



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



In the matter of: )  
)  
) CAC Case No. 18-00295  
)  
Applicant for CAC Eligibility )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

August 1, 2019

**Decision**

TUIDER, Robert, Administrative Judge:

Criminal or dishonest conduct concerns are mitigated. Common access card (CAC) credentialing eligibility is granted.

**Statement of the Case**

On October 17, 2017, Applicant submitted a Questionnaire for Non-Sensitive Positions (SF 85). On July 20, 2018, the Department of Defense (DOD) issued a statement of reasons (SOR) to Applicant detailing eligibility concerns for CAC credentialing pursuant to Homeland Security Presidential Directive – 12, *Policy for a Common Identification Standard for Federal Employees and Contractors*, August 27, 2004 (HSPD-12). DOD was unable to find that it was clearly consistent with the national interest to grant Applicant CAC eligibility.

This action is based on the *Supplemental Adjudicative Standards (SAS)* found in DOD Instruction (DODI) 5200.46, *DOD Investigative and Adjudicative Guidance for Issuing the Common Access Card*, dated September 9, 2014, and the procedures set forth in Enclosure (Encl.) 3 of DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The concerns raised are “criminal or dishonest conduct,” under DODI 5200.46 and in DODI 5200.46, Appendix (App.) 2 to Encl. 4, SAS ¶¶ 1 and 2.

On August 10, 2018, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated August 24, 2018, was provided to her by letter on August 27, 2018. Applicant received the FORM on September 5, 2018. She was afforded a period of 45 days to file objections and supply additional information for consideration. Applicant timely submitted a two-page response to the FORM. On December 20, 2018, the case was assigned to me. Department Counsel submitted six documents with her FORM, marked as Items 1 through 6. Applicant's response to the FORM is marked Item 7. Items 1 through 7 are admitted into evidence.

### **Findings of Fact**

Applicant is a 28-year-old mechanic employed at a military installation since August 2017. She has been steadily employed since at least 2012 holding multiple jobs. Applicant was awarded an associate in applied science degree in avionics technology in May 2015. She also holds an active medical certificate third class and student pilot certificate.

### **Criminal or Dishonest Conduct**

CAC eligibility concerns were identified as a result of Applicant's five arrests involving physical altercations. In her SOR Answer, Applicant admits each of the allegations. These allegations are further established by the evidence contained in the FORM. (SOR ¶¶ 1.a – 1.e; Items 1 - 6)

A summary of Applicant's criminal conduct follows: (1) in March 2011 (age 21), arrested and charged with assault-domestic violence 3<sup>rd</sup>. Charge dismissed; (2) in November 2011 (age 21), arrested and charged with harassment. Charge dismissed; (3) in December 2011 (age 21), arrested and charged with simple assault, harassment, and domestic violence. Pled guilty to disorderly conduct and sentenced to six months of confinement (suspended), ordered to pay court costs and fines, and complete two years of unsupervised probation; (4) in September 2012 (age 21), arrested and charged with disorderly conduct and harassment after bench warrant had been issued. Charge dismissed; (5) in March 2015 (age 24), arrested and charged with assault 3<sup>rd</sup>, obstruction of government operation, and disorderly conduct. Pled guilty to charges and sentenced to six months of confinement (suspended), ordered to pay court costs and fines, and complete two years of unsupervised probation. (SOR ¶¶ 1.a – 1.e; Items 1 - 6)

In 2017, Applicant completed anger management – domestic violence group counseling following her March 2015 arrest. She is in a stable relationship, has not been involved in further criminal conduct, and no longer associates with individuals involved in her past criminal conduct. (Item 2) Applicant has no record of disciplinary actions in her employee file, has received favorable performance evaluations, and was awarded her associate's degree. Lastly, and on her own initiative, she completed the requirements to receive a medical certificate third class and student pilot certificate to further assist pilots in flight. Applicant requested to maintain her CAC eligibility to

continue providing “excellent aircraft maintenance for the men and women” on her military installation. (Item 2) Post-FORM, Applicant submitted a comprehensive attendance log documenting her anger management - domestic violence counseling sessions completed in 2017. (Item 7)

## **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, Encl. 4, App. 1, *Basic Adjudicative Standards*, and App. 2, SAS. The overriding factor for all of these conditions is unacceptable risk. The decision must be arrived at by applying the standard that the grant of CAC eligibility is clearly consistent with the national interest.

The objective of the CAC credentialing process is the fair-minded commonsense assessment of a person’s life to make an affirmative determination that the person is an acceptable risk to have CAC eligibility. Each case must be judged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain CAC eligibility. In all adjudications, the protection of the national interest is the paramount consideration. Therefore, any doubt concerning personnel being considered for CAC eligibility should be resolved in favor of the national interest.

## **Analysis**

### **Criminal or Dishonest Conduct**

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

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 . . . , 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.

DODI 5200.46, App. 2 to Encl. 4, SAS ¶ 2 indicates conditions that may be disqualifying in this case:

b. Therefore, conditions that may be disqualifying include:

(1) A single serious crime or multiple lesser offenses which put the safety of people at risk or threaten the protections of property or information. . . . ;

(2) Charges or admissions 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 . . . of a criminal nature that poses an unacceptable risk if access is granted to federally-controlled facilities and federally-controlled information systems.

Based on the evidence contained in the record concerning Applicant's criminal or dishonest conduct, SAS ¶¶ 2.b (1), (2), and (5) are applicable. Further review is necessary.

SAS ¶¶ 2.c lists three circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk:

(1) The behavior happened so long ago, was minor in nature, or happened under such 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.

The record supports full application of SAS ¶¶ 2.c (1), (2), and (4). Four of Applicant's arrests occurred when she was 21 years old, and her last arrest in 2015 occurred when she was 24 years old. The charges following three of her arrests were dismissed. Her two convictions were pursuant to her pleading guilty. Applicant has accepted responsibility for her actions and has not attempted to minimize her culpability.

Applicant has made a concerted effort to make positive changes in her life and refrain from criminal conduct since her last arrest in March 2015. She was awarded her associate's degree in May 2015, obtained an active medical certificate third class and student pilot certificate, and has avoided any further criminal conduct. She is no longer on probation and completed all of her court-ordered counseling requirements in 2017. Since starting her current job in August 2015, Applicant has received favorable performance evaluations and has no record of disciplinary actions in her employee file. Criminal or dishonest conduct concerns are mitigated.

## Whole-Person Assessment

DODI 5200.46, Encl. 4, *CAC Adjudicative Procedures*, ¶ 1, *Guidance For Applying Credentialing Standards During Adjudication* provides the following mitigating factors:

As established in [HSPD-12], credentialing adjudication considers whether or not an individual is eligible for long-term access to federally controlled facilities and/or information systems. The ultimate determination to authorize, deny, or revoke the CAC based on a credentialing determination of the PSI must be made after consideration of applicable credentialing standards in [U.S. Office of Personnel Management Memorandum, *Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12*, July 31, 2008].

b. Each case is unique. Adjudicators must examine conditions that raise an adjudicative concern, the overriding factor for all of these conditions is unacceptable risk. Factors to be applied consistently to all information available to the adjudicator are:

(1) The nature and seriousness of the conduct. The more serious the conduct, the greater the potential for an adverse CAC determination.

(2) The circumstances surrounding the conduct. Sufficient information concerning the circumstances of the conduct must be obtained to determine whether there is a reasonable basis to believe the conduct poses a risk to people, property, or information systems.

(3) The recency and frequency of the conduct. More recent or more frequent conduct is of greater concern.

(4) The individual's age and maturity at the time of the conduct. Offenses committed as a minor are usually treated as less serious than the same offenses committed as an adult, unless the offense is very recent, part of a pattern, or particularly heinous.

(5) Contributing external conditions. Economic and cultural conditions may be relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk if the conditions are currently removed or countered (generally considered in cases with relatively minor issues).

(6) The absence or presence of efforts toward rehabilitation, if relevant, to address conduct adverse to CAC determinations.

(a) Clear, affirmative evidence of rehabilitation is required for a favorable adjudication (e.g., seeking assistance and following professional

guidance, where appropriate; demonstrating positive changes in behavior and employment).

(b) Rehabilitation may be a consideration for most conduct, not just alcohol and drug abuse. While formal counseling or treatment may be a consideration, other factors (such as the individual's employment record) may also be indications of rehabilitation.

My comments under the criminal or dishonest conduct analysis are incorporated into this whole-person assessment. Applicant is a 28-year-old mechanic and has been employed at a military installation for almost two years. She is making a contribution towards the national defense. Her arrests occurred when she was relatively young. The evidence suggests that Applicant has come to grips with the fact that her past conduct is unacceptable, and she has successfully avoided engaging in any further criminal conduct.

I have carefully considered the facts of this case and applied the standards in DODI 5200.46. For reasons discussed above, Applicant's request for CAC eligibility is granted.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Encl. 3 of the Directive, are:

Paragraph 1, Criminal or Dishonest Conduct:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant CAC eligibility. CAC eligibility is granted.

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ROBERT TUIDER  
Administrative Judge