and they are Uyghurs. I used to use [the WeChat messaging application] to talk to [them] only a few times a year. We talk when there are family health concerns (My grandmother passed away in 2019) but other than that not very often. My family members are in the railroad industry, and they do not interact with any government related workers. I have removed [WeChat] as of March 10, 2022. (Answer)

At the hearing, in addition to his mother's two sisters, Applicant referenced an uncle, a maternal cousin, and an unspecified number of paternal cousins, who are also citizens and residents of China. He acknowledged he maintained contact with one or more of them, without specifying the frequency or method of their communications. When he learned, during his 2021 SI, of the potential negative impact on his security clearance adjudication, he ceased all contacts with them and "removed my tools to contact them." When asked how often he spoke with his cousins, he testified, "Barely. We don't talk." However, he later acknowledged he spoke with at least one of them during the COVID-19 pandemic, stating:

> They got worried when they heard that I got sick, I was in [the] hospital . . . It's not like . . . [if] I was doing good, they will never reach out. So when something happens, then . . . they reach out and are asking like, what's up, and just very casual. (Tr. at 93-96)

Applicant's mother testified she communicated with one of her sisters "almost every day" via WeChat. She stated she maintained no contact with her other sister or any other family members in China, and that Applicant had no contact with any family members in China, including her two sisters. (Tr. at 146-149)

During the hearing, Applicant and his mother alluded to risks they associated with their Uyghur ethnicity, including possible surveillance of their extended family members in China. His mother acknowledged her contact with her sister "is dangerous for my sister" because China is "control[ling] . . . watch[ing] . . . checking everything," but she intended to maintain contact with her sister because "I mean, she's my sister" and "I want [to keep] talking to her." Applicant testified he chose not to use traditional Arabic greetings during previous communications with his family members in China because "those . . . words" would "literally put them [at] risk." He believed there was a risk of possible detainment should he or his immediate family members return to China. He and his mother testified neither returned to China since immigrating to the United States, and they had no intent to return to China. He also had the following exchange:

> DEPARTMENT COUNSEL: Did you ever tell . . . one of your doctors that you were involved as an agent for the U.S. or Chinese government?
>
> APPLICANT: No, I did not . . . but I have the capability. I know the languages. I mean, if you're the Chinese government that comes up to me, I'm going to ask you, What can you offer me. Right? But my family are on the line that I'm on this job, so I would probably say no. And then being the strong multilingual, I would want to just stay where I am and, you know, do what's good for me.
>
> DEPARTMENT COUNSEL: Okay. So let's say a Chinese government agent came up to you and said, you have amazing language skills . . . and we're going to offer you $5 million. What would you say?
>
> APPLICANT: I'm not after money.
>
> DEPARTMENT COUNSEL: What would make you change your mind? . . .
>
> APPLICANT: If they put my family on risk . . .
>
> DEPARTMENT COUNSEL: Do you think that could happen?
>
> APPLICANT: I don't think so.
>
> DEPARTMENT COUNSEL: If your family ever traveled back to China, could it happen?

APPLICANT: Yeah. That will happen. But they will not. (Tr. at 17, 40-41, 88-91, 93-96, 146-149)

The PRC is an authoritarian state. The paramount authority is the Chinese Communist Party (CCP), whose members hold almost all top government and security positions. The PRC's "counterterrorism efforts continued to target ethnic Uyghurs . . . as so-called extremists for engaging in standard practices of Islam." Under the pretext of counterterrorism efforts," the PRC actively screened, monitored, and censored its citizens on the internet." (AX III at Item I; AX IV at 15, 17)

Genocide and crimes against humanity occurred in the PRC against "predominantly Muslim Uyghurs . . ." The PRC committed "[s]ignificant human rights" abuses, including arbitrary or unlawful killings, enforced disappearances, and torture; arbitrary arrest and detention (including, more than one million ethnic Uyghurs since 2017); arbitrary interference with privacy; and crimes involving violence targeting members of racial and ethnic minority groups, including Uyghurs. (AX IV at 1-2)

The PRC "remains the most active and persistent cyber threat to U.S. Government, private-sector, and critical infrastructure networks." Moreover, the PRC's "cyber espionage pursuits and its industry's export of surveillance, information, and communications technologies increase the threats of aggressive cyber operations against the United States and the suppression of the free flow of information in cyberspace." Additionally, the PRC "leads the world in applying surveillance and censorship to monitor its population and repress dissent." (AX IV at 8)

Whole-Person Concept

Applicant provides for his parents and sister, both monetarily and non-monetarily. He helped his parents pay their home mortgage, bought his mother a car, and has been a role model for his sister. He moved back home from State B in 2019 to attend to the needs of his family following the death of his maternal grandmother. He learned that the stress underlying his psychotic episode resulted, in part, from a difficult childhood. His mother and sister lauded his character. His sister described him as "the glue that holds [their] family together." He cares diligently for his cat, including making its food from scratch. (Tr. at 18-19, 35-36, 131-133, 154, 163, 164)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Egan* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication 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. *Egan* 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 (4th 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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan* at 531; AG ¶ 2(b).

Analysis

Guideline I: Psychological Conditions

The concern under this guideline is set out in AG ¶ 27:

> Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or

> acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

I have considered all the disqualifying conditions in AG ¶ 28 under Guideline I. I find the following warrant discussion:

> (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
>
> (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
>
> (c) voluntary or involuntary inpatient hospitalization; and
>
> (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Although the facts alleged in SOR ¶¶ 1.f, 1.m, 1.n, 1.p, 1.s, and 1.w are largely established by Applicant's admissions and the record evidence, they are either duplicative of other SOR allegations or do not involve disqualifying conduct under Guideline I. Accordingly, I find these six allegations in Applicant's favor under Guideline I. Nevertheless, they remain relevant to mitigation and the whole-person concept.

The facts alleged in the remaining 20 allegations involve conduct that is both disqualifying and not disqualifying under Guideline I. I find in favor of Applicant with respect to those portions of the allegations involving conduct that is not disqualifying under Guideline I. As to the remaining portions of the allegations involving conduct that is disqualifying, I find that:

AG ¶ 28(a) is established by the facts involving the disqualifying behaviors alleged in SOR ¶¶ 1.a through 1.e, 1.g through 1.l, 1.o, 1.q, 1.r, 1.t, and 1.u;

AG ¶ 28(b) is established by the facts surrounding the diagnoses alleged in SOR ¶¶ 1.d, 1.h, and 1.j, and 1.z;

AG ¶ 28(c) is established by the facts involving the inpatient hospitalizations alleged in SOR ¶¶ 1.c, 1.d, 1.h, 1.k, and 1.o; and

AG ¶ 28(d) is established by the facts involving the Applicant's failure to follow prescribed treatment plan, including taking prescribed medications, alleged in SOR ¶¶ 1.v, 1.x through 1.z.

The following factors set forth in AG ¶ 29 could mitigate the concern under this guideline:

> (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
>
> (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
>
> (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
>
> (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
>
> (e) there is no indication of a current problem.

AG ¶ 29(a) is not established. The record suggests, but does not unequivocally establish, Applicant's Schizophreniform and Bipolar I Disorders may be controllable with medication. The record indicates his Cannabis Use Disorder is controllable by abstinence. However, Applicant failed to meet his burden to demonstrate ongoing and consistent compliance with taking his prescribed medication or abstaining from marijuana.

AG ¶ 29(b) is not established. Applicant is credited with engaging in outpatient treatment at Program X through March 2021 to address his Schizophreniform, Bipolar I, and Cannabis Use Disorders. Without sufficient corroborating evidence, I am not able to conclude he continued treatment at Program X through April 2022, as he claimed. Even assuming *arguendo* that he did, there is no indication he received any counseling or treatment since April 2022, nor received a favorable prognosis by TP or another duly qualified mental health professional. Moreover, the record suggests Applicant's renewed interest in treatment in March 2021, following his prolonged indifference and denial, was motivated more by his pending court date than a shift in his prior belief that treatment was unnecessary.

AG ¶ 29(c) is not established. The record does not include an opinion in accordance with AG ¶ 29(c). In September 2020, Applicant was clinically stable, with no

signs of mania or psychosis; but, in February 2021, TP assessed he was at substantial risk of relapse, while noting it was impossible to predict the course of his illness.

AG ¶¶ 29(d) and (e) are not established. The record indicates Applicant's psychotic episode began in about May 2020, and resolved sometime between August and October 2020. However, he was diagnosed with Schizophreniform and Bipolar I Disorders, which carry a risk of relapse or recurrence. Despite the differential diagnoses, nothing in record established they were temporary conditions. The fact that TP diagnosed Applicant with Bipolar I Disorder after his psychotic episode ended indicates he continued to exhibit symptoms not yet resolved. Arguably, despite the lack of a prognosis in the record, the Cannabis Use Disorder diagnosis could be considered temporary and resolved with abstinence. However, Applicant did not meet his burden to establish it as such. Particularly given the credibility concerns, which are discussed further below, and the lack of a recent opinion by a duly qualified mental health professional proffering a positive prognosis, I am unable to conclude there is no indication of a current psychological disorder.

TP considered differential diagnoses to explain Applicant's behavior in connection with his 2020 psychotic episode. Regardless of the final diagnosis, TP emphasized the need for Applicant to continue medication for maintenance and prophylaxis, and recommended he consider outpatient treatment to better manage his illness. I considered the improvements in his symptoms noted by TP through March 2021, and the apparent lack of relapse or recurrence through the hearing date. However, Applicant failed to meet his burden to mitigate the Guideline I concerns.

TP assessed Applicant was medically capable of making medication decisions in December 2020; and that outpatient treatment was no longer medically necessary in February 2021. Accordingly, Applicant's decisions to discontinue taking medication after January 2021, and discontinue treatment after March 2021 (or, assuming *arguendo,* after April 2022) could be considered reasonable within the context of his medical care. However, in the context of evaluating his security worthiness, those decisions undermine mitigation.

Applicant's engagement in treatment at Program X was sporadic at best. In March 2021, he was better able to acknowledge the severity of his psychotic episode, but he remained unable to grasp the potential for recurrence. At the hearing, he disputed the diagnoses, while also claiming he was fully recovered and could manage his conditions without medication. However, he did not proffer a recent opinion by a duly qualified mental health professional to corroborate his position. The concern is exacerbated by his continued denial and lack of insight about his conditions during the hearing and his lack of candor regarding his marijuana use. I have substantial doubts about his current judgment, reliability, and trustworthiness.

Guideline H: Drug Involvement and Substance Misuse

The concern under this guideline is set out 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.

According to 2017 guidance from the SAMHSA,

> The marijuana analyte tested in urine is tetrahydrocannabinol-carboxylic acid (THCA). THCA is a metabolite of tetrahydrocannabinol (THC), the primary psychoactive constituent of marijuana. CBD is a different chemical compound present in the marijuana plant. Marijuana products, including CBD, are classified as Schedule I controlled substances under the Controlled Substances Act and, thus, are illegal under federal law; and
>
> Many CBD oils and other marijuana-derived products are sold over the internet or at dispensaries in states allowing marijuana use, either recreationally or medically. These products are not regulated by the Food and Drug Administration for content and may be contaminated by a host of cannabinoid chemicals, including THC and CBD. CBD is chemically distinguishable from THC and will not cause a positive drug test result under the current drug testing panel but is a Schedule I drug. However, CBD products may contain other cannabinoids such as THC, therefore, use of CBD oils and marijuana-derived products may result in a positive urine drug test for THCA.

According to 2021 guidance from the DNI,

> With respect to the use of CBD products, agencies should be aware that using these cannabis derivatives may be relevant to adjudications in accordance with SEAD 4. Although the passage of the Agricultural Improvement Act of 2018 excluded hemp from the definition of marijuana within the Controlled Substances Act, products containing greater than a 0.3 percent concentration of delta-9 [THC], a psychoactive ingredient in marijuana, do not meet the definition of "hemp." Accordingly, products labeled as hemp-derived that contain greater than 0.3 percent THC continue to meet the legal definition of marijuana, and therefore remain illegal to use under federal law and policy. Additionally, agencies should be

> aware that the Federal Drug Administration does not certify levels of THC in CBD products, so the percentage of THC cannot be guaranteed, thus posing a concern pertaining to the use of a CBD product under federal law. Studies have shown that some CBD products exceed the 0.3 percent THC threshold for hemp, notwithstanding advertising labels . . . Therefore, there is a risk that using these products may nonetheless cause sufficiently high levels of THC to result in a positive marijuana test under agency-administered employment or random drug testing programs.

2014 DNI guidance affirms marijuana remains a Schedule I controlled drug under federal law; federal marijuana laws supersede state laws; and changes in the laws pertaining to marijuana by states, territories, and the District of Columbia do not alter the existing AG. 2021 DNI guidance reaffirmed that federal law remains unchanged with respect to marijuana use, possession, production and distribution; and that individuals who hold security clearances or occupy a sensitive position within the federal government are currently prohibited by law from using controlled substances, such as marijuana, on or off-duty. 2021 DNI guidance also made clear that prior recreational marijuana use by an individual applying for a security clearance or national security position might be relevant to adjudications, but not determinative. The guidance instructed federal agencies to adjudicate each potential applicant through a "whole-person concept" by evaluating multiple variables in an individual's life to determine whether past marijuana use raises a security concern and whether that concern has been mitigated.

I construed the references to Applicant's use of marijuana, cannabis, and THC (as opposed to CBD) throughout the record evidence as synonymous for his use of the same controlled substance. For simplicity, the term "marijuana" will be used hereafter. His CBD use, including oils and edibles, was not alleged in the SOR. Moreover, the record did not contain sufficient facts to ascertain whether he used CBD containing amounts of THC sufficient to render it a controlled substance. Accordingly, I have considered his CBD use, not as disqualifying conduct, but as to mitigation and the whole-person concept.

The record evidence and Applicant's admissions surrounding his marijuana use establish the following disqualifying conditions set forth in AG ¶ 25 under this guideline:

> (a) any substance misuse (see above definition);
>
> (b) testing positive for an illegal drug;
>
> (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
>
> (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder.

Given the facts alleged in SOR ¶ 2.d, AG ¶ 25(g) (expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse) warrants discussion. The facts alleged in SOR ¶ 2.d are not established by either Applicant's admissions or the record evidence, and the SOR does not otherwise allege facts to support the application of AG ¶ 25(g). Accordingly, I find SOR ¶ 2.d in Applicant's favor. Nevertheless, Applicant's equivocation and denials about his use of marijuana remain relevant to mitigation and the whole-person concept.

Having considered all the factors set forth in AG ¶ 26 that could mitigate the concern under this guideline, I find the following warrant discussion:

> (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) 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; 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.

The precise timeline and frequency of Applicant's marijuana use was difficult to ascertain given Applicant's underreporting and equivocation. Nevertheless, the record established by substantial evidence that he used marijuana regularly for an extended period, including after being diagnosed with cannabis use disorder. At the hearing, he not only failed to take responsibility for his marijuana use, but he inexplicably denied he ever used marijuana, despite his prior admissions, which undermined his credibility and the sincerity of his commitment to abstain.

Applicant disputed his Cannabis Use Disorder diagnosis, which he attributed initially to his deliberate consumption of marijuana in edible form; and then to his use of CBD, which he considered legal. He claimed his August 2020 positive test resulted from what he believed was a legal use of CBD that may have contained THC. He indicated he understood marijuana use was illegal under federal law. He acknowledged he frequently used and purchased CBD, but denied he ever intentionally used or purchased CBD containing amounts of THC sufficient to render it a controlled substance. However, he failed to meet his burden to establish innocent consumption as to his diagnosis or positive test.

Applicant's continued lack of candor regarding his marijuana use raises questions about the complete and accurate details of his history with it, and also suggests a pattern of questionable judgment that undermines confidence in his ability or willingness to comply with laws, rules, and regulations. I considered TP's favorable status notations about his Cannabis Use Disorder between September 2020 and February 2021. However, neither TP's notes nor other record evidence establish that Applicant was provided a favorable prognosis. Moreover, Applicant failed to meet his burden to demonstrate a sustained period of abstinence. In light of the record as a whole, I am unable to conclude his illegal drug use is unlikely to recur. I have doubts about his current reliability, trustworthiness, and judgment. AG ¶¶ 26(a), 26(b), and 26(d) are not established.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:
>
> > (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
> >
> > (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant's falsification of material facts on his 2021 SCA establishes the general concerns involving questionable judgment and unwillingness to comply with rules and regulations, and renders the following specific disqualifying condition potentially applicable:

> AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant answered "I admit" in response to each of the Guideline E falsification allegations. However, he otherwise denied that the admitted falsifications were deliberate. Accordingly, I construed his responses as denials and find the falsification allegations controverted. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's education and experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

The falsifications alleged in the SOR involve Applicant's hospitalizations (SOR ¶¶ 3.a-3.c), September 2020 arrest (SOR ¶ 3.d), and marijuana use (SOR ¶ 3.e). Among these three categories, Applicant provided negative responses to all but one question about his hospitalization history. He disclosed he was voluntarily hospitalized from June to August 2020, and he identified the address and location of the service provider for Program X (which is not a hospital). I did not find credible Applicant's explanations and excuses for his failure to disclose derogatory information about his marijuana use, arrest, and hospitalization history. Not only did he provide inaccurate information about his reported hospitalization on the SCA, but he also omitted materially relevant information. Inexplicably, at the hearing, he contradicted his earlier admissions about marijuana use, which damaged his overall credibility. He also testified that, at the time he completed his SCA, he considered the possibility that disclosing his arrest would impede his ability to get a security clearance. I find substantial evidence of an intent on the part of Applicant to omit and conceal materially relevant information from his 2021 SCA. AG ¶ 16(a) is established.

Nevertheless, I find in favor of Applicant with respect to the following portions of the allegations in SOR ¶¶ 3.c through 3.e, which involve conduct that is not disqualifying under Guideline E: (1) the subparagraphs cross-alleged in SOR ¶ 3.c that contain facts involving his two emergency room visits (1.b, 1.g) and treatment at the crisis center (1.j), which were not inpatient hospitalizations; (2) the subparagraphs cross-alleged in SOR ¶ 3.d that do not contain facts involving his arrest (1.b, 1.c, 1.g, 1.k, and 1.o); and (3) the subparagraphs cross-alleged in SOR ¶ 3.d that do not contain facts about his illegal drug use that are responsive to the SCA question alleged in SOR ¶ 3.d (1.d, 1.e, 1.j, 1.l, 1.m, 1.w, 2.b-2.d).

The security concerns raised under this guideline have not been mitigated by either of the following applicable factors:

> AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
>
> AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances

that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

The security clearance investigation is not a forum for an applicant to split hairs or narrowly parse the truth. The Federal Government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions (based on complete and accurate information) about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002).

AG ¶ 17(a) is not established. Applicant's partial disclosure on his 2021 SCA about his hospitalization history was not only misleading, but also had the potential to impact the way the information was evaluated during the adjudication process. He is credited with providing additional information about his mental health condition during his 2021 SI. However, the information involved solely his voluntary outpatient treatment at Program X, and not any disclosures about his four inpatient hospitalizations. He is further credited with disclosing, during his 2021 SI, that he was arrested in September 2020. However, he failed to disclose he was placed on probation, which was materially relevant. There is no indication in the record that he reported any information about his marijuana use during his 2021 SI.

AG ¶ 17(c) is not established. I considered that Applicant was still in treatment for psychiatric conditions and may have been under the influence of a prescribed antipsychotic when he certified his SCA in January 2021; and that the assault and hospitalizations occurred in or around the period of his psychosis and manic episodes. However, these factors do not suffice to overcome the Guideline E concerns, particularly given that his medical capacity to answer questions accurately and truthfully was not addressed in the record by a duly qualified mental health professional.

More compelling are the following factors that weigh against mitigation. Applicant failed to avail himself of opportunities to provide derogatory information on his SCA in response to other pertinent questions besides those alleged in the SOR. He failed to take accountability for his deliberate omissions in his Answer and at the hearing. He was aware of the potentially negative impact derogatory information could have on his security clearance at the time he completed his SCA. He emphatically denied ever using marijuana at the hearing, despite his earlier admissions and the substantial evidence to the contrary, separate and apart from any use of CBD that may have been considered legal. Given Appellant's lack of candor at the hearing and the record as a whole, I have doubts about his current reliability, trustworthiness, and judgment.

Guideline B: Foreign Influence

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

> 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.

The following are potentially relevant disqualifying conditions under this guideline:

> AG ¶ 7(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;
>
> AG ¶ 7(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
>
> AG ¶ 7(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.

Applicant's familial ties to citizens and residents of China establish AG ¶¶ 7(a), 7(b), and 7(e). A heightened risk is associated with the Chinese government, an authoritarian government dominated by the Communist Party, due to its espionage pursuits against the United States, poor human rights record, and targeting of ethnic Uyghurs. Applicant bears the burden of persuasion to mitigate these concerns. ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000). Because China is hostile to the United States, his burden is "very heavy" to show that neither he nor his family members are subject to influence by China. ISCR Case No. 06-17838 (App. Bd. Jan 28, 2008).

Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No.

08-10025 at 4 (App. Bd. Nov. 3, 2009). Family relationships can involve matters of influence or obligation. ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003). The mere possession of close family ties with one or more family members living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006; ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The following are potentially relevant mitigating conditions under this guideline:

> AG ¶ 8(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;
>
> AG ¶ 8(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
>
> AG ¶ 8(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.

Applicant ceased communications with his extended family residing in China in about March 2021 due to concerns with how those communications could impact his security clearance adjudication. However, his familial relationships with them cannot be considered casual. His mother remains in frequent contact with at least one of her sisters. While it has not been established that any of his extended family in China maintain security-significant affiliations with the Chinese government, there remains a heightened risk associated with China regardless of any such affiliations.

Based upon the existing record, I am unable to ascertain the extent of Applicant's assets in the United States. However, Applicant otherwise established strong ties to the United States. Since immigrating over fourteen years ago, he has studied, lived, and worked exclusively in the United States. Moreover, all his immediate family reside in the United States. Neither he nor his immediate family have plans to return to China given the perceived risks associated with their Uyghur ethnicity. Nevertheless, Applicant failed to meet his burden to establish that his strong ties to United States are sufficient to overcome his strong ties to extended family residing in China, who are vulnerable to a foreign government known for its poor human rights record, espionage pursuits against the United States, and targeting of ethnic Uyghurs.

Under these circumstances, I cannot conclude it is unlikely Applicant will be placed in a position of having to choose between the interests of one or more members of his extended family residing in China and that of the United States. Applicant failed to meet his heavy burden to mitigate the Guideline B concern. There remains a potential risk for foreign influence or exploitation. AG ¶¶ 8(a), 8(b), and 8(c) are not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the AG, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, an administrative judge should consider the nine adjudicative process factors 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.

I have incorporated my comments under Guidelines I, H, E and B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After considering the disqualifying and mitigating conditions under Guidelines I, H, E, and B, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated security concerns involving psychological conditions, drug involvement and substance misuse, personal conduct, and foreign influence. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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 I:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.l:	Against Applicant
Subparagraphs 1.m – 1.n:	For Applicant

Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q – 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t – 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraphs 1.x – 1.z:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a – 3.e:	Against Applicant
Paragraph 4, Guideline B:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge