



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



In the matter of

Applicant for Security Clearance

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CAC Case No. 17-00436

Appearances

For Government: Adrienne Driskill, Esquire

For Applicant: *Pro se*

08/23/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated Common Access Card (CAC) credentialing concerns raised under the criminal or dishonest conduct standard. CAC eligibility is granted.

Statement of the Case

On November 9, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing criminal or dishonest conduct eligibility. The DOD was unable to find that it was clearly consistent with the national interest to grant Applicant CAC eligibility. The action was taken under Homeland Security Presidential Directive – 12 (HSPD-12); 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).

Applicant responded to the SOR on December 7, 2017, and requested a determination based on the written record. On January 19, 2018, Department Counsel issued a File of Relevant Material (FORM) including four attachments (“Items”). Applicant did not respond to the FORM. I was assigned the case on May 10, 2018. After a complete examination of all materials submitted in relation to this matter, I find that

Applicant met his burden showing that it is clearly consistent with the national interest to grant him eligibility for Command Access Credentialing and Installation Access.

Findings of Fact

Applicant is a 30-year-old team lead working abroad for a defense contractor. He has been in that position since June 2016. Applicant earned a high school diploma in 2005. He then served honorably in the United States military from 2005 through 2014. He is married and the head of his family.

Upon his discharge from the military in December 2014, Applicant was prepared to take a short break before assuming a position he had already secured. A few weeks into the new year, Applicant learned that prospective job opportunity had been cancelled. Initial attempts to find another job were difficult. The reality that he might not be able to provide for his family was devastating and he had to quickly dip into his limited savings. (SOR Response) "The stress, coupled with [the] unrealized issue of still having a soldier's mindset but not having a mission eventually became too much." (SOR Response)

At some time on the evening of February 7, 2015, Applicant began consuming alcohol. He and a friend began ranting about how they were unable to provide for their families. (FORM, Item 4, Probable Cause Statement) Applicant went outside to get some air when he started "freaking out," yelling and punching both a guest's truck and friend's arm. (FORM, Item 4, Probable Cause Statement) The friend calmed Applicant down and led him to the garage, where Applicant again "freaked out." (FORM, Item 4, Probable Cause Statement) He was then led into the home, where he ran to a bedroom where a gun safe was located. His friends then sought to restrain him.

Shortly after 3:00 a.m., a sheriff's deputy was dispatched to Applicant's home. There, he found Applicant being restrained on a bed by three men. The deputy was told that restraint was necessitated when Applicant began to access a gun safe. Applicant calmed down after being handcuffed, but was too intoxicated to be questioned. He muttered that he had to take care of things. Suffering from a bloody nose, Applicant was removed to the patrol car.

The deputy was told that Applicant had consumed a fifth of 70 proof whiskey before he started to lose his self-control; it was also noted that he had previously been drinking an "apple pie drink . . . [that had made him] happy as can be." (FORM, Item 4, Probable Cause Statement and Voluntary Statement) Applicant was ultimately arrested and read his *Miranda* rights. On February 8, 2017, he was charged with Assault 2nd Degree. Applicant has admitted these facts and expressed regret over the incident.

When apprised by his wife of his behavior on the night in question, Applicant was embarrassed, humiliated, and appalled. He immediately sought appropriate therapy through the United States Department of Veteran's Administration (VA), which helped him put the situation behind him so he could start moving ahead and addressing his

situation. He was greatly relieved when the charges were ultimately dropped. He has focused on regaining the trust of his wife and family. He quickly found another job opportunity that paid a sufficient salary to enable him to take care of his financial obligations. He was soon promoted to team leader over a team of 16 to 22 employees. After 18 months, he accepted a better position located abroad and more suited to his talents.

Applicant has excelled in his present position. His site manger regards Applicant as an organizational asset whose “professional demeanor and flawless integrity ensures all tasking are completed with minimum means and time.” (SOR Response, Reference 1) The deputy site manager is grateful to have Applicant as one of his most valued employees. (FORM Response Reference 2) A fellow team leader characterized Applicant as one who sets the standard among his peers in regard to character and attitude, and is a successful, integral part of their organization. (SOR Response Reference 3) A lead mechanic writes of Applicant’s leadership in glowing terms. (SOR Response Reference 4) A co-worker noted that Applicant “has shown nothing but respect for fellow workers and is a good friend to many of us. I have never, ever seen [him] lose his temper or show any anger towards anyone.” (SOR Response Reference 5)

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. 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, 6 Tr. at 20-23; Applicant’s response to SOR; AE C, I. 7 Tr. at 20-25, 27-29; AE A, C, I. 8 Tr. at 38-41; AE H. 4 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) 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, ¶ 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. 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, Supplemental Adjudicative Standards, ¶ 2.b lists several conditions that could raise a CAC concern and may be disqualifying. The following are potentially applicable in this case:

Criminal or Dishonest Conduct or Financial Irresponsibility

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 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 concern and may be disqualifying. Here, Applicant was charged with 2nd degree assault. Consequently, 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; and

(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.

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; 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 entered the United States military directly after graduating from high school. He honorably served in the military for a decade. Still in his 20s upon discharge in late 2014, and with no private sector work experience, he found his well-calculated plans for post-discharge employment dashed. Depressed over this reversal of fortune and embarrassed that he seemingly could not reliably provide for his family, he binged on alcohol with violent results one night in February 2015.

The day after the incident for which he was charged with 2nd degree assault, Applicant was told by his wife what had happened. He was honestly embarrassed and humiliated that he had lost control. He immediately sought help through the VA, where he sought therapy. He also began to move ahead with his life and find another job. Once that was secured, he was able to resume his familial responsibilities as both patriarch and breadwinner. While he excelled in that position, 18 months later he was offered a superior opportunity abroad. There, he quickly gained a reputation as an exceptional and reliable team leader, prized by his superiors and respected by his peers.

Applicant's contrition with regard to his 2015 alcohol binge is genuine. The 2nd degree assault charge, which was ultimately dropped, appears to be an isolated blemish on an otherwise honorable professional and personal record. Nothing in the record suggests that this incident was anything more than aberration, or that it is part of a pattern of questionable, violent, or criminal behavior. Given these considerations, both of the noted circumstances are applicable.

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
or Financial Irresponsibility: FOR APPLICANT

Subparagraph 1.a: 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.

Arthur E. Marshall, Jr.
Administrative Judge