



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



In the matter of:	)	
	)	
	)	CAC Case No. 18-00533
	)	
Applicant for CAC Eligibility	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

02/13/2019

**Decision**

Goldstein, Jennifer I., Administrative Judge:

**Statement of the Case**

On July 20, 2018, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for Common Access Card (CAC) issuance pursuant to Homeland Security Presidential Directive–12 (HSPD-12) because it found it was an unacceptable risk to grant Applicant CAC eligibility. The action is based on the Adjudicative Standards found in DoD Instruction 5200.46, *DoD Investigative and Adjudicative Guidelines for Issuing the Common Access Card*, dated September 9, 2014, and made pursuant to 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). The concerns raised under the Adjudicative Standards of DoDI 5200.46 are: paragraph 1.a - misconduct or negligence in employment; and paragraph 3.a - material, intentional false statement, deception, or fraud.

Applicant answered the SOR on July 18, 2018 (Answer), and requested a decision based on the record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on September 26, 2018. Applicant received it on October 1, 2018. The Government’s evidence is identified as Items 1 through 5. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of her receipt of the FORM. On November 14, 2018, Applicant submitted a 4-page response to the FORM (Response). Items 1 through 5 and the Response are admitted into the record without objection. The case was assigned to me on January 16, 2019.

### **Findings of Fact**

Applicant is 28 years old. She is a high school graduate. She has worked for her employer since August 2017. (Item 3.)

On June 8, 2017, Applicant was involuntarily terminated by her prior employer for stealing money from another employee's purse. She indicated she "immediately regretted" her decision and "tried to put the money back" but was caught in the act. A disciplinary action form from Applicant's former employer documents the theft. (Item 5; Answer.)

The SOR alleged that Applicant's material, intentional false statement, deception, or fraud raised concerns under DoDI 5200.46, Enclosure 4, Appendix 2, *Supplemental Adjudicative Standards*. Specifically, it alleged that Applicant falsified material facts on a Declaration for Federal Employment form (306), signed by Applicant on September 26, 2017, when she failed to disclose she was discharged by her employer in June 2017. She answered "No" on that declaration to the question that asked whether in the past five years she had been fired, quit after being told she would be fired, or left a job by mutual agreement because of specific problems. She admitted that she "didn't think [she] would get the job if [she] checked yes." (Item 4; Answer.)

Applicant expressed remorse for being dishonest. She has worked hard to be a top performer for her current employer. (Answer.)

Applicant presented four letters of recommendation from supervisors and coworkers. The first letter indicated that Applicant was recognized as the employee of the month during her first 90 days of employment and is trustworthy. Her program manager believes she has dedication, character, and dependability required for the job. Her deputy program manager finds her character to be "beyond reproach." Her team lead believes Applicant to be honest, hardworking, and a motivated team player. (Response.)

### **Policies**

Every CAC eligibility decision must be a fair and impartial overall commonsense decision based on all available evidence, both favorable and unfavorable. The HSPD-12 credentialing standards 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 eligibility criteria is unacceptable risk.

The objective of 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.

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, paragraph 1.)

## **Analysis**

### **Supplemental Adjudicative Standards, Paragraph 1.a**

DoDI 5200.46, Enclosure 4, Appendix 2, *Supplemental Adjudicative Standards* expresses concerns pertaining to misconduct or negligence in employment. Paragraph 1 of this section states:

A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual’s misconduct or negligence in employment, that issuance of a CAC poses an unacceptable risk.

a. An individual’s employment misconduct or negligence may put people, property, or information systems at risk.

The disqualifying condition set forth in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 1.b that is raised by Applicant’s misconduct or negligence in employment is:

(1) A previous history of intentional wrongdoing on the job, disruptive, violent, or other acts that may pose an unacceptable risk to people, property, or information systems.

Applicant was terminated because she stole from another employee in June 2017. Her conduct raises a significant concern because it is disruptive to the workplace. The above disqualifying conditions apply.

Potentially mitigating conditions are set forth in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 1.c. The conditions that could apply to mitigate the security concerns raised by the evidence in this case are:

(1) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current trustworthiness or good judgment relating to the safety of people and proper safeguarding of property and information systems;

(2) The individual was not adequately warned that the conduct was unacceptable and could not reasonably be expected to know that the conduct was wrong;

(3) The individual made prompt, good-faith efforts to correct the behavior; and

(4) The individual responded favorably to counseling or remedial training and has since demonstrated a positive attitude toward the discharge of information-handling or security responsibilities.

Applicant's decision to take money from the purse of a coworker was recent and no unusual circumstances surrounding her theft have been documented. Her misconduct casts doubt on her current trustworthiness or good judgment. While she has expressed remorse for her conduct, and has demonstrated trustworthiness in her current position, not enough time has passed since the theft to show rehabilitation, in light of her falsification discussed below. The concern is not mitigated.

### **Supplemental Adjudicative Standards, Paragraph 3.a**

DoDI 5200.46, Enclosure 4, Appendix 2, *Supplemental Adjudicative Standards* expresses concerns pertaining to misconduct or negligence in employment. Paragraph 3 of this section states:

A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual's material, intentional false statement, deception, or fraud in connection with federal or contract employment, that issuance of a CAC poses an unacceptable risk.

a. The individual's conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual's honesty, reliability, trustworthiness, and put people, property, or information systems at risk.

b. Therefore, conditions that may be disqualifying include material, intentional falsification, deception or fraud related to answers or information provided during the employment process for the current or a prior federal or contract employment (e.g., on the employment application or other

employment, appointment or investigative documents, or during interviews.)

The disqualifying conditions set forth in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 3.b are raised by Applicant's falsification on her Declaration for Federal Employment form (306), signed on September 26, 2017. She admitted her falsification in her Answer.

Potentially mitigating conditions are set forth in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 3.c. The conditions that could apply to mitigate the unacceptable risk concerns raised by the evidence in this case are:

- (1) The misstated or omitted information was so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur; and
- (2) The misstatement or omission was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation.

After considering the mitigating conditions outlined above in Subparagraph 3.c, it is apparent that neither of them were established in this case. Applicant's falsification was recent. Falsifying material information raises serious concerns and Applicant has done little to show that similar dishonesty is unlikely to recur. While she has gained the trust of her supervisors and coworkers, there is no evidence that the authors of the letters knew of the allegations on the SOR. Applicant did not make prompt or good-faith efforts to correct her falsification and concealment. She has not provided sufficient evidence to meet her burden of proof to overcome her material, intentional false statement in connection with her federal employment.

### **Further Mitigation**

DODI 5200.46, Enclosure 4, *CAC Adjudicative Procedures*, Paragraph 1, *Guidance For Applying Credentialing Standards During Adjudication* provides the following:

- a. As established in Reference (g), 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 Reference (c).
- 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.

Applicant presented evidence of recent good character at her present employer including being awarded employee of the month. While she offered four letters of support, they failed to acknowledge they knew about her prior criminal conduct. Her theft and her falsification were recent and material. She has not demonstrated she has the requisite judgment to have CAC eligibility. There is a reasonable basis to conclude that Applicant represents an unacceptable risk for the U.S. Government. Applicant's request for CAC eligibility is denied.

## Formal Findings

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

SOR Paragraph 1:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
SOR Paragraph 2:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is an unacceptable risk to grant Applicant CAC eligibility. CAC eligibility is denied.

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Jennifer I. Goldstein  
Administrative Judge