DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-03620
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel

For Applicant: Mark S. Zaid, Esquire

April 5, 2011

Decision

O'BRIEN, Rita C., Administrative Judge*:*

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for personal conduct. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions signed on January 30, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding[1] that it is clearly consistent with the national interest to grant Applicant's request.

[1] *See* Executive Order 10865 and DoD Directive 5220.6. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

On February 24, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline E (Personal Conduct) of the Adjudicative Guidelines (AG).

Applicant signed his notarized Answer on April 15, 2010, in which he admitted allegations 1.a., 1.b, and 1.g. and denied allegations 1.c., 1.d., 1.e., and 1.h. Applicant admitted in part and denied in part the allegation at ¶ 1.f. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 20, 2010, and the case was assigned to me on August 25, 2010. DOHA issued a Notice of Hearing on October 13, 2010. I convened the hearing as scheduled on November 17, 2010. The Government offered ten exhibits, marked as Government Exhibits (GE) 1 through 10. Applicant testified on his own behalf and presented two witnesses. He also offered six exhibits, marked as Applicant Exhibit (AE) A through F, which were admitted without objection. I held the record open to allow Applicant to submit additional documentation. He timely submitted one exhibit, which I admitted as AE G. DOHA received the transcript on November 24, 2010.

Procedural Matters

Applicant objected to three subparts of GE 3 as inadmissible without an authenticating witness, under Directive 5220.6, ¶ E3.1.20. I sustained Applicant's objection, and excluded subparts 3.d., 3.e., and 3.f. GE 3, as admitted, consists of subparts 3.a., 3.b., and 3.c. (Tr. 15-16) Applicant also objected to allegation 1.g., which alleges denial of access by another government agency. Applicant contends that it is not a disqualifying condition, and Department Counsel did not oppose the objection. I find FOR the Applicant on allegation 1.g.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is a 35-year-old employee of a defense contractor. He received a bachelor's degree in 1998 in civil engineering. He married the same year and has two children, nine and six years old. He works in the information technology field. Applicant has been with his current employer since 2004, where his position is Test Lead. He has held an interim top secret clearance since 2004, and a final top secret clearance since 2005. (GE 1, 2, 5; Tr. 74-80, 117)

Applicant admits that he had physical altercations with his wife three times between 1996 and 2002. When they had disagreements, he became frustrated and angry with his wife. Sometimes he "made the fist and physically moved her out of the way." His wife remembers the events differently. She testified that they did have arguments, but Applicant never punched or slapped her. (Tr. 46-47, 66) When asked by

counsel, “Have you ever hit your wife?” Applicant testified, “I would say yes.” But he went on to explain that when he said “hitting,” he meant that he pushed her out of the way. Upon further questioning, he testified as follows:

> APPLICANT: My arm made contact with her almost like this –
>
> MR. MENDEZ: Your arm made contact. Did your fist make contact with your wife?
>
> APPLICANT: Probably did because of the way I did my arm. It made contact with, I believe, her body.

Applicant submitted a report from a forensic psychiatrist who interviewed Applicant two days before the hearing. Based on the information Applicant provided, she stated that Applicant and his wife, “cursed at each other, hit each other, and on a few occasions, [Applicant] recalls hitting his wife with his fist.” (AE C; Tr. 75-76, 81-84, 122, 127-128)

Applicant testified that he has not engaged in physical altercations since 2002. When he and his wife argue, he leaves the house. He intends not to engage in physical arguments in the future. Applicant and his wife separated in January 2008 because, according to Applicant's wife, “We were just arguing, just too much. We weren't getting along.” They attended marital counseling, and reconciled in June 2008. (Tr. 83-84, 122-125, 156)

Applicant solicited the services of prostitutes three times between 2000 and 2004. His wife was unaware of his activities. In his Answer of April 15, 2010, he stated he had not shared these facts with anyone other than people involved in the security clearance process. He did not want to tell his wife because “nothing positive will result from that revelation.” He opined that:

> To reveal my past indiscretion simply on the basis of a possibility, and a remote one at that, that somehow someone will discover my past history and then use it against me does not seem reasonable or rationale [*sic*]. Nevertheless, if the Department of Defense believes that informing my wife is necessary in order to prove my trustworthiness, I will do so.” (Answer)

One week before his DOHA hearing, Applicant told his wife about his activities with prostitutes. He testified that he told her because of his upcoming hearing. Applicant's wife testified that she was extremely angry, and described his actions as a betrayal of her trust. However, she believes it is a personal matter that should not affect his ability to retain a security clearance. She stated that “his morals are excellent” and that he is a different person than he was then. She also testified that he suggested marital counseling after he disclosed his use of prostitutes, and she stated the suggestion was

"great." However, the psychiatrist noted in her letter that, two days before the hearing, Applicant's wife was not willing to return to counseling. (AE C; Tr. 52-57, 128)

In 2007 and 2008, another government agency (AGA) considered Applicant for access to sensitive compartmented information (SCI). His four AGA interviews occurred in March, May, and July 2007, and in July 2008. He revealed no security-relevant information during the first interview. He disclosed his 1993 and 1994 alcohol-related driving incidents in his second interview. He disclosed that he drove after drinking alcohol in June 2007 in his third interview. During the fourth interview, he disclosed his failure to report his ticket-selling profits; the billable hours issue; his two 2008 alcohol-related driving accidents; and his security violations.[2] (GE 3)

Since 1998, Applicant has purchased high-demand sports and entertainment event tickets and re-sold them online. He keeps some tickets for his own use. He did not report his ticket-selling income when he filed his tax returns between 1998 and 2007. During his fourth AGA interview in July 2008, he disclosed that he failed to report this income. He estimated his income from 1999 to 2007 to be $40,000. At the hearing, he stated that this was an estimate of his gross sales, not his profit after expenses. (Answer; GE 3; Tr. 85-90, 130-133)

Applicant testified that he did not deliberately falsify his income tax returns by failing to report the income, because he did not realize he was required to report it. The commercial software that he used did not flag that type of income as taxable. He did report income he earned in other side jobs, such as acting as an umpire in sports games. However, in about 2008, he learned from an internet forum that the income from selling tickets was taxable. He included the income on his 2008 and 2009 returns. His 2008 Form 1040 shows $402 in profit, and his 2009 form shows $675 in profit. (AE D, E; Tr. 85-90, 130-133)

Applicant has retained a certified public accountant (CPA) to assist him in filing amended returns for 1998 through 2007. His CPA characterizes Applicant's activities as a hobby rather than a business. He noted in a letter submitted for the hearing that Applicant's income was small (0.69 percent of his gross income from 2000 to 2007), and that it was a common mistake at the time to fail to report such income. At the hearing, Applicant estimated his annual income from the ticket sales to be about $1,000 for the years 2000 through 2007.[3] His CPA filed the amended 2000 through 2007 returns in December 2010. Applicant's annual profit ranged from $227 to $687. (Answer; AE B, C, G; Tr. 85-90, 130-133)

[2] Applicant's access to SCI was denied in October 2008. This is not a disqualifying condition. (*See* DoD Directive 5220.6; GE 4, 5)

[3] Applicant's CPA stated that Applicant made no profit in 1998 and 1999, and no amended income tax return was filed. (AE B)

Applicant was involved in several alcohol-related driving incidents. In 1993, Applicant was 18 and under the legal limit to drink alcohol. The AGA report states that on one occasion, Applicant consumed four alcoholic beverages; he testified that he shared a 40-ounce malt beverage with friends. After one or two hours, he drove, and then hit a utility pole while parking. Applicant weighed 160 pounds at the time.[4] According to the BAC chart provided by Applicant, he would have been over the limit of 0.08 after four drinks. However, if two hours had passed since his last drink, his BAC may have been under 0.08, but over 0.06. In 1994, he again drank when he was under the legal age. On one occasion, he consumed approximately four alcoholic beverages, waited one to two hours, and drove. Later in the evening, he consumed more alcohol, but did not drive again. In June 2007, he consumed three drinks in a three-hour period, and then drove 30 miles to his home. At his then-weight of 175, he would have had a BAC of 0.064. At the hearing, he testified that before 2008, he knew he could have two drinks and be under the limit at his weight. Sometimes he had a third drink if it was going to be a longer time before he drove. He testified that he did not drive a car while intoxicated before 2008. (GE 3; AE F; Tr. 90-98)

In March 2008, Applicant consumed three 12-ounce margaritas (labeled as "super-drinks" in the AGA interview) while at dinner and later, at two nightclubs. The record evidence does not indicate the amount of alcohol in these "super-drinks." He fell asleep while driving home, and nearly hit a concrete barrier in the road. He rested a while, and then continued home. One month later, in April 2008, he ate food and drank six 8-ounce alcohol beverages of an unspecified type, between 9 pm and 3 am. He then drank a five-hour energy drink and decided he could drive. However, he fell asleep at the wheel, woke up going up a ramp at high speed, went over the median into oncoming lanes, and blew out a tire. (Answer; GE 3; Tr. 98-100, 135)

Discussing the two 2008 accidents, Applicant stated in his Answer, "I dispute that the reason I lost control of my car on either occasion was because I had consumed alcohol, much less was intoxicated." Later in his Answer, he stated:

> While I do not believe I was intoxicated to a point of being significantly impacted (although I candidly may have been over the legal limit of 0.08), nevertheless I should not have driven home that evening [April 2008].

At the July 2008 AGA interview, he stated he should not have driven after drinking in either March or April 2008. Discussing the accident in April 2008, he stated, "…it was quite fortunate that there was no one in that path that could have hit me at the time…" (GE 3; Tr. 90-98, 136)

[4] In the 1990s, Applicant weighed 160 pounds. He is now approximately 175 pounds. Applicant provided a BAC chart prepared by a state Department of Transportation. It defines one drink as 1 ounce of liquor, or five ounces of wine, or 12 ounces of beer. (AE F; Tr. 94-95)

Applicant made conflicting statements about his condition during the 2008 accidents. At his July 2008 AGA interview, Applicant stated that the only reason he had not been charged [with DUI or DWI] was that he had not been caught by authorities. At the hearing, he denied that he told the AGA interviewer that he drove while intoxicated. He then testified that he did make this statement at the AGA interview, but only in relation to the April 2008 incident, not his other alcohol-related incidents. However, in his Answer, Applicant denied that he lost control of his car in 2008 because of his alcohol use. He ascribed it to fatigue and stress because he and his wife were separated. He also testified that if he had been stopped by police the night of the April accident, it is "questionable" whether he would have been charged with driving under the influence of alcohol or driving while intoxicated. (GE 3; Tr. 113, 133-139)

Applicant stated, during his July 2008 AGA interview, that self-control was an issue in relation to alcohol and driving. However, he testified that it is no longer an issue. His practice now is to have a designated driver in any situation where he plans to consume alcohol, or to avoid alcohol if a designated driver is not available. He has followed that policy since 2008. Applicant's supervisor has worked with Applicant on a daily basis since February 2010. He has not seen Applicant drink alcohol at after-work social events, specifically six baseball games from spring to fall 2010. Applicant informed him that he did not want to drink because he had to drive home afterward. He also told the witness that he did not want to drink and drive because his security clearance application was under review and he had to change his behavior if he was to retain his security clearance. (Tr. 24-26, 37-39, 100-101, 112-114)

In 2007, Applicant was working on-site at a government agency. Work was slow, and Applicant asked his supervisor if he could take online courses during the work day. After checking with the second-line supervisor, Applicant's supervisor gave him permission to do so. For about one year between 2007 and 2008, Applicant charged non-contract-related training to his assigned government contract code. He testified that, with permission, he also did some of the training at his employer's location, rather than at his work site. Applicant estimated the cost of the training hours to be between $3,200 and $4,000. Later, Applicant's second-line supervisor was replaced. The new second-line supervisor was upset that Applicant was charging training to a government contract code, and forbade Applicant from doing so. Applicant discussed this event at the AGA interview. The interviewer reported that Applicant misrepresented his contract hours to his employer. Applicant denies this characterization, noting that he did it when he had permission and stopped when he was prohibited. Applicant testified that he worked extra hours to make up the time, but did not provide documentation to support his statement. (GE 3; Tr. 26-27, 101-106; 139-142, 148-150)

Applicant's witness became his supervisor in February 2010, and has no personal knowledge of the contract codes Applicant charged during 2007-2008. He testified that employees in Applicant's company receive training about the significance of time sheet entries, and that the hours listed on time sheets are billed directly to the government. Some contracts can be charged for training, and others cannot.

Employees are allowed to use charge codes for training only on an as-needed basis. Applicant told him that he had authorization to charge his training to a government contract code in 2007-2008. The witness stated Applicant's explanation is plausible. (Tr. 26-27, 32-36, 39-40)

Applicant committed security violations while working for his current employer. Government and company policy prohibited employees from bringing cell phones into the secured classified area. Applicant had received security training, and was aware that this action was a violation. Lockers were available outside the secured area for employees to store cell phones while in the secured area. Approximately 13 to 15 times from 2007 to 2008, he carried his cell phone into the secured area, because he forgot to remove it from his pocket. Whenever he realized he had carried his cell phone into a restricted area, he left and secured the phone in his desk. He testified that one supervisor he spoke with believed these violations did not have to be reported to the facility security officer (FSO). Applicant discussed his cell phone violations during his AGA interview in July 2008. He stated that the most recent occurrence had been in May 2008. The interviewer reported that Applicant stated he did not report these violations because he feared he would be reprimanded by his supervisor. Applicant denied this characterization at the hearing, stating he did not think it was a violation that had to be reported. Applicant now knows that he should have reported it. Applicant's supervisor testified that Applicant currently follows security protocols. Applicant's FSO submitted a statement that Applicant has not been cited for security violations while working for his current employer. (GE 3; AE A; Tr. 27-28, 106-109, 142-143)

In March 2009, Applicant was interviewed by an agent of the Office of Personnel Management (OPM) as part of his security investigation. Applicant discussed facts from his background and history, as well as his denial of SCI access by AGA. He told the agent that one of his AGA polygraphs, concerning his foreign travel, was inconclusive. He stated that another polygraph, in late 2007, concerned his employment and past drug use. Applicant told the agent that the AGA polygrapher thought Applicant was "hiding something," but that the polygrapher did not state anything more specific. (GE 8, 9, 10)

The SOR alleges that Applicant failed to disclose material facts to the OPM agent about why he was denied SCI access. Specifically, he did not disclose his failure to report taxable income, alcohol-related incidents, inaccurate time card entries, and security violations. Department Counsel submitted a Stipulation of Expected Testimony from the OPM agent, stating that she did not remember Applicant's security interview. She noted that she writes her reports based on notes taken during the interview. She has "no reason to believe that it does not accurately reflect in summary the information the Applicant provided to me on that date." She also noted that she "would not generally stop an Applicant from giving me details regarding any information discussed during a personnel background interview." (GE 10)

DOHA provided Applicant with a copy of the OPM agent's interview summary and requested that he review it for accuracy. He noted inaccuracies about some of his family's employment, and about whether or not he had informed his employer of his foreign contacts. He did not add or discuss any information regarding the issues alleged in the SOR. In his Answer to the SOR, Applicant denied that he failed to disclose relevant information, stating that he answered the questions the agent asked, and she did not ask him for further information about the AGA interview. (Answer; GE 8, 9)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.[5] Decisions must also consider the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy governing the grant or denial of access to classified information. In this case, the pleadings and the information presented require consideration of the security concerns and adjudicative factors addressed under Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest[6] for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.[7] A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.[8]

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[5] Directive at § 6.3.

[6] *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[7] *See Egan,* 484 U.S. at 528, 531.

[8] *See Egan;* Adjudicative Guidelines, ¶ 2(b).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

> 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Guideline E allegations implicate the following disqualifying conditions under AG ¶ 16:

> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
>
> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and
>
> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's 2009 security interview with an OPM agent raises issues under AG ¶ 16(b). The disqualifying condition requires deliberate intent by an applicant to provide false or misleading information about relevant facts. At his security interview, Applicant discussed the fact that he was denied SCI access, that his polygraphs by AGA were inconclusive, and mentioned several issues that he discussed during the AGA interviews. The OPM agent did not testify at Applicant's hearing, so she could not be questioned about whether she had tried to obtain additional facts from Applicant about

his AGA interviews. I cannot determine, based on the evidence presented, whether Applicant deliberately concealed security-relevant facts from the OPM agent. AG ¶ 16(b) does not apply, and mitigation is not required.

Applicant failed to report his earned income from selling tickets from 2000 to 2007 (excluding 1998 and 1999, when he did not earn a profit), implicating AG ¶ 16(c). According to his CPA, failure to report such income was a common error by taxpayers, especially during that time when internet income was a relatively new concept. Applicant's total taxable earnings from this venture generated only a small fraction of his total income. He remedied his error by reporting the income in 2008 and 2009, hiring a CPA for assistance, and filing amended returns for the years 2000 through 2007. He is unlikely to commit such an error in the future. AG ¶ 17(d) applies.

Over the period from 1996 to 2008, Applicant engaged in domestic violence against his wife, hired prostitutes, charged government contracts for work hours not related to the contract code, violated security regulations, and consumed excessive alcohol before driving. Applicant's conduct supports application of AG ¶ 16(c). In addition, Applicant did not tell his wife that he used the services of prostitutes from 2000 to 2004. He kept this secret for ten years, from 2000 to 2010. During six of those years, he held a clearance, and was vulnerable to exploitation. AG ¶ 16(e) applies.

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Under AG ¶ 17, the following mitigating conditions are relevant:

> (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;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Over a one-year period, Applicant charged non-contract-related time to a government contract. His conduct cannot be considered minor or insignificant. It did not happen in unique circumstances, but during his daily work. Although he states that he received permission from a supervisor, he had received training about billing hours to the government, and knew or should have known that taking non-contract-related courses could not be charged to a contract code. Applicant's actions reflect poorly on his judgment and trustworthiness. Applicant's security violations raise similar concerns. If he had forgotten to store his cell phone once or twice, it might be considered a

mistake. But Applicant had received training in security policy and to violate the rules 13 to 15 times displays a troubling nonchalance about security requirements that does not reflect good judgment or reliability. AG ¶ 17 (c) does not apply.

Applicant hired prostitutes and engaged in domestic violence against his wife. Both are serious violations that can be charged as criminal conduct. Here, the violations are from 7 to 15 years old. The distance in time, without recurrence, supports some mitigation. However, Applicant appears conflicted about the violence against his wife. He admitted hitting her in his Answer, but at the hearing, stated he pushed rather than hit his wife. Then he agreed that he did, in fact, hit her. His wife's denial that he engaged in physical violence, in light of her husband's admission, is not credible. Applicant's equivocation indicates he does not fully accept his past behavior, which undermines a claim of rehabilitation, and casts doubt on his trustworthiness. AG ¶ 17 (c) does not apply.

Applicant kept the knowledge of his use of prostitutes from his wife during the time that he held a top secret security clearance from 2004 to just one week before the hearing in 2010. He was vulnerable to manipulation based on his desire that his wife never learn of his conduct. Although he has now disclosed it to her and eliminated his vulnerability, he allowed himself to be vulnerable to coercion for the six years that he held a top secret clearance while he kept the secret from his wife. AG ¶ 17(e) cannot be applied.

AG ¶ 17(d) is relevant to Applicant's alcohol-related conduct. Over the 12 years from 1996 to 2008, Applicant decided to drive on least five occasions after consuming alcohol. The two 1990 events are distant in time. However, they contribute to a pattern of driving after consuming alcohol. Moreover, the three more recent events, in 2007 and 2008, show an increase in both amount consumed, and gravity of the subsequent accidents. In June 2007, he had three drinks in three hours. In March 2008, after three 12-ounce drinks, he fell asleep at the wheel, and almost hit a concrete barrier in the road. One month later, he consumed six eight-ounce drinks over six hours, again fell asleep at the wheel, and drove into oncoming traffic. Both serious accidents endangered not only his own life, but others' lives as well.

Applicant's June 2007 decision to drive after drinking occurred after he had completed two AGA interviews in March and May 2007 that focused on his conduct. In the May interview, he discussed his drinking and driving in the early 1990s. Yet he drank and drove the following month. In July 2007, he had a third AGA interview, and discussed his drinking and driving again. But only months later, in March and April 2008, he drank so much that he fell asleep at the wheel both times. Applicant failed to moderate his drinking behavior though he was on notice that it was an issue in the access decision.

As with his testimony about the domestic violence, Applicant's statements about his drinking habits were ambivalent. He testified that he knew he would not be

intoxicated after two drinks, and that he had not driven while intoxicated before 2008. Yet in all three incidents before 2008, he had consumed more than two drinks. The BAC chart shows that he may have been, at the least, impaired by alcohol in these incidents. The two accidents in 2008 were the most serious. In his Answer, Applicant vehemently denied being intoxicated during the two events in 2008. He then qualified that by saying he was not intoxicated "to a point of being significantly impacted." He then further qualified his statement by noting, "although I candidly may have been over the legal limit of 0.08" and admitted that he should not have been driving the night of April 2008. At the AGA interview, he admitted that the only reason he was not charged with DUI or DWI in April 2008, was because he had not been caught by police.

Applicant has taken positive steps by avoiding alcohol when he will be driving. He has not had alcohol-related incidents since April 2008. However, he told his supervisor he was avoiding alcohol in order to retain his security clearance, indicating his current caution is related more to the security process than a concern about his past dangerous decisions to drink and drive. Moreover, Applicant's past decisions to drive after drinking, and his ambivalence about how seriously impaired he was in 2008, raise questions as to his acknowledgement and understanding of his use of alcohol. I cannot confidently conclude Applicant will not decide to drink and drive in the future. His past actions reflect poorly on his judgment and reliability. AG ¶ 17(d) does not mitigate Applicant's alcohol-related conduct.

Whole-Person Analysis

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

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's mistake in failing to report certain income is mitigated. However, in evaluating the whole person in this case, I considered that Applicant has been involved in a number of high-risk activities that cast doubt on his suitability to hold a security clearance, including using prostitutes and driving after drinking excessive amounts of alcohol in 2008. He also demonstrated poor judgment when he subsequently equivocated about his level of intoxication; ignored policy and charged his own training to a government contract; repeatedly violated security rules; and failed to be candid about whether or not he hit his wife. All these behaviors raise serious questions about his reliability and trustworthiness. Most significantly, he left himself vulnerable to exploitation from 2004 to 2010 when he did not tell his wife about his activities with prostitutes. During those six years, he held a top secret security clearance. He placed his own desires above the Government's need for security clearance holders to avoid conduct that could place classified information in jeopardy.

Overall, Applicant's conduct raises serious doubts about his suitability for access to classified information. The record evidence fails to satisfy these doubts, which must be resolved in favor of the national security. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline E	AGAINST APPLICANT
Subparagraphs 1.a. – 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. – 1.f.:	Against Applicant
Subparagraphs 1.g. – 1.h.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge