



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



In the matter of:

Applicant for CAC Eligibility

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CAC Case No. 15-06064

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

06/14/2016

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Common Access Card (CAC) credentialing concerns raised under the alcohol abuse supplemental adjudicative standards. CAC eligibility is granted.

**Statement of the Case**

On November 9, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing alcohol abuse eligibility concerns. The DOD was unable to find that it was clearly consistent with the national interest to grant Applicant CAC eligibility. The action was taken under Homeland Security Presidential Directive – 12 (HSPD-12); the Adjudicative Standards found in DOD Instruction (DODI) 5200.46, *DOD Investigative and Adjudicative Guidelines for Issuing the CAC*, dated September 9, 2014; and the procedures set out in Enclosure 3 of DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

Applicant responded to the SOR on November 30, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 13, 2016, scheduling the hearing for February 4, 2016. The hearing was

convened as scheduled. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on February 12, 2016.

### **Findings of Fact**

Applicant is 61 years old. He served on active duty in the U.S. military from 1976 until he retired in 1996. He has worked as a driver of a passenger van on a military installation since 2009. He has an associate's degree. He has been married for more than 35 years. He has four adult children.<sup>1</sup>

Applicant was involved in alcohol-related incidents while in the military. There was no disciplinary action taken, but he received a mental health evaluation from a medical doctor in September 1988. He was diagnosed with alcohol abuse, episodic, and narcissistic and paranoid traits. He was determined to be fit for duty. He received another evaluation in September 1989 from a staff psychologist. He was diagnosed with alcohol abuse, in remission, and narcissistic and paranoid traits. The psychologist concluded that Applicant had stopped drinking and that he did "not suffer from major mental illness, and [was] fit for duty." Applicant's security clearance was revoked in 1989.<sup>2</sup>

Applicant did not have any additional alcohol problems during his military career. He was promoted and retired as a senior noncommissioned officer. He did not drink between about 1988 and 2002.<sup>3</sup>

Applicant was arrested in July 2008 and December 2011 after domestic incidents with his oldest son. He had been drinking before both incidents. In 2008, he was charged with appearing in an intoxicated condition. He pleaded guilty, paid a fine, and completed six months of unsupervised probation. In 2011, he was charged with domestic abuse battery. He pleaded guilty through a pretrial diversion program. He received probation for a year and community service, and he was required to attend anger management classes and complete a substance abuse evaluation. He completed all the terms of the diversion program, and the charge was dismissed.<sup>4</sup>

Applicant stated that he still drinks responsibly and in moderation. His relationship with his son is better. His son is 26 years old and a college graduate working as an engineer. There has been no additional police involvement.<sup>5</sup>

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<sup>1</sup> Tr.at 14-21; Applicant's response to SOR; GE 1-3.

<sup>2</sup> Tr. at 14, 16-18, 27, 32; Applicant's response to SOR; GE 4-6.

<sup>3</sup> Tr. at 14-17, 27; Applicant's response to SOR; GE 5, 6.

<sup>4</sup> Tr. at 18-28, 32; Applicant's response to SOR; GE 1, 3, 7, 8.

<sup>5</sup> Tr. at 20, 27-29, 34; Applicant's response to SOR.

## **Policies**

Every CAC eligibility decision must be a fair and impartial overall commonsense decision based on all available evidence, both favorable and unfavorable. The specific issues raised are listed in DODI 5200.46, Enclosure 4, Appendix 1, Basic Adjudicative Standards, and Appendix 2, Supplemental Adjudicative Standards. The overriding factor for all of these conditions is unacceptable risk. The decision must be arrived at by applying the standard that the grant of CAC eligibility is clearly consistent with the national interest.

The objective of the CAC credentialing process is the fair-minded commonsense assessment of a person's life to make an affirmative determination that the person is an acceptable risk to have CAC eligibility. Each case must be judged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain CAC eligibility.

Factors to be applied consistently to all information available include: (1) the nature and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the recency and frequency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) contributing external conditions; and (6) the absence or presence of efforts towards rehabilitation. (DODI 5200.46, Enclosure 4, ¶ 1) In all adjudications, the protection of the national interest is the paramount consideration. Therefore, any doubt concerning personnel being considered for CAC eligibility should be resolved in favor of the national interest.

## **Analysis**

### **Alcohol Abuse**

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 4 provides:

A CAC will not be issued to a person if there is a reasonable basis to believe, based on the nature or duration of the individual's alcohol abuse without evidence of substantial rehabilitation, that issuance of a CAC poses an unacceptable risk.

a. An individual's abuse of alcohol may put people, property, or information systems at risk. Alcohol abuse can lead to the exercise of questionable judgment or failure to control impulses, and may put people, property, or information systems at risk, regardless of whether he or she is

diagnosed as an abuser of alcohol or alcohol dependent. A person's long-term abuse of alcohol without evidence of substantial rehabilitation may indicate that granting a CAC poses an unacceptable safety risk in a U.S. Government facility.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards lists several conditions that could raise a CAC concern and may be disqualifying. The following is potentially applicable in this case:

4.b.(1) A pattern of alcohol-related arrests.

Applicant had alcohol-related incidents in the 1980s, in 2008, and in 2011. The above disqualifying condition applies.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards lists circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk. The following may be relevant:

4.c.(1) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an abuser of alcohol).

Applicant has not had an alcohol-related incident in more than four years. He drinks responsibly and in moderation. The above mitigating circumstance is established.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Alcohol Abuse:	For Applicant
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Subparagraphs 1.a-1.c:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant CAC eligibility. CAC eligibility is granted.

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Edward W. Loughran  
Administrative Judge