

KEYWORD: CAC

DIGEST: The application of the wrong standard raises due process concerns and warrants corrective action. Adverse decision remanded.

CASENO: 17-01458.a1

DATE: 10/29/2018

DATE: October 29, 2018

In Re:

Applicant for CAC Eligibility

)
)
)
) CAC Case No. 17-01458
)
)
)
)

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 pursuant to Instruction, Enclosure 4 ¶ 6.

In analyzing the concerns in Applicant’s case, the Judge applied the wrong standard. Both in the Policies section of the Decision as well as in the Conclusion, the Judge cited to the “clearly consistent with the national interest” standard required for security clearance determinations.¹ Also, the Policies section contains the following language: “In all adjudications, the protection of the national interest is the paramount consideration. Therefore, any doubt concerning an applicant’s CAC eligibility should be resolved in favor of the national interest.” In a CAC case, however, the appropriate standard is whether the applicant’s conduct poses an “unacceptable risk.”² The application of the wrong standard raises due process concerns and warrants corrective action. Given these circumstances, the best resolution is to remand the case to the Judge for correction of the identified error and issuance of a new decision consistent with the requirements of the Instruction.

¹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²“[T]he overriding factor . . . is unacceptable risk.” Instruction, Encl. 4 ¶ 1(b). “The determination will be unfavorable . . . when there is a reasonable basis to conclude that derogatory information or conduct relating to the . . . CAC credentialing standards presents an unacceptable risk for the U.S. Government.” *Id.* at ¶ 4.

Order

The Decision is **REMANDED**.

Signed: Michael Y. Ra'anan
Michael Y. 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