



**Personnel Security
Adjudications
Independent Study Course
PS001.08**

Security through Knowledge

Defense Security Service Academy
938 Elkridge Landing Road, Linthicum, MD 21090
DSN 283-7295 – (410) 865-2295
<http://www.dss.mil/training>

LESSON 4

CENTRALIZED ADJUDICATION

In the previous lessons, we looked at two of the four elements of the PSP. In Lesson 2, we discussed how positions are designated. The PSIs required for each type of position were addressed in Lesson 3. In this lesson, we will begin to look at the third element of the PSP-- **Adjudication**. Figure 4-1 identifies the "whole person" concept in making personnel security determinations.

Adjudication

- **Evaluation of "whole person"**
 - ◆ **Favorable information**
 - ◆ **Unfavorable information**
 - ◆ **Circumstances**
- **Use adjudication guidelines**
- **Adjudication is to determine**
 - ◆ **Loyalty**
 - ◆ **Trustworthiness**
 - ◆ **Reliability**



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Figure 4-1

We will view it from the perspective of the functions that a Central Adjudication Facility (CAF) performs and your responsibilities as an adjudicator. The confidentiality of personal information contained in PSIs will be discussed. The CAF's role in Special Access Programs and procedures for carrying out adverse personnel security determinations will also be addressed.

Why do we have CAFs? Prior to centralizing the adjudicative function within each Component, each activity commander was responsible for making adjudications on assigned personnel. This led to duplication of effort since many commanders decided to re-adjudicate a PSI on new personnel even if the previous commander had adjudicated the same PSI. There was no training available for activity personnel to help them make adjudicative determinations. This often resulted in different decisions based on the same PSI--there was no consistency of adjudicative determinations.

Finally, there were no centrally available records that could provide accurate information on the overall personnel security program. In 1975, DoD decided to have the Components centralize the adjudicative function into one facility within each Component. Each Component has now centralized. Centralization is designed to provide consistency in adjudicative determinations and eliminate the duplicative efforts by activity commanders. A central data base of personnel security information provides management data for the Components, DoD and other authorized requesters.

We will look at **your** role in the CAF. Your responsibilities and limitations direct what you can do and how you do it. What is the effect of bias on your determination and what is the impact of your determination on the subject?

A responsibility of persons who have access to PSIs is to protect the sensitive personal information contained in the investigations. The Privacy Act establishes requirements for the collection, use and dissemination of personal information. The Privacy Act protects personal information in PSIs. The information may only be used for official purposes and may be released to persons with a need-to-know. The investigative agency is the only one authorized to release a PSI directly to the subject. Each CAF has internal procedures for handling PSIs and who may have access to them.

A Special Access Program is established to control access, distribution and protection of particularly sensitive information. CAFs make the personnel security determinations for security clearance or sensitive duties

for these programs. Certain CAFs make eligibility determinations for access to SCI. A program manager outside of the CAF will make the final determination of acceptance or retention in the program.

A major responsibility of a CAF is taking action to deny or revoke a security clearance or eligibility to perform sensitive duties. The procedures used to carry out this action make up the "due process" a subject receives. The procedures call for a notice to the subject of the proposed action, an opportunity to reply, a final decision and the opportunity to appeal an unfavorable decision.

Each of these areas will be discussed in this lesson.

THE ADJUDICATOR'S RESPONSIBILITIES

In this section, we will look at your responsibilities as an adjudicator. We will look at the different conditions that influence how you carry out your responsibilities. Your grade level may determine what types of cases and actions you can approve and which ones must be referred to a more senior adjudicator.

Once your duties have been assigned, what are the considerations involved in adjudications? We will look at the relevancy of information and the thirteen adjudication guidelines to help you evaluate the information. Each adjudication guideline is divided into disqualifying and mitigating conditions to help you evaluate that type of information.

We will also look at personal bias and how it could affect your adjudication. Once your decision has been made, you will see the impact that a favorable or unfavorable determination can have on the activity and the subject.

Finally, we will look at the functions a Central Adjudication Facility (CAF) provides and your role in the CAF.

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READING ASSIGNMENT

Assignment 1:

DoD 5200.2-R Chapter 2: Paragraph 2-504

DoD 5200.2-R Chapter 3: Section 5

DoD 5200.2-R Chapter 5: All

DoD 5200.2-R Chapter 6: All

DoD 5200.2-R Chapter 9: Section 1

DoD 5200.2-R Chapter 7: All

DoD 5200.2-R Appendix F: All

Assignment 2:

Memo: Personnel Security Investigations and Adjudication

THE PERSONNEL SECURITY ADJUDICATOR

The personnel security adjudicator plays an important role in the DoD Personnel Security Program. As an adjudicator, you are primarily responsible for initial and subsequent personnel security determinations on DoD affiliated personnel who will require access to classified information or perform sensitive duties.

The decisions you make have short and long-term effects on both the national security and the subject. DoD has established criteria and adjudicative guidelines to assist you in reaching a final decision.

In making a determination, you must apply the criteria, guidelines, knowledge of the program, experience and common sense. Before arriving at a decision, all of the facts and circumstances contained in each PSI must be weighed on its own merits

Adjudicative Factors

- **Nature, extent, and seriousness of the conduct**
- **Circumstances**
- **Frequency and recency**
- **Age and maturity**
- **Voluntariness of participation**
- **Rehabilitation**



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Figure 4-2

Adjudicative Factors

- **Motivation for the conduct**
- **Potential for**
 - ◆ **Pressure**
 - ◆ **Coercion**
 - ◆ **Exploitation**
 - ◆ **Duress**
- **Likelihood of continuance or recurrence**



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Figure 4-3

In addition to the adjudicative factors, the adjudicator, must review actual or potentially derogatory information

about the individual and consider the information in Figure 4-4.

Additional Considerations

Questions to be asked about the individual:

- **Voluntarily reported information**
- **Truthful & complete in responding to questions**
- **Sought assistance & followed professional guidance**
- **Resolved or appears likely to resolve the security concern**
- **Demonstrated positive changes**
- **Should access be temporarily suspended**



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Figure 4-4

In recent years, the emphasis has been on centralizing the adjudicative function in each DoD Component. The Components are now required to centralize this function and have either completed centralization or are in the process of centralizing.

RESPONSIBILITIES OF THE ADJUDICATOR

Your role in the personnel security program is that of making personnel security determinations which allows access to classified information or assignment to sensitive duties. The decision made by you is accepted throughout the DoD as the basis for certifying eligibility for security clearance or sensitive duties. This decision permits the subject's commander to grant access to classified information or perform sensitive duties. The decision also permits commanders of other DoD activities to grant access to

classified information to the subject or permit him/her to perform sensitive duties when temporarily assigned to another command.

In this role, you must review PSIs and other information based on a common-sense evaluation by applying the adjudicative criteria and guidelines.

The following is a listing of some of the adjudicator's responsibilities.

- * Authorizing security clearances or eligibility determinations to perform sensitive duties;
- * Adjudicating PSIs;
- * Adjudicating supplemental information;
- * Requesting additional information/investigation to resolve issues;
- * Initiating loyalty reviews;
- * Initiating actions to deny/revoke a security clearance or eligibility to perform sensitive duties;
- * Taking final actions on decisions to deny/revoke a security clearance or eligibility to perform sensitive duties;
- * Ordering temporary suspension of access to classified information pending final resolution of issues;
- * Maintaining personnel security records/files;
- * Making reports of personnel security information;
- * Providing interrogatories/depositions or testifying before hearings, boards, courts or other administrative bodies to explain personnel security determinations;
- * Providing information on personnel security policies and procedures to requesters;

- * Notifying investigative agencies of certain types of information; and
- * Referring certain suitability issues to personnel authorities for military retention or civilian employment determinations.

ADJUDICATION OF PSI's

During the actual adjudication of a PSI or other information, several conditions must be considered:

- * Is the PSI complete and ready for adjudication?
- * Are there any basic qualification issues in the PSI that would cause referral to personnel authorities for military retention or civilian employment decisions?
- * Is the information complete so that all potential issues are resolved?
- * When considering the information in the PSI, is it relevant?
- * The actual decision process consists of weighing the information, both favorable and unfavorable, against the adjudicative criteria and guidelines.
- * The final decision must be that a favorable determination is in the interests of national security.
- * Personal bias must not influence the adjudication.
- * Classified and personal information must be protected.

THE COMMON-SENSE APPROACH

When making a determination, you may only consider information that is relevant to a personnel security determination. Other matters that would not directly impact on the personnel security determination are not appropriate for consideration in the adjudicative process.

For example, the subject's religious beliefs are not normally a proper area of consideration. A belief in some form of supreme being is not an adjudicative issue by itself because it does not reflect on the subject's loyalty, trustworthiness or reliability. If the religious practices involve the violation of public laws, such as harboring and protecting illegal aliens, then the relevancy of the information for adjudication has been established because the subject's trustworthiness is now questioned due to criminal conduct.

Adjudication guidelines are aids providing policy guidance to help you evaluate different types of information in determining eligibility for clearance or sensitive duties. **The adjudicative guidelines contain disqualifying and mitigating conditions which are critical to the adjudicative process.**

The concept is that a disqualifying condition is one that the conduct is so serious that it could be the basis for an adverse personnel security determination. A mitigating condition lessens the severity or seriousness of a disqualifying condition to the point that a favorable determination may be possible. Figure 4-5 shows the adjudication guideline structure.

Adjudication Guideline Structure

- **Basis - what the guideline covers**
- **Disqualifying Conditions**
 - ◆ **Serious enough to be disqualifying**
 - ◆ **One or more conditions may apply**
- **Mitigating Conditions**
 - ◆ **Reduces the seriousness**
 - ◆ **May or may not be present**
 - ◆ **May or may not outweigh the disqualifying information**

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Figure 4-5

The disqualifying and mitigating conditions are not absolutes. They cover most of the information you will see, but occasionally the circumstances will not fit into the guidelines.

If you are not sure, ask a senior adjudicator or your supervisor about it.

A multiple issue PSI is more complex because disqualifying conditions from different guidelines are present in the case and there may be mitigating conditions present from different guidelines. The conditions of each case and their interrelationships will affect the final decision based on that particular set of facts and circumstances.

Your final decision is whether it appears the subject can reasonably be expected to properly safeguard classified information or perform sensitive duties. If there is a question about the subject, a favorable determination cannot be made. The adjudication guidelines and disqualifying and mitigating conditions will be discussed in detail in Lesson 5.

Your experience, knowledge of similar cases, and general application of the guidelines is a process of applying logic to the decision-making process.

A single adjudication guideline to cover all aspects of human behavior is not possible; therefore, reliance is placed on you to think the information through and arrive at the decision through the exercise of sound judgment and careful analysis.

Because we are dealing with people, common sense is an integral part of adjudication. People change and those changes may affect their initial or continued eligibility to hold a security clearance or perform sensitive duties.

You must keep this in mind when making determinations. **You are being asked to make a determination about the future based on the past and, in some cases, the individual's stated intent about future actions.** These statements may be a sincere statement of intent or an attempt to deceive. This is where duties of the position and adversely impact on his or her short and long-term career. It could delay advancement and it could even cause a change in career fields if the subject cannot work. Careful analysis of the information, along with experience and common sense, will help you to make the final decision.

IMPACT OF ADJUDICATION

The adjudication is designed to protect the interests of national security, but you must also consider the impact on the subject. A favorable decision will permit the subject to continue a civilian or military career of employment on classified contracts. An unfavorable decision can have several different effects on the subject.

At the minimum, it will cause the subject to be ineligible to perform the duties of the position and adversely impact his/her short or long-term career. It could delay advancement and it could even cause a change in career fields if the subject cannot work without a favorable personnel security determination.

For military personnel, this could cause a change in the Military Occupational Specialty (MOS) or rating. Civilian personnel would not be eligible to occupy a sensitive position, but could occupy a nonsensitive position. Contractor personnel would not be eligible for access to classified information within DoD.

At the maximum, an adverse determination can indirectly cause the loss of civilian employment, release from military service, or termination of work on a particular contract.

An adverse loyalty decision could be the direct cause of loss of civilian employment or discharge from military service. **In certain cases, the information that caused the unfavorable determination could even be the basis for criminal prosecution under United States law or the Uniform Code of Military Justice.**

THE ROLE OF BIAS IN ADJUDICATIONS

One of your most important responsibilities as an adjudicator is to ensure that **“each adjudication is...an overall common-sense determination based upon consideration and assessment of all available information.”** This requires that all of your decisions be reasoned, rational and thought out. Because of this, **adjudicators can’t let their personal feelings, biases, and prejudices** enter into the decision making process. Personal bias is simply not acceptable in adjudicative determinations.

There are a number of ways that personal feelings can enter the adjudicative process: you may have a prejudice (preconceived opinion or judgment) against members of a particular racial or religious group; you may have a bias (an inclination of temperament or outlook) in favor of people with a particular educational or employment history; or you may have personal feelings based on an experience you have shared with the subject.

Any of these can be either positive or negative. **Just as you can be prejudiced or biased against someone, so you can be prejudiced or biased in favor of someone.** You may identify favorably with the subject because you and he/she have shared some experience, such as divorce, so you can also identify with the victim of subject's actions - for instance, if subject is a child abuser, and you were an abused child.

Regardless of whether your bias is positive or negative, it is unacceptable. Figure 4-6 contains a listing of some biases which can influence your adjudications. When your determinations are influenced by personal bias, you are unable to make sure that "each adjudication...is based upon consideration and assessment of all available information." Rather, your adjudication is being driven by only one piece of information - by the subject's race or by the fact that subject is a child abuser.

When you allow bias to influence your decision, you are adjudicating subject as a member of a group or class rather than as an individual. This is the quickest way for both you and your CAF to end up in very hot water.

COMMON BIASES WHICH CAN AFFECT ADJUDICATIONS

- * **Prejudice based on racial, ethnic or religious background**
- * **Prejudice against homosexuals**
- * **Prejudice based on subject's history as a child molester or abuser**
- * **Prejudice against someone because of prior criminal activity, such as rape or drug dealing**
- * **Prejudice for or against subject because of substance abuse**
- * **Identifying with subject because you and he/she have shared experiences or background**
- * **Identifying with the victims of subject's actions**

Figure 4-6

As an adjudicator you have a responsibility to identify your own biases, prejudices, and understand when your personal feelings are likely to affect your professional judgment. And having done that, you have to put a tight rein on these biases and feelings. This doesn't mean that you have to squelch all human feelings in order to be a good adjudicator. It does mean that you have to keep them in perspective and recognize them for what they are: **personal** feelings and opinions which can't be allowed to influence **professional** judgments and decisions.

CENTRAL ADJUDICATION FACILITIES (CAFs)

Final adjudications are done at the CAF.

CAFs have been established to perform the personnel security adjudication function for each component. Some of the major functions a CAF performs for its Component are:

- Authorize security clearances and eligibility determinations to perform sensitive duties;
- Deny or revoke security clearances or sensitive duty eligibility determinations;
- Maintain a central data base of personnel security investigative and adjudicative information;
- Provide management data upon request;
- Provide information to local commands on procedures for requesting PSIs and adjudications;
- Review and adjudicate supplementary information as part of continuous evaluation;
- Review and adjudicate Periodic Reinvestigations (PR). Some CAFs provide local commands information on when PRs are due on subjects;
- Provide adjudicative information to the Defense Clearance and Investigations Index (DCII) for use by all DoD components;
- Implement procedures for protecting classified and personal information held by the CAF; and
- Other functions as assigned by the Component.

PERSONNEL SECURITY DETERMINATIONS FOR SAPs

CAFs make the personnel security determinations for individuals nominated for SAPs. Within DoD, CAFs also make the access determination for the SCI program per the criteria of Director of Central Intelligence Directive 6/4 (DCID 6/4). This is accomplished by either one CAF making both determinations or by separate CAFs. One CAF making the determination for the security clearance and the other for the SCI access determination.

The following is a list of CAFs who make SCI access determinations:

- Army Central Clearance Facility
- Navy Central Adjudication Facility
- Air Force Central Adjudication Facility
- Defense Intelligence Agency
- National Security Agency

THINGS TO REMEMBER

You have many responsibilities assigned and functions to perform in fulfilling your role in making final determinations which permit commanders to grant access to classified information or assign personnel to sensitive duties. The type of actions you may take will depend upon the type of PSI, action needed, and the organization of the CAF.

When working in a CAF, you may perform any or all of these functions. This will be decided by the administrative organization of the CAF and your grade level. Once your duties have been determined, you will be delegated the authority to perform those responsibilities and functions.

There are certain limitations placed on you to ensure that the information considered is relevant and that information contained in the PSI is properly protected.

There are several considerations involved in making an adjudicative decision: the appropriateness of the request; a complete PSI; equal consideration of all information; the decision is free from personal bias; the information considered is relevant to the decision; the final decision must support the interests of national security. Also, the impact on the subject must be considered as the determination can have positive and negative effects on the subject's current and future career.

The adjudicative process is centralized in each DoD Component. The CAFs provide personnel security services for the Component. The adjudicator in a CAF may perform a variety of functions depending upon the organization and type of PSIs/actions involved.

CONFIDENTIALITY OF FILES

As an adjudicator, you will review PSI's that contain personal information regarding subjects. The information is provided for use in determining a subject's eligibility for a security clearance and assignment to sensitive duties. You must ensure this information is tightly controlled and not made available to any person or organization which does not have an official need-to-know it. We will examine the protection of personal information and the subject's access to it.

PROTECTION OF PSIs AND OTHER INVESTIGATIVE REPORTS

Information contained in PSIs and other investigative reports requires protection based on the category of the information. The information is generally in two categories.

The first category of information is unclassified but personal in nature and is protected by the provisions of the Privacy Act. This law establishes requirements for protecting personal information collected, held and used by the United States government. You must protect personal information on individuals. DoD Directive 5400.11, Department of about the subject. Defense Privacy Program, implements the Privacy Act in DoD.

The second category is classified information which is protected by the requirements of DoD 5200.1R, Information Security Program Regulation. This directive establishes procedures for the handling, storing and dissemination of classified information.

We will address the basic procedures for safeguarding information you will see when reviewing PSIs and other information.

PROTECTING CLASSIFIED INFORMATION IN PSIs

Occasionally, you will see a classified PSI. PSIs containing classified information must be protected in accordance with the requirements of DoD 5200.1R and the Component regulations that implement it.

PSIs containing classified information are treated the same as any other classified document for purposes of storage, retention, safeguarding and dissemination. This depends on the classification level. When handling classified PSIs, you must ensure that the report is released only to persons within the CAF with an official need-to-know and the proper security clearance.

Each CAF has internal procedures established to control the classified PSIs while they are at the facility. If a classified PSI is sent to a local command or other DoD component, that command or component is responsible for its proper protection.

COLLECTION OF PERSONAL INFORMATION

PSIs and other information about subjects which is considered by you as personal in nature are protected by the Privacy Act, DoD Directive 5400.11, and the Component regulations.

The collection of personal information by the United States government is controlled by the Privacy Act. The Act sets forth a requirement to publish in the Federal Register all systems of records for which personal information is collected. This permits the general public to be aware of official systems of records that maintain personal information and the specific uses of the information.

Each time a Federal agency wishes to collect personal information, a written Privacy Act notification must be provided to the subject notifying him/her why the information is being collected, its routine uses, and the impact of failure to provide the requested information. Lesson 2 identified the various forms used to collect personnel security information.

What is **personal** information that is covered by the Privacy Act? Personal information is that information which is intimate or private to the subject. Information that is related solely to the subject's official functions or public life is not covered by the Privacy Act.

Some examples of personal information are:

- **Social Security Number**
- **Date and place of birth**
- **Home address**
- **Home telephone number**
- **Financial information**
- **Medical information**
- **Counseling records**

Personal information is collected from military and civilian personnel to conduct PSIs for military retention and civilian employment determinations.

For personnel security purposes, we collect personal information from subjects to use in making a personnel security determination. The same investigation used for a retention or employment determination is, in many cases, also used for the personnel security determination.

ACCESS TO INVESTIGATIVE FILES AND INFORMATION

Personal information contained in PSIs and other investigative files may be released to those government officials who must see the information to perform their duties.

These are usually officials who must make civilian employment/military retention decisions (including the current supervisor), personnel security determinations or perform other functions indirectly affecting employment, retention or security determinations.

Remember, you are the custodian, not the owner of the report. Figure 4-7 shows some of these individuals who may need official access to the Personnel Security Investigations information.



Figure 4-7

In all of the above cases, the individual(s) must have an **"OFFICIAL NEED TO KNOW"** - not just idle curiosity. An example would be a medical determination for continued employment/military retention or security clearance/assignment to sensitive duties. For example, a physician would be requested to review the personal information in the PSI, and provide medical information necessary for the military personnel officer to make a retention decision.

The PSI contains information that the subject is a paranoid schizophrenic with probability of recurring violent episodes. The physician's opinion is that the subject is not suitable for retention because of the medical condition. The subject is then discharged. The information in the PSI was provided to an authorized official for a medical opinion.

The use of the PSI by other officials also occurs when a program has additional requirements beyond the personnel or security determinations. An example of this would be the nuclear Personnel Reliability Program (PRP). The commander is responsible for making the PRP certification. He must review the PSI or other investigative files in order to make a decision on the certification independent of the personnel security determination by the CAF.

TRANSMITTING PSIs

A PSI or other investigation conducted by a DoD investigative agency may be transmitted within DoD for official use, generally without prior approval of the investigative agency. In some cases, the investigative agency may place restrictions on dissemination beyond the original requester due to current criminal, counterintelligence or prosecutorial considerations. If this is the case, the investigative file will contain specific instructions on its handling and dissemination.

An investigative file created by a DoD investigative agency may not be provided to another Federal agency without the approval of the agency that did the investigation.

For example, if the Department of Energy (DOE) requests a DSS file on a new employee who previously worked for a DoD Component, the holder of the file could not send the file directly to DOE. DSS would have to approve of the release to a non-DoD agency and provide a copy of the file to DOE.

PSIs conducted by OPM are handled in the same manner as DSS PSIs. All of DoD is considered one agency for file handling purposes by OPM. An OPM PSI may be transmitted within DoD without further approval of OPM. If another Federal agency needs an OPM PSI, the DoD component can not release the file directly to the agency. The agency would request a copy of the file from OPM and they would make the release.

RELEASE OF PSIs TO THE SUBJECT

A DSS or OPM PSI, or other investigative file, may be released only to the subject of the investigation or his/her designated representative by the investigative agency. See Figure 4-8.

Release of Report

- You are the *custodian*, not the owner
- May be released only by the investigating agency
- Subject or representative may not be given direct access
- Individuals who have no need to know should never be given report
- Privacy Act & Freedom of Information Act procedures apply.



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Figure 4-8

This is necessary to protect information in the file that may not be releasable to the subject, such as classified information or confidential sources. Only the investigative agency is in a position to make this determination.

The current holder of an investigative file *cannot* provide the file, or any part of it, directly to the subject.

If a subject requests a copy of the file, he/she should be advised to write to the investigative agency requesting a copy. The investigative agency will treat the request under the procedures of the Privacy Act for release.

HEARINGS and BOARDS

There are situations where an adverse action may be proposed against a subject and the procedures of that action permit the subject to be given a copy of all information being used in the proposed action.

If the action, such as a removal from civilian employment or discharge from military service involves information in a PSI or other investigative file, the subject may not be given the file, directly or indirectly, without the investigating agency's approval. This may be accomplished by notifying the investigative agency prior to the board or hearing date. Explain that information in the PSI will be used in a board or hearing and a release authorization is necessary before the information can be presented or released to the subject. The investigative agency will provide the file, or portions of it. The subject must not be given a copy of the file (including the copy used by the hearing or board) unless the approval has been received from the investigative agency.

RELEASE OF INFORMATION AND PENALTIES

Penalties

- **Giving someone access without official need is violation of Privacy Act**
- **Maximum \$5,000 fine**
- **Disciplinary action by agency**



Figure 4-9

Any release of information for purposes other than that for which it was collected requires a written notification to the subject of why it was released and to whom. **The Privacy Act provides penalties for unauthorized release or disclosure of protected information.** If the protected information is improperly released to unauthorized individuals, the person who released it may be fined up to \$5,000 per offense by a Federal court.

A person improperly releasing protected information is also subject to adverse administrative actions by his/her Component.

If you receive a request for a release of personal information, give it to your supervisor. He/she will see that it is handled per your Component procedures.

DUE PROCESS

Now, you will learn the procedures to deny or revoke a security clearance, Limited Access Authorization (LAA) or eligibility to be assigned to sensitive duties. The procedures are called "**due process.**" They are intended to inform the subject of a proposed unfavorable administrative action and permit him/her to reply with reasons why the action should not be taken. The procedures also offer an appeal if the CAF determination is unfavorable.

This is how to say "No"

The CAF has decided to make an unfavorable personnel security determination. To implement this determination, the CAF must take an unfavorable administrative action.

The procedures to carry out this action are called "**due process.**" These procedures must be followed to deny or revoke a security clearance (military, civilian and contractor) or determine the subject ineligible to be assigned to sensitive duties (military and civilian).

The following paragraphs outline the basic procedures for administering due process. You will notice a difference in due process between military/civilian and contractor personnel. The military/civilian program is governed by

administrative policy of DSP, ODASD(CI&SCM) while the contractor program conforms to the specific requirements of E.O. 10865.

Figure 4-10 shows how the procedures for due process are determined by the program and the person's status.

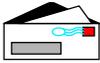
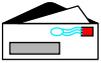
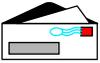
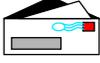
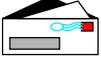
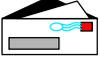
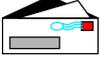
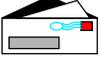
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Status	DoD 5200.2-R	DCID 6/4	DoD 5220.6	DoD-O 5205.7
			N/A	
			N/A	
	N/A			

Figure 4-10

DoD 5200.2-R governs security clearance and sensitive duties procedures for military and civilian personnel.

DoD 5220.6 governs security clearance procedures for contractor personnel.

Director of Central Intelligence Directive 6/4 (DCID 6/4) governs SCI procedures for all personnel.

DoD Directive O-5205.7 governs SAP procedures for all personnel.

DUE PROCESS FOR MILITARY AND CIVILIAN PERSONNEL

Due process must be given to military and civilian personnel to deny or revoke a security clearance, deny or revoke an LAA, or declare the subject ineligible to perform sensitive duties. These procedures are administrative in nature and are in writing.

A personal appearance before a Administrative Judge can be offered in these proceedings. The procedures are shown in Figure 4-11.

Due Process-Military/Civilian

- CAF sends Statement of Reasons (SOR)
- Person may reply
- Command position
- CAF considers reply and command position
- Final decision
- Appeal
 - ◆ Decision by PSAB , or
 - ◆ Personal appearance with recommendation to PSAB



Figure 4-11

The Central Adjudication Facility (CAF) sends a **Statement of Reasons (SOR)** indicating the reasons for the proposed action.

The **person may reply** to the SOR but is not required to reply.

The **command may place its position** with the person's reply to the SOR.

The **CAF considers the reply and the command's position.**

If the decision is negative, a Letter of Denial/Revocation (LOD) is sent via the command to the person indicating the final CAF determination.

The **person may choose to appeal** to the Personnel Security Appeal Board (PSAB) with:

- A decision by the PSAB based on review of the appeal, or
- **Request a personal appearance.** The personal appearance (explained in Figure 4-12 below) gives the person the opportunity to explain or provide information to an Administrative Judge (AJ) from the Defense Office of Hearings and Appeals (DOHA).
- The AJ then makes a recommendation to the PSAB.
- The PSAB considers the appeal and the AJ recommendation.
- The person is notified of the final determination.

Personal Appearance

- Option when denied/revoked by CAF.
- An Administrative Judge from DOHA
- Receives information from person in written or verbal form.
- Makes written recommendation to PSAB within 30 days after appearance.



Figure 4-12

If the decision is favorable, the CAF decision is overruled and the subject declared eligible to hold a security clearance or be assigned to sensitive duties.

If the decision is unfavorable, the CAF decision is upheld. The appeal decision is the last action on the personnel security determination within the Component. The subject, the activity and the CAF are notified in writing of the appeal decision.

CONTRACTORS

Due process is given to a contractor employee to deny or revoke a security clearance. The Defense Office of Hearings and Appeals (DOHA), is the CAF that administers due process to all DoD contractors for security clearance denials or revocations. The procedures are:

- * DOHA issues a Statement of Reasons (SOR) to the contractor employee. The SOR provides the reasons for the proposed action as specifically as national security and privacy considerations permit.
- * The subject may choose to reply to the SOR. If the decision is favorable, the contractor employee is declared eligible to hold a security clearance. If not, the subject may request a hearing before an Administrative Judge (JA)

(Note: The "Adjudication Policy" contained in Enclosure 3 of DoD 5220.6, has been superseded. The adjudication policy guidelines of DoD 5200.2-R are now used to evaluate information.)

- * If requested, a hearing will be scheduled. The AJ will conduct the hearing and permit the subject and government to call witnesses and present evidence or other information. Department Counsel will represent the government in these hearings.
- * If the AJ's decision is favorable, the subject is eligible to hold a security clearance. If not, the subject may appeal to the Appeal Board.
- * Department Counsel may appeal a decision in favor of the subject to the Appeal Board.
- ◆ The Appeal Board will review the case and make a determination. This determination is the final action on the security clearance. Figure 4-13 outlines the due process procedures.

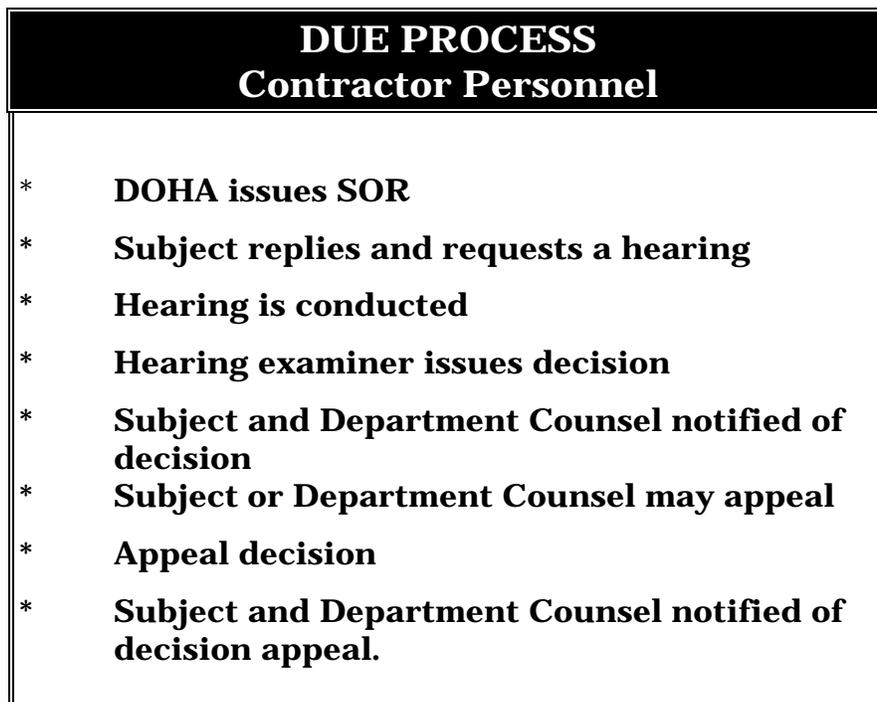


Figure 4-13

RECONSIDERATION

Taking another look at an unfavorable decision.

Each Component has procedures for reconsideration of an adverse personnel security determination. **These procedures allow for a review of an unfavorable determination, usually after at least one year**, if the activity believes the reasons for the initial adverse decision have been overcome and the subject would now be eligible.

A subject is not entitled to due process on reconsideration as he/she has already received it with the original determination. Consult your Component regulation for specific procedures.

APPLICABILITY

Due process must be given to U.S. citizens and immigrant aliens nominated for, or currently holding, a security clearance, LAA or assignment to sensitive duties.

Foreign nationals are not entitled to due process for an LAA.



SUMMARY

You will have many responsibilities working in a CAF. The adjudicative actions will vary depending upon the type of Personnel Security Investigations, the actions required to make a final determination and, of course, the structure of your CAF.

Equal consideration must be given to all information in the case without bias based on the whole person concept. Your final decision must support the interests of national security.

This lesson identified the procedures required for a CAF to take a final unfavorable administrative action leading to the denial or revocation of security clearance, LAA or eligibility to be assigned to sensitive duties for military and civilian personnel.

For contractors, the procedures for denial or revocation of security clearance are administered by DOHA. The requirement for due process applies to U.S. citizens and immigrant aliens.

These procedures ensure that the subject is informed of the reasons for the proposed action and is given the opportunity to reply with information he/she wishes the CAF, Appeals Board or Administrative Judge to consider in making a final decision. Also, it offers the opportunity to appeal an unfavorable decision by the CAF or Appeals Board.

Review Exercises

- 1. Requests for PSIs may be submitted for any reason by the subject's supervisor.**
 - a. True
 - b. False

- 2. Which of the following is a function of a CAF?**
 - a. Making final appointments to civilian sensitive positions after completion of the PSIs.
 - b. Denying or revoking security clearance and sensitive duty eligibility.
 - c. Making final determinations on appeals of denied or revoked security clearances
 - d. Determining a subject's eligibility for military service.

- 3. The security clearance of a military member may be revoked by the Defense agency he/she is currently assigned to.**
 - a. True
 - b. False

- 4. On which PSI request package is a supervisor required to place a statement of whether he/she knows of derogatory information?**
 - a. NAC
 - b. SSBI
 - c. PR
 - c. SII

- 5 Each adjudication guideline is divided into which two sections?**
- a. Loyalty and suitability issues
 - b. Disqualifying and mitigating conditions
 - c. Trustworthiness and reliability standards
 - d. Judgment and reliability standards
- 6. Which of the following is NOT a responsibility of an adjudicator?**
- a. Authorizing security clearances or eligibility determinations to perform sensitive duties.
 - b. Requesting additional information/investigation to resolve issues.
 - c. Initiating actions to deny or revoke a security clearance or eligibility to perform sensitive duties.
 - d. Authorizing retention in military service or civilian employment.
- 7. A mitigating condition does which of the following?**
- a. Overcomes a disqualifying condition in every case and permits a favorable determination.
 - b. Lessens the severity or seriousness of a disqualifying condition.
 - c. Has almost no effect on the final determination.
 - d. The adjudicator may consider it to decide a "borderline" case.
- 8. _____ is the means by which personal feelings, prejudices and beliefs can influence an adjudication.**

9. To the greatest extent practical, personal information relevant for a security determination should be obtained from which of the following?

- a. Employers
- b. Law enforcement agencies
- c. Subject
- d. Credit bureaus

10. If the subject refuses to provide a Standard Form 86 needed for requesting an SSBI, the PSI be will complete without the information.

- a. True
- b. False

11. A DSS PSI may be released to a non-DoD agency by which one of the following?

- a. The activity security office
- b. The CAF
- c. The subject's supervisor
- d. DSS

12. The subject may obtain a copy of his/her PSI by requesting it from

- a. The supervisor
- b. The CAF
- c. The investigative agency
- d. The activity security office

- 13. Any person may review the personal information in a PSI.**
- a. True
 - b. False
- 14. The collection of personal information by the Federal government is governed by the _____.**
- 15. What are the five major SAPs within DoD?**
- a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
- 16. Who is responsible for SCI determinations on military personnel assigned to a Defense agency?**
- _____
- 17. _____ is the directive that governs SCI procedures for all personnel.**
- 18. What are the four steps in due process for military and civilian personnel?**
- a. _____
 - b. _____
 - c. _____
 - d. _____

19. Due process must be given to all of the following except:

- a. U.S. citizens
- b. Foreign Nationals
- c. Immigrant aliens

20. Which of the following best describes "due process"?

- a. The procedures used by a CAF to deny or revoke a security clearance or eligibility to be assigned to sensitive duties.
- b. The procedures used by an activity to deny an interim security clearance.
- c. The procedures used to deny or revoke an LAA for a foreign national employee.
- d. The procedures used by a CAF to determine a subject ineligible for military service.

21. Which of the following best describes an SOR?

- a. A letter notifying the subject that his/her security clearance has been revoked.
- b. A letter notifying the subject of a proposed action to deny or revoke his/her security clearance.
- c. A letter notifying the subject of the reasons for a proposed denial or revocation of security clearance or sensitive duty eligibility and the opportunity to reply.
- d. A letter notifying the command of a proposed denial or revocation of security clearance or sensitive duty eligibility for an assigned military member or civilian employee.

22. DOHA is responsible for denying or revoking the security clearance of a contractor employee.

- a. True
- b. False

23. If a CAF revokes a security clearance, the subject may _____ that decision to a higher level of authority.

Solutions & References

1. b. False (DoD 5200.2R, para 5-101)
2. b. Denying or revoking security clearance and sensitive duty eligibility. (Lesson 4, page 4-3)
3. b. False (DoD 5200.2R, para 7-101c)
4. c. PR (DoD 5200.2R, para 9-102a)
5. b. Disqualifying and mitigating conditions (Lesson 4, page 4-10)
6. d. Authorizing retention in military service or civilian employment.
(Lesson 4, pages 4-7/4-8)
7. b. Lessens the severity or seriousness of a disqualifying condition. (Lesson 4, page 4-10)
8. Bias or personal bias (Lesson 4, pages 4-13)
9. c. Subject (DoD 5200.2R, para 2-502)
10. b. False (DoD 5200.2R, para 5-105)
11. d. DSS (Lesson 4, page 4-23)
12. c. The investigative agency (Lesson 4, page 4-24)

13. b. False (Lesson 4, pages 4-21) (Must have a need to know)

14. Privacy Act. (Lesson 4, page 4-18)

15. (DoD 5200.2R, Chapter 3, Section 5)
 - a. SCI
 - b. SIOP-ESI
 - c. Presidential Support
 - d. Nuclear PRP
 - e. NATO

16. Appropriate Military Department CAF (DoD 5200.2R, Para 7-101 d.)

17. DCID 6/4 (Lesson 4, page 4-27)

18. (Lesson 4, pages 4-28)
 - a. CAF issues an SOR
 - b. Person may reply w/command position
 - c. Command position
 - d. CAF considers reply and command position
 - e. CAF makes final decision

19. b. Foreign Nationals (Lesson 4, page 4-32)

20. a. The procedures used by a CAF to deny or revoke a security clearance or eligibility to be assigned to sensitive duties. (Lesson 4, page 4-26)

21. c. A letter notifying the subject of the reasons for a proposed denial or revocation of security clearance or sensitive duty eligibility and the opportunity to reply. (Lesson 4, page 4-30)

22. b. true (Lesson 4, page 4-29)

23. appeal (Lesson 4, pages 4-28)