



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



In the matter of:	)	
	)	
[Name Redacted]	)	CAC Case No. 15-00839
	)	
Applicant for CAC Eligibility	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/08/2016

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**Decision**

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Hogan, Erin C., Administrative Judge:

**Statement of the Case**

On May 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for Common Access Credential eligibility pursuant to Homeland Security Presidential Directive – 12 (HSPD-12). DOD was unable to find that it was clearly consistent with the national interest to grant Applicant Common Access Credential (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: Supplemental Adjudicative Standards – Paragraph 3a- Material, Intentional False Statement, Deception, or Fraud.

Applicant answered the SOR on June 18, 2015, and requested a decision based on the written record. Department Counsel prepared a File of Relevant Material (FORM)

on August 28, 2015. The Form contained three items. The FORM was forwarded to Applicant on October 8, 2015. Applicant received the FORM on October 17, 2015. She timely responded to the FORM on that same date. Applicant's response to the FORM is admitted as Item 4. Department Counsel had no objection to Applicant's response to the FORM. Department Counsel's response dated October 22, 2015, is marked as Hearing Exhibit (HE) I. The FORM was forwarded to the Hearing Office on October 23, 2015, and assigned to me on October 27, 2015. Based on the record evidence presented in this case, CAC eligibility is granted.

### **Findings of Fact**

The sole allegation in the SOR, alleges Applicant falsified material facts on a Declaration for Federal Employment form (Optional Form 306), dated May 12, 2014, when she answered, "No" to the question in Item 12, which asked:

*During the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management or any other Federal agency? If "Yes" use item 16 to provide the date, explanation of the problem, reason for leaving, and the employer's name and address.*

(Item 3)

Applicant failed to disclose that she was terminated from employment with Employer A on March 5, 2010 for failing to meet position requirements. The record does not include evidence of Applicant's termination from Employer A. However, Applicant admits to the termination in her response to the SOR, dated June 18, 2015. Department of Defense Directive 5220.6, enclosure 3.1.14 states Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Aside from the intent issue, the fact that Applicant did not list her termination from Employer A in March 2010 on her Declaration for Federal Employment, Form 306, is not in dispute.

In her response to the SOR, Applicant indicates she made a mistake in reporting the employment termination. The question asked that terminations be reported which occurred within the past five years. Applicant attempted to recall from memory when she was terminated from Employer A. She answered, "No" to the question because she believed she was terminated just outside of the five year period required by the question. Applicant says this was a mistake on her part and she was not attempting to deceive or show an unwillingness to comply with rules and regulations. (Item 1)

After completing her Declaration for Federal Employment form on May 12, 2014, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), SF 85, Questionnaire for Non-Sensitive Positions on May 30, 2014. In section 10 of the e-QIP, Applicant listed that she was employed by Employer A from August 1999 to

March 2010. She also listed that she collected unemployment from March 2010 to April 2010. The SF 85 did not have a question about employment terminations. (Item 2)

In her response to the FORM, Applicant mentions that when she completed this paperwork, she was given a short suspense to complete it. When completing the Declaration for Federal Employment she based her answer on her memory rather than looking at paperwork. She realized she had made a mistake while later completing the e-QIP, SF 85. Her employer had discovered other discrepancies and forwarded them back to her for her to correct. Applicant was under the assumption the rest of her answers would be screened as well. Applicant stresses that this was a mistake and she was not attempting to deceive or show an unwillingness to comply with rules and regulations. (Item 4)

Applicant provided four reference letters attesting to her character. Her job involves working with children with disabilities. A mother of one of her clients wrote a letter attesting to Applicant's professionalism and understanding when caring for her son. She states, "[Applicant's] experience and compassion have allowed my time with my son to be much more manageable and enjoyable when we are out in public. She has been a lifesaver, what she has done for me is given me more peace of mind." (Item 1 at 5)

Three teachers who worked with Applicant wrote letters on her behalf. They describe Applicant as "punctual, reliable, and trustworthy". (Item 1 at 6) "She dedicates herself to her job. She is passionate about working with children with disabilities and helping them find ways to be successful. She goes beyond her job requirements." (Item 1 at 7) "She is very caring, organized, and a quick learner. She always had great ideas to help children learn new skills." (Item 1 at 8)

## **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. 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 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 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) 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**

In Applicant’s case, overall CAC eligibility concerns are raised under DoDI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, paragraph 3:

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 security risk.

3.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.

3.b. Therefore, the 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).

3.c. Circumstances relevant to a determination of whether there is a reasonable basis to believe there is an unacceptable security risk include:

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

Applicant admits that she did not list that she was terminated from Employer A in March 2010, on a Declaration for Federal Employment Form 306 completed on May 12, 2014. She states the omission was not intentional. Item 12 of Form 306 asks applicants to list employment terminations within the last five years. Applicant states she made an error in calculations when completing the form on May 12, 2014. She believed she had been terminated more than five years from the time she completed the Declaration for Federal Employment Form 306. I find her explanation credible.

Two weeks after submitting the Form 306, Applicant completed an e-QIP form, SF 85 on May 30, 2014. Section 10 of the SF 85, asked her to provide a detailed entry of all employment activities for the past five years. She listed the fact that she was employed with Employer A from August 1999 to March 2010. She also listed that she received unemployment compensation from March 2010 to April 2010. The SF 85 does not ask specifically about employment terminations. Regardless, Applicant provided sufficient information to put the Government on notice about her period of unemployment from March 2010 to April 2010. I find Applicant did not intentionally omit her termination on the FORM 306 completed on May 12, 2014. Having more time to complete her SF 85, Applicant provided more accurate information on her SF 85. Her explanation that she initially made an error when calculating the five year period when completing her federal employment application is plausible.

Applicant's favorable character letters from former co-workers and the mother of one of the children she cares for attest to her professionalism and trustworthiness. For these reasons, I conclude Applicant's request for CAC eligibility should be granted.

### **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, Material, Intentional False Statement, Deception or Fraud: FOR APPLICANT

Subparagraph 1.a:

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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Erin C. Hogan  
Administrative Judge