



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



In the matter of:

-----,<sup>1</sup> -----

Applicant for CAC Eligibility

)  
)  
)  
)  
)  
)

CAC<sup>2</sup> Case No. 15-06141

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel

For Applicant: *Pro se*

02/09/2017

**Decision**

Heiny, Claude, Administrative Judge:

**Statement of the Case**

On November 13, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR<sup>3</sup>) to Applicant detailing eligibility concerns for Common Access Card (CAC) eligibility pursuant to Homeland Security Presidential Directive – 12 (HSPD-12). DoD was unable to find that granting Applicant CAC eligibility did not pose an unacceptable risk. The action is based on the Adjudicative Standards found in DoD Instruction 5200.46, *DoD Investigative and Adjudicative Guidelines for Issuing the*

---

<sup>1</sup> The Statement of Reasons (SOR) was issued to------. She has since married and changed her last name.

<sup>2</sup> Originally, the SOR was issued under a “HSPD” number using the same number as the CAC number.

<sup>3</sup> Government moved to amend the wording of the SOR replacing the words [If “Yes” use item 16 to provide the date, and explanation of the problem, reasons for leaving and the employers name and address”] and inserting the words [“violation, place of occurrence, and the name and address of the police department or court involved.”] Applicant did not object to the change and the motion to the change to the wording was granted. (Tr. 15)

*Common Access Card*, 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. In 2014, Applicant had too much to drink at a friend's house and was arrested for operating a vehicle while intoxicated (misdemeanor). When she completed her Declaration for Federal Employment form (306) she failed to list her misdemeanor conviction. The SOR lists material, intentional false statement deception, or fraud for her actions.

Applicant answered the SOR on November 30, 2015, and requested a hearing before a DOHA administrative judge. On February 17, 2016, a Notice of Hearing was sent out scheduling the hearing for March 2, 2016. The hearing was held as scheduled. Department Counsel offered four exhibits, which were admitted as Exhibits (Ex.) 1-4, without objection. Applicant testified and offered six exhibits which were admitted as Ex. A-F, without objection. The transcript (Tr.) was received on March 10, 2016. Based on the record evidence and testimony presented in this case, CAC eligibility is granted.

### **Findings of Fact**

In March 2014, Applicant, then 23 years old, was at a friend's home, had too much to drink, and was arrested for operating a vehicle while intoxicated (a Class C misdemeanor) (OWI) and operating a motor vehicle with a blood alcohol content of at least .15 (a Class A misdemeanor). (Ex. 3, 4) Immediately after leaving her friend's home, she realized she had drunk too much and should not be driving. She asserted she was on the road approximately 20 seconds before pulling into the parking lot of a closed fast-food restaurant. (Tr. 21) When police investigated her running vehicle, she was found sleeping in the car. She was then arrested.

In May 2014, Applicant pleaded guilty to the Class A misdemeanor, was fined \$500, and sentenced to serve 365 days in custody, all of which were suspended. (Ex. 4) She was also required to complete 40 hours of community service, attend a victims' impact panel, pay \$368.50 in court costs, undergo court ordered drug-alcohol evaluation-counseling, and undergo 364 days of unsupervised probation. (Ex. 4) In June 2014, the probation office indicated she had completed all terms and conditions of probation and her probation was terminated. (Ex. 4, Tr. 17, 21)

On September 30, 2014, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) The e-QIP asked no questions about arrests or alcohol use. On September 18, 2014, she completed a Declaration for Federal Employment, Office of Personnel Management (OPM) form 306. (Ex. 2) She answered "no" to question 9, which asked if she had been convicted, imprisoned, on probation, or on parole during the previous seven years.

In Applicant's response to the SOR, she admitted her misdemeanor arrest and conviction and denied knowingly lying or falsifying her response to the Form 306. (SOR Answer) She indicated her lifestyle had completely changed since the incident and that

she was now a wife and mother who rarely consumed alcohol. (Tr. 21) Her life style also changed from the civilian world to that of being a military dependent. In January 2014, she married an Army E-4, who works as a chaplain's assistant at the same military post. (Tr. 22) They had met while attending university together. (Tr. 23) Following the wedding he left for basic training. Her daughter was born in June 2015. (Tr. 22) She left the state where she was born and had attended university to move to her husband's duty location where she works at the fitness center. (Tr. 22) She obtained a new job. Applicant enjoys being a military dependent, the lifestyle, the opportunity to travel, the people, the structure of military life, and the Army community. (Tr. 39) She indicated she has learned from her mistake. (Tr. 21)

Applicant is a health promotion technician working at a post wellness center. Part of her duties involves teaching a metabolism class, a healthy sleep habit class, an exercise class, and writing workout programs. (Tr. 26) Her supervisor and coworkers state Applicant is trustworthy, reliable, intelligent, learns quickly, is a hard-working and dedicated worker who goes above and beyond to help their clients reach their health and wellness goals. (Ex. A, B, C, D) Applicant is extremely knowledgeable in the health and fitness fields and provides excellent customer service. (Ex. C, D) Prior to receiving the SOR, Applicant informed her supervisor about her arrest and conviction. (Tr. 36) She asserted, but failed to document, that she had acknowledged her arrest and conviction in her job application with her employer. (Tr. 34)

In May 2013 Applicant received a Bachelor of Science degree in Applied Exercise and Health. She then worked at as a head personal trainer and manager at a gymnasium before obtaining her current job with a DoD contractor in September 2014.

Applicant completed the Form 306 on-line, at work because she had no internet at home. She completed it on her first or second day of her new job. (Tr. 33) She was told the form was time critical. She was attempting to learn the duties of her new job while completing all the paperwork of a new employee. (Tr. 24) She says it was a stressful time being trained in a new job, being in a new location, and learning the "ins and outs" of being a military spouse. She misread the question on the Form 308. She saw that it talked about felonies and parole and did not believe the question applied to her. (Tr. 25) Her mindset in reading the question was that it applied only to felonies even though it also references misdemeanors. (Tr. 34)

Applicant admits she should have gone over the form more closely and double checked it. (Tr. 25) In the future, she will fill out forms more slowly and reread all of her answers. She believes the distraction of learning her new job and the time crunch to complete the form led to her incorrect response on the form. (Tr. 28) She admits it was her fault for misreading the question and acknowledges she should have reviewed the form much better before submitting it. (Tr. 29, 31, 33)

## **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**

Disqualifying conditions are set forth in DoDI 5200.46, September 9, 2014, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards. Paragraph 2 states 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 when:

- 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.

b. Therefore, conditions that may be disqualifying include:

(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.

(7) Deliberate omission, concealment, or falsification of relevant facts or deliberately providing false or misleading information to an employer, investigator, security official, competent medical authority, or other official U.S. Government representative, particularly when doing so results in personal benefit or which results in a risk to the safety of people and proper safeguarding of property and information systems.

In March 2014, Applicant, then age 24, drank too much at a friend's home before attempting to drive home. Realizing she should not be driving, she pulled into the parking lot of a closed fast-food restaurant. She was cited for OWI when the police discovered her sleeping in her running vehicle. She was found guilty of operating a motor vehicle with a prohibited BAC. In September 2014, Applicant completed her Federal employment form and failed to list her arrest or conviction. She did so because she incorrectly believed the question only applied to felonies, which did not apply to her.

The OWI conviction and failing to list her OWI on her employment form is conduct involving questionable judgment or an unwillingness to comply with rules and regulations. Conditions that could mitigate the conduct are set forth in paragraph 2.c, which lists circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk. These circumstances include:

(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.

The OWI incident occurred in 2014, and the conduct has not been repeated. Applicant has matured and is unlikely to repeat the misconduct. There has been successful rehabilitation including remorse, job training, and an outstanding employment record. Mitigating conditions AG ¶ 2.c (1) and (4) apply.

Paragraph 3 states a CAC will not be issued to a person if there is a reasonable basis to believe, based on the 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. Conditions that may be disqualifying include:

- 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.)

The conduct could be mitigated under 3.c (2) if the misstatement or omission was unintentional or inadvertent and followed by a prompt, good-faith effort to correct the situation.

Applicant failed to list her arrest and conviction because she misread the question and thought it applied only to felonies. Because she had been convicted of a misdemeanor, she did not list her arrest or conviction. She acknowledges she should have been more careful in answering the question. There is no showing she made an intentionally false statement or was deceptive.

Applicant's work performance is outstanding. She has been and is willing to maintain the conduct expected of one entrusted with CAC access. Her employers support her. She has a history of stable employment and a strong work ethic. This support and self-introspection should ensure her continued success. She demonstrated the correct attitude and commitment to security matters. Considering her demeanor and testimony, I believe Applicant has learned from this incident, and in the future she will fully disclose the 2014 incident. In sum, I find Applicant has presented sufficient evidence of rehabilitation. Applicant is living an appropriate lifestyle. She is now a mother, and is a responsible, contributing member of society. She presented sufficient evidence to explain, extenuate, or mitigate the CAC eligibility concerns raised. For these reasons, 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 1, Criminal Conduct or Dishonest Conduct: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Material, Intentional False Statement, Deception, or Fraud: 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.

---

Claude R. Heiny  
Administrative Judge