



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



In the matter of:

Applicant for CAC Eligibility

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CAC Case No. 15-00895

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2016

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant did not mitigate Common Access Card (CAC) credentialing concerns raised under the criminal or dishonest conduct supplemental adjudicative standards. CAC eligibility is denied.

Statement of the Case

On May 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing criminal or dishonest conduct eligibility concerns. The DOD was unable to grant Applicant CAC eligibility. The action was taken under Homeland Security Presidential Directive – 12 (HSPD-12); 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 July 1, 2015, and requested a review based on the written record in lieu of a hearing. The case was assigned to me on June 29, 2016. Department Counsel submitted a File of Relevant Material (FORM), dated

November 5, 2015. Applicant received the FORM on November 17, 2015. Applicant submitted a timely response to the FORM.

Findings of Fact

Applicant is 61 years old. She has worked for her current employer since May 2014. She enlisted in the U.S. military from February 1983, until she received a General Discharge in April 1983. She has some college education and currently takes courses online. She is married. Applicant completed a questionnaire for non-sensitive positions on June 4, 2014. (Item 2)

Applicant has a history of financial problems, which she attributed to unforeseen mortgage increases and tax increases. She and her husband filed for Chapter 13 bankruptcy in 2007. She was unable to make the payments to the trustee. (Item 1) She noted that the stability of her family was the priority at the time.

Applicant disclosed her delinquent federal taxes for tax years 2005 to 2011 that total approximately \$9,200 when she completed her Declaration for Federal Employment. (Item 3) She noted in her answer to the SOR that she had a repayment plan with the IRS for \$75 a month to repay the delinquent taxes. (Item 3) The Offer in Compromise consists of payments for 24 months and settles 20% of the total debt.

In response to the FORM, Applicant submitted a letter from the IRS that replied to her inquiry of November 2015 to resolve the account balance for the tax periods in question. The proposal for the installment agreement established a monthly payment of \$203 beginning on January 15, 2016. A voucher for payments was included, but appeared to be for tax year 2010 only. There was no evidence of any payments made to the IRS.

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.

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) 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, Appendix 2 to Enclosure 4, *Supplemental* Adjudicative Standards, ¶ 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.

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental* Adjudicative Standards, ¶ 2.b lists several conditions that could raise a CAC concern and may be disqualifying. The following are potentially applicable in this case:

(6) Financial irresponsibility may raise questions about the individual's honesty and put people, property or information systems at risk, although financial debt should not in and of itself be cause for denial.

Applicant has a significant amount of delinquent debt from six years of unpaid taxes and despite her promise to engage in a repayment plan with the IRS, she has not provided evidence to establish that she has actually entered into the agreement and that she has made any payments. Applicant filed for bankruptcy in 2007, but due to increases in mortgage payments and tax increases, had to stop the plan. Disqualifying condition ¶ 2.b.(6) states that "financial debt should not in and of itself be cause for denial." There is no indication of fraud, but Applicant has not presented sufficient evidence that she has been responsible about her finances.

Applicant owes the IRS for tax years 2005-2011. The amount of delinquent tax is in the amount of \$9,200. The above disqualifying condition has been established.

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental* Adjudicative Standards, ¶ 2.c lists circumstances relevant to the determination of whether there is a

reasonable basis to believe there is an unacceptable risk. The following may be relevant:

- (1) The behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur; 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 has not established that she has begun the installment plan with the IRS. She has unpaid federal taxes for years 2005-2011. She recently contacted the IRS for an installment agreement but there is no evidence of any payments made. The above mitigating circumstances are not established. I also considered the factors in DODI 5200.46, Enclosure 4, ¶ 1.

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: Against Applicant

Subparagraph 1.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant CAC eligibility. CAC eligibility is denied.

Noreen A. Lynch
Administrative Judge