

KEYWORD: CAC

DIGEST: In a CAC adjudication, “the overriding factor . . . is unacceptable risk.”. The Supplemental Adjudicative Standards, which apply in this case, are designed to ensure that the issuance of a CAC does not pose such a risk. The Judge specifically found that, while Applicant did not act responsibly in handling her finances, her delinquent taxes created no indication of fraud. The gravamen of Paragraph 2 of the Supplemental Adjudicative Standards is criminal or dishonest conduct. As stated in Instruction, “financial debt should not in and of itself be cause for denial” of a CAC. To be a basis for a CAC denial, the financial irresponsibility should raise the questions or risks identified in that standard. In this case, the Judge erred by failing to explain how Applicant’s delinquent taxes raised questions about her honesty or put people, property, or information systems at risk. As a result of this error, the Judge failed to consider an important aspect of the case and failed to articulate a satisfactory explanation for her conclusion. Adverse decision remanded.

CASENO: 15-00895.a1

DATE: 11/16/2016

DATE: November 16, 2016

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In Re:)	
)	
-----)	CAC Case No. 15-00895
)	
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 May 22, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—criminal and 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 July 25, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant’s request for CAC eligibility. Applicant appealed pursuant to Instruction, Enclosure 4 ¶ 6.

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

The Judge’s Findings of Fact

Applicant is 61 years old and has worked for her current employer since May 2014. She served in the U.S. military for about two months in 1983 and received a general discharge. She is married and has a history of financial problems that she attributed to unforeseen mortgage and tax increases. She and her husband filed Chapter 13 bankruptcy in 2007, but she was unable to make the payments to the bankruptcy trustee.

When she completed a Declaration for Federal Employment, Applicant disclosed that she had delinquent Federal taxes totaling about \$9,200 for 2005 to 2011. In her Answer to the SOR, she noted that she had a repayment plan with the Internal Revenue Service (IRS) to pay \$75 a month toward the delinquent taxes. The Offer in Compromise consists of payments for 24 months and amounts to 20% of the total debt.

In her Response to Department Counsel’s File of Relevant Material (FORM), Applicant provided a letter from the IRS responding to her inquiry concerning her total delinquent tax debt. The IRS proposal established a monthly payment of \$203 beginning in January 2016, but the voucher for making those payments appeared only to address the taxes for 2010. No evidence was presented of any payments to the IRS.

The Judge’s Analysis

The Judge concluded that Applicant has a significant amount of delinquent taxes for multiple years. Despite her promise to initiate a repayment plan with the IRS, Applicant has not established that she entered into such an agreement or made any payments. While there is no indication of fraud, Applicant has not presented sufficient evidence that she has been responsible in handling her finances. Mitigating circumstances were not established.

Discussion

Instruction, Enclosure 4 ¶ 6 provides that appeals to DOHA of CAC cases are accorded the established administrative procedures set out in DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992, as amended) (Directive). Since its inception, the Appeal Board has been issuing decisions that interpret and analyze the administrative procedures set forth in the Directive. Because those same administrative procedures are used in appeals of CAC revocations, our decisions interpreting and analyzing those procedures apply equally here for reviewing a judge's actions, rulings, findings, and conclusions in CAC cases.¹

In her appeal, Applicant contends that her conduct does not involve questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. She points out that she has never attempted to hide or be untruthful about her financial situation.

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

In her decision, the Judge cites to the applicable Supplemental Adjudicative Standards that state:

2. A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual's criminal or dishonest conduct, that issuance of a CAC poses an unacceptable risk.

a. An individual's conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about his or her reliability or trustworthiness and may put people, property, or information systems at risk. An individual's past criminal conduct or dishonesty may put people, property, or information systems at risk.

¹ Decisions of the Appeal Board are available to the public at DOHA's website: <http://www.dod.mil/dodgc/doha/>.

b. Therefore, conditions that may be disqualifying include:

* * *

(6) Financial irresponsibility may raise questions about the individual’s honesty and put people, property, or information systems at risk, although financial debt should not in and of itself be cause for denial.²

In a CAC adjudication, “the overriding factor . . . is unacceptable risk.” Instruction, Enclosure 4 ¶ 1(b). The Supplemental Adjudicative Standards, which apply in this case, are designed to ensure that the issuance of a CAC does not pose such a risk.

The Judge specifically found that, while Applicant did not act responsibly in handling her finances, her delinquent taxes created no indication of fraud. The gravamen of Paragraph 2 of the Supplemental Adjudicative Standards is criminal or dishonest conduct. As stated in Instruction, Enclosure 4, Appendix 2 ¶ 2b(6), “financial debt should not in and of itself be cause for denial” of a CAC. To be a basis for a CAC denial, the financial irresponsibility should raise the questions or risks identified in that standard. In this case, the Judge erred by failing to explain how Applicant’s delinquent taxes raised questions about her honesty or put people, property, or information systems at risk. As a result of this error, the Judge failed to consider an important aspect of the case and failed to articulate a satisfactory explanation for her conclusion.

Pursuant to Directive ¶ E3.1.33.2, the Board remands the case to the Administrative Judge to correct this error and issue an new decision consistent with the requirements of Directive ¶ E3.1.35.

Order

The Decision is **REMANDED**.

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

Signed: James E. Moody
James E. Moody
Administrative Judge

² Instruction, Enclosure 4, Appendix 2.

Member, Appeal Board

Signed: James F. Duffy _____

James F. Duffy
Administrative Judge
Member, Appeal Board