



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



In the matter of:)
)
) CAC Case No. 15-05769
)
Applicant for CAC Eligibility)

Appearances

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

06/20/2016

Decision

LOUGHRAN, Edward W., 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 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing criminal or dishonest conduct eligibility concerns. 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 November 29, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on January 12, 2016, scheduling the hearing for February 3, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on February 10, 2016.

Findings of Fact

Applicant is 44 years old. He has worked for his current employer since January 2015. He is a high school graduate. He is a widow with a child and six stepchildren.¹

Applicant grew up in a heavy-crime area. He was involved in drugs, alcohol, and criminal activity. From 1990 to 1997, he was arrested on multiple occasions for crimes including robbery, burglary, battery on a police officer, and being under the influence of a controlled substance. A number of the charges resulted in convictions. He was sentenced to probation, but he never had to serve time in jail.²

Applicant has not used any illegal drugs in 20 years. He credits the Salvation Army with turning his life around. He completed the Salvation Army rehabilitation program in 1999, and continued his involvement with the organization for many years. He stopped drinking in 2012 when his wife died from cancer.³

Applicant wrote a check to a supermarket in 2013 that was returned for nonsufficient funds. He thought he had enough money in the bank to cover the check. He was cited for issuing a worthless check. He paid the supermarket, and the charge was dismissed.⁴

Applicant became involved in a somewhat unhealthy relationship after his wife passed away. His girlfriend was possessive and would look in his cell phone to see who he was talking to. In June 2014, they were arguing, and she threw his cell phone. He then threw her cell phone and broke it. She called the police. He was arrested and charged with simple criminal damage to property. He bought her a new phone, and the charge was dismissed. He is no longer with that girlfriend.⁵

Applicant has had steady employment since he completed rehabilitation in 1999. His employer from 1999 to 2005 wrote that Applicant received several promotions and that he was an assistant manager before he left their employment. Three supervisors from his 2007 to 2012 employment wrote that he was a valued employee who exhibited reliability, competence, dependability, dedication, and integrity. Applicant submitted

¹ Tr. at 17, 20, 29-30; GE 1.

² Tr. at 14-16, 22; Applicant's response to SOR; GE 2.

³ Tr. at 14-18, 24-25; Applicant's response to SOR.

⁴ Tr. at 19-20; Applicant's response to SOR; GE 3.

⁵ Tr. at 18, 34; Applicant's response to SOR; GE 3.

letters from family members who praised his personal growth and that he is not the same person who was involved in drugs and criminal activity in his youth. I was favorably impressed with Applicant's honesty and demeanor and with how he is attempting to be a role model for his child and stepchildren.⁶

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 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, ¶ 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:

⁶ Tr. at 16, 20-28, 31, 34-34; Applicant's response to SOR; AE A.

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. 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;

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

(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

(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.

Applicant's criminal history is sufficient to establish all of the above disqualifying conditions.

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 fell prey to his environment and was heavily involved as a youth in drugs, alcohol, and criminal activity. He credits the Salvation Army with turning his life around. He completed the Salvation Army rehabilitation program in 1999, and was involved with the organization for years. He has had steady employment at jobs where he was recognized as a valued employee. I am convinced Applicant is rehabilitated and that his two recent brushes with the law for bouncing a check and breaking his girlfriend's cell phone are not indicative of his current state of rehabilitation. The above mitigating circumstances are established.

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.i: 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.

Edward W. Loughran
Administrative Judge