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## **My Security Clearance Has Been Denied or Revoked. Do I Really Need A Lawyer?**

**By**

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Millions of Armed Forces personnel, U.S. Government civilian employees, and U.S. Government contractors world-wide are required to obtain and retain a security clearance in order to access classified information or to perform sensitive duties affecting national security. Many more are required to obtain and retain a Common Access Card (CAC), regardless of the nature of their duties, in order to gain access to government buildings and computer networks.

If you are reading this article and are facing denial of a security clearance or CAC, you are probably asking yourself whether you need the assistance of an attorney. If so, you should understand that *denial or revocation of a security clearance or a CAC can have a devastating effect on a person's job and career*. That action – and the process to keep it from happening – must be treated seriously.

Lawyers will tell you that there is no “right” to a security clearance and probably will say the same about the newer CAC as the law surrounding it develops. This is certainly true.

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You do, however, have a right to a fair process to determine whether the adverse action should be taken. You most likely need professional assistance to ensure that you get the full benefit of this process – and that your life is properly presented so a decision on adverse facts, which will be the focus presented by the Government’s lawyer, can be considered in context of the “whole person”.

The Government requires you to have a security clearance and a CAC because the American people expect it to have reasonable assurance that persons having access to its secrets, buildings and computer networks are trustworthy, reliable, and exercise good judgment. There are 13 Adjudicative Guidelines<sup>2</sup> for raising concern that a person may not be trustworthy, reliable or exercise the good judgment needed to hold a security clearance. There is a similar but narrower set of criteria for holding a CAC.<sup>3</sup> While clearance guidelines cover a broad spectrum of obvious issues – like criminal conduct, alcohol or drug abuse, and mental illness – others like financial irresponsibility or foreign contacts may not seem as intuitive. Security clearance denials and revocations can happen to good people, sometimes for reasons outside of their control.

The good news is that there is a legal process for making sure the derogatory information which will be the focus of the Government’s case is not considered in isolation and that full context of the extenuating and mitigating information is presented. The formal administrative process – referred to as due process – typically begins with receipt of a Statement of Reasons (SOR) but may begin sooner if you receive an inquiry from a government adjudicator.

You need to start with a well-organized, articulated, supported and advocated response *at that time*. In fact, many successful applicants choose to engage legal assistance even earlier: when completing the security form that will serve to kick off a background investigation. The questions contained in that document can sometimes be confusing. If you make a mistake, you may be accused of a material falsification. Convincing someone that you made a mistake and were not trying to hide something is not necessarily easy, and the reasons for making this critical distinction can be nuanced. A lawyer can help you address this or even avoid the problem entirely.

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<sup>2</sup> These 13 Adjudicative Guidelines are: Allegiance to the United States; Foreign Influence; Foreign Preference; Sexual Behavior; Personal Conduct; Financial Considerations; Alcohol Consumption; Drug Involvement; Psychological Conditions; Criminal Conduct; Handling Protected Information; Outside Activities; and Use of Information Technology Systems. These criteria are part of the National Adjudication Guidelines, which can be found, with a supporting matrix of factors for making an adverse decision with corresponding mitigating factors at Enclosure 2 of Department of Defense Directive 5220.6 dealing with the rules for contractors. They are also applicable to civilian employees and the members of the military by DoD Regulation 5200.2R and other implementing guidance for other Agencies.

<sup>3</sup> DoD Instruction 5200.46 provides guidance for Department of Defense denial or revocation of CACs.

If you are still questioning whether you need an attorney, keep in mind the old saying about being penny-wise and pound foolish. Consider the fact that the Government has security specialists and attorneys doing their best to present you as a security risk *in an adversarial process*. They are fair people, but they have a job to do.

Then ask yourself these questions. Am I very good at telling my side of the story and organizing it so it covers all of the adjudication factors that the deciding official will be bound to consider? Will I know what documents are needed for corroboration and who would be the best people to make statements for me? Can I prepare effective witness statements? These questions and answers will be important even at the early stages of responding to an adjudicator or preparing an answer to the SOR.

If you ask for a hearing, can you ask and answer questions of yourself and witnesses to properly present your case? Can you handle cross-examination by a trained Government lawyer? Do you know when to object and how to do it if the Government is doing something that prejudices you? Can you effectively cross-examine witnesses presented by the Government? Are you a good advocate who can start the proceeding with a convincing opening statement and end with it a great closing argument? And finally, if your case needs to go to an appeal panel, how well can you identify and brief legal errors?

Ultimately, you are free to choose to go it alone or with the assistance of a non-attorney, but do so at your potential peril. Even lawyers hire lawyers when they are in trouble. Savvy people know their limits and do not go beyond them when the stakes are high.

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