



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



In the matter of:

Applicant for CAC Eligibility

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CAC Case No. 15-04510

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

08/15/2016

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant mitigated Common Access Card (CAC) credentialing concerns raised under the criminal or dishonest conduct and material false statement supplemental adjudicative standards. CAC eligibility is granted.

**Statement of the Case**

On August 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing criminal or dishonest conduct eligibility concerns and material, intentional false statement, deception or fraud. 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 August 19, 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

September 23, 2015. Applicant received the FORM on October 12, 2015. Applicant did not respond to the FORM.

### **Findings of Fact**

Applicant is 61 years old. He has worked for his current employer as a propane driver since July 1991. He did not serve in the military. Applicant completed a questionnaire for non-sensitive positions on October 24, 2014. (Item 3) He completed a Declaration of Federal Employment, Form 306, on October 15, 2014. (Item 4)

Applicant was arrested on September 16, 2011, and charged with domestic battery. (Item 6) On October 19, 2011, the charge was amended to disorderly conduct. He was fined and ordered to pay court costs (\$882) and placed on 12 months of Court supervision. (Item 5) There are no other details in the record concerning the incident.

When Applicant completed his Form 306, he failed to disclose the 2011 charge, which had occurred three years earlier. He answered “no” to question nine – “During the last seven years, have you been convicted, been imprisoned, been on probation, or been on parole?” Applicant admits to this allegation, but he stated that he forgot about the incident in question and that he rushed through the application. He added that he and his wife attended counseling for six months. He noted that he has not had any incidents of that nature since 2011. He stated that it was not his intent to falsify any information on the application. He apologized for any inconvenience that may have been caused to his employer and all involved in this process.

### **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 is potentially applicable in this case:

(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 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.

The Government established this disqualifying condition through Applicant's admission and evidence presented as a result of his 2011 arrest for domestic battery, which was amended to disorderly conduct. He was convicted in October 2011 of disorderly conduct. 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's charge of domestic battery was amended to disorderly conduct. He and his wife have attended counseling for a period of six months. He paid court costs and completed 12 months of court supervision. This one incident occurred in 2011. There are no other incidents on his record. He has been employed with the same employer since 1991. The above mitigating circumstances are established. I also considered the factors in DODI 5200.46, Enclosure 4, ¶ 1.

### **Material, Intentional Falsification, Deception, or Fraud**

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental Adjudicative Standards*, paragraph 3, lists two conditions that raise a CAC concern and may be disqualifying:

- 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; and
- b. Therefore, 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.)

Applicant admitted that he did not list the 2011 offense of disorderly conduct, and explained that he completed his 2014 application in haste and had simply forgotten about the incident. There is nothing in the record to contradict that this was a onetime occurrence with his wife. He stated that he had no intent to falsify the application. He expressed remorse for any inconvenience and apologized to all involved in the process. I find the misstatement or omission was unintentional or inadvertent. I have carefully considered the facts in the record and applied the standards in DODI 5200.46. 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 2, Criminal or Dishonest Conduct: For Applicant

Subparagraph 1.a: For Applicant

Paragraph 3, Intentional False Statement: For Applicant

Subparagraph 2.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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Noreen A. Lynch  
Administrative Judge