



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



In the matter of:)	
)	
)	CAC Case No. 15-05757
)	
)	
Applicant for CAC Eligibility)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2016

Decision

RICCIARDELLO, Carol, G., Administrative Judge:

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

Statement of the Case

On November 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing eligibility concerns for CAC 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 Adjudicative Standards found in DOD Instruction 5200.46, DOD Investigative (DODI) and Adjudicative Guidelines for Issuing the CAC, dated September 9, 2014, 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 criminal or dishonest conduct, or financial irresponsibility.

Applicant answered the SOR on December 3, 2015, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. Department Counsel was ready to proceed on January 11, 2016. The case was forwarded to the DOHA and assigned to me on January 22, 2016. On February 8, 2016, a Notice of Hearing was issued. I convened the hearing as scheduled on March 3, 2016. Department Counsel submitted a copy of the discovery letter sent to Applicant. It was marked as Hearing Exhibit I. Also submitted were Government Exhibits (GE) 1 through 7 which were admitted into evidence without objection. Applicant testified and did not offer documentary evidence. The transcript (Tr.) was received on March 14, 2016.

Findings of Fact

Applicant is 42 years old. He has completed three years of college, but did not receive a degree. He married in 1994 and has three children ages five, three, and two. He served in the military from 1994 to 1999 and was honorably discharged.¹

Applicant had a 2007 state tax lien (\$1,290) that he satisfied before he purchased his house in 2008. Credit reports from December 2014 and October 2015 indicate the tax lien has not been released. He did not provide supporting documents.²

Applicant was arrested while on active duty in December 1995 by military police and was charged with possession of marijuana. He was giving a person a ride and was unaware the person possessed marijuana. After the arrest, the person admitted Applicant was unaware of the marijuana, and the charge was dismissed. Applicant credibly testified that he has never used marijuana.³

In April 2002, Applicant was arrested for disorderly conduct. He acknowledged he was intoxicated and was held in custody until he was sober and then released.⁴

In May 2002, Applicant was charged with failure to obey a police officer and 3rd degree assault. The charges were dismissed when the witnesses failed to appear in court.⁵

In May 2004, Applicant was arrested for driving under the influence (DUI) of liquor. The charge was dismissed when the police officer failed to appear in court.⁶

¹ Tr. 16-18.

² Tr. 18-21.

³ Tr. 20-23.

⁴ Tr. 24-26.

⁵ Tr. 26-30.

⁶ Tr. 31.

In May 2005, Applicant was arrested and charged with DUI. He was found guilty, fined, ordered to attend a course for DUI offenders, suspension of his license for a year, and probation for a year.⁷

In February 2010, Applicant was arrested and charged with 3rd degree theft of property. He pled guilty to the charge and paid a fine. Applicant testified that he was intoxicated and was shopping with his wife when he took a keychain from a department store. He admitted it was a stupid act and being intoxicated affected his judgment.⁸

Applicant testified that all of his criminal conduct happened while he was relatively young and consuming alcohol. He is aware he makes poor decisions when he consumes alcohol, so he no longer drinks.⁹

Applicant stopped consuming alcohol when he became a father in 2011 because he wanted to set a positive example. Applicant and his wife could not have children for many years. After pursuing infertility options, they conceived. His relationship with his wife changed once they had a child. His father was never a part of his life, so when Applicant became a father, he decided he would always be there for his children and would never abandon them. He testified that after his child was born he gave his life to God and straightened up. He stated he does not want to ever jeopardize his relationship with his children. He has been working overseas to earn more money, be responsible, and take care of his family.¹⁰

Applicant has worked for federal contractors since 2010. Much of his work is done overseas. He supervises eight employees. When overseas he lives in a tent and alcohol is not available. When he is home he does not consume alcohol. He has made major changes in his life, and he is motivated to be a good father.¹¹

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.

⁷ Tr. 31-33.

⁸ Tr. 34-37.

⁹ Tr. 15, 33, 36.

¹⁰ Tr. 15-16, 33, 43-45.

¹¹ Tr. 37-43.

The objective of the 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, paragraph 2.a articulates 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 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards lists four 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;

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;

2.b.(3): Dishonest acts (e.g., theft, accepting bribes, falsifying claims, perjury, forgery, or attempting to obtain identity documentation without proper authorization);

2.b.(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; and

2.b.(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.

The Government established through Applicant's admissions and documentary evidence that Applicant was arrested for disorderly conduct, failure to obey a police officer, 3rd degree assault, 3rd degree theft, and twice for DUI. In addition, he has a 2007 state tax lien. The above three disqualifying conditions apply.

DODI 5200.46, Appendix 2 to Enclosure 4, Supplemental Adjudicative Standards lists circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk. The following four may be relevant:

2.c.(1): The behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur;

2.c.(2): Charges were dismissed or evidence was produced that the person did not commit the offense and details and reasons support his or her innocence; and

2.c.(4) Evidence 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 attributed his criminal activity to his abuse of alcohol and bad decision making when he was intoxicated. When he became a father in 2011, he changed his life. There is no evidence that he has been in any trouble since his last arrest for theft in 2010, which happened while he was under the influence of alcohol. Applicant credibly testified about the emotional impact of growing up without a father, and he is committed to being a responsible father for his children. It has been more than six years since Applicant's last criminal conduct. He has not consumed alcohol since 2011. Some of the criminal charges against Applicant were dismissed and he paid the fine and completed probation on the others. Although Applicant did not provide documented proof that he satisfied the state tax lien, I found his testimony credible that it was paid before he

purchased his house. The above conditions mitigate any unreasonable risk raised by Applicant's past conduct. 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.g: 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.

Carol G. Ricciardello
Administrative Judge