



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



In the matter of:)
)
) CAC Case No. 15-04512
)
Applicant for CAC Eligibility)

Appearances

For Government: Andreas Corrales, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2017

Decision

CREAN, Thomas M., Administrative Judge:

On September 10, 2014, Applicant submitted a Declaration for Federal Employment (OF306). On August 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing concerns for Common Access Card (CAC) eligibility pursuant to Homeland Security Presidential Directive – 12 (HSPD-12). Specifically, the concerns raised were misconduct or negligence in employment; and false statement, deception, or fraud. DOD was unable to find that granting Applicant CAC eligibility did not pose an unacceptable risk.

These actions are based on the Supplemental Adjudicative Standards 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).

Applicant answered the SOR on August 26, 2015. He denied the allegations and requested a decision on the written record. Department Counsel submitted the Government's written case on December 24, 2015. Applicant received a complete file of relevant material (FORM) on December 28, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying

conditions. Applicant did not submit a response to the FORM. I was assigned the case on September 27, 2016.

Findings of Fact

Applicant denied all of the SOR allegations with explanations. His SOR answer is incorporated in my findings of fact. Applicant is a 44-year-old mechanic seeking employment with a defense contractor. He served on active duty in the Army from August 1992 until August 1998. He was honorably discharged. (Item 3)

Applicant was employed as a mechanic from February 2013 until March 2014. A report from his employer shows that he was terminated in March 2014 for falsifying information on a maintenance checklist. Applicant signed off that a required safety inspection had been completed. On review, it was discovered that the safety inspection had not been accomplished, so the company terminated Applicant. (Item 5)

On September 10, 2014, Applicant submitted a Declaration for Federal Employment (OF306), dated September 10, 2014. The form he submitted was a computer-generated form. Applicant checked the "no" box to question 12 asking if he had ever been fired, quit after being informed he would be fired, or left a job by mutual agreement because of a specific problem. (Item 4)

In his response to the SOR, Applicant explained that he sent the wrong OF306. He meant to submit an OF306 with the correct information concerning the termination from his mechanic's job with a previous employer handwritten. Instead, he submitted the OF306 that was computer generated. Applicant forwarded with his SOR answer an OF306 with the correct information concerning his job termination handwritten on the form. Applicant acknowledged his mistake in submitting the wrong form. He also stated that the incorrect OF306 was not submitted with the intent to mislead or falsify information.

Applicant referenced in his SOR response a state unemployment compensation request based on his termination. Applicant and another employee, who was working with Applicant and was also terminated for falsifying inspection information, requested state unemployment compensation benefits but were denied. Applicant testified in the other employee's case. Applicant found another job before his case was completed, so his unemployment request was dismissed. A state employment judge determined that the other employee was not properly trained on the sign-off procedures for work and was not cleared by the company to work without supervision. According to Applicant, the judge ruled that the other employee did not falsify the completed work report but incorrectly completed the document because he was not properly trained. Applicant did not present any documents to verify his statement concerning the judge's ruling on the unemployment compensation issue.

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 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)

Analysis

Misconduct or Negligence in Employment

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 the issuance of a CAC poses an unacceptable risk. The CAC concern is stated in DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, Paragraph 1.a as, "An individual's employment misconduct or negligence may put people, property, or information systems at risk."

The Government's case is supported by evidence contained in the termination notice showing that a required safety inspection was not performed, and the record was falsified to report that the safety check was performed. (Item 5) The information raises the following disqualifying conditions under Appendix 2 to Enclosure 4, paragraph 1.b:

- (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

DODI 5200.46, Appendix 2 to Enclosure 4, Paragraph 1.c provides mitigating conditions relevant to the determination whether there is a reasonable basis to believe

that there is an unacceptable risk based on Applicant providing false information to his employer:

- (1) the behavior happened so long ago, was 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;
- (3) The individual made prompt, good-faith efforts to correct the behavior; and
- (4) the individual responded favorably to counseling or remedial training and has since demonstrated a positive attitude toward the discharge of information-handling or security responsibilities.

The mitigating conditions are not established. Applicant falsified a required maintenance checklist in March 2014. Falsification of a work document, particularly one that concerns a safety inspection, is not a minor matter. There are no unusual circumstances presented that would require Applicant to falsely report a safety inspection had been performed. Applicant did not present any information to indicate if he made a prompt good-faith effort to correct his behavior. Applicant has not mitigated the employment misconduct.

Intentional false, deception, or fraud in federal employment

A CAC will not be issued to a person if there is a reasonable basis to believe, based on an 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. The CAC concern is stated in DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, "The individual's conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations can raise questions about the individual's honesty, reliability, trustworthiness, and put people, property, or information systems at risk."

Applicant's intentional failure to report on his OF306 that he was terminated from his prior employment raises the following disqualifying condition under paragraph 3 of Appendix 2 to Enclosure 4 of DODI 5200.46:

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 prior federal or contract employment.

DODI 5200.46, Appendix 2 to Enclosure 4, Paragraph 3 c. provides the following mitigating circumstances relevant to the determination of whether there is a reasonable basis to believe that there is an unacceptable risk:

- (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.

Applicant did not report that he was terminated from a previous employment for falsifying a maintenance checklist. He failed to note the termination on his OF306. I find that the omission was deliberate and not minor. Applicant's explanation for his deliberate omission is not credible. Based on all of the foregoing, I conclude Applicant's request for CAC 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

Subparagraph 1.a: Against Applicant

Paragraph 2: Material, Intentional False Statement; AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, granting Applicant CAC eligibility poses an unacceptable risk. CAC eligibility is denied.

THOMAS M. CREAN
Administrative Judge