



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



In the matter of:

[NAME REDACTED]

Applicant for CAC Eligibility

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CAC Case No. 15-00899

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

09/22/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

**Statement of the Case**

On May 30, 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:

1. Misconduct or negligence in employment (Supplemental Adjudicative Standards, Paragraph 1.a);
2. Criminal or dishonest conduct (Supplemental Adjudicative Standards, Paragraph 2.a); and
3. Material intentional false statement, deception, or fraud (Supplemental Adjudicative Standards, Paragraph 3.a).

On June 1, 2015, Applicant answered the SOR and requested a decision without a hearing. On February 11, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>1</sup> in support of the SOR. Applicant received the FORM on February 25, 2016, and timely submitted information in response to the FORM. The record closed on March 26, 2016. The case was assigned to me on June 6, 2016. Based on the record evidence as a whole, and testimony presented in this case, CAC eligibility is denied.

### **Findings of Fact**

Applicant is 40 years old. Since May 2014, she has been employed in a position that requires CAC eligibility to access sensitive systems and facilities as part of her assigned duties. On June 16, 2014, she submitted an Electronic Questionnaire for Investigations Processing (EQIP) to initiate a background investigation to determine her CAC eligibility. Applicant had previously submitted an OPM Form 306 application for federal employment. (FORM, Items 3 and 4).

During Applicant's background investigation, former employers were contacted and asked to complete an OMB Form 3206-0165, Investigative Request for Employment Data and Supervisor Information. Two former employers provided information that is the basis for the allegations at SOR 1.a and 1.b. As to SOR 1.a, her former employer, a doctor, stated that Applicant resigned in 2010 when she was told she would be fired for forging the doctor's name on a medical excuse for Applicant's daughter. As to SOR 1.b, the former employer, a chiropractor, stated that Applicant left her job in 2010 voluntarily, but later tried to get unemployment benefits by claiming she had been laid off due to a workforce reduction. Neither employer would recommend Applicant for federal employment or for a security clearance. (FORM, Items 5 and 6)

Also during Applicant's background investigation, her arrest record was obtained from an FBI database. It showed, as alleged in the SOR, that she was arrested for criminal offenses in October 2009 (SOR 2.a), in April 2007 (SOR 2.b), and in March 2003 (SOR 2.c). Available information shows that she committed the offenses for which she was charged, but that she was never incarcerated. (FORM, Items 2 and 6)

When Applicant submitted her application for federal employment, she was required to list any arrests that had occurred in the preceding seven years. As alleged in SOR 3.a., she did not list her October 2009 arrest. Available information shows she omitted that information deliberately. Applicant was also required to disclose if, in the previous five years, she had left any job under adverse circumstances; that is, if she had been fired, resigned after being informed she would be fired, or left a job by mutual agreement because of specific problems in the workplace. Applicant did not disclose that she had resigned from the job referred to in SOR 1.a after being told she would be fired. As alleged in SOR 3.b, available information shows she omitted that information deliberately. (FORM, Items 2 and 4)

In response to the SOR, Applicant denied SOR 1.a, claiming she left solely because of medical issues that were causing her to miss a lot of work. She provided a medical record documenting treatment for injuries sustained in a car accident, but she did not establish how that information refutes the Government's allegation. Applicant denied the allegation at SOR 1.b and provided documents purporting to show she

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<sup>1</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven exhibits (Items 1 - 7) proffered in support of the Government's case.

worked for all of 2010 and did not receive unemployment compensation. The documents submitted do not conclusively support her claim.

As to the SOR 2.a - 2.c allegations of criminal conduct, Applicant admitted SOR 2.b, but denied SOR 2.a and 2.c. However, the explanations she provided with her responses actually support those allegations.

As to SOR 3.a and 3.b, Applicant denied she intended to falsify her application for federal employment. However, her explanations do not adequately explain why she did not list her 2009 arrest or the fact that she left a job in 2010 after being told she would be fired.

Applicant's SOR response and her response to the FORM present a lengthy and compelling account of hardships she endured growing up and in her earlier adult life. Applicant claims she is now married and has a stable lifestyle. Applicant did not provide any current references or other information regarding her current judgment, reliability, and trustworthiness.

### **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**

The Government's information supports the SOR allegations and they are established as facts. Those facts raise CAC eligibility concerns addressed in DoD Instruction 5200.46, Enclosure 4, Appendix 2. Those concerns are addressed in the Supplemental Adjudicative Standards, **Paragraph 1** as follows:

A CAC will not be issued to a person if there is reason 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.

b. Therefore, conditions that may be disqualifying include:

(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; and

(2) A pattern of dishonesty or rule violations in the workplace which put people, property, or information at risk.

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

(1) The behavior happened so long ago, was so 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; and

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

All of the paragraph 1.a and 1.b factors apply here. Applicant left one job in 2010 because she forged her employer's name on a medical excuse for her child. She knew she would be fired if she did not resign. Applicant knew or should have known this conduct was unacceptable. She also knew or should have known that applying for unemployment benefits after leaving a prior job of her own volition was both illegal and unacceptable. Applicant did not present information that supports application of any of the paragraph 1.c factors.

Eligibility concerns arising from the facts of this case are also addressed in the Supplemental Adjudicative Standards, **Paragraph 2** as follows:

A CAC will not be issued to a person if there is reason to believe, based on the individual's **criminal or dishonest conduct**, that issuance of a CAC poses an unacceptable risk.

a. The 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 and 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.

b. Therefore, conditions that may be disqualifying include:

(3) Dishonest acts (e.g., theft, accepting bribes, falsifying claims, perjury, forgery, or attempting to obtain identity documentation without proper authorization).

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

(1) The behavior happened so long ago, was so minor, or happened under such unusual 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, or constructive community involvement, or passage of time without recurrence.

The paragraph 2.b factors apply. All of Applicant's criminal conduct involved theft or deceptive conduct or both. Although the conduct occurred seven or more years ago, without information establishing other aspects of rehabilitation, which Applicant did not provide, none of the paragraph 2.c factors apply.

Finally, eligibility concerns arising from the facts of this case are also addressed in the Supplemental Adjudicative Standards, **Paragraph 3** as follows:

A CAC will not be issued to a person if there is reason 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, dishonesty, or unwillingness to comply with rules and regulations can raise questions about his or her reliability and trustworthiness and put people, property, or information systems at risk.

b. Therefore, conditions that may be disqualifying include material intentional false statement, 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.)

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

(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.

Paragraph 3.b applies. Applicant deliberately omitted from her application for federal employment the fact that she was arrested in 2009. She also deliberately omitted from the same document the fact that she resigned from her job in 2010 after being told she would be fired for forging her employer's name on a letter. These omissions were recent and the information was relevant and material to an assessment of her suitability for federal employment. Her false statements in this regard were not minor. Nor did she establish that her omissions were unintentional or that she made any prompt effort to correct her answers. The paragraph 3.c factors do not apply.

Based on all of the foregoing, I conclude Applicant's request for Common Access Credentialing eligibility should be denied.

### **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: Misconduct or Negligence in Employment:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant
Paragraph 2: Criminal or Dishonest Conduct:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant
Paragraph 3: Material Intentional False Statement, Deception or Fraud:	AGAINST APPLICANT
Subparagraphs 3.a - 3.b:	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.

Matthew E. Malone  
Administrative Judge