

KEYWORD: CAC

DIGEST: Applicant was fired from a job in 2016 for poor performance. In completing her DFE, Applicant answered “no” to a question about whether, within the previous five years, she had been fired from any job for any reason. This answer was false. Applicant stated in her response to the SOR that she had been involuntarily terminated from the job but that she was not given a reason. She also stated that her omission from her DFE was due to oversight. Adverse decision affirmed.

CASENO: 16-03527.a1

DATE: 06/11/2018

DATE: June 11, 2018

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In Re:)	
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-----)	CAC Case No. 16-03527
)	
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 January 5, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—Misconduct or Negligence in Employment concerns and Material, Intentional False Statement, Deception, or Fraud 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 March 13, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 erred in finding that her omission from a Declaration For Federal Employment (DFE) was deliberate, thereby rendering her adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact and Analysis

Applicant’s husband was killed in action while serving in the U.S. military. She was fired from a job in 2016 for poor performance. In completing her DFE, Applicant answered “no” to a question about whether, within the previous five years, she had been fired from any job for any reason. This answer was false. Applicant stated in her response to the SOR that she had been involuntarily terminated from the job but that she was not given a reason. She also stated that her omission from her DFE was due to oversight.

Applicant is active in various school programs and has received recognition for her activities as a volunteer. She submitted numerous letters of recommendation from various members of the community, as well as letters of appreciation she has received due to her work with the military. Her recent performance evaluation was “outstanding.” Decision at 2.

The Judge’s Analysis

The Judge resolved one allegation in Applicant’s favor, which addressed the job termination itself. The Judge stated that there was insufficient evidence in the file about this matter to support an adverse determination. However, she found against Applicant on the allegation regarding her omission. She stated that Applicant’s claim that the omission was simply an oversight was not credible, noting that the question was clearly written. She also stated that the job termination and the DFE answer were only about a month apart, making it unlikely that she forgot about it or was otherwise mistaken. The Judge concluded that sufficient time has not passed to establish mitigation for this infraction.

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* (January 1991, as amended). 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 cases, our decisions interpreting and analyzing them apply equally here for reviewing a Judge's actions, rulings, findings, and conclusions in accordance with the Instruction. *See, e.g.*, CAC Case No. 15-02333 at 3 (App. Bd. Nov. 16, 2016). 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.

Applicant states first of all that, while the Judge's decision was not unjust, she wanted to submit additional evidence. We are not permitted to consider new evidence on appeal. Directive ¶ E3.1.29. She reiterates the contention in her SOR response that her omission was an oversight. However, after considering the record as a whole, we conclude that the Judge's finding was based upon substantial record evidence. CAC Case No. 16-00427 at 3 (App. Bd. Aug. 11, 2017).

Applicant cites to evidence that she is a single mother who has provided valuable service to the U.S. She states that she is in danger of losing her job. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018); CAC Case No. 16-01524 at 5 (App. Bd. Apr. 19, 2018). The Directive does not permit us to consider the impact that an adverse decision might have upon an applicant. *See, e.g.*, ISCR Case No. 17-01492 at 2 (App. Bd. Apr. 30, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's conclusion that granting Applicant CAC eligibility poses an unacceptable risk is sustainable on this 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