



**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. 17-01101

Appearances

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

09/17/2018

Decision

HESS, Stephanie C., Administrative Judge:

Applicant mitigated Common Access Card (CAC) credentialing concerns raised under the misconduct or negligence of employment and intentional false statement standards set forth in the supplemental adjudicative standards. CAC eligibility is granted.

Statement of the Case

On August 14, 2017, 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). 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 (DODI) 5200.46, DOD Investigative and Adjudicative Guidelines for Issuing the Common Access Card, 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: misconduct or negligence in employment and material, intentional false statement, deception, or fraud.

Applicant answered the SOR on August 28, 2017, and requested a decision based on the administrative record. Department Counsel submitted the Government's written case on September 29, 2017. On October 3, 2017, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 11, 2017, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) within the allotted 30 days. Department Counsel made no objections to Applicant's Response. The case was assigned to me on January 16, 2018.

Findings of Fact

Applicant is a 30-year-old help desk technician employed by a federal contractor since March 2016. The SOR alleges that Applicant was fired from his employment in December 2014 after an unsatisfactory review and that he intentionally failed to disclose this information as required on a declaration for federal employment form in March 2016. Applicant admits that he was fired from the job at a call center but denies that he received an unsatisfactory review. Applicant states that his supervisor told Applicant that he was not performing at the requisite high standard of performance the job required and that Applicant was not a good fit for the position. He was fired after four weeks of training and one week in the position. Applicant denies that he intentionally failed to list that he was fired, and states that his failure to accurately disclose this information was unintentional.

In his Response, Applicant again denies that he intentionally falsified the form he submitted and states that it was a clerical error. Applicant attached an e-QIP certified in March 2017 wherein he disclosed having been fired for not performing up to the customer service standards in December 2014. He also attached a November 2017 declaration for federal employment wherein he answered "yes" to Question 12 which asks if the Applicant has been fired from any employment in the last five years. Additionally, Applicant attached a letter from November 2017 from his former employer which states that Applicant "was terminated due to an unsatisfactory performance."

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.

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

Misconduct or Negligence in Employment

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 1 provides:

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 negligent may put people, property, or information systems at risk.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 1.b lists conditions that may be disqualifying. None of the conditions are applicable in this case.

Material, Intentional False Statement, Deception, or Fraud

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 3 provides:

A CAC will not be issued to person if there’s 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.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 3.b states:

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.)

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, ¶ 3.c states:

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

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

Applicant was terminated from his employment in December 2014 for unsatisfactory performance which did not rise to the level of negligence or misconduct set forth in the disqualifying conditions. Applicant emphatically stated that he did not intentionally fail to disclose his termination from employment. He provided a copy of an e-QIP certified in March 2017, five months before he received the SOR, where he fully disclosed the termination and the reason for it. ¶ 3.c(2) applies. Applicant has mitigated the concerns raised by the conduct alleged in the SOR. 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, Misconduct or Negligence in Employment	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Intentional False Statement	FOR APPLICANT
Subparagraph 1.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.

Stephanie C. Hess
Administrative Judge