



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



In the matter of:

)
)
)
)
)
)
)

CAC Case No. 15-06299

Applicant for CAC Eligibility

Appearances

For Government: Gina L. Marine, Esq., Department Counsel

For Applicant: *Pro se*

01/26/2017

Decision

RICCIARDELLO, Carol, G., Administrative Judge:

Applicant failed to mitigate Common Access Card (CAC) eligibility concerns raised under the criminal or dishonest conduct and alcohol abuse 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 and alcohol abuse.

Applicant answered the SOR on December 6, 2015, 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 on March 10, 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. He was advised that failure to submit any material will result in the Administrative Judge proceeding to a determination based on the Government's FORM. The Government's documents are identified as Government Exhibits (GE) 2 through 6.¹ Applicant did not object or provide documents within the time period. The Government's documents are admitted into evidence without objection. The case was assigned to me on November 4, 2016.

Procedural Matters

In the FORM, Department Counsel amended the SOR adding criminal or dishonest concerns and alcohol concerns. Applicant did not respond to the amendment and he did not admit or deny the additional allegations. I will consider his nonresponse as a denial to each additional allegation. The allegations are as follows:

1.i. You were arrested and charged with uttering a fraudulent check on or about August 23, 1996.

1.j. You were arrested and charged with driving with a suspended license on or about July 26, 2007.

1.k. You were arrested and charged with DUI/Driving Under the Influence on or about December 1, 2013.

Department Counsel amended the SOR by adding the following allegation under the alcohol abuse concern. It is:

2.a. That information as set forth in subparagraphs 1.b, 1.d, and 1.k., above.

Findings of Fact

Applicant is 62 years old. He is a high school graduate.² Applicant was arrested in December 1992 and charged with uttering fraudulent checks (two counts). In May 1996, he was arrested and charged with driving under the influence (DUI), open container, and resisting arrest. He was convicted and sentenced to one year in jail, which was suspended and he was ordered to complete one year of probation and 40 hours of community service. In early July 1996, he was arrested and charged with simple possession of marijuana and open container. In late July 1996, he was again

¹ Item 1 is the SOR.

² GE 3.

arrested and charged with DUI. In August 1996, Applicant was arrested and charged with uttering a fraudulent check (one count).³

Applicant was arrested and charged with driving with a suspended license in September 1997. He was arrested and charged with uttering multiple fraudulent checks in February 1998 (nine counts). He was convicted of eight counts of uttering fraudulent checks and fined.⁴

In May 1998, Applicant was arrested and charged with driving with a suspended license and a child restraint violation. He was arrested and charged with uttering fraudulent checks in July 1999 (two counts). In July 2007, Applicant was arrested and charged with driving with a suspended license. In December 2013, he was arrested and charged with DUI.⁵

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.h in his answer, but did not provide any mitigating information. He did not respond to the allegations in SOR ¶¶ 1.i through 1.k or 2.a. A Federal Bureau of Investigation Criminal Report provided proof of all allegations.⁶

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.

³ Items 2 and 5.

⁴ Items 2 and 5.

⁵ Items 2 and 5.

⁶ Items 2 and 5.

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, paragraph 2.b, 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;

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

2.b.(4) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, or other intentional financial breaches of trust.

The Government established through Applicant's admissions in his answer to the SOR and the FBI criminal report that over a 17-year-span, Applicant was arrested three times for DUI, the most recent in December 2013. He has a 1996 criminal conviction for DUI and resisting arrest. He was arrested and charged with possession of marijuana in 1996. Over a seven-year period, Applicant was arrested and charged with writing fraudulent checks: two counts in 1992; one count in 1996; nine counts in 1998 (convicted of eight counts); and two counts in 1999. Over an 11-year period, Applicant was arrested and charged with driving with a suspended license four times, in 1996, 1997, 1998, and 2007. He was arrested and charged with open container violations twice in 1996. The above disqualifying conditions apply.

DODI 5200.46, Appendix 2 to Enclosure 4, paragraph 2.c, 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 his arrests and convictions. Although some of the arrests are old, his most recent arrest was in 2013 for DUI. He also was arrested multiple times for writing fraudulent checks. Applicant's record reflects a pattern of criminal and dishonest conduct. No evidence was provided to conclude the offenses happened under unusual circumstances; therefore, I am unable to find that similar conduct is unlikely to recur. There is no evidence of successful rehabilitation. Due to the 17-year history of criminal and dishonest behavior, I am unable to conclude that his conduct is mitigated by the passage of time without recurrence of similar illegal activity. Applicant failed to mitigate the concerns raised by his past criminal conduct.

Alcohol Abuse

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, paragraph 4.a articulates the CAC concern:

An individual's abuse of alcohol may put people, property, or information systems at risk. Alcohol abuse can lead to the exercise of questionable judgment or failure to control impulses, and may put people, property, or

information systems at risk, regardless of whether he or she is diagnosed as an abuser of alcohol or alcohol dependent. A person's long-term abuse of alcohol 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, paragraph 4.b, Supplemental Adjudicative Standards lists two conditions that raise a CAC concern and may be disqualifying:

4.b.(1) A pattern of alcohol-related arrests; and

4.b.(3) Current continuing abuse of alcohol.

The Government established through Applicant's admissions in his answer to the SOR and the FBI criminal report that over a period of 17 years, Applicant was arrested three times for DUI, the most recent in December 2013, and two charges for open container. There is sufficient evidence to raise the above disqualifying conditions.

DODI 5200.46, Appendix 2 to Enclosure 4, paragraph 4.c, 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:

4.c.(1) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an abuser of alcohol);

4.c.(2) The individual is participating in counseling or treatment programs, has no history of previous treatment or relapse, and is making satisfactory progress; and

4.c.(3) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare. He or she has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in an alcohol treatment program. The individual has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant failed to provide any information as to the circumstances or facts surrounding his alcohol abuse and arrests. The evidence shows that Applicant had two alcohol-related arrests for DUI in 1996 and one in 2013. Without additional evidence regarding Applicant's alcohol use, I cannot find that there is a pattern of abstinence or

responsible use. There is no evidence of alcohol counseling, treatment, or rehabilitation. None of the above mitigating conditions applies.

Conclusion

Applicant has a long history of criminal and dishonest conduct. He also has a history of alcohol-related offenses. He failed to provide amplifying information about his arrests and criminal charges or his alcohol use and alcohol-related offenses. Without mitigating information, these issues pose an unacceptable risk. For these reasons, I conclude Applicant's request for CAC eligibility should be denied.

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
Subparagraphs 1.a-1.k:	Against Applicant
Paragraph 2, Alcohol Abuse:	AGAINST APPLICANT
Subparagraph 2.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