

KEYWORD: CAC

DIGEST: Applicant, who is 55 years old, was arrested and charged with felony first-degree assault, misdemeanor second-degree assault, and misdemeanor reckless endangerment in 2016. At that time, he was living with his girlfriend and their two-year-old child. He became angry when he thought his girlfriend hid his car keys. He climbed on top of her in bed and choked her for about ten seconds. He allegedly said, "I should kill you now." She told police she feared he would kill her and there had been other unreported incidents of domestic violence. The charges were dismissed and expunged from his record. He provided a statement of his community involvement. Adverse decision affirmed.

CASENO: 17-01458.a2

DATE: 02/14/2019

DATE: February 14, 2019

In Re:)	
)	
-----)	CAC Case No. 17-01458
)	
Applicant for CAC Eligibility)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman , Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant eligibility for Common Access Card (CAC) credentialing. On November 9, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—Criminal or Dishonest Conduct concerns raised under the adjudicative standards in the appendices of DoD Instruction 5200.46 (Sep. 9, 2014) (Instruction). Applicant requested a decision on the written record. On June 28, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone denied Applicant’s request for CAC eligibility. Applicant appealed the decision pursuant to Instruction, Enclosure 4 ¶ 6.

On October 29, 2018, we remanded the case to the Judge to correct an identified error. On November 16, 2018, the Judge issued a Remand Decision in which he again denied Applicant’s request for a CAC. Applicant appealed pursuant to DoD Directive 5220.6.

Applicant raises the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Finding of Fact and Analysis

Applicant, who is 55 years old, has been working in a position that requires CAC eligibility since late 2015. He is retired from the Air National Guard. The SOR alleges that Applicant was arrested and charged with felony first-degree assault, misdemeanor second-degree assault, and misdemeanor reckless endangerment in 2016. At that time, he was living with his girlfriend and their two-year-old child. He became angry when he thought his girlfriend hid his car keys. He climbed on top of her in bed and choked her for about ten seconds. He allegedly said, “I should kill you now.” Decision at 3. She told police she feared he would kill her and there had been other unreported incidents of domestic violence. The charges were dismissed and expunged from his record. He provided a statement of his community involvement.

Other than indicating the charges were dismissed, Applicant did not provide information refuting them or addressing the underlying conduct, which is indicative of a significant inability to control impulsive or violent behavior. His alleged conduct was not minor and occurred less than two years ago. He did not provide information establishing rehabilitation or remorse. Applicant’s response did not sufficiently address the unacceptable risk concerns.

Discussion

Applicant’s appeal brief draws our attention to his evidence of good character and community involvement. In addition, it contains statements and documents that were not previously submitted to the Judge for consideration. The Appeal Board may not receive or consider new evidence. Directive ¶ E3.1.29

Applicant has failed to establish that the Judge committed any harmful error. In light of the record as a whole, we conclude that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board