



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



In the matter of:

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CAC Case No. 15-06229

Applicant for CAC Eligibility

Appearances

For Government: Douglas Velvel, Esq., Department Counsel

For Applicant: *Pro se*

10/28/2016

Decision

RICCIARDELLO, Carol, G., Administrative Judge:

Applicant failed to mitigate Common Access Card (CAC) eligibility concerns raised under the criminal or dishonest conduct supplemental adjudicative standards. CAC eligibility is denied.

Statement of the Case

On November 17, 2015, 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 December 11, 2015, and elected to have her 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 on March 3, 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 Government Exhibits (GE) 2 through 5. Applicant did not object or provide additional documents within the time period. The Government's documents are admitted into evidence without objection. The case was assigned to me on September 27, 2016.

Findings of Fact

Applicant is 54 years old. She is a high school graduate.¹ Applicant completed a Declaration for Federal Employment application on October 21, 2014. She answered "yes" to question nine, which asked if during the last seven years had she been convicted, been imprisoned, been on probation, or been on parole." Under question 16, she was required to provide details of the event she disclosed. She provided the place where the offense occurred, the date of the occurrence as March 4, 2011, and the violation as "uttering forgery."² No other details were provided.

A Federal Bureau of Investigation (FBI) Criminal Report was included in the FORM and it noted Applicant was arrested in August 2008 and charged with "making fraudulent statements/representations" The charge was later amended to three counts of felony "uttering forgery." On March 4, 2011, Applicant was convicted of three felony counts of "uttering forgery." She was sentenced to five years of probation.³

Applicant did not provide any information about the circumstances of her arrest and felony conviction. Applicant's entire answer to the SOR states: "I deny conviction."⁴ Her answer contradicts the FBI criminal report. She did not provide any additional information.

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.

¹ GE 3.

² GE 4.

³ GE 5.

⁴ GE 2.

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 eligibility 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 eligibility concern and may be disqualifying in this case:

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 Applicant's admission in her Declaration for Federal Employment form and the FBI criminal report that Applicant was convicted of three felony counts of "uttering forgery." She was sentenced to five years' 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;

2.c.(2): Charges were dismissed or evidence was produced that the person did not commit the offense and details and reasons support his or her innocence; 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 failed to provide any information as to the circumstances or facts surrounding her arrest and felony conviction for "uttering forgery." She failed to provide information as to whether she has completed the terms of her probation. Despite evidence from the FBI criminal report, she denied the conviction in her SOR answer. A felony conviction is not minor in nature. No evidence was provided to conclude that her offense happened under unusual circumstances, and therefore, I am unable to find that it is unlikely to recur. There is insufficient evidence of successful rehabilitation or the passage of time without recurrence of similar illegal activity. Applicant failed to mitigate the concerns raised by her past criminal conduct.

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: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant CAC eligibility. CAC eligibility is denied.

Carol G. Ricciardello
Administrative Judge