



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



In the matter of:	)	
	)	
[Redacted]	)	CAC Case No. 18-00887
	)	
Applicant for CAC Eligibility		

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2019

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**Decision**

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Foreman, LeRoy F., Administrative Judge:

Applicant has mitigated the eligibility concerns about his alcohol abuse. He has not mitigated the eligibility concerns raised by his criminal conduct. CAC eligibility is denied.

**Statement of the Case**

On July 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, detailing concerns about his eligibility for a Common Access Card (CAC). The DOD acted under Homeland Security Presidential Directive 12, *Policy for a Common Identification Standard for Federal Employees and Contractors* (August 27, 2004); the Adjudicative Standards in DoD Instruction 5200.46, *DoD Investigative and Adjudicative Guidance for Issuing the Common Access Card* (September 9, 2014) (Instruction); 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). The SOR alleges eligibility concerns under the Supplemental Adjudicative Standards (SAS) set out in Enclosure 4, Appendix 2 of the Instruction. The specific concerns were alleged under SAS 2 (Criminal or Dishonest Conduct or Financial Responsibility) and SAS 4 (Alcohol Abuse).

Applicant answered the SOR on September 27, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on October 11, 2018. On October 12, 2018, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 23, 2018, and he did not respond. The case was assigned to me on February 12, 2019.

### **Findings of Fact<sup>1</sup>**

Applicant admitted the allegations in SOR ¶¶ 1.c-1.g, 2.b, and 2.c, and he admitted the allegations in SOR ¶¶ 1.a and 2.a in part. His admissions are incorporated in my findings of fact.

Applicant is a 53-year-old carpenter employed by a defense contractor since February 2017. He was unemployed from May 2015 until he began his current job. He did not complete high school, but he obtained his GED certificate in April 1983.

In October 1987, Applicant was convicted of receiving stolen property worth more than \$100, a felony. The record does not reflect the sentence imposed. (FORM Item 4 at 5.)

In January 1990, Applicant was charged with receiving stolen property worth more than \$100. In July 1990, he was convicted of the lesser offense of receiving stolen property worth less than \$100, a misdemeanor. He was sentenced to confinement for 90 days (suspended), and he was placed on probation for two years. (FORM Item 4 at 7-8.)

In April 1990, Applicant was charged with two counts of 2<sup>nd</sup> degree assault (felonies), armed criminal action (a felony), damaging property, and resisting arrest. He was convicted of 2<sup>nd</sup> degree assault, and the remaining charges were dismissed. He was sentenced to confinement for three years (suspended), and placed on probation for five years. (FORM Item 4 at 8-9.)

In August 1990, Applicant was charged with stealing and 2<sup>nd</sup> degree assault (both felonies). In his answer to the SOR, he stated that these charges arose from the same incident as the April 1990 2<sup>nd</sup> degree assault and the October 1987 charge of receiving stolen property. (FORM Item 4 at 10-11.) The record contains insufficient evidence to determine if the August 1990 and April 1990 charges are duplicates.

In January 1996, Applicant was charged with possession of a controlled substance, a felony. He was convicted and sentenced to confinement for two years (suspended) and placed on probation for two years. (FORM Item 4 at 12-13.) In his answer to the SOR, he stated that he was walking through a bad part of town when a

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<sup>1</sup> Applicant's personal information is extracted from his Electronic Questionnaire for Investigations Processing (e-QIP) (FORM Item 2) unless otherwise indicated by a parenthetical citation to the record.

person who was “strung out” approached him and then ran away from an approaching police officer and threw a small quantity of crack cocaine onto the ground in front of him. The police charged Applicant with possession of cocaine, and he pleaded guilty to a misdemeanor drug offense.

In February 1997, Applicant was charged with driving while intoxicated (DWI). The police records do not reflect the disposition of this charge. (FORM Item 4 at 13.) In his answer to the SOR, Applicant stated that he pleaded guilty even though the breathalyzer was not administered properly, and the offense was expunged from his record after he attended the court-ordered classes and completed a period of unsupervised probation.

In November 2000, Applicant was charged with DWI. He was convicted and placed on probation for 24 months. (FORM Item 4 at 14.) In his answer to the SOR, Applicant stated that he drove while intoxicated to leave a “violent atmosphere.”

In July 2014, Applicant was charged with assault and domestic violence. He was convicted of domestic violence. In his answer to the SOR, he stated that the incident occurred when an ex-girlfriend came to his home to retrieve her laptop and became verbally abusive. He ordered her to leave, and she continued to be loud and abusive outside the home. He “half punched” and slammed her car door and broke the glass in the door. After his ex-girlfriend left, the police came to his home and arrested him for domestic assault and malicious property damage. He pleaded guilty to domestic assault and paid for the damage to the car.

In July 2016, Applicant took his girlfriend’s car without her knowledge, ran off the road, and struck a concrete barrier, causing extensive damage. He drove it to another location in an effort to hide it. When he was interviewed by police several hours later, the police noticed an odor of alcohol. He pleaded guilty to leaving the scene of an accident with property damage exceeding \$1,000. In his answer to the SOR, Applicant denied consuming alcohol before wrecking the car, but he admitted consuming alcohol afterwards.

## **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 concerns, standards, disqualifying conditions, and mitigating circumstances are listed in the Instruction, Enclosure 4, Appendix 1, Basic Adjudicative Standards (BAS), and Appendix 2, Supplemental Adjudicative Standards (SAS). The overriding factor for CAC eligibility decisions is “unacceptable risk,” which is defined as follows:

A threat to the life, safety, or health of employees, contractors, vendors, or visitors; to the U.S. Government physical assets or information systems; to personal property; to records, including classified, privileged, proprietary, financial, and medical records, or to the privacy rights established by The

Privacy Act of 1974, as amended, or other law that is deemed unacceptable when making risk management determinations.

(Instruction, Glossary, Part II at 28.)

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. A CAC will not be issued if there is a reasonable basis to believe that issuance of a CAC poses an unacceptable risk. Each case must be judged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

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. (Instruction, Enclosure 4, paragraph 1.b.)

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.

## **Analysis**

### **SAS ¶ 2, Criminal or Dishonest Conduct**

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." The concern under this standard is set out in SAS ¶ 2.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.

The evidence is sufficient to establish the following disqualifying conditions under this guideline:

SAS ¶ 2.b(1): A single serious crime or multiple lesser offenses which put the safety of people at risk or threaten the protection of property or information. . . ;

SAS ¶ 2.b(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;

SAS ¶ 2.b(3): Dishonest acts (e.g., theft, accepting bribes, falsifying claims, perjury, forgery, or attempting to obtain identity documentation without proper authorization); and

SAS ¶ 2.b(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. For example, convictions for sexual assault may indicate that granting a CAC poses an unacceptable risk to the life and safety of persons on U.S. Government facilities.

The following mitigating circumstances are potentially relevant:

SAS ¶ 2.c(1): The behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur; and

SAS ¶ 2.c(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.

Neither mitigating condition is established. The offenses alleged in SOR ¶¶ 1.c-1-1.g happened many years ago, but they reflect a pattern of criminal conduct from 1987 until recently, in July 2016. Several were felonies, and they did not occur under unusual circumstances. Applicant submitted no evidence regarding his employment record or any community involvement.

#### **SAS 4, Alcohol Abuse**

SAS 4 provides, “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.” The concern under this standard is set out in SAS 4a:

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 risk in a U.S. Government facility.

The disqualifying condition in SAS ¶ 4.b(1) (“A pattern of alcohol-related arrests”) is relevant. However, it is not established. Applicant was not charged with DWI after the accident in January 2016. While the police noticed an odor of alcohol when they interviewed him several hours after the accident, there is no evidence that he was intoxicated. The incidents in 1997 and 2000 happened three years apart, have not been repeated, and are insufficient to establish a “pattern” of alcohol-related arrests or “long-term abuse of alcohol.” No other disqualifying conditions under this guideline are established by the evidence.

### **Formal Findings**

SAS ¶ 2, Criminal or Dishonest Conduct:	Against Applicant
SAS 4, Alcohol Abuse:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that issuing Applicant a CAC would pose an unacceptable risk. CAC eligibility is denied.

LeRoy F. Foreman  
Administrative Judge