



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	CAC Case No. 15-00790
	)	
Applicant for Common Access Credentialing	)	

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2015

**Decision**

TUIDER, Robert J., Administrative Judge:

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

**Statement of the Case**

On June 9, 2014, Applicant submitted a Questionnaire for non-sensitive positions (SF 85). On February 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for Common Access Credential eligibility 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 Supplemental Adjudicative Standards found in DoD Instruction 5200.46, DOD Investigative and Adjudicative Guidelines for Issuing the Common Access Card, 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). The concerns raised under the Supplemental Adjudicative Standards of DoDI 5200.46 are criminal or dishonest conduct.

Applicant answered the SOR on February 23, 2015, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. Department Counsel was ready to proceed on April 20, 2015. The case was forwarded to the Hearing Office and assigned to me on April 23, 2015. On May 5, 2015, a Notice of Hearing was sent out scheduling the hearing for May 29, 2015. On May 7, an Amended Notice of Hearing was sent out scheduling the hearing for May 27, 2015. The hearing was held as rescheduled.

Department Counsel offered Government Exhibits (GE) 1 through GE 3, which were received without objection. Applicant testified and offered Applicant Exhibit (AE) A, which was received without objection. I held the record open until June 5, 2015, to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE B through AE D, which were received without objection. The transcript (Tr.) was received on June 3, 2015. Based on the record evidence and testimony presented in this case, CAC eligibility is granted.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. His SOR answers are incorporated in my findings of fact.

### **Background Information**

Applicant is a 25-year-old accountant employed by a defense contractor since August 2014. He seeks CAC eligibility as a condition of his continued employment. (GE 1; Tr. 18-20, 26-27)

Applicant graduated from high school in May 2008. He was awarded a bachelor of science in business administration with a double major in accounting and finance in August 2014. Applicant is not married and does not have any dependents. He did not serve in the armed forces. (GE 1; Tr. 20-24)

### **Criminal or Dishonest Conduct**

CAC credentialing concerns were identified during Applicant's background investigation as a result of a two misdemeanor arrests over a five-month period. The first arrest occurred on February 18, 2014, when Applicant was 24-years-old, for domestic violence and harassment following an altercation between Applicant and his former girlfriend (GF). (GE 1 – GE 3)

Applicant met GF at college. She was unable to pay out-of-state tuition and was forced to drop out of college. Applicant offered to let GF move in with him while she worked and established herself as an in-state resident. Their relationship subsequently deteriorated resulting in an altercation on February 18, 2014. Applicant testified that GF attacked him and assaulted him with household objects such as a phone and lamp. He went outside and called the police. (Tr. 27-30, 61)

When the police arrived, they were unable to determine who the aggressor was and arrested both Applicant and GF and brought them to the police station where they spent the night in jail. Applicant and GF subsequently entered an identical pre-trial diversion program. He successfully completed the program on August 21, 2014 and all charges were dismissed. The program required Applicant to undergo random drug testing, complete an alcohol assessment program, and pay all court costs. In addition to the diversion program requirements, Applicant consulted with a psychologist to explore alternative problem resolution avenues. He is no longer involved with GF. (SOR answer; Tr. 30-33, 49-50, 60)

The second arrest occurred on June 21, 2014, also when Applicant was 24-years-old, for boating under the influence of alcohol. (GE 1 – GE 3) Applicant was with two out-of-town friends celebrating at his family's lake house. At the time he was arrested, he and his friends were sitting in his parent's powerboat drinking while the boat was anchored. They were approached by a police boat and Applicant as the boat operator was arrested and charged with boating under the influence after it was determined his blood alcohol content was .15%. (Tr. 33-37)

On August 6, 2014, Applicant pled guilty to the charge and was sentenced to 90 days, suspended; 24 months of unsupervised probation; a \$600 fine; a \$100 bail bond fee; \$30 driving/criminal history fee; \$25 victim compensation assessment; and court costs. He also completed a Level I alcohol education class. Apart from waiting to complete 24 months of supervised probation, Applicant has complied with all requirements of his sentence. (SOR answer; (Tr. 37-41, 46-49. 59-60)

At the time of his first arrest, Applicant was employed at a very stressful job at a bank and his father had just had a second heart attack. Applicant had just returned from the hospital visiting his father before his first arrest. Since Applicant's boating under the influence arrest, he has made significant lifestyle changes to include rarely drinking alcohol and participating in a rigorous fitness program. (Tr. 41-45, 50-52, 54)

Applicant recognizes his mistakes and is ashamed and embarrassed not only for himself, but also for his family. He added that not a day goes by that he does not regret his mistakes. (SOR answer; Tr. 48-57)

### **Character Evidence**

Applicant submitted a Performance Plus Certificate signed by his company president, and two work-related reference letters -- one from his supervisor and the second from the head of the accounts payable department. It is clear from both letters that Applicant is viewed as a valuable, dedicated, and trustworthy employee. (AE A – AE C; Tr. 52-54) Applicant also submitted the results of his 2015 company-sponsored physical fitness challenge documenting that he came in second place. (AE D)

Applicant is also involved with the local high school's computer information technology department by serving on their advisory committee and is involved with student preparations for computer and business-related competitions. (SOR answer; Tr.

54-57) Applicant regularly spends time with his family who live locally. (Tr. 57-58) He is also preparing to take the GMAT with the intention of attending graduate school and earning a master of business administration degree. (Tr. 61-62)

## **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.

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.

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, 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**

### **Criminal or Dishonest Conduct**

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards, Paragraphs 2.a., 2.b.(1) and (2) articulate the CAC concern:

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 Instruction 5200.46, Appendix 2, Supplemental Adjudicative Standards lists two conditions that raise a CAC concern and may be disqualifying:

2.b.(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; and

2.b.(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.

The Government established these two disqualifying conditions through Applicant’s admissions and evidence presented as a result of his arrests for domestic violence, harassment, and boating under the influence of alcohol.

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

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.

When Applicant was arrested for domestic violence and harassment, he was in a stressful job and had just returned home after visiting his father in the hospital who had just had his second heart attack. It is unlikely that all of the circumstances surrounding the altercation between Applicant and GF will ever be determined with certainty. What is noteworthy is that Applicant called the police; however, when the police arrived they arrested both Applicant and GF. Both Applicant and GF entered an identical pre-trial diversion program.

Applicant fully complied with and completed the requirements of his diversion program and on August 21, 2014, all charges were dismissed. In addition to completing the requirements of his diversion program, Applicant also consulted a psychologist to provide him with better coping skills when dealing with stressful situations.

Approximately five months after his domestic violence and harassment arrest, Applicant was arrested for boating under the influence of alcohol. While not operating the boat at the time he was arrested, Applicant accepted responsibility as the boat operator. He pled guilty a little more than a month after his arrest. Applicant completed all aspects of his sentence and is waiting out the completion of his two-year unsupervised probation. Applicant was 24-years-old and a recent college graduate at the time of both of his misdemeanor arrests over a year ago.

Applicant expressed sincere remorse for his actions and it is evident that this process has impacted him. He has made lifestyle changes that include minimum alcohol consumption and is engaged in an active lifestyle. Applicant's employer considers him to be a loyal, productive, and trustworthy employee. Having carefully considered the facts of this case, I find ¶¶ 1.b. (1) through (4) and (6)(a) and 6(b) of the credentialing standards are applicable.

For these reasons, I conclude 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Criminal or Dishonest Conduct: FOR APPLICANT

Subparagraphs 1.a – 1.b 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.

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ROBERT J. TUIDER  
Administrative Judge