



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



In the matter of: )  
 )  
 ) CAC Case No. 15-02128  
 )  
Applicant for Common Access Credentialing )

**Appearances**

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

09/01/2016  
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**Decision**  
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TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate Common Access Card (CAC) credentialing concerns raised under criminal or dishonest conduct supplemental adjudicative standards. CAC eligibility is denied.

**Statement of the Case**

On August 18, 2014, Applicant submitted a Questionnaire for Non-Sensitive Positions (SF-85). On May 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for Common Access Card 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 CAC eligibility.

The action is based on the *Supplemental Adjudicative Standards* (SAS) found in DOD Instruction 5200.46, *DOD Investigative and Adjudicative Guidelines for Issuing the Common Access Card*, 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). The concerns raised under the *Supplemental Adjudicative Standards* of DODI 5200.46 are “criminal or dishonest conduct.”

On June 14, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated November 5, 2015, was provided to him by letter dated November 6, 2015. Applicant received the FORM on November 15, 2015. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information within the 30-day period. On May 2, 2016, the case was assigned to me.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except SOR ¶ 1.d. His SOR answers are incorporated in my findings of fact.

### **Background Information**

Applicant is a 35-year-old maintenance trade helper employed by a defense contractor since August 2014. He seeks CAC eligibility as a condition of his continued employment. (Item 2)

Applicant was awarded his General Education Development certificate in August 2013. He is married and has three children.<sup>1</sup> He did not serve in the armed forces. (Items 1, 2)

### **Criminal or Dishonest Conduct**

CAC credentialing concerns were identified during Applicant's background investigation as a result of his criminal conduct spanning approximately eight years. In December 2000, Applicant was arrested and charged with possession, distribution, and manufacture of Schedule IV drugs. He denied this allegation, however, his state arrest record documents this arrest as well as the other arrests alleged. Applicant did not provide any documentation rebutting this December 2000 arrest. In August 2001, Applicant was arrested and charged with possession of cocaine. He was convicted and sentenced to two and one-half years in prison, suspended, and three years of probation, which was extended from August 2004 to December 2004. In March 2006, Applicant was arrested and charged with disturbing the peace and being loud and profane and resisting an officer. In January 2009, Applicant was arrested and charged with criminal trespass. (SOR ¶¶ 1.a – 1.d; Items 2, 4)

In his SOR answer, Applicant stated that since these arrests, he is a "completely different man." He is married, has three children, is a church member, and has done everything he could to turn his life around. Applicant submitted an October 2012 letter from his state board of pardons advising him that the board of pardons had forwarded a recommendation to the Governor for a pardon and restoration of rights without firearms. It is unknown whether the Governor acted on that recommendation or whether that recommendation is still pending. (Item 1)

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<sup>1</sup>The FORM does not contain additional detailed information about Applicant's family situation such as when he got married or the ages of his children.

## **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**

### **Criminal or Dishonest Conduct**

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental Adjudicative Standards*, Paragraphs 2.a., 2.b.(1) and (2) articulate the CAC concern:

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 Instruction 5200.46, Appendix 2, *Supplemental Adjudicative Standards* lists two conditions that raise a CAC concern and may be disqualifying:

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. A person's convictions for burglary may indicate that granting a CAC poses an unacceptable risk to the U.S. Government's physical assets and to employees' personal property on a U.S. Government facility; and

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.

The Government established these two disqualifying conditions through Applicant's admissions and evidence presented as a result of his four arrests spanning a ten-year period.

DODI 5200.46, App. 2 to Encl. 4, SAS 2c, lists four conditions that could mitigate CAC credentialing concerns:

(1) The behavior happened so long ago, was minor in nature, 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;

(3) Improper or inadequate advice from authorized personnel or legal counsel significantly contributed to the individual's omission of information. When confronted, the individual provided an accurate explanation and made prompt, good-faith effort to correct the situation; 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.

Having carefully considered the facts of this case, I find none of the mitigating factors are applicable. Applicant has an eight-year history of serious criminal misconduct. This lengthy pattern of behavior calls into question Applicant's judgment and trustworthiness as well as his willingness to comply with laws, rules, and regulations. His SOR answer fails to adequately mitigate the security concerns raised in the SOR allegations, which clearly establish a basis for disqualification under the Instruction's Supplemental Adjudicative Standards Paragraph 2b.(1) and (2).

In requesting an administrative determination, Applicant chose to rely on the limited written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances,

articulate his position, and mitigate the criminal or dishonest CAC concerns. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, criminal or dishonest concerns remain.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept, I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the criminal or dishonest concerns. Accordingly, Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his CAC eligibility.

### **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

Subparagraphs 1.a – 1.d 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.

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ROBERT J. TUIDER  
Administrative Judge