



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



In the matter of:

Applicant for CAC Eligibility

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CAC Case No. 15-08117

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

11/15/2017

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate Common Access Card (CAC) credentialing concerns raised under the criminal or dishonest conduct supplemental adjudicative standards. CAC eligibility is denied.

**Statement of the Case**

On December 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing credentialing concerns for CAC eligibility under the adjudicative standards of criminal or dishonest conduct. Applicant responded to the SOR on January 9, 2016, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 28, 2016. On April 11, 2016, Applicant changed his request to a decision on the written record in lieu of a hearing.

The Government's written case was submitted on April 19, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 26, 2016. He responded to the FORM with documents that I have marked collectively as Applicant's

Exhibit (AE) A. The case was assigned to me on November 9, 2017. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since 2012. He attended a technical school for more than two years. He filed his 2002 federal income tax return as married with two children. His 2011 return was filed as single without dependents. His current status is unknown.<sup>1</sup>

Applicant has a long criminal history. He was convicted of inflicting corporal injury to a spouse or cohabitant in 1992; inflicting injury to a child in 1997; and trespass in 1998.<sup>2</sup>

Applicant was arrested in September 2008 and charged with battery/domestic violence. He was convicted and received time served, a fine, and a suspended sentence. He completed a six-month course on domestic violence and anger management. He was arrested in 2009 for failure to pay the fine for the conviction. He paid the fine and was released.<sup>3</sup>

Applicant was arrested in 2009 and charged with battery/domestic violence. He asserted that he was falsely accused. The disposition of the charge is unclear.<sup>4</sup>

Applicant has a history of traffic citations and criminal moving violations. Between 2007 and 2011, he was cited on multiple occasions for speeding, open container, driving without a license, driving with a suspended license, driving with a revoked license, expired license plate, no insurance, no registration, and fictitious registration. He was arrested on a bench warrant in 2011 for failure to pay the fines for the various citations. Applicant stated that he was in between jobs and homeless at the time. He asserted that the fines were lowered and eventually paid.<sup>5</sup>

Applicant accepted responsibility for his actions and charges. He wrote that it was a bad chapter of his life. He longed to return to a “normal life” at his current job. He requests to continue to hold his CAC so that he can continue to assist our troops in defending this great country.<sup>6</sup>

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<sup>1</sup> Item 2; AE A.

<sup>2</sup> Item 3. These convictions were not alleged in the SOR and will not be used for disqualification purposes. They may be considered in the application of mitigating conditions and in the whole-person analysis.

<sup>3</sup> Items 1, 3, 4.

<sup>4</sup> Items 1, 3, 4.

<sup>5</sup> Items 1, 4.

<sup>6</sup> Item 1.

Applicant did not file his state and federal income tax returns when they were due for tax years 2002 and 2008 through 2011. He filed the returns in 2014. His 2002 returns show that he owed the IRS \$3,576 and the state \$3,084. His 2008 through 2011 federal returns show a mixture of refunds and additional taxes owed.<sup>7</sup>

## **Policies**

This case is adjudicated under Homeland Security Presidential Directive – 12 (HSPD-12); DOD Instruction (DODI) 5200.46, *DOD Investigative and Adjudicative Guidance for Issuing the CAC*, dated September 9, 2014; and 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).

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.

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, ¶ 1)

## **Analysis**

### **Criminal or Dishonest Conduct**

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 2 provides:

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

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<sup>7</sup> Items 1, 4; AE A.

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, ¶ 2.b lists several conditions that could raise a CAC eligibility concern and may be disqualifying. The following are potentially applicable in this case:

(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) 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;

(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;

(5) Actions involving violence or sexual behavior of a criminal nature that poses an unacceptable risk if access is granted to federally-controlled facilities and federally-controlled information systems. For example, convictions for sexual assault may indicate that granting a CAC poses an unacceptable risk to the life and safety of persons on U.S. Government facilities; 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's criminal history is sufficient to establish disqualifying conditions ¶¶ 2.b.(1); 2.b.(2); and 2.b.(5). Some of Applicant's traffic violations were not criminal offenses, but at a minimum, his driving without a valid license offenses were misdemeanor criminal offenses.

Applicant did not file his tax returns or pay his taxes for several years. However, I am not convinced that he had the specific intent to evade his income tax obligation under 26 U.S.C. § 7201 or file tax returns under 26 U.S.C. § 7203, which is necessary for criminal liability. Disqualifying condition ¶ 2.b.(6) states that "financial debt should not in and of itself be cause for denial." Absent criminal intent, no disqualifying conditions are established. See CAC Case No. 15-02333 (App. Bd. Nov. 16, 2016). SOR ¶ 1.e is concluded for Applicant.

SOR ¶¶ 1.b and 1.c allege that in January 2009 and July 2009, Applicant “was arrested and charged with failure to appear in court on the charge of battery domestic violence.” Those allegations were not established through substantial evidence. SOR ¶¶ 1.b and 1.c are concluded for Applicant.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 2.c 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:

- (1) The behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur;
- (2) Charges were dismissed or evidence was provided that the person did not commit the offense and details and reasons support his or her innocence; 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 a long criminal history. While he has not been arrested on a domestic violence charge since 2009, his disregard for the law, manifested by numerous charges of driving without a valid license, continued through 2011. Applicant appears to be sincere, but that is insufficient to mitigate the well-established pattern of criminal conduct. I am unable to determine that criminal behavior is unlikely to recur. There is some mitigation, but the limited information in the FORM has not convinced me that Applicant does not pose an unacceptable risk. I also considered the factors in DODI 5200.46, Enclosure 4, ¶ 1.

### **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
Subparagraphs 1.b-1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, granting Applicant CAC eligibility poses an unacceptable risk. CAC eligibility is denied.

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Edward W. Loughran  
Administrative Judge