



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



In the matter of:

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Applicant for CAC Eligibility

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CAC Case No. 15-06377

**Appearances**

For Government: Adrienne Strzelczyk, Esq., Department Counsel

For Applicant: *Pro se*

March 29, 2017

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

On November 19, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for Common Access Card (CAC) eligibility pursuant to Homeland Security Presidential Directive – 12 (HSPD-12) *Policy for a Common Identification Standard for Federal Employees and Contractors* (August 27, 2004). (Item 1.) 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 Common Access Card* (September 9, 2014), 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 Supplemental Adjudicative Standards of DoDI 5200.46 are: Appendix 2 to Enclosure 4, Paragraph 1.a. Misconduct or Negligence in Employment; and Paragraph 3.a. Material, Intentional False Statement, Deception or Fraud.

Applicant answered the SOR on December 18, 2015, and requested a decision based on the administrative record. (Item 1.) Department Counsel submitted the Government's written case (FORM) consisting of five items to Applicant on January 20, 2016. Applicant acknowledged receipt of the FORM on February 3, 2016. Applicant was given 30 days after receipt of the FORM to file objections to any of the Government's documents, or to provide additional documentation of her own. No additional information was submitted by Applicant. The case was assigned to me on July 19, 2016.

### **Findings of Fact**

Applicant is 48 years old. She works in the medical field for a defense contractor. Her marital status is unknown. (Item 3.)

Applicant admitted the factual allegations in paragraph 1 of the SOR with explanations. She denied paragraph 2.

#### **Paragraph 1 – Misconduct or Negligence in Employment**

The Government alleges in this paragraph that Applicant is ineligible for CAC credentialing because she has engaged in misconduct or negligence in employment that may put people, property, or information systems at risk.

a. Applicant worked for Company A from October 2009 to April 2012. In her answer, Applicant states:

I admit I was let go by [Company A] in April 2012. I left under the perception and understanding it was a mutual agreement. I had been working for the company for over two years when the working environment became hostile and stressful to the point I felt that I was being disrespected and humiliated. (Item 1.)

An Investigative Request for Employment Data and Supervisor Information is contained in the file. (Item 4.) This form is dated December 1, 2014, and signed by Applicant's supervisor, who stated Applicant was discharged for "unfavorable employment or conduct," and was not eligible for rehiring. She further states the reason for Applicant's discharge was, "Repeated error [sic] which could jeopardize patients' wellbeing." Applicant did not contest the stated reason for her discharge. The supervisor marked the form in Block 7 not recommending Applicant for a security clearance.

Applicant submitted a letter of recommendation from a co-worker at Company A. The writer states, "She [Applicant] was always hard working, great customer service, professional and dependable."

b. Applicant worked at Company B from October 2013 to May 2014. In her answer, Applicant states:

I admit to have discontinued my employment with [Company B] in May 2014, but not for gross misconduct and company policy violations as the Statement of Reasons suggest. I was still in the 90 day probationary with a 30 day extension when I was let go. (Item 1.)

An Investigative Request for Employment Data and Supervisor Information is contained in the file from this employer as well. (Item 5.) This form is dated November 25, 2014, and signed by Applicant's supervisor, who stated Applicant was discharged for "unfavorable employment or conduct," and was not eligible for rehiring. She went on to state Applicant was, "Terminated due to gross misconduct & company policy violations." It is noted that both parties agree Applicant worked for Company B for approximately eight months. A 120-day probationary period would be shorter, only approximately four months.

## **Paragraph 2 – Material, Intentional False Statement, Deception, or Fraud**

The Government alleges in this paragraph that Applicant is ineligible for CAC credentialing because she has made material false statements during the employment process.

Applicant filled out a Declaration for Federal Employment (Form 306) on November 17, 2014. Item 12 of that form asks Applicant, "During the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management or any other Federal agency? *If "Yes," use Item 16 to provide the date, explanation of the problem, reason for leaving, and the employer's name and address.*" (Emphasis in original.) Applicant answered, "No." This was a false answer to a relevant question pertaining to Applicant's employment record.

Applicant denied this allegation stating, "My intention was never to mislead or falsify a document." Based on her responses to the other allegations, Applicant appears to be arguing that she did not know the adverse nature of her discharge from employment from Company A or Company B. The question asks for information concerning an applicant leaving a job "by mutual agreement because of specific problems." In relation to Company A, Applicant certainly knew she had employment problems there, and left by mutual consent. With Company B, she left after the probationary period, not during it, as she states. Applicant was under an affirmative duty to tell the Government about the reasons she left both jobs.

## **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**

### **Paragraph 1 – Misconduct or Negligence in Employment**

1. A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual's misconduct or negligence in employment, that issuance of a CAC poses an unacceptable risk.

a. An individual's employment misconduct or negligence may put people, property, or information systems at risk.

b. Therefore, conditions that may be disqualifying include:

- (1) A previous history of intentional wrongdoing on the job, disruptive, violent, or other acts that may pose an unacceptable risk to people, property, or information systems.
- (2) A pattern of dishonesty or rule violations in the workplace which put people, property or information at risk.
- (3) A documented history of misusing workplace information systems to view, download, or distribute pornography.
- (4) Violation of written or recorded commitments to protect information made to an employer, such as breach(es) of confidentiality or the release of proprietary or other information.
- (5) Failure to comply with rules or regulations for the safeguarding of classified, sensitive, or other protected information.

c. Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

- (1) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current trustworthiness or good judgment relating to the safety of people and proper safeguarding of property and information systems.
- (2) The individual was not adequately warned that the conduct was unacceptable and could not reasonably be expected to know that the conduct was wrong.
- (3) The individual made prompt, good-faith efforts to correct the behavior.
- (4) The individual responded favorably to counseling or remedial training and has since demonstrated a positive attitude toward the discharge of information-handling or security responsibilities.

Documentation provided by Company A indicates that Applicant engaged in conduct involving rule violations, which potentially put people at risk. At Company B, she engaged in gross misconduct and violated company rules. I find that Disqualifying Conditions Supplemental Adjudicative Standards Paragraphs 1.b.(1), and 1.b.(2) apply.

Applicant's conduct occurred two and four years ago in a workplace environment. Her dismissal from Company A was directly related to patient safety. Applicant did not submit sufficient information to overcome the concerns raised by the statements of her

former supervisors. None of the mitigating conditions are established. I find Paragraph 1 of the SOR against Applicant.

## **Paragraph 2- Material, Intentional False Statement, Deception, or Fraud**

3. 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.

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.

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 prior federal or contract employment (e.g., on the employment application or other employment, appointment or investigative documents, or during interviews).

c. Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(1) The misstated or omitted information was so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur.

(2) The misstatement or omission was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation.

Applicant's explanations for her failure to tell the Government the truth about the circumstances of her dismissals from Company A and Company B, do not withstand scrutiny. With regard to Company A, she admits leaving by mutual agreement, but does not attempt to dispute that it was due to her misconduct. She left Company B at least two months after her probationary period ended. Even if the dismissal had occurred during the probationary period, that does not preclude the fact that her misconduct led to the company's action. I find that Disqualifying Conditions 3.a and 3.b apply. Applicant has not mitigated her falsifications, and I find Paragraph 2 of the SOR against Applicant.

I have examined Applicant's conduct in relation to the general adjudicative guidance contained in Enclosure 4 of DoDI 5200.46, as described above. None of those mitigating conditions apply to the facts of this case. Based on my analysis of the facts as related to the guidance in DoDI 5200.46, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Misconduct or Negligence in Employment:      AGAINST APPLICANT

    Subparagraphs 1.a and 1.b:      Against Applicant

Paragraph 2, Material, Intentional False Statement:      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.

WILFORD H. ROSS  
Administrative Judge