



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



In the matter of:)	
)	
)	CAC Case No. 17-00458
)	
Applicant for CAC Eligibility)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2018

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the Common Access Card (CAC) credentialing concerns raised under supplemental adjudicative standards (SAS) for criminal or dishonest conduct and alcohol abuse. The concern for misconduct or negligence in employment was unfounded. CAC eligibility is granted.

Statement of the Case

On May 31, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing credentialing concerns for CAC eligibility under Homeland Security Presidential Directive – 12 (HSPD-12). The DOD was unable to find that granting Applicant CAC eligibility did not pose an unacceptable risk.¹ The concerns raised under the Adjudicative Standards of DODI 5200.46 are SAS ¶ 2.a, criminal or dishonest conduct; ¶ 4.a, alcohol abuse; and ¶ 1.a, misconduct or negligence in employment.

¹ The action was taken under 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 June 23, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 20, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2018, scheduling the hearing for March 14, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and after the hearing, submitted documents marked as Applicant Exhibits (AE) A-D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 22, 2018.

Findings of Fact

Applicant is a 35-year-old military-vehicle mechanic for a government contractor since 2014. In 2013, Applicant was terminated from a previous job as a result of a 2013 driving while intoxicated (DWI) conviction. He graduated from high school in 2001. He was married in 2010 and divorced in 2013. He has three children, two of whom currently live with him. He lives with his girlfriend and cares for her three children as well. He currently holds CAC eligibility for access to a government facility.

The SOR alleges a 2001 arrest and conviction for DWI; a 2002 arrest for possession of a controlled substance that was not prosecuted; a 2010 arrest and conviction for drunk in public; a 2011 arrest for assault by physical contact; a 2013 DWI arrest and conviction; and a 2013 citation for driving on an invalid license. The alcohol-related allegations were cross-alleged under the standard for alcohol abuse, and Applicant's job loss due to his 2013 DWI was alleged under the standard for misconduct or negligence in employment. Applicant admitted all of the allegations except he noted that his 2002 possession charge was "no billed" by the grand jury.

Applicant was arrested in 2001 for DWI when he was 18 years old. He attended Alcoholics Anonymous meetings and a Mothers Against Drunk Driving course mandated by his terms of probation. In 2002, he was arrested for possession of cocaine, but the case was "no billed" and he was not prosecuted. He admitted first using marijuana while in seventh grade, and he stopped in 2010. He also used cocaine once when he was 15 years old.

In 2010, Applicant was arrested at a resort for public intoxication after getting into a dispute with another person. In 2011, Applicant was arrested for assault after a dispute with his mother's boyfriend.

In 2013, Applicant was arrested on New Year's Day for his second DWI. Applicant was convicted and served 15 days in jail. As a result of his conviction, he was terminated from a job he held since graduating from high school because he was required to install an alcohol-interlock device on his work vehicle. His wife divorced him and he lost the home he was renting because of his unemployment. While moving from his home, he was cited for driving on a suspended driver's license. While serving his sentence in jail, Applicant came to the realization that his drinking had led to serious consequences during his life. He vowed to stop drinking and has remained abstinent since 2013.

Applicant was evaluated for substance abuse counseling on March 23, 2018, using the Substance Abuse Screening Inventory (SASSI-4). Based on his history of alcohol use, he was assessed as having a high probability of a substance-use disorder. However, the licensed evaluator noted that the SASSI does not yield a clinical diagnosis, but rather a screening result that can be used as one piece of information when conducting clinical diagnostic evaluations. Based on the DSM-V Diagnostic Criteria for Substance Use Disorders, Applicant does not display any symptoms of having a substance-use disorder. The evaluator recommended that Applicant need not seek counseling unless he is unable to maintain abstinence. To date, he remains abstinent.

Applicant no longer stays at events where alcohol is present. He expressed shame for his past behavior and acknowledged how it adversely affected him and his family. He submitted character letters that generally support his abstinence from alcohol, renewed lifestyle, honesty, work ethic, responsible behavior at work and home, and sincere remorse for his past behavior. Applicant's work site manager has known him for several years and noted that he is a reliable employee who does not pose a threat to anyone.

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.

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)

Analysis

Criminal or Dishonest Conduct

DODI 5200.46, Appendix 2 to Enclosure 4, SAS ¶ 2 provides:

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 or dishonest conduct may put people, property, or information systems at risk.

SAS ¶ 2.b lists several conditions that could raise a CAC concern and may be disqualifying. The following are potentially applicable in this case:

(2) charges or admission of criminal conduct relating to the safety of people and proper protection of property or information systems, regardless of whether the person was formally charged, formally prosecuted, or convicted; and

(5) actions involving violence or sexual behavior of a criminal nature that poses an unacceptable risk if access is granted to federally-controlled facilities and federally-controlled information systems.

Applicant has a history of criminal conduct including assault and DWI. SAS ¶¶ 2.b (2) and (5) apply.

SAS ¶ 2.c provides circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk. Relevant conditions include:

(1) the behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur;

(2) charges were dismissed or evidence was provided that the person did not commit the offense and details and reasons support his or her innocence; and

(4) evidence has been supplied of successful rehabilitation, including but not limited to remorse or restitution, job training or higher education, good employment record, constructive community involvement, or passage of time without recurrence.

Applicant's last criminal offense was in 2013. At that time, he contemplated how continued abuse of alcohol adversely affected him and his future. He acknowledged his past behavior and took action to avoid future problems. He stopped drinking in 2013. His testimony and those of his character references support his sobriety and changed behavior. He has a good work history, and but for his 2013 DWI, he would likely still be employed with the same employer since graduating from high school. However, as a result of his DWI and the need for an alcohol-interlock device on a company vehicle, he lost his long-held job. In 2014, he found a new position that he has since held without incident.

Applicant was evaluated for a substance-use disorder and advised to continue his abstinence and only seek counseling if he had difficulty complying. Applicant has remained sober for over five years and has not had a recurrence of criminal or alcohol-related

incidents. I have sufficient evidence to determine that Applicant's criminal and alcohol-related misconduct is unlikely to recur and that his alcohol use is now under control. Applicant provided sufficient documentary evidence showing that he does not display any symptoms of having a substance-use disorder and that counseling is not recommended unless he is unable to maintain abstinence.

Alcohol Abuse

DODI 5200.46, App. 2 to Encl. 4, SAS ¶ 4 describes the concern:

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.

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, App. 2 to Encl. 4, SAS ¶ 4b, lists conditions that raise a CAC concern and may be disqualifying:

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

As described above, Applicant has a history of alcohol-related incidents resulting in criminal conduct. SAS ¶ 4b(1) applies because Applicant has a pattern of alcohol-related arrests.

DODI 5200.46, App. 2 to Encl. 4, SAS ¶ 4c, lists three conditions that could mitigate concerns about "whether there is a reasonable basis to believe there is an unacceptable risk":

- (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);
- (2) The individual is participating in counseling or treatment programs, has no history of previous treatment or relapse, and is making satisfactory progress; and
- (3) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare. He or she has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as

participation in an alcohol treatment program. The individual has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has acknowledged his alcohol problems and testified to self-abstaining from alcohol use since 2013. His character letters, medical evaluation, and testimony support his abstinence for over five years, remorse for his past behavior, and a change in lifestyle. As stated above, Applicant was evaluated for a substance-use disorder and advised to continue his abstinence from alcohol and to seek counseling only if he had difficulty complying. I find that SAS ¶¶ 4c(1) and (2) apply, and 4c(3) partially applies.

Misconduct or Negligence in Employment

DODI 5200.46, App. 2 to Encl. 4, SAS ¶ 1 describes concerns that arise from misconduct or negligence in employment. The SOR allegations raise criminal and alcohol related issues that resulted in termination from employment, but did not arise while at work nor were they directly related to actions during work. Based on the facts of this case, I determine that Applicant's conduct resulted in his termination, but did not directly implicate standards described under SAS ¶ 1. Therefore, SOR ¶ 3.a is unfounded.

I have carefully considered all of the facts of this case and applied the adjudicative and whole-person standards in DODI 5200.46. Based on the record and Applicant's testimony, there is sufficient evidence to find that the behavior leading to the denial of Applicant's CAC eligibility has been overcome and that he no longer poses an unacceptable risk.

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, Criminal or Dishonest Conduct:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Alcohol Abuse:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Misconduct or Negligence in Employment:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances, granting Applicant CAC eligibility does not pose an unacceptable risk. CAC eligibility is granted.

Gregg A. Cervi
Administrative Judge