



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



In the matter of:

Applicant for CAC Eligibility

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CAC Case No. 16-03733

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2018

Decision

CERVI, Gregg A., Administrative Judge:

Applicant refuted the Common Access Card (CAC) credentialing concerns raised under supplemental adjudicative standards (SAS) for misconduct or negligence in employment; and material, intentional false statement, deception, or fraud. CAC eligibility is granted.

Statement of the Case

Applicant submitted a Declaration for Federal Employment (Form 306) on August 18, 2016, and a Questionnaire for Non-Sensitive Positions (SF-85P) on August 19, 2016. On June 1, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing credentialing concerns for CAC eligibility under Homeland Security Presidential Directive – 12 (HSPD-12). The DOD was unable to find that granting Applicant CAC eligibility did not pose an unacceptable risk.¹ The concerns raised under the Adjudicative Standards of DODI 5200.46 are SAS paragraph 1.a, misconduct or

¹ The action was taken under the Adjudicative Standards found in DOD Instruction (DODI) 5200.46, *DOD Investigative and Adjudicative Guidelines 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).

negligence in employment; and paragraph 3.a, material, intentional false statement, deception, or fraud.

Applicant responded to the SOR on June 30, 2017, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 25, 2017.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the CAC credentialing concerns. Applicant received the FORM on August 14, 2017, but did not submit a response FORM items 5 and 6 consist of inadmissible written statements under section E3.1.22 of Enclosure 3 of the Directive.² The Government's remaining exhibits included in the FORM (Items 1 to 4) are admitted into evidence. The case was assigned to me on January 16, 2018.

Findings of Fact

Applicant is 25 years old. She has worked as a lab aide for her current employer since November 2014. From 2007 to December 2013, Applicant worked as a teaching assistant at a school. The SOR alleges that Applicant was fired from this job, and failed to report it in her federal employment declaration (Form 302).

In response to the SOR, Applicant stated that "[I] was told they would not need me during the school year, but that I could keep working in the summer if I wished to. I did not take that a[s] being terminated, but as being a different schedule." She denied falsifying her Form 302, claiming she answered to the best of her knowledge and was truthful.

Misconduct or negligence in employment eligibility concerns, and material, intentional false statement, deception, or fraud have not been established. SOR ¶¶ 1.a and 2.a are found for Applicant.

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, Misconduct or Negligence in Employment: FOR APPLICANT

Subparagraph 1.a: For Applicant

² There was no admissible evidence to establish the facts alleged in SOR ¶ 1.a under the misconduct or negligence in employment eligibility concerns and SOR ¶ 2.a under the intentional false statement eligibility concerns. Because I am unable to make findings of fact about those allegations, SOR ¶¶ 1.a and 2.a are found for Applicant and will not be discussed further.

Paragraph 2, Material, Intentional False Statement,
Deception, or Fraud:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, granting Applicant CAC eligibility does not pose an unacceptable risk. CAC eligibility is granted.

Gregg A. Cervi
Administrative Judge