



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



In the matter of:

CAC Case No. 15-07613

Applicant for CAC Eligibility

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

August 4, 2017

Decision

Goldstein, Jennifer I., Administrative Judge:

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 Common Access Card (CAC) issuance pursuant to Homeland Security Presidential Directive-12 (HSPD-12). DOD was unable to find that it was clearly consistent with the national interest to grant Applicant CAC eligibility. 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*, dated 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 Adjudicative Standards of DoDI 5200.46 are: Paragraph 2.a (Criminal or Dishonest Conduct).

Applicant answered the SOR on December 8, 2015 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 17, 2016. On that date, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 8. She was given an opportunity to file objections and submit material

to refute, extenuate, or mitigate the Government's evidence. She received the FORM on October 28, 2016, and responded on that date with a nine page fax, marked Applicant Exhibit (AE) A. No objections to Items 1 through 8, or AE A were noted by either party, and they are all admitted into evidence. The case was assigned to me on July 11, 2017.

Based on the record evidence and testimony presented in this case, Common Access Card eligibility is granted.

Findings of Fact

Applicant is 29 years old. She earned a Bachelor of Science degree in December 2011. She worked as a sales associate while earning her degree. She was unemployed from December 2011 to March 2012. She has been employed by a Government contractor since August 2014. (Item 5.)

The SOR alleged that Applicant's criminal or dishonest conduct raised concerns under DoDI 5200.46, Enclosure 4, Appendix 2, *Supplemental Adjudicative Standards*. Specifically, it alleged that Applicant was charged with domestic battery in February 2013 and was delinquent on four student loans in the total amount of \$17,772. Applicant admitted subparagraphs 1.b through 1.e. She denied 1.a.

SOR subparagraph 1.a alleged that Applicant was charged with domestic battery in February 2013. This allegation was based upon an investigation request for law enforcement data made to a police department by the Office of Personnel Management (OPM) on April 16, 2015. (Item 6.) On that form completed and returned by a records clerk, it indicated on "2/13" an offense of "Domestic Battery" in "State Court" was recorded into Applicant's record. It provided no other details. Applicant produced a letter from the police department that indicated Applicant "has no arrest history with [police department]. [Applicant] was a complainant for a domestic incident in February 2013, but was not a victim or a suspect in the incident." (AE A.)

SOR subparagraphs 1.b through 1.e alleged that Applicant was delinquent in repaying four student loans in the amounts of \$5,967; \$2,800; \$2,895; and \$6,110; respectively. These debts became delinquent in March 2015. (Item 8.) However, Applicant provided written verification dated October 28, 2016, which reflects that her student loans have been fully rehabilitated and the creditor "notified the national credit bureaus to delete the record of default from [Applicant's] credit record." (AE A.) These debts are being resolved.

Policies

Every CAC eligibility decision must be a fair and impartial overall commonsense decision based on all available evidence, both favorable and unfavorable. The HSPD-12 credentialing standards 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 eligibility criteria 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 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.

Directive ¶ E3.1.14 requires the Government to 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 the 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

Supplemental Adjudicative Standards, Paragraph 2.a

DoDI 5200.46, Enclosure 4, Appendix 2, Supplemental Adjudicative Standards expresses concerns pertaining to criminal or dishonest conduct. Paragraph 2 of this section 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.

- 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.

The disqualifying conditions set forth in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 2.b that are raised by Appellant's conduct as set out in the SOR are:

(2) Charges or admissions 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

(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 was not arrested or charged with domestic battery in February 2013. She was neither a victim nor a suspect in that incident. As a result, there are no disqualifying conditions that were established concerning the allegation in SOR subparagraph 1.a.

Applicant's four student loans became delinquent in March 2015 in the total approximate amount of \$17,772. The above disqualifying condition in Subparagraph 2.b(6) applies.

Potentially mitigating conditions are set forth in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 2.c. The conditions that could apply to mitigate the security concerns raised by the evidence in this case are:

(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.

Applicant has rehabilitated her delinquent student loans and the creditor has removed them from default status. Applicant meet her burden to establish mitigation under the conditions in DoDI 5200.46, Enclosure 4, Appendix 2, Subparagraph 2.c.

Further Mitigation

DODI 5200.46, Enclosure 4, *CAC Adjudicative Procedures*, Paragraph 1, *Guidance For Applying Credentialing Standards During Adjudication* provides the following:

a. As established in Reference (g), credentialing adjudication considers whether or not an individual is eligible for long-term access to federally controlled facilities and/or information systems. The ultimate determination to authorize, deny, or revoke the CAC based on a credentialing determination of the PSI must be made after consideration of applicable credentialing standards in Reference (c).

b. Each case is unique. Adjudicators must examine conditions that raise an adjudicative concern, the overriding factor for all of these conditions is unacceptable risk. Factors to be applied consistently to all information available to the adjudicator are:

(1) The nature and seriousness of the conduct. The more serious the conduct, the greater the potential for an adverse CAC determination.

(2) The circumstances surrounding the conduct. Sufficient information concerning the circumstances of the conduct must be obtained to determine whether there is a reasonable basis to believe the conduct poses a risk to people, property or information systems.

(3) The recency and frequency of the conduct. More recent or more frequent conduct is of greater concern.

(4) The individual's age and maturity at the time of the conduct. Offenses committed as a minor are usually treated as less serious than the same offenses committed as an adult, unless the offense is very recent, part of a pattern, or particularly heinous.

(5) Contributing external conditions. Economic and cultural conditions may be relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk if the conditions are currently removed or countered (generally considered in cases with relatively minor issues).

(6) The absence or presence of efforts toward rehabilitation, if relevant, to address conduct adverse to CAC determinations.

(a) Clear, affirmative evidence of rehabilitation is required for a favorable adjudication (e.g., seeking assistance and following professional guidance, where appropriate; demonstrating positive changes in behavior and employment).

(b) Rehabilitation may be a consideration for most conduct, not just alcohol and drug abuse. While formal counseling or treatment may be a consideration, other factors (such as the individual's employment record) may also be indications of rehabilitation.

As noted above, Applicant has now matured and has demonstrated responsible behavior in rehabilitating her student loans, as documented in the letter from the creditor. She demonstrated sufficient rehabilitation. For these reasons, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Criminal or Dishonest Conduct: FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

Jennifer I. Goldstein
Administrative Judge