



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



In the matter of: )  
 )  
 --- ) CAC Case No. 15-06091  
 )  
 Applicant for CAC Eligibility )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: Brandy Pierre Anderson, Personal Representative

09/29/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the Common Access Card (CAC) credentialing concerns raised under the criminal or dishonest conduct or financial irresponsibility, as well as the illegal use of narcotics, drugs, or other controlled substances supplemental adjudicative standards. CAC eligibility is granted.

**Statement of the Case**

On June 2, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On September 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to him, pursuant to Homeland Security Presidential Directive – 12, *Policy for a Common Identification Standard for Federal Employees and Contractors*, dated August 27, 2004 (HSPD-12); DOD Instruction 5200.46, *DOD Investigative and Adjudicative Guidance for Issuing the Common Access Card*, dated September 9, 2014 (DODI); Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

<sup>1</sup> GE 1 (e-QIP, dated June 2, 2014).

(January 2, 1992), as amended and modified (Directive). The SOR alleged concerns pertaining to “criminal or dishonest conduct or financial irresponsibility” under ¶ 2.a., Appendix 2, Enclosure 4, and “illegal use of narcotics, drugs, or other controlled substances” under ¶ 5.a., Appendix 2, Enclosure 4, Supplemental Adjudicative Standards, and detailed reasons why the DOD adjudicators were unable to make an affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s CAC eligibility. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated October 21, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On January 14, 2016, Department Counsel indicated the government was prepared to proceed. The case was assigned to me on January 15, 2016. A Notice of Hearing was issued on January 20, 2016. I convened the hearing, as scheduled, on February 3, 2016.

During the hearing, two government exhibits (GE 1 and GE 2), ten Applicant exhibits (AE A through AE J), and one administrative exhibit were admitted into evidence without objection. Applicant and one witness testified. The transcript (Tr.) was received on February 11, 2016. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He timely submitted a number of additional documents, which were marked as AE K through AE P that were admitted into evidence without objection. The record closed on February 22, 2016.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with explanations, two of the factual allegations pertaining to criminal conduct (¶¶ 1.l. and 1.m.) of the SOR. During the hearing, after discussing certain allegations, Applicant changed his answers to “admit,” and he also admitted the one factual allegation pertaining to drug involvement (¶ 2.a.). Applicant’s admissions, as well as his explanations and comments related to those allegations which he denied, are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor. He has been a mechanic for his employer since February 2014. He had previously been a mechanic or auto technician for other employers from at least December 2004 until February 2014.<sup>2</sup> He was unemployed from January 2010 until February 2011.<sup>3</sup> He is seeking to retain his CAC eligibility which was initially granted to him in 2006.<sup>4</sup> Applicant attended high school

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<sup>2</sup> GE 1, *supra* note 1, at 7-11.

<sup>3</sup> GE 1, *supra* note 1, at 9.

<sup>4</sup> Tr. at 8.

and completed the tenth grade in 1985 or 1986.<sup>5</sup> He has never served in the U.S. military.<sup>6</sup> Applicant was married in March 1991 and divorced in 1999.<sup>7</sup> He has five children: two 27-year-old sons, a 26-year-old-daughter, a 21-year-old daughter, and a 14-year-old daughter.<sup>8</sup>

### **Criminal or Dishonest Conduct or Financial Irresponsibility and Illegal Use of Narcotics, Drugs, or other Controlled Substances<sup>9</sup>**

Applicant has a lengthy history, from 1991 until 2012, of being a justice-involved individual with a variety of incidents pertaining to variations of assault and domestic violence charges; illegal substance charges; contempt of court charges, and a theft charge. He was in a very dysfunctional relationship with his wife, a person who was afflicted with manic schizophrenia and subject to violent outbursts. She periodically struck him or attacked him with knives and other objects, and he attempted to fend her off to defend himself.<sup>10</sup> She routinely called the police, but also refused to sign complaints or testify against him.<sup>11</sup> Most of the charges were dismissed or *nolle prossed*, while other charges were reduced. He was convicted for a rather small number of charges. Because of the time period during which many of the incidents occurred, Applicant was unable to recall the specifics of many of the events alleged.

(SOR ¶ 1.a.): On July 28, 1991, when he was 20 years old, Applicant was arrested and charged with one count of trespassing and two counts of simple assault. He spent one night in jail. He was convicted of trespassing and sentenced to time served, and the simple assault counts were dismissed.<sup>12</sup>

(SOR ¶ 1.b.): On September 17, 1991, sometime after a fight between Applicant and another individual, that individual was shot by some unidentified person. Although Applicant was not involved in the shooting, he was in the area of the shooting, so he was arrested and charged with assault and battery with intent to kill. On June 21, 1993, after spending eight months in jail without a trial, the charge was dismissed, *nolle prossed* or Applicant was found not guilty. The record was expunged.<sup>13</sup>

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<sup>5</sup> Tr. at 8, 92.

<sup>6</sup> GE 1, *supra* note 1, at 12.

<sup>7</sup> Tr. at 92.

<sup>8</sup> Tr. at 93.

<sup>9</sup> General source information pertaining to the alleged incidents of criminal or dishonest conduct or financial irresponsibility, as well as the illegal use of narcotics, drugs, or other controlled substances, discussed below can be found in the following exhibits: GE 2 (Criminal History Record, dated July 14, 2014); Applicant's Answer to the SOR, dated October 21, 2015. More recent information can be found in the exhibits furnished and individually identified.

<sup>10</sup> Tr. at 56, 58-59.

<sup>11</sup> Tr. at 59.

<sup>12</sup> GE 2, *supra* note 9, at 2.

(SOR ¶ 1.c.): On August 5, 1992, while preparing to leave for work, Applicant's wife struck him in the head with a coffee mug, starting an altercation in which Applicant pushed her away, causing her to fall onto the bed. She came back swinging. The police were called and they arrested and charged Applicant with simple assault. On August 7, 1992, the charge was dismissed, *nolle prosequit* or Applicant was found not guilty. The record was expunged.<sup>14</sup>

(SOR ¶ 1.d.): On July 28, 1993, Applicant and his wife engaged in an altercation. The police were called and they arrested and charged Applicant with criminal domestic violence. The charge was subsequently dismissed, *nolle prosequit* or Applicant was found not guilty.<sup>15</sup>

(SOR ¶ 1.e.): On August 22, 1993, Applicant and his wife engaged in an altercation. The police were called and they arrested and charged Applicant with domestic violence. The charge was apparently subsequently dismissed, *nolle prosequit* or Applicant was found not guilty.<sup>16</sup>

(SOR ¶ 1.f.): On August 25, 1993, Applicant and his wife engaged in an altercation. The police were called and they arrested and charged Applicant with criminal domestic violence and disorderly conduct. The charges were subsequently dismissed, *nolle prosequit* or Applicant was found not guilty.<sup>17</sup>

(SOR ¶ 1.g.): On August 27, 1994, Applicant and his wife engaged in an altercation. The police were called and they arrested and charged Applicant with aggravated assault, later modified to assault of a high and aggravated nature and criminal domestic violence. All of the charges were subsequently dismissed, *nolle prosequit* or Applicant was found not guilty. The record was expunged.<sup>18</sup>

(SOR ¶ 1.h.): On June 16, 1995, Applicant was arrested and charged with theft of electric current. Following an argument with his wife, Applicant attached an electric meter to their trailer located in the trailer park he was staying in for the night. A police officer saw him place the meter in the trailer. Applicant was convicted of the charge and given the option of a \$304 fine or 30 days in jail.<sup>19</sup>

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<sup>13</sup> GE 2, *supra* note 9, at 3; AE H (Order for Destruction of Arrest Records, dated August 14, 2015); Tr. at 42-49, 51-53, 97.

<sup>14</sup> GE 2, *supra* note 9, at 3.

<sup>15</sup> GE 2, *supra* note 9, at 3.

<sup>16</sup> GE 2, *supra* note 9, at 3, does not indicate any disposition of the charge, but Applicant contended it was dismissed. Applicant's Answer to the SOR, *supra* note 9, at 1.

<sup>17</sup> GE 2, *supra* note 9, at 3-4.

<sup>18</sup> GE 2, *supra* note 9, at 4-5; AE I (Order for Destruction of Arrest Records, dated August 14, 2015).

<sup>19</sup> GE 2, *supra* note 9, at 5; Tr. at 82-83.

(Not alleged in the SOR): On July 28, 1995, while speaking with a friend in the trailer park, the friend and a police officer got into an argument. One police officer, the same one who had arrested him the month earlier, decided Applicant no longer belonged in the trailer park. As a result, Applicant was arrested and charged with congregating for unlawful purpose. Notwithstanding the absence of information pertaining to what the illegal purpose might be, he was convicted of the charge and given the option of a \$764 fine or 30 days in jail.<sup>20</sup>

(SOR ¶¶ 1.i. and 2.a.): On October 25, 1996, Applicant was “hanging out” with some friends. An individual walked up to one of people in the group and gave that person a \$20 bill. Applicant borrowed the money to eat. After the individual departed, the police came and raided the bar where they were located. The individual joined the police and although no drugs were found on anyone, the \$20 bill turned out to be marked money. Applicant was arrested and charged with one count of distribution of crack and one count of distribution of crack in proximity of school. On June 23, 1998, following the advice of the public defender to plead guilty, Applicant was convicted of a reduced charge of possession of less than one gram ice/crack cocaine 1<sup>st</sup> degree, a felony, fined \$5,000, and sentenced to five years confinement, suspended, with 14 days credit for time served. The charges for distribution of crack and distribution of crack in proximity of school were dismissed, *nolle prossed* or Applicant was found not guilty.<sup>21</sup>

(SOR ¶¶ 1.j. and 2.a.): On December 15, 1996, Applicant was receiving a ride to his mother’s home. The driver was pulled over by the police who spotted a beer in his hand. The vehicle was searched and drugs were found under the driver’s seat. Applicant was unaware of the drugs. When the police were unhappy with Applicant’s claimed lack of knowledge with respect to the drugs, he was arrested and charged with one count of possession of crack with intent to distribute, one count of possession of crack with intent to distribute within proximity of school, possession of cocaine with intent to distribute, and false police report. Under that state’s law, the three drug charges apply if the activity takes place on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university. distribution of crack and one count of distribution of crack in proximity of school. On June 23, 1998, all of the charges were dismissed, *nolle prossed* or Applicant was found not guilty.<sup>22</sup>

(SOR ¶ 1.k.): Applicant became involved with a woman and moved in with her, taking his furniture with him into her house. Upon their breakup, she wanted him out of the house, but she refused to permit him to remove his property. The lock on the door was changed. Applicant and the woman got into a dispute which became mutually violent and she destroyed a piece of his furniture. He left the house.<sup>23</sup> On November 29, 2011,

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<sup>20</sup> GE 2, *supra* note 9, at 5; Tr. at 85-86.

<sup>21</sup> GE 2, *supra* note 9, at 5-6; Tr. at 77-80.

<sup>22</sup> GE 2, *supra* note 9, at 6-7; Tr. at 81-82.

<sup>23</sup> Tr. at 60-62.

Applicant was arrested and charged with one count of assault and battery 3<sup>rd</sup> degree, a misdemeanor. On March 20, 2012, following a bench trial, Applicant was convicted and sentenced to time served.<sup>24</sup>

(SOR ¶ 1.I.): Applicant had been making regular child support payments that were automatically taken from his paycheck. The payments ceased when he left his job. On January 2, 2012, Applicant was arrested and charged with civil contempt of family court by adult, a misdemeanor, for having failed to make timely child support payments totaling \$11,607.11. He was found to be in civil contempt and ordered to report for confinement unless he purged himself of contempt by making certain payments. Applicant explained his financial circumstances, including his earlier extensive period of unemployment, and upon investigation, the court determined that the arrearage had increased because the child support payments had erroneously continued although the child had previously become emancipated. The arrearage was recalculated down to \$6,765.56, and ongoing support was cancelled. Applicant was ordered to pay \$210, and he was released.<sup>25</sup>

(SOR ¶ 1.m.): Following his earlier appearance in the family court, Applicant received a payment plan and before it could be implemented, he had been making regular child support payments. He was unaware that he had to sign paperwork to start the automatic payroll deduction. He fell \$50 short one time. On September 12, 2012, Applicant was again arrested and charged with civil contempt of family court by adult, a misdemeanor, for having failed to make timely child support payments on the arrearage now totaling \$6,425.56. He was found to be in civil contempt and ordered to report for confinement unless he purged himself of contempt by making certain payments. Applicant was ordered to pay \$340 in court costs and \$250 for arrearage, and he was released.<sup>26</sup> On January 31, 2014, the child support arrearage was determined by the court to be paid off, and the Income Withholding Order/Notice for Support (IWO) was terminated.<sup>27</sup>

Applicant and his twin brother were raised by their mother while their father chose to reside in another state. He grew up longing for a relationship with his father but there was none. Instead, without any type of guidance, he turned to the streets and got into a lot of trouble. He consumed alcohol, smoked marijuana, and stopped going to school. As a young African-American, there were times when he felt that some of his police-related incidents were actually pretext for something else. The trespassing and loitering generally occurred where there were no signs prohibiting his presence. Anger filled him, and without

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<sup>24</sup> AE J (Case History, dated November 30, 2015). Under the state law, there is no requirement that a battery be committed. The evidence merely requires that the accused unlawfully injured another person, or offers or attempts to injure another person with the present ability to do so.

<sup>25</sup> GE 2, *supra* note 9, at 7; AE M (Civil Contempt Order, dated January 4, 2012); Tr. at 71-73.

<sup>26</sup> GE 2, *supra* note 9, at 7; AE N (Civil Contempt Order, dated September 13, 2012); Tr. at 76-77.

<sup>27</sup> AE O (Income Holding for Support Termination, dated January 31, 2013). The IWO is confusing in that the judge signed the order on January 31, 2014, but the cover page of the order is dated January 31, 2013.

thinking, he became indifferent to the requirements of society. He did not care if he lived or died.<sup>28</sup>

There was a seismic shift in his attitude and outlook when Applicant met his current girlfriend. She inspired him to better himself. He attends church regularly and has spoken at length with his pastor as well as his girlfriend. She has been a “very inspiring light” to him. As God-fearing individuals, she and her family have helped guide him. He no longer drinks, smokes, or parties. His days of foolishness are behind him. He has now learned to turn the other cheek and walk away from confrontation. He is now hard-working, and he fills his spare time working on vehicles for family and friends. He has accepted responsibility for all that has gone before, and he acknowledges that when he was younger, he wasn’t thinking at all. As a dramatically changed person, he considers himself to be a productive citizen, paying his taxes and living like a decent human being.<sup>29</sup>

### **Character References**

Applicant’s team leader characterized him in extremely positive terms, referring to his excellent quality performance, promptness, trustworthiness, integrity, and dedication. He is respectful to others and always volunteers to assist his coworkers.<sup>30</sup> His landlady has known Applicant since 2012, and she considers him to be both a “wonderful tenant” and a great neighbor and friend.<sup>31</sup> Applicant’s pastor has concluded that he is a very loyal and honest person who is very considerate of others, and that he is a self-motivated hard-worker.<sup>32</sup> Applicant’s sister witnessed incidents when Applicant was hassled by police officers, and she related the difficulties he experienced as a youth. She noted his life-changing progression as he removed himself from his old way of life and adjusted into a respectable role model for others, including her son. She attested to the “tremendous growth in his character and his life.”<sup>33</sup> Friends and coworkers consider Applicant to be an excellent mechanic and model employee.<sup>34</sup>

Applicant’s girlfriend, who considers him as her “soul mate and companion,” has known him since June 2012, and since that time she has witnessed a continuous growth in his beliefs, standards, and goals. He is honest about his past encounters and admitted his past wrongs. He has separated himself from his past environment, friends, and activities – those things related to illegal or inappropriate matters. He has not displayed

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<sup>28</sup> Tr. at 86-88, 96.

<sup>29</sup> Tr. at 89-91.

<sup>30</sup> AE P (Character Reference, dated February 6, 2016).

<sup>31</sup> AE G (Character Reference, dated October 16, 2015).

<sup>32</sup> AE B (Character Reference, undated).

<sup>33</sup> AE L (Character Reference, dated February 3, 2016).

<sup>34</sup> AE A (Character Reference, dated September 17, 2015); AE F (Character Reference, dated February 1, 2016).

any hostility or aggressiveness or possessed or used any controlled substances since she has known him. Applicant is considered a selfless person who puts everyone's needs before his own. He is reliable and trustworthy.<sup>35</sup>

## **Policies**

Every CAC eligibility decision must be a fair and impartial overall common sense 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 common sense 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. An administrative judge need not view the standards as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these standards are applied in conjunction with the factors listed below in the adjudicative process.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. If there is evidence sufficient to present a reasonable basis to conclude that a disqualifying factor in accordance with the basic CAC credentialing standards is substantiated, or when there is a reasonable basis to conclude that derogatory information or conduct relating to the supplemental CAC credentialing standards presents an unacceptable risk for the U.S. Government, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present witnesses and other evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. 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.

A person who seeks CAC eligibility enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special

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<sup>35</sup> AE K (Character Reference, dated February 3, 2016); Tr. at 27-33.

relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants CAC eligibility for access to information systems and installation access. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, unacceptable risk. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

### **Analysis**

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental Adjudicative Standards*, ¶ 2 articulates the CAC concern:

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 conditions are 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 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) 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;

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

(5) Actions involving violence or sexual behavior of a criminal nature that poses an unacceptable risk if access is granted to federally-controlled facilities and federally-controlled information systems. For example, convictions for sexual assault may indicate that granting a CAC poses an

unacceptable risk to the life and safety of persons on U.S. Government facilities;

(6) 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.

Applicant's extensive history of criminal or dishonest conduct and limited history of financial irresponsibility is sufficient to establish all of the above disqualifying conditions.

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 mitigating conditions 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;

(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;

(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.

It is clear that without any type of guidance from an absentee father, Applicant fell prey to his environment, and he turned to the streets where he got into trouble. He consumed alcohol, smoked marijuana, and stopped going to school. He entered into a dysfunctional relationship with his wife. As a young African-American, there were times when he felt that some of his police-related incidents were actually pretext for something else. Time, maturity, a change in environment, a divorce, and a caring girlfriend, brought substantial changes in his life. He learned to control his anger and avoid negative influences and situations. The criminal conduct for which Applicant was arrested and charged during the period 1991 through 1996 occurred when he was between the ages of 20 and 25 – over 20 years ago.

The variations of assault and domestic violence incidents during that period were largely the result of his wife's aggressions because of her manic schizophrenia when she was subject to violent outbursts. All of the charges involving his spouse were eventually dismissed, *nolle prossed* or Applicant was found not guilty. He was convicted of both incidents involving the minor charges of trespassing and congregating for unlawful purposes. At the age of 24, Applicant exercised poor judgment when he stole electric current. The two drug-related incidents when he was 25 years old resulted from Applicant being in the wrong place at the wrong time. He was a passenger in a car receiving a ride to his mother's home when the driver had drugs under the driver's seat. Applicant took

the public defender's advice and pled guilty to one reduced charge. The remaining charge was dismissed. The other drug-related incident arose because Applicant borrowed money from a friend who apparently was in a police drug-sting. All of those charges were eventually dismissed, *nolle prossed* or Applicant was found not guilty.

The remaining assault charge occurred when Applicant was 40 years old. It, too, involved very unusual circumstances when a former girlfriend managed to steal Applicant's property and destroy some of it. She physically attacked him, but he was arrested, charged, and convicted of misdemeanor assault, although no battery took place. The two civil contempt incidents in 2012 were in part, a combination of miscommunication, misinformation, and a period of unemployment. All child support arrearage was eventually paid off and the matter has been resolved.

With the exception of the one lengthy period of unemployment, Applicant has been a hard-working mechanic or auto technician for various employers since at least December 2004. He has held steady employment since February 2011, and he has been recognized as a valued employee. Based on the extremely positive information presented by his various character references, as well as Applicant's own description of his spiritual, psychological, and social transformation and maturity, I am convinced Applicant is rehabilitated. His history of criminal or dishonest conduct or his financial irresponsibility from the past is not indicative of his current state of rehabilitation, and it does not pose an unacceptable risk. The above mitigating circumstances are established.

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental Adjudicative Standards*, ¶ 5 articulates the CAC concern:

A CAC will not be issued to a person if there is a reasonable basis to believe, based on the nature or duration of the individual's illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation, that issuance of a CAC poses an unacceptable risk.

a. An individual's abuse of drugs may put people, property, or information systems at risk. Illegal use of narcotics, drugs, or other controlled substances, to include abuse of prescription or over-the-counter drugs, can raise questions about his or her trustworthiness, or ability or willingness to comply with laws, rules, and regulations. For example, a person's long-term illegal use of narcotics without evidence of substantial rehabilitation may indicate that granting a CAC poses an unacceptable safety risk in a U.S. Government facility.

DODI 5200.46, Appendix 2 to Enclosure 4, *Supplemental Adjudicative Standards*, ¶ 5.b. lists several conditions that could raise a CAC concern and may be disqualifying. The following conditions are potentially applicable in this case:

(1) Current or recent illegal drug use, serious narcotic, or other controlled substance offense.

(2) A pattern of drug-related arrests or problems in employment.

(3) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution of illegal drugs, or possession of drug paraphernalia.

There is no SOR allegation that Applicant used any illegal substances, although he admitted using marijuana as a youth. The SOR merely alleged that Applicant was arrested on two occasions in 1996 for variations of drug-related criminal offenses pertaining to distribution and possession of cocaine and crack cocaine. As noted above, the two drug-related incidents occurred two decades ago when he was 25 years old. Applicant pled guilty to one reduced charge. The remaining charge was dismissed. The other drug-related incident eventually resulted in all of the charges being eventually dismissed, *nolle prossed* or with Applicant being found not guilty. Nevertheless, Applicant's limited involvement with controlled substances is sufficient to partially establish two of the above disqualifying conditions. The condition raised in ¶ 5.b.(1) has not been established.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 5.c. lists circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk. The following mitigating conditions may be relevant:

(1) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur (e.g., clear, lengthy break since last use; strong evidence the use will not occur again).

(2) A demonstrated intent not to abuse any drugs in the future, such as:

(a) Abstaining from drug use.

(b) Disassociating from drug-using associates and contacts.

(c) Changing or avoiding the environment where drugs were used.

Applicant's limited relationship with controlled substances, arising out of his two drug-related arrests two decades ago when he was 25 years old, has faded into the past with no recurrence. Applicant changed the environment of his youth and has disassociated himself from any drug-using individuals. Based on the extremely positive information presented that reflects Applicant's spiritual, psychological, and social transformation and maturity, I am convinced Applicant is rehabilitated. His history of drug-related involvement from the past is not indicative of his current state of rehabilitation, and it does not pose an unacceptable risk. The above mitigating circumstances are established.

### **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 or Financial Irresponsibility:	FOR APPLICANT
Subparagraphs 1.a. through 1.m.:	For Applicant
Paragraph 2, Illegal Use of Narcotics, or other Controlled Substances:	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 or continue Applicant's CAC eligibility. CAC eligibility is granted.

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ROBERT ROBINSON GALES  
Administrative Judge