



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



In the matter of:

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CAC Case No. 15-05750

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Applicant for CAC Eligibility

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Appearances

For Government: Ross Hymans, Esq., Department Counsel

For Applicant: *Pro se*

05/30/2017

Decision

RICCIARDELLO, Carol, G., Administrative Judge:

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

Statement of the Case

On January 4, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for CAC eligibility pursuant to Homeland Security Presidential Directive – 12 (HSPD-12). The DOD was unable to find that granting Applicant CAC eligibility did not pose an unacceptable risk. The action was based on the Adjudicative Standards found in DOD Instruction (DODI) 5200.46, *DOD Investigative and Adjudicative Guidelines for Issuing the CAC*, 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 criminal or dishonest conduct.

Applicant answered the SOR on February 28, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of

relevant material (FORM). It was mailed to Applicant and was received by him on May 30, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's documents are identified as Items 2 through 5. Applicant provided documents within the time period, and they are marked Applicant Exhibits (AE) A through D. All documents are admitted into evidence without objection. The case was assigned to me on March 21, 2017.

Findings of Fact

Applicant is 35 years old. He has three children. He has been working overseas for a government contractor for over a year. Applicant admitted all of the allegations in the SOR, with explanations.

A State Investigation Criminal Report was included in the FORM and it reflected Applicant's criminal charges.¹ Applicant was arrested in approximately November 2003, and charged with theft by shoplifting, theft by taking, criminal trespass, and simple battery. Applicant explained he was detained and arrested and went to court. His offenses were adjudicated as a "first offender." He plead nolo contendere. It is unknown what if any punishment he received.²

In approximately July 2010, Applicant was arrested and charged with driving with a suspended or revoked license, a misdemeanor. Applicant stated in his answer that he was unaware that his license was suspended at the time. He indicated he was sentenced to two days confinement.³

In approximately May 2012, Applicant was arrested and charged with driving with a suspended or revoked license, a misdemeanor. Applicant stated in his answer that he was subsequently convicted, fined, and placed on 12 months probation. He stated he paid the fine, and completed the probation and the six-month suspension of his license.⁴

In about January 2013, Applicant was arrested and charged with driving with a suspended or revoked license. He admitted the charge, but provided no further explanation. It is unclear how he successfully completed the terms of the 12 months probation from his May 2012 conviction if he was arrested in January 2013. It is unknown if he was convicted of this charge.⁵

In about August 2013, Applicant was arrested and charged with driving with a suspended or revoked license. He admitted the charge and stated:

¹ Item 5.

² Item 2.

³ Item 2.

⁴ Item 2.

⁵ Item 2.

The system was not recognizing my license at the time I was being detained and when I went to court I had to present my license on my behalf. I was placed on a 6 month probation to pay off the court fees which was paid off 2 months later.⁶

Applicant was arrested in October 2013, and charged with probation violation due to a new arrest for driving with a suspended or revoked license. He was subsequently convicted of driving without a valid license, a misdemeanor, and sentenced to ten days community service, probation for 12 months, and fined \$730.⁷

On about June 2014, Applicant was arrested and charged with a probation violation for driving on a suspended violation. Applicant stated in his answer that he was late paying the fees for the probation that was ordered in October 2013, so he was detained for approximately a week. He stated that after he was released he finished paying the fine.⁸

Applicant provided a letter stating that he apologizes for his past behavior and has no excuses for it. He has grown and learned from his mistakes. He stated he was not deliberately or intentionally making the mistakes. Applicant stated he has had a driver's license now for a few years and has not been in trouble. He has been working hard at his current job for over a year and is doing well.⁹

Applicant provided character letters. The program manager for his job is aware of his past criminal charges. He stated that he believes Applicant has good moral character and that he has aggressively attempted to correct his past mistakes. His work performance has been outstanding, and he had received praise from his coworkers and those in superior positions. He is remorseful for his past conduct. Other character letters state that Applicant is always professional and maintains the highest standard of customer service. He is reliable. He has a good work ethic, willingly works long hours, and is respectful to people at all levels.¹⁰

Applicant did not provide any information about the circumstances of each of his arrests for driving with a suspended license. He did not provide information about his failure to comply with his probation. He has complied with his state's requirements to obtain a valid license.

⁶ Item 2.

⁷ Item 2.

⁸ Item 2.

⁹ AE A.

¹⁰ AE B, C, D.

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 the 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, Paragraph 2.a articulates 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 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards lists three 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;

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; and

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

The Government established through the state criminal report that Applicant was arrested and charged in 2003 for theft by shoplifting, theft by taking, criminal trespass, and simple battery. It was adjudicated as a first offense and Applicant plead nolo contendere. He was also arrested and charged six times from July 2010 to June 2014 for driving with a suspended license and for violating probation. The above disqualifying conditions apply.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards 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:

2.c.(1): The behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur; and

2.c.(4) Evidence 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 did not provide amplifying information about the circumstances surrounding his 2003 arrest and conviction for theft. He also did not provide amplifying information about his repeated violation for driving with a suspended license and a probation violation. However, he took full responsibility for his past behavior and indicated he has learned from his past mistakes. He expressed remorse for his past conduct. He has a valid license from his state. It has been three years since his last arrest. Based on character evidence, he has a positive employment record. Although the record reflects that Applicant had multiple arrests for the same offense, thereby failing to comply with the law, the evidence strongly indicates that he has put his life on the right track and further misconduct is unlikely to recur. There is sufficient evidence of rehabilitation. The above mitigating conditions apply.

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: FOR APPLICANT

Subparagraphs 1.a-1.g: 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.

Carol G. Ricciardello
Administrative Judge