



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

Security through Knowledge

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LESSON 5

ADJUDICATIVE ISSUES

In the previous lesson, we looked at the functions of a CAF and your responsibilities as an adjudicator to make personnel security determinations. This lesson deals with the process of how you determine when a PSI is ready for adjudication and how to evaluate the information for a determination. First, we will look at the elements of the adjudication process.

When reviewing a PSI, you must first determine if it is complete and ready for adjudication. If there are unresolved issues, then additional investigation will be necessary to obtain the information.

The next step is to determine what information is relevant to consider. Information that is directly related to evaluating allegiance, trustworthiness and reliability is relevant for personnel security purposes. Once the relevant information has been identified, you can then begin to evaluate the information and make a determination.

To aid you in making consistent determinations, a set of adjudication guidelines have been developed. They are divided into thirteen general categories of information that relate to a subject's allegiance, trustworthiness and reliability.

Each guideline is divided into disqualifying and mitigating conditions. A disqualifying condition is information that is serious enough by itself to be the basis for an unfavorable determination. A mitigating condition is information that reduces the severity or significance of the disqualifying condition. Sufficient mitigating conditions can permit a favorable determination to be made even though there are disqualifying conditions present.

The guidelines help you to evaluate the two general categories of information - allegiance issues and suitability issues.

This lesson contains examples of each of the adjudication guidelines and how disqualifying and mitigating conditions are evaluated. We will also look at the adjudication guidelines that involve allegiance issues. We will discuss the guidelines used in evaluating trustworthiness and reliability which are referred to as suitability issues. You will see several examples of where conditions from more than one guideline is involved. This interrelationship of conditions results in complex determinations and is present in many PSIs. After completing the lesson, you will better understand the decision making process involved in adjudications.

READING ASSIGNMENT

Assignment 1:

**DoD 5200.2R Chapter 2: Sections 2, 3 and 4
DoD 5200.2R Chapter 6: all**

Assignment 2:

Memo of Nov 98

IDENTIFYING ADJUDICATIVE ISSUES

Allegiance and suitability are the two general categories of information.

When you are reviewing a PSI or other information, you are looking for any relevant information that would raise a question about the subject's allegiance, trustworthiness or reliability. Allegiance and suitability are the two major categories of information that you will see. You must be able to determine what types of information could indicate an issue about the subject's allegiance or suitability.

Allegiance Issues

An allegiance issue is one wherein the subject's allegiance to the United States may be in question. This may be demonstrated through: support of unlawful means to overthrow the United States government; providing classified information to foreign countries; showing a preference for a foreign government over ours. The subject may also participate in or support activities that would deprive individuals of exercising their constitutional rights.

Suitability Issues

Suitability issues are all other types of information that may question a subject's trustworthiness or reliability for access to classified information or assignment to sensitive duties. These issues include: **criminal conduct; security violations; emotional, mental, and personality disorders; drug involvement, alcohol consumption; sexual behavior; financial considerations; misuse of information technology systems; outside activities; personal conduct; allegiance to the U.S.; foreign influence; foreign preference.**

Disqualifying and Mitigating Information

disqualifying and mitigating conditions.

As an adjudicator you must recognize the information in the PSI that may be serious enough to be disqualifying information is the basis for making adverse personnel security determination. This involves serious misconduct, improper or irresponsible behavior, or medical conditions which cast a doubt on the subject's allegiance, judgment, trustworthiness or reliability.

PSIs may also contain mitigating information. This type of information reduces the severity or significance of the disqualifying information. The mitigating information may be sufficient to overcome the disqualifying information and a favorable personnel security determination could be made. (Figure 5-1)

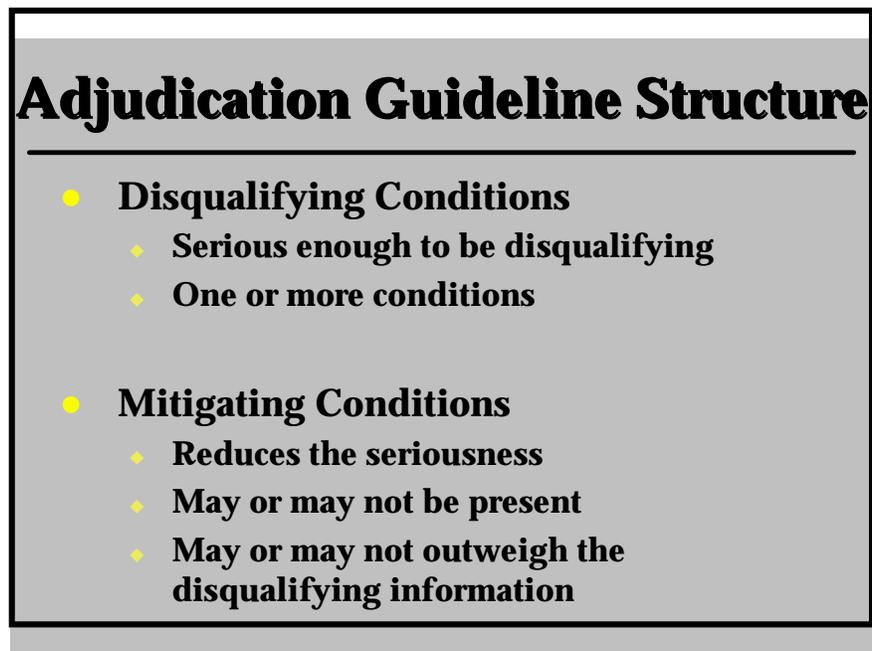


Figure 5-1

Adjudicative Process

First, you must determine if the PSI is complete and ready for adjudication. If there is an unresolved issue, then additional investigation may be necessary to obtain the information.

After reviewing and considering the relevant information, a determination must be made to make a favorable decision or start action to make an unfavorable decision.

IDENTIFYING ADJUDICATION ISSUES

How to identify issues.

There are both security criteria and adjudication guidelines provided in the DOD 5200.2R to aid you in determining the presence of issues and making determinations about the subject's allegiance, judgment, trustworthiness and reliability. The criteria are stated in paragraph 2-200 of the regulation. They are used to determine eligibility for clearance, access or assignment to sensitive duties.

Each criterion **identifies** a type of information that must be considered in the adjudicative process. The thirteen adjudication guidelines of Appendix I of the regulation are to aid you in **evaluating** the information.

Each adjudication guideline contains disqualifying and mitigating conditions for that type of information. The adjudication guidelines are the primary reference you will use to identify issues and make adjudications

DETERMINING THE RELEVANCE OF INFORMATION

Is the information directly related to the security issues?

Only information directly relevant to the personnel security standard may be considered in the adjudicative process. This involves both **favorable** and **unfavorable** information related to the security criteria and the adjudication guidelines. **Information must have a direct bearing on the criteria or guidelines to be relevant for adjudicative purposes.**

For example, the fact that a subject can only produce 50 items per hour instead of the 55 items per hour in the work performance standard has no bearing on his/her allegiance, judgment, trustworthiness or reliability. The fact that the subject may **falsify** his/her productivity records to meet the performance standard is relevant because it bears directly upon his/her trustworthiness.

All information provided for adjudication must be reviewed for its relevance before it is applied to the actual personnel security determination. Information provided by individuals, employers, official records, etc., may provide both relevant and irrelevant information for adjudication.

Whether factual or opinion, is it relevant?

The sources of information, especially individuals, providing facts, and in many cases, personal opinions that they think are important. Some of the information may be important and some will not be from an adjudicative viewpoint. This is a difficult part of adjudication, trying to sort out what is relevant and what is not.

You must not let your personal biases or other outside, non-adjudicative conditions influence your decision. This is to ensure that the adjudication reflects a proper application of the criteria and guidelines and is an equitable decision based solely on the merits of the security issues involved.

You are not concerned with the subject's work performance, community activities or the life-style **unless** there is a direct bearing on the allegiance, judgment, trustworthiness or reliability of the subject.

RESOLVING INCOMPLETE INFORMATION

Many times when issues are raised, the information is not complete enough for you to make a determination. In those cases, you must attempt to obtain the information needed so that a final determination can be made.

How to obtain complete information.

There are four means available to you to resolve an issue.

Re-opening PSIs

The first method is to re-open the PSI if the issue was raised but not fully resolved. Occasionally, PSIs conducted by DSS may have an unresolved issue. When this happens, return the PSI to DSS for re-opening to resolve the issue.

An example of this is the subject was convicted of drug possession and ordered to undergo a drug counseling program. The PSI did not get any record from the drug counseling program. The PSI should be re-opened to obtain the information.

Special Investigative Inquiry (SII)

The SII is used to gather information on specific issues that arise after the initial PSI or PR has been completed and adjudicated. For example, the subject had a favorably adjudicated SSBI a year ago. Information on an arrest by the local police arrives at the activity. The activity would request an SII from DSS for the details and disposition of the arrest. The CAF would make a determination based on the information in the SII. The CAF could use the information to revoke the security clearance.

ANACIs pose an unusual problem because OPM will complete the ANACI, but any expansion must be done by DSS. If an ANACI requires expansion, DSS will conduct an SII. This occurs most often with the situations shown in Figure 5-2.

- **Hostage situations**
- **Disposition of criminal offenses**
- **Derogatory comments from references**
- **Citizenship or naturalization information**

Re-opening the original PSI and the SII are two means of obtaining more information about an unresolved issue.

Medical Issues

If additional medical information is required, the CAF or the activity, depending upon Component procedures, may request a government physician to review medical information or offer a medical evaluation to the subject to obtain the current medical information.

For personnel security purposes, a medical evaluation cannot be required of a civilian employee, only offered. If the subject declines the offer, the adjudication must be based on the available information.

The subject may choose to have his/her personal physician provide medical information. The government physician should review that information and give a medical opinion as to whether the subject has a condition that may affect his/her judgment, trustworthiness, or reliability

Resolving Current Criminal or Counterintelligence Issues

If the information appears to involve a current counterintelligence (CI) issue or criminal conduct that might affect DoD, you should first go to the CI or criminal agency supporting the Component. If they determine there is no current CI or criminal interest, then the request could go to DSS. Examples of this are:

- **Willful compromises of classified information**
- **Foreign travel to designated countries**
- **Criminal activity on base**
- **Selling drugs to military personnel**
- **Committing crimes or conspiracy to commit crimes against the Federal government.**

Figure 5-3

Any of the types of information shown in Figure 5-3 should be initially referred to the CI or criminal agency unless the matter has already been referred. If a request is sent to DSS and current CI activity is indicated, DSS will stop the PSI and refer it to the proper agency. DSS will complete the PSI after the CI investigation is finished. If there is current criminal activity, DSS will complete the PSI except for the current criminal activity.

So far, we have recognized adjudicative issues in a PSI. If there were unresolved issues, we requested additional investigation to obtain the information. We have now identified the relevant information we will evaluate. The next step is how to evaluate the information.

EVALUATING FORMATION

How do you evaluate information?

The adjudication of information is an evaluation of information using nine conditions. These conditions are designed to help you evaluate both the positive and negative information about the subject. The end result of your evaluation is a decision whether the subject can be trusted to properly perform his/her duties. These conditions are shown in Figure 5-4. An explanation of them follows the figure.

EVALUATION CONDITIONS

- **Nature, extent, and seriousness of the conduct**
- **Circumstances surrounding the conduct, to include knowledgeable participation**
- **The frequency and recency of the conduct**
- **The individual's age and maturity at the time of the conduct**
- **The voluntariness of participation**

- **The presence or absence of rehabilitation and other pertinent behavioral changes**
- **The motivation for the conduct**
- **The potential for pressure, coercion, exploitation, or duress**
- **The likelihood of continuation or recurrence**

FIGURE 5-4

The **nature and seriousness of the conduct** refers to what type of conduct it is and how serious it is. It may vary from minor in nature, such as a traffic violation, to a major issue, such as an arrest for murder.

The **circumstances surrounding the conduct** refers to the contributing conditions that may have caused the conduct. The arrest for murder could have been the end result of the subject killing another person in a drug deal (illegal) or it was self-defense from a violent attack (legal). If the subject was with a group of people and did not know the incident took place and did not participate, then this would be in the subject's favor. The arrest is just the first official reaction to the conduct until a prosecutor or court can sort out the circumstances.

The **frequency and recency of the conduct** refers to how many times has the subject committed the conduct and when. A single offense that occurred ten years ago is of a different concern than five of the same offenses happening within the last four years.

The **age of the subject at the time of the conduct** will help to determine his/her **maturity**. Should the subject have known not to commit the conduct or was his/her immaturity a contributing condition? It is easier to understand the action of a naive seventeen year old who

lives at home than a thirty year old who has lived life on his/her own for years.

The **voluntariness of the participation** refers to how the subject was involved. Did he/she knowingly and intentionally participate? Was the subject unaware of what was happening until later on? Did the subject involuntarily participate because he/she was pressured or threatened if he/she did not become involved?

The **absence of presence of rehabilitation** refers to the subject's efforts to overcome a problem. What was his/her motivation to be rehabilitated? Did the subject voluntarily enter an alcohol rehabilitation program? Was the subject ordered into the rehabilitation program by a court? Did the subject successfully complete the rehabilitation or fail it and return to alcohol abuse?

The **motivation for the conduct** refers to the driving conditions behind the conduct. Did the subject commit the crime because he/she needed money to purchase drugs or alcohol? Was the individual coerced due to peer pressure or threatened.

The **potential for pressure, coercion, exploitation, or duress** refers to whether the individual is vulnerable because of something he or she has done. This could be drug involvement, mental or emotional problems or criminal activity that only a few people may know about and the subject is trying to keep quiet or hide.

The **likelihood of continuation or recurrence** refers to the passage of time. This means an incident has occurred so recent in time (less than one year) as to preclude a determination that recurrence is unlikely. Will it happen again?

The thirteen adjudication guidelines that follow, take these considerations into account in the disqualifying and mitigating conditions. You are looking at the conditions that could influence potentially disqualifying conduct. These considerations help to explain why the subject committed the conduct and is there reason to believe he/she may do it again?

Each of the following guidelines should be evaluated in the context of the whole person. Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior.

However, notwithstanding the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, or adverse information.

When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

- **Voluntarily reported information**
- **Sought assistance & followed professional guidance**
- **Resolved or appears likely to favorably resolve the security concern**
- **Demonstrated positive changes in behavior and employment**
- **Should have access be temporarily suspended pending final adjudication**

Figure 5-5

If after evaluating information of security concerns, you (the adjudicator) decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future

incidents of a similar nature may result in revocation of access.

ALLEGIANCE ISSUES

Allegiance is the most important issue.

Allegiance questions are the most significant and potentially damaging issues to national security you will review. Allegiance issues go to the very foundations of our constitutional form of government.

This means the subject **may be or is** supporting the goals, objectives or policies of other governments, organizations, groups or individuals in preference to those of the United States. Those interests may be contrary to law or official United States policies. This includes the violent overthrow, attempted violent overthrow, or participation or support of any other unlawful means to overthrow the United States government or any state/local government.

A secondary aspect of an allegiance issue is that of the subject participating in or supporting organizations, groups or individuals that are involved in, advocate, or aid actions that would unlawfully interfere with an individual or group exercising their constitutional rights. Examples of this are preventing people from voting in elections, exercising the right of free speech and the right of lawful assembly.

Allegiance issues are covered by six of the criteria of paragraph 2-200 and three adjudication guidelines from Attachment 2 (Nov 98 Memo). Figure 5-6 shows the criteria and the adjudication guidelines that apply to them.

CRITERIA AND GUIDELINES ASSOCIATED WITH ALLEGIANCE

<u>Criteria Element</u>	<u>Adjudication Guideline</u>
Para 2-200a-d	Allegiance to the United States
Para 2-200e	Security Violations
Para 2-200f	Foreign Preference

FIGURE 5-6

Read this carefully!

If a allegiance issue is present in a PSI or other information, three actions must be taken:

- Immediate referral to the CI agency to determine if there is a current or potential threat to the national security. The referral is made if the CI agency has not previously seen the information.
- The activity must determine whether to temporarily suspend access to classified information or performance of sensitive duties.
- Immediate referral to the CAF. In most cases, PSIs are usually routed to the CAF upon completion by the investigative agency and these actions would already have been started. If the PSI or other information is first received by the activity, the activity then must start these actions.

The remainder of the criteria and adjudicative guidelines deal with suitability issues that reflect on the subject's trustworthiness and reliability. **Suitability issues will be discussed later in this lesson.**

Review Assignment

Review the criteria of DoD 5200.2R, paragraphs 2-200a-f (page II-2) and the adjudication guidelines of Allegiance, Foreign Preference and Security Violations (NOV 98 MEMO). The two examples illustrate the types of allegiance information that you may see and the application of disqualifying and mitigating conditions.

Example 1

The employing activity requests a SSBI on a new civilian employee who will require a Top Secret clearance. The subject has a favorably completed NACI from employment with another Federal agency. The activity makes an emergency appointment to the critical-sensitive position and grants an interim Top Secret clearance.

A DSS Special Agent conducts a subject interview as a part of the SSBI. During the interview, the subject states that he was once the secretary of the New Free America Liberation Coalition. (This was not shown on the SF 86) The goal of this group was to overthrow the US government by any means, including violence, to establish a worker state. The subject claims that he supported the goals of the group as he understood them at the time. He only later found out that the group secretly advocated both unlawful and violent means to overthrow the U.S. government. The DSS agent then informs the activity and the PIC.

The CI agency of that Component would be immediately notified by DSS. As there appears to be a current CI issue and a possible threat to the US government, DSS would temporarily stop conducting the SSBI. The employing activity would notify the local CI agent that services the activity and notify the CAF of the information. At the same time, the employing activity decides to temporarily suspend access to classified information pending the outcome of the CI investigation, completion of the SSBI and the CAF action.

To this point, the activity has taken the proper actions to protect the national security by temporarily suspending access to classified information, notifying the CI agency and notifying the CAF.

Evaluation of Example 1

You are now reviewing the CI report and completed SSBI on the civilian employee. The CI agency report indicates the Department of Justice (DOJ) has no information about this group. When questioned by the CI agent, the subject stated that he had bragged to some of his friends in college that he belonged to this group, which in reality, did not exist. He told the DSS agent this because he was afraid DSS agents would talk to his friends and discover the subject's statements about the group; therefore, he had to make up a believable story to cover it. The subject stated that he believed in the U.S. constitution and form of government and would support it.

The problem for you is that there was initially a potential allegiance issue involved. Subsequent investigation indicated the subject was making up the story and got caught up in it when interviewed by the DSS agent.

No allegiance issue here, but a definite suitability question.

There is no real allegiance issue here; however, the subject's false statements to the agents question his suitability to be granted a security clearance. You were faced with a subject who created a false story and got caught up in it.

If the subject had actually belonged to this group and stated that he would take up arms to achieve the violent overthrow of the U.S. government, or support any other unlawful means, then there would be an allegiance issue. In that case, you would refer the case to a senior adjudicator for an allegiance review.

Mitigating Information in Example 1

To illustrate how the mitigating conditions affect allegiance issues, let's look at the civilian employee. We will add some new information to the example.

Presume the employee was 25 years old and graduated from college and this was his second federal job at the time of the interview. Presume the subject actually joined this group out of curiosity while attending college and he was 19 years old at the time. He belonged to it for a year and, for a short time, became the secretary of the group. He initially supported the concept of a worker state and thought it would come about through the election process because of the dissatisfaction of many citizens. Once he found out the group believed in using armed force and other unlawful measures to achieve a worker state, he left the group. This was confirmed through DSS interviews with other students.

The completed SSBI contains a full written statement about his current favorable beliefs in and intentions to support the United States government. The adjudicator must consider that the subject joined the group and supported the concept of a different form of government that would come about through popular support by lawful means (the election process.) This was a popular peer position during his time in college. At that time he was in his young adult years and was not aware of the unlawful and violent measures the group considered using. Once he found out about this, he left the group. It has been five years since his association with the group.

This case contains sufficient mitigating conditions to believe that the subject is not an allegiance concern and a favorable determination could be made.

Example 2

A military member currently holds a Secret clearance and has access to Secret information in the performance of his duties. One night, the local police arrest the military member in town for driving under the influence of alcohol. While taking the

military member into custody, the police officer observes an open envelope on the car seat. He takes the envelope into custody to record it with the military member's property at the police station.

When listing the contents of the envelope, the officer sees documents marked "SECRET" and a map indicating where the documents should be left. The officer contacts the military base and tells the investigators what he has found. The base investigator then notifies the CI agency of the situation. A CI agent takes custody of the military member and the documents at the police station.

The military member tells the agent that he was going to deliver the documents and pick up money for them. He had made a deal with a Russian intelligence agent to provide classified information about a weapons program he had access to. The base then suspends the military member's access to classified information and notifies the CAF.

To this point, the base has taken the necessary steps to suspend access to classified information, notified the CI agency, and the CAF of the situation.

Evaluation of Example 2

A textbook example of espionage.

You are now reviewing the case file of the military member. The file indicates the subject had a favorably completed ENTNAC. There was no other information in the file until the civilian police agency report was submitted by the base. The completed CI agency report indicates the military member was recruited to spy for the Russians. In this case, there is an allegiance issue involved. You would refer this case to a senior adjudicator for an allegiance review and possible removal from military service on allegiance grounds.

Mitigating Information in Example 2

The action of the military member is an example of espionage. The military member was recruited to sell classified information to the Russians. He was attempting to deliver the classified information for money when he was arrested on a traffic violation. There are no mitigating conditions in this example.

Receiving Allegiance Information

In both of the examples, the activity became aware of information that indicated a potential allegiance issue. The information came from different sources, one during a PSI and the other as a result of a civilian police agency report. In both cases, the activity was initially notified and started the necessary actions to protect classified information and reported it to the proper organizations

Recap

We have explained what types of information, disqualifying, mitigating, make up an allegiance issue. The examples illustrated what the activity and DSS do when first confronted with a potential allegiance issue. The first example also provided two different types of mitigating conditions. First, the mitigating conditions revealed that there was no allegiance issue. The other mitigating conditions reduced the significance of the disqualifying conditions. The second example provided a case of current espionage in which there were no mitigating conditions.

You will not see many actual allegiance cases; therefore, you must be careful not to overlook this type of information. When you see a potential allegiance issue, refer it to a senior adjudicator or supervisor for review.

SUITABILITY ISSUES

Suitability issues involve any behavior, condition, circumstances or other factors that directly affect the subject's trustworthiness or reliability. The security criteria

and adjudication guidelines will be discussed in the following sections.

Now, the rest of the story!

Each section will include disqualifying and mitigating conditions plus examples of how they are applied.

The last section will deal with a PSI involving disqualifying and mitigating conditions from several criteria and guidelines. Figure 5-7 identifies the adjudicative guidelines used to evaluate suitability information. conditions. The second example provided a case of current espionage in which there were no mitigating conditions.

You will not see many actual allegiance cases; therefore, you must be careful not to overlook this type of information. When you see a potential allegiance issue, refer it to a senior adjudicator or supervisor for review.

<u>CRITERIA</u>	<u>ADJUDICATION GUIDELINE</u>
NOV 98 MEMO	Foreign Influence
NOV 98 MEMO	Foreign Preference
NOV 98 MEMO	Allegiance to the U.S.
NOV 98 MEMO	Security Violations
NOV 98 MEMO	Criminal Conduct
NOV 98 MEMO	Emotional, Mental or Personality Disorders
NOV 98 MEMO	Misuse of Information Technology Systems
NOV 98 MEMO	Financial Considerations
NOV 98 MEMO	Alcohol Consumption
NOV 98 MEMO	Drug Involvement
NOV 98 MEMO	Personal Conduct
NOV 98 MEMO	Outside Activities
NOV 98 MEMO	Sexual Behavior

Figure 5-7

Note: Paragraph 2-200i is a general criterion. It is used when a subject's acts, or lack of them, reflect on his/her trustworthiness or reliability and the conduct does not fit into any of the adjudication guidelines. This does not happen often as the guidelines cover mostly all conduct that could impact on a subject's trustworthiness or reliability.

SECURITY VIOLATIONS

Does the subject follow security regulations or show a disregard for them?

This guideline looks at how the subject follows laws, Executive Orders and regulations involving the protection of classified information and other established security procedures necessary to protect information, personnel and property. **Non-compliance with security regulations raises doubt about an individual's trustworthiness, willingness and ability to safeguard classified information.**

A subject who violates security procedures, intentionally or accidentally, can pose a risk to the protected information, personnel or property. He/she could cause the loss or compromise of classified information to persons who are not authorized to receive it. Violation of security procedures can cause varying degrees of damage to the national security.

A minor violation could be a safe left open (administrative violation with no compromise) which costs manpower to investigate the violation and time to correct the problem and discipline the subject.

A major violation could be a loss of military advantage (a new weapons system) costing both an advantage in wartime, plus development costs up to billions of dollars for some advanced major systems.

Types of Security Violations

Security violations are deliberate or inadvertent.

Violations of security responsibilities can be either inadvertent or deliberate. This may be to sell property or information for his/her own monetary benefit. Information could be sold to a foreign government or persons (then it becomes an allegiance issue) or to a contractor seeking a contract or proprietary information (information belonging to a private firm but the government has a legal or contractual interest in it) to further his/her company. Also, it could be

the destruction of documents to reduce the subject's workload or accountability of documents. The subject may provide information to someone else to further his/her position.

This practice is known as "**leaking**" and usually involves classified or sensitive information. The purpose is usually to cause others to agree with his/her position when there may be opposition to it at the subject's level or at higher decision-making levels. Information that is "leaked" may end up in the news media with persons without official authorization to see it or to Congress for political purposes.

A subject who accidentally, or negligently, discloses classified information can also cause damage to the national security. If the information is lost or compromised through improper handling, mailing, or accountability, time will be lost to investigate and correct the situation.

If the information falls into the hands of people not authorized to receive it, the compromise can have varying degrees of damage. The damage could vary from just one person seeing it, turning it over to a foreign government or to the news media, or others using it for their own purposes.

Any of these circumstances would damage both our national security and the public's perception of our ability to properly safeguard our secrets.

Review Assignment

Review paragraph 2-200g (page II-2) and the guideline for Security Violations, (Nov 98 Memo) before reading the examples. The two examples illustrate types of information you will see involving this condition and how the adjudicative guideline is applied.

A lack of security training contributed to this problem.

Example 1

The subject frequently traveled to meetings throughout the country on a new weapons project. The weapons project is classified and all of the documents about it are classified. The subject carried the documents with her on the airplane each time she went to one of the quickly called meetings. During the next security briefing, the procedures for hand carrying classified information were discussed. The subject reported to the speaker that she had carried classified documents on three trips.

An investigation was conducted by the security office. The investigation revealed the subject had **never received any type of security briefing or training** on how to handle classified documents. The supervisor had merely told the subject to "be careful with that stuff."

On one hand, carrying the classified documents without authorization on three separate occasions is a disqualifying condition. On the other hand, the subject had never been instructed on how to properly handle the classified information.

In good faith, she took the supervisor's instructions, "to be careful with that stuff," as the way to handle it. This is a strong mitigating condition as the subject was not properly trained in how to safeguard the classified documents, so it is difficult to hold her solely responsible for the improper handling.

If the subject had received proper security training and still hand carried the classified information without authorization, then it would have been an intentional violation of security regulations with no mitigating conditions.

In this case, there is a valid mitigating condition to consider in the adjudication and it would support a favorable decision.

Example 2

On four separate occasions, the subject has been reported for leaving his safe open after duty hours. Each time the safe was found open by the guard force during an office check after hours. When interviewed by the security office about the latest violation, the subject stated he didn't think the procedures were necessary as the information shouldn't be classified and he would lock up the safe if he remembered to do so.

This subject just doesn't care about protecting classified information.

In this case, the subject had received the proper training on securing classified information at the work site and had received supervisory reprimands for the previous violations. He disagreed with the document classification, but still had an obligation to properly protect it. He indicates the safe may be properly secured if he remembers to do so.

This statement, considered along with the previous violations, is not a positive indication that the subject intends to comply with security directives.

There are no mitigating conditions in this case; therefore, the decision would be unfavorable.

CRIMINAL CONDUCT

This guideline involves **any criminal conduct regardless of whether or not the person was formally charged**. The conduct includes violation of any Federal, state or local county/municipal law, or the laws of foreign countries.

Look for intent in criminal conduct.

A subject who violates laws raises questions about his/her trustworthiness and reliability. Criminal conduct can range from a minor traffic violation to serious offenses such as murder and espionage. The more serious the offense, or a pattern of criminal conduct, the more the subject's trustworthiness and reliability are doubted.

A subject who intentionally commits a crime is more of a security concern than a subject who accidentally commits an offense such as a traffic violation. **The difference is in the intent of the subject to do something.** If the subject knowingly and intentionally commits a crime, what reliance can we place in the subject to properly safeguard classified information or perform other sensitive duties? He/she has either demonstrated an intent to disobey or has already deliberately disobeyed laws. What will the subject do if he/she does not respect or agree with security or other regulations?

We cannot afford to take the risk to national security with this type of subject. This individual demonstrated willingness to place himself, or herself, above the established laws of the community as they personally see fit. **This creates a doubt about his/her trustworthiness and reliability.**

Evaluating Criminal Conduct Information

When evaluating information about criminal conduct, you must consider all available information about the criminal conduct, both good and bad. **Remember, you are making a personnel security determination, not conducting a criminal trial of the subject.** Even though a subject may have had criminal charges dropped, or had not been charged, it only means there may be no further criminal prosecution of the subject. There may still be valid personnel security concerns if the subject engaged in criminal activity, but for some reason was not convicted.

You are concerned about the subject's intent and actions in any criminal conduct. For example, the subject may show a willingness to assault people with no apparent reason and cause serious injury. From a personnel security viewpoint, this conduct raises questions about his/her trustworthiness and exercise of responsible judgment. He/she may not be convicted of assault because the subject threatened the victims with more violence if they prosecuted him/her, so the victims will not say anything. This does not reduce the

Don't dismiss the significance of the information just because the subject

was not convicted.

significance of the information about criminal conduct. In this case, the subject intended to harm others without any lawful reason, such as self-defense from attack, and threatened the victims if they acted against him/her. **Is this a person we could trust with our secrets?** When mitigating conditions are present, a favorable decision is possible in many cases. Many people who commit a crime only do it once. The emotional impact of the crime and the decision of the judicial system can cause the subject to change his/her way of thinking about committing crimes. **This is one reason that the passage of time, or recency, can be a mitigating condition.** This lets the subject prove him or herself by personal conduct over a period of time. We cannot take his/her word immediately because the subject may lie about not committing crimes again and some subjects do not know in their own minds what they will do for awhile.

Time is an important mitigator.

The time period gives the government the opportunity to see how the subject will conduct him or herself after the crime. In most cases, the subject does not commit any further crimes. These subjects may later become eligible to be granted security clearances or perform sensitive duties. In a few cases, however, some people just continue committing crimes. These are the few who remain security problems as they have shown a history of untrustworthiness and unreliability.

Review Assignment

Review paragraph 2-200h (page II-2) and the adjudication guideline for Criminal Conduct (NOV 98 MEMO) before reading the examples. The four examples show the types of information that you will see and how disqualifying and mitigating conditions are applied.

Example 1

An individual is selected for a noncritical-sensitive civilian position as a cashier at a base finance office. The application states there has been no criminal conduct on the subject's part and the local records check is favorable.

Based on this information, the activity makes an emergency appointment to the position and the subject goes to work.

When the ANACI is received at the base, it contains a record from a police department in another state which indicates that the subject was convicted of embezzlement from her employer. The record shows the subject is still on probation for another two years. In this example, the subject falsified the application by not admitting the conviction for embezzlement and the current probation. The subject hid this information so the employer would not find out. Because of this, the base decides to remove the subject from the job.

If a personnel security determination had been made, the decision would have been to declare the subject ineligible to perform sensitive duties. The personnel security issues are that the subject was convicted of embezzlement, is still on probation (so we do not know if subject will successfully complete it), and the subject falsified the employment application. **There are no mitigating conditions in this example.**

Example 2

An individual has been selected for a noncritical-sensitive civilian position requiring a Secret security clearance. On the application forms, the subject lists two convictions in 1991 and 1992 for assault and battery on his spouse.

When the ANACI is received at the activity, the two convictions are confirmed in the ANACI. The subject tells the activity security office that he completed a rehabilitation program in 1993. Since the ANACI does not contain the court records, the activity requests DSS to conduct an SII to obtain the court records. Upon receipt of the SII, the court records indicate the subject voluntarily entered a counseling program in 1992 and successfully completed it in 1993. The subject recognized that he had a problem dealing with the recent death of two daughters in a house fire. This was causing a family situation with the spouse so he sought the help. The

court took the subject off probation early due to the successful completion of the counseling. The SII shows no further criminal conduct. A favorable employment determination was made. A CAF adjudication was then requested.

In this example, the subject admitted to the criminal conduct on the application forms. The SII shows the subject took a positive step in recognizing that he had a problem because of the death of his daughters and sought help for it. There has been no criminal conduct since the last offense in 1992. The subject appears to have solved the problem he had and does not present a security issue at this time. **There is sufficient mitigating information in the example to make a favorable decision.**

Example 3

An individual is selected for a critical-sensitive civilian position requiring a Top Secret clearance. The subject admits on the SF 86 that she has been arrested three times for shoplifting but was convicted only one time.

The activity submits the SSBI request but does not make an emergency appointment. The subject is informed that she will be notified when the SSBI is completed and adjudicated. When the SSBI is received at the activity, it shows the subject has been arrested 22 times between 1972 and the present for charges of shoplifting, petty theft, unemployment fraud, auto theft and probation violation. She was convicted 14 times, all misdemeanor convictions, and placed on probation each time.

In the subject interview of the SSBI, the subject says that she did commit all the offenses listed even though several did not have a conviction. The subject lied on the application because she thought she would not get the job if the arrest information was listed on the application. **The activity informs the subject that she will not be appointed to the job.**

The personnel security issues in this example involve a pattern of criminal conduct and falsifying the SF 86. Because of the lengthy and current pattern of criminal conduct,

including violating probation, mitigating conditions probably could not overcome the disqualifying conditions in the case. **The pattern of continuous criminal conduct without any evidence of rehabilitation makes her trustworthiness and reliability too questionable for a favorable determination at this time.**

Example 4

A military member with a Secret clearance is currently stationed overseas. The subject's unit receives a report from the local police that the subject has been arrested for selling cocaine off base. The unit temporarily suspends the subject's access to classified information, notifies him in writing, and reports it to the CAF. The police report states the subject sold cocaine (tested positive by the police laboratory) to an undercover officer on two occasions. The two sales were recorded on videotape. The subject is not prosecuted because of a legal error.

In this example, the subject has violated foreign law by selling cocaine. Even though the subject was not prosecuted by the foreign government due to a legal error, the police information is sufficient to start an action to revoke the security clearance. There has not been enough time since the offenses occurred to determine if the subject may commit future criminal acts. **There are no mitigating conditions in this example.**

Complexity of Criminal Conduct Information

Criminal conduct is a difficult area of adjudication because of the variety of disqualifying and mitigating conditions that can arise. The four examples provided no mitigation, insufficient mitigation, or sufficient mitigation to affect the final decision favorably or unfavorably.

An important mitigating condition to consider is the long-term conduct of the subject. A period of time free from criminal conduct is more likely to indicate the subject has changed his/her attitude towards crime, but not always.

A pattern of criminal conduct is one of the best indicators

***Is the subject remorseful?
Will he/she commit crimes in the future?***

of a potential problem. Here the subject has demonstrated the criminal conduct over a period of time and there is a greater likelihood that there will not be sufficient mitigating conditions to make a favorable determination.

When reviewing police reports or statements to special agents, look for the subject's explanations and any signs that the subject is sorry for what he/she did. Also, look for any statement that the subject may commit further crimes. This occurs in drug abuse cases where the subject indicates he/she will continue to use drugs in the future but not at the job site. Using any illegal drug is still a criminal offense and the subject's declaration shows he/she intends to commit criminal acts in the future.

This alone is a sufficient basis to make an unfavorable determination. A statement of intent to commit future criminal acts casts a doubt on the subject's trustworthiness and reliability.

EMOTIONAL, MENTAL AND PERSONALITY DISORDERS

This guideline involves emotional, mental and personality disorders that can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability or stability.

Emotional, mental and personality disorders and illness may be severe enough that the individual cannot control his/her actions or make rational decisions.

Emotional, mental and personality disorders and illnesses can cause an individual to think and react differently than he/she normally would. The effects can be minor or major in nature and can be short or long-term in duration. The condition may be so serious that the individual's judgment and reliability may be impaired to such a degree that normal, rational decisions cannot be made. If this happens, or the possibility exists, then the individual must not have access to classified information or perform sensitive duties until he/she is no longer affected by the condition or until the possibility is remote that the condition will affect the individual's judgment or reliability.

Figure 5-8 shows some of the reasons for emotional, mental and personality disorders.

- An inherited condition
- Accident or injury
- Illness
- Degenerative disease
- Chemical imbalance in the body
- Effects of drug or alcohol abuse

Figure 5-8

Obtaining Medical Information

disqualifying conditions indicate this individual has a disorder that could result in a defect in psychological, social or occupational functioning. When information in a PSI indicates a potential problem area involving mental or emotional conditions, a credentialed mental health professional, acceptable to or approved by the government, should be consulted so that potentially disqualifying and mitigating information may be fully and properly evaluated..

Ask the medical professional for a medical opinion, not a security opinion.

For personnel security purposes, a medical examination cannot be required, it may only be offered to the subject. The medical professional should be given access to the PSI to review the information. The medical professional may be able to provide an opinion based on that information, or he/she may request the subject undergo a medical examination.

When a medical opinion is requested, the questions should cover any diagnosis and prognosis of a medical condition, if any, and whether the condition could cause a defect in the individual's judgment or reliability. **Do not ask the medical professional if the subject should have a security clearance.** He/she is a medical specialist, not a

personnel security specialist. He/she will not know all the requirements of the PSP.

By asking the medical professional for an opinion on whether the subject may have a condition that could affect the judgment or reliability, you can make a determination based on medical information rather than personal opinion.

If the subject declines the offer of a medical examination, the adjudication must be based on all the available information.

Review Assignment

In 2R review paragraph 2-200j (page II-2) and the adjudication guideline for Emotional, Mental and Personality disorders (NOV 98 MEMO) before reading the examples. The two examples show you what type of information you may see involving this guideline and how the disqualifying and mitigating conditions are applied.

Example 1

An individual begins acting violently at work. On two occasions, he assaults other employees. A medical examination for employment is conducted by the activity.

The diagnosis reveals the subject has developed a chemical imbalance, which causes mood swings. The condition can be effectively treated with medicines and the subject will not suffer any negative effects of the condition while taking the medicine.

The security office requests that the physician give a medical opinion of whether the condition could cause a defect in the subject's judgment or reliability. The physician states there should not be any problem with the subject's judgment or reliability if he continues to take the prescribed medicines.

The subject decides he doesn't like to take the medicines and sometimes does not take them. This occasionally

causes a problem at the work site with the subject becoming argumentative and hostile towards his co-workers and supervisors. The subject is sent to the activity physician for another medical examination for employment. The physician states the subject is not taking the medicines as prescribed. This action is causing the hostility observed at work and it will affect his judgment if the medicines are not taken for periods of time.

In this example, the subject developed a condition which affected his judgment and reliability, but which could be controlled with prescribed medicines. If the subject had continued to take the medicines as prescribed, the medical opinion indicated the condition would not cause a defect in the judgment or reliability. There was a disqualifying condition (the condition that could cause the defect in judgment or reliability). The subject refused to use the medicines as prescribed and it adversely affected his behavior and judgment.

As long as the subject refuses to take the medicines, he has a condition that would make him ineligible to have access to classified information or perform sensitive duties. If, at a later time, the subject decides to continue using the medicines as prescribed, then he may be eligible for access or sensitive duties. In mental or emotional disorders, the condition and its effects can change because of many conditions.

Sometimes the subject's own actions can help or worsen the conditions.

This example shows a situation where the subject had a controllable condition and would have been eligible, but through his own actions, he did not follow medical advice rendering himself ineligible at the time.

Example 2

An individual is selected for a noncritical-sensitive position requiring a Secret security clearance. The application indicates that she was hospitalized for one year due to episodes of paranoia, including violent conduct. The activity does not make an emergency appointment and advises the subject they will notify her when the PSI is completed.

The CAF then receives the ANACI but it does not contain any information about the hospitalization. The CAF requests DSS to conduct an SII to get information from the hospital. The completed SII contains a medical report that indicates the subject has a form of paranoia that manifests itself by violent conduct. There is a high probability of recurrence and when it happens, the subject cannot tell reality from fantasy and is not in control of her actions. Medication may not control the more serious incidents and the subject would have to be hospitalized. The activity does not hire the person as she could not properly perform the job duties and would cause a potential danger to other employees.

From a personnel security aspect, the medical report provides sufficient information to decide that there is a condition which will cause a defect in the subject's judgment and reliability. There is a high probability of recurrence and the medication could not adequately control the condition at all times. **There is not sufficient mitigating information in the example to make a favorable determination.**

Another Viewpoint

In reviewing information dealing with emotional, mental and personality disorders, you are faced with conditions that are, in many cases, beyond the subject's control to do anything about it.

It may not be the subject's fault, but it is still a security concern.

In some cases, the subject may contribute to the conditions that are causing the problem. When mental or emotional disorders are present, the subject may not be eligible for access or sensitive duties because he/she might not be capable of properly performing the duties, rather than because of some voluntary action on the part of the subject.

FOREIGN INFLUENCE

This adjudicative guideline involves situations where a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence or obligation are:

- (1) not citizens of the United States or**
- (2) may be subject to duress.**

These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

disqualifying conditions increase the subject's vulnerability to coercion, exploitation, or pressure because of the attempt to hide those conditions or to protect relatives, friends or associates in foreign countries from any action taken against them to pressure the subject. Some subjects will go to great lengths to hide something about themselves or to protect others. In some of the worst cases, the subject could be blackmailed into providing classified information or performing the sensitive duties improperly.

Review Assignment

Review paragraph 2-200k (page II-2) and the guideline for Foreign Influence (NOV 98 MEMO) before reading the examples. The two examples show you the types of information you will see involving this guideline and how the disqualifying and mitigating conditions are applied.

Example 1

An individual is a naturalized United States citizen from Iran. The subject's immediate family (father, mother and two sisters) is still in Iran. The subject was selected for a

position requiring a Top Secret clearance. When the NAC portion of the SSBI was completed, the activity made an emergency appointment to the position, but did not issue the interim clearance as there were questions about a potential hostage situation.

During the subject interview portion of the SSBI in 1995, the subject stated that he had not divulged his association with the United States government to the family members in Iran during their correspondence. He also stated that he could not be pressured into providing any information or other assistance to Iran as he hated the current government and did not believe in it. The completed SSBI further developed information that the subject has made four trips to Iran: one in 1986; two in 1990; one in 1994. The subject did not report any of these trips on the SF 86, to the supervisor, or the security office.

These were potential CI issues; therefore, the subject was questioned by a CI agent. **The subject admitted that threats had been made against his family by officials of the current government.** If he did not cooperate and provide certain information when he went to work in the position, the family members would be executed. The subject stated that he was going to report this threat to the security office but had not done so. The subject requested a polygraph examination to confirm this. The polygraph examination was inconclusive on whether he told the relatives about his job and access to classified information. Since there was no further CI action to be taken, the CI case was closed.

A classic hostage situation.

The issues in this example show the subject had lied on the SF 86 by concealing the travel and not reporting the pressure applied against him by the Iranians (a hostage situation). The subject was vulnerable to pressure and there is a question of whether he would have reported it and possibly given the information to Iran.

In this example, there is doubt about the subject because he concealed information about the foreign travel and the attempted pressure by the Iranian government. There is a question of whether he may later give information to the

Iranians and it is not clear how the Iranians knew about his job duties. **There is too much disqualifying information to be overcome by the few mitigating conditions. In this example, the determination would be unfavorable.**

Example 2

An individual was selected for a noncritical-sensitive position, the ANACI requested, an emergency appointment made and an interim Secret clearance granted. On the SF 171 for the position, **the subject claimed a Bachelor of Science degree in electrical engineering and that she also held a state license to practice as an electrical engineer in New York.**

The position required the employee to possess at least a Bachelor of Science degree in electrical engineering from an accredited university/college and a New York State engineering license to meet the qualifications. When the completed ANACI was received at the activity, it indicated the subject had only 30 hours of credit at the university and no record of the New York State license.

The subject was questioned by the personnel office about her qualifications for the position. **The subject admitted that she lied** about the degree and the state license in order to get the job. She did not think the government would check the qualifications that closely as her previous employers had not checked them thoroughly.

During the interview, the subject admitted she had been pressured on another job to provide information. If she had not provided the information, the person would inform her employer of the false qualifications. That could get her fired and she did not want that, therefore, she resigned.

The subject was discharged during the probationary period and the final appointment to the position was not made because she lacked the necessary qualifications and falsified her application. From the personnel security aspect, this example brings out the issue of making false

There are many ways to pressure people to get them to do

something.

claims about qualifications in order to obtain a position and vulnerability to blackmail or pressure.

Not only did the subject attempt to get the job by lying about the qualifications, her statement to the personnel office about previous employers not closely checking the qualifications and the threat of pressure indicate a pattern of deceit. **This example contains no mitigating information.**

FINANCIAL CONSIDERATIONS

This adjudicative guideline involves excessive debts, continuing financial problems and unexplained change in lifestyle or increased income.

A subject's financial history can tell a great deal about how he/she handles responsibility. An individual who mismanages money, shows an indifferent attitude toward paying his/her debts, has a lifestyle well above what he/she can apparently afford or uses deception, including criminal acts to obtain credit, is someone who requires close scrutiny when making a personnel security determination.

Much of the information an adjudicator needs is contained in credit reports, subject interviews, and other financial records included in several of the PSIs. In the PSIs that do not include financial information as a normal part of the investigation, an SII can be conducted to obtain financial information if there is an indication of financial problems.

One reason so much emphasis is placed on finances is that money has figured as an important, if not the primary, factor in many espionage cases. The subject has either needed money to take care of his/her debts or just wanted more money to raise his/her lifestyle.

Reviewing Financial Information

When reviewing financial information, **you are looking for conduct, or a stated intent, by the subject** that describes both the financial picture and his/her attitude. Is the subject

someone who is reckless with spending money and shows an unwillingness to pay his/her debts? Or, is the subject someone who spends within his/her means, takes care of debts, or is making good-faith efforts to do so? A subject who is irresponsible in his/her financial dealings raises questions about his/her trustworthiness and reliability. Not everyone with financial problems who performs sensitive duties will become a spy; however, we cannot take the risk when trustworthiness and reliability are in question.

Review Assignment

In 2R review paragraph 2-2001 (page II-3) and the adjudication guideline for Financial Considerations (NOV 98 MEMO) before reading the examples. The three examples will show you the types of information you will see and how disqualifying and mitigating conditions are applied.

Example 1

A newly assigned junior enlisted military member is undergoing a SSBI for a Top Secret clearance for his new duties. When the completed SSBI is reviewed at the CAF, the credit report indicates that five accounts, totaling \$11,400, are more than 120 days overdue and two accounts, totaling \$3,600, have been sent for collection.

In the subject's statement, he said that he bought a car, a computer and several pieces of electronic equipment. He bought most of the items on impulse and received "instant credit" available at the stores. The subject stated he can not make all of the payments on the items. The car has just been repossessed. The subject stated he has not made payments on some of the items as he is not satisfied with them and probably won't make any further payments on those items.

The subject stated he attempted to obtain a loan from the credit union but was turned down due to his credit rating. **On the day before the interview**, the subject stated he purchased a \$1,500 stereo system with "instant credit" available at the store and will probably buy other things if he likes them.

In this example, the subject has demonstrated a lack of financial responsibility through impulse buying beyond his means to pay and states an intent to buy more.

The subject can not pay for the items already purchased and shows an indifferent attitude about paying for some of the items because he doesn't like them. This situation has already resulted in the repossession of the car.

With the stated attitude of not paying, creditors will be forced to repossess the items and, in some cases, may need court judgments against the subject to collect. **This example contains no mitigating information.** The subject appears headed for even more financial problems due to irresponsible spending and a negative attitude about taking care of his debts. **The decision in this example would be unfavorable.**

Example 2

An employee occupies a noncritical-sensitive position with a Secret clearance. **The employee asks the supervisor for some time off from work to go to court and petition for bankruptcy.**

Under the continuous evaluation program, the supervisor reports this information to the security office. The security office requests DSS to conduct an SII for financial information. **The completed SII reveals the subject filed for bankruptcy due to a business failure.** The subject is a machinist and had set up a business to make fittings and gaskets for oil-well drilling machinery. She had borrowed \$200,000 to set up the business with the necessary machinery. She had just received a contract for fittings and gaskets. At that time, the oil industry suffered a downturn and the contract was canceled. As the oil-well drilling equipment was not used due to a reduction in oil consumption, the bank had to repossess the equipment. The bank could not sell all of the equipment and took a loss. The remainder of the loan, \$140,000, had to be paid by the subject. The subject's current expenses already took most of her take home pay and she could not repay the remainder of the loan. The court arranged for a payment schedule to repay the loan and the subject was meeting the payment

schedule.

In this example, **the subject suffered a business related loss of income beyond her control.** Until that time, there had been no problems with the subject's financial status as she was handling the bills and other debts. The court approved repayment schedule was being followed by the subject. Her responsible actions to take care of the debts show a favorable attitude in taking care of financial obligations. **There is sufficient mitigating information in this example to make a favorable determination.**

Example 3

An employee occupies a noncritical-sensitive position but does not need a security clearance. The employee's annual salary is \$23,000. Until recently, the employee drove an older model car, wore casual clothes and lived a moderate lifestyle.

Recently, the subject started driving a new, expensive sports car, wearing custom-tailored clothes and was living a very high lifestyle. One of the co-workers reported this to the security office as **unexplained affluence.** The security office requested DSS to conduct an SII to determine the source of the subject's new affluence. The completed SII contained a statement that the subject had just won the state lottery prize of \$3,500,000. **This was confirmed by an interview with a state lottery official.**

In this example, the sudden change in lifestyle and affluence was a proper area to question as there was no apparent or known reason for it. The SII provided the mitigating information about the subject winning the lottery. This can happen when a subject receives an inheritance. The information explains the change in the subject's lifestyle and indicates there is no security issue here. **This example warrants a favorable determination.**

Overall Evaluation

The subject's and actions are important.

The three examples above describe different types of ***attitude*** disqualifying and mitigating information that may be contained in PSIs. Both the financial information and the statements are good indicators of the subject's attitude and actions in taking care of their financial responsibilities.

If the overall actions and attitude are favorable, there probably is not a security concern. If the overall attitude and actions are unfavorable, there will be a security concern about the subject's suitability to be granted a security clearance or perform sensitive duties.

ALCOHOL CONSUMPTION

This adjudicative guideline involves the occasional or continuing use of alcohol to excess. You are looking at how the use of alcohol affects the subject's trustworthiness and reliability.

Alcohol can cause a change in the subject's behavior to such a degree that he/she may be incapable of properly protecting classified information or performing sensitive duties. The ability to make responsible judgments and decisions is reduced and it contributes to irresponsible and sometimes criminal conduct. The use of alcohol frequently causes conduct or medical conditions which are related to other adjudication guidelines. **The misuse of alcohol is usually detected by the subject's conduct or medical problems.**

Review Assignment

In 2R review paragraph 2-200m (page II-3) and the adjudication guideline involving Alcohol Consumption (NOV 98 MEMO) before reading the examples. The two examples show the types of information you will see in alcohol cases and how the disqualifying and mitigating conditions are applied.

Example 1

A SSBI is being conducted on a military member to perform ADP-I duties but no security clearance is required. During the interview by a DSS agent, the subject states that he has been arrested three times for Driving While Intoxicated (DWI). The arrests all occurred between four and six years ago. A civilian court directed the subject to attend an alcohol program as a result of the last conviction for DWI.

The subject also voluntarily entered a military alcohol rehabilitation program at the same time. The subject successfully completed both the civilian and military programs and has not had any alcohol to drink since the last conviction. The SSBI also includes verification of successful completion of both programs and the local agency checks do not show any arrests or detentions since the last DWI arrest.

In this example, there is disqualifying information but there is also strong mitigating information. The successful completion of the two programs (one which the subject voluntarily entered), no further use of alcohol, and no record of any subsequent alcohol related conduct for the past four years are sufficient factors to overcome the disqualifying information. **The determination in this example is favorable.**

Example 2

Alcohol abuse affects the subject's judgment and may lead to unusual behavior.

An individual is employed in a critical-sensitive position with a Top Secret clearance. One day a police officer arrives at the activity with two warrants for the subject's arrest. The warrants are for Assault and Battery on his spouse and Leaving the Scene of an Injury Accident (Felony). The police officer tells the security office that the subject had been drinking when he assaulted his spouse. When the police arrived, the subject drove off and later was involved in an accident but was not arrested because he had left the scene prior to the police's arrival.

As this appears to be a serious situation with alcohol involvement, the security office suspends the access to

classified information and notifies the subject in writing of the suspension,

The activity requests DSS to conduct an SII to obtain any information about the subject's use of alcohol or criminal conduct. The completed SII is being reviewed at the CAF. The SII discloses the subject has two previous arrests and convictions. Both are alcohol related; one involving assaulting his spouse and the other a DWI within the last three years.

A subject interview also reveals that he attended a court ordered alcohol program after the DWI conviction, but the record shows that he **did not complete the program** as required. The SII also includes the court records for the latest two offenses. The subject was found guilty of assault and battery and leaving the scene of an accident. The second charge resulted in a felony conviction and the court ordered three years probation and successful completion of an alcohol program. The court records indicate subject had been drinking heavily at the time the incidents occurred but **the subject claimed he did not remember anything about the incidents.**

In this example, there is the following disqualifying information:

- The subject had two previous incidents involving alcohol which resulted in criminal convictions.
- The subject failed to comply with court orders to complete an alcohol program as a result of the criminal conviction.
- The subject was involved in two recent incidents, one resulted in a felony conviction - both were alcohol related.
- The subject is on probation for three years and must complete a court ordered alcohol program.
- The subject claims he does not remember the latest two incidents while drinking.

This information is recent and it questions the subject's reliability and trustworthiness.

He has repeated alcohol related conduct, the latest resulting in a felony criminal conviction. The subject may also have a medical problem due to alcohol as he cannot remember the incidents. The outcome of the probationary period and second court ordered alcohol program could be mitigating conditions after they are both successfully completed, but it is too early to make any decisions on that.

This example contains considerable disqualifying information and no real mitigating conditions. The determination at this time must be unfavorable. This information became known between the time the SSBI was completed and the PR was due. The PR would have picked up this information but the subject would have access to classified information for that period of time and could pose a risk because of the affects of alcohol. **This is an example of why the SII is used any time derogatory information is developed, even though there may be the requirement for a PR.**

The two examples show that alcohol related information may come from various sources, not just PSIs. Because of the frequent nature of alcohol related conduct and the many non-DOD sources of information, you normally must use the SII to obtain full information.

DRUG INVOLVEMENT

This adjudicative guideline involves the use, possession, sale, transfer or addiction to illegal drugs and other psychoactive substances. The use of these substances can have various effects on the subject's judgment, reliability, physical and mental health. The possession, sale, transfer and trafficking of these substances are illegal and, in many cases, are felony crimes. Involvement with drugs is frequently encountered in PSIs and other reports.

Evaluating Drug Involvement Information

Drug involvement is a voluntary action by the subject.

When considering any type of disqualifying information about drug involvement, keep in mind that the subject is intentionally involved in the vast majority of cases. Only if the subject is given drugs without his/her knowledge or if someone uses an unwitting subject to transfer drugs, would the subject not have a knowing participation. The mere use, possession, or other involvement with illegal drugs is a violation of Federal law, even if a state or local government were to decriminalize it.

There are certain exceptions to the Federal laws (such as use of marijuana for medical research or processing of cocaine for medical use), but these have official approval.

Mitigating conditions provide for the passage of time and actions of the subject to demonstrate that he/she is no longer involved with drugs. For personal use, experimental abuse is not as serious as regular or compulsive abuse because of the less serious effects on the subject. Possession of paraphernalia for personal use is not as serious as possession for manufacture.

The subject's involvement in sale, trafficking, distribution, cultivation, etc., is the most serious as he/she is now involved for profit. Accordingly, the mitigating information requires a longer period of time and other conditions. When involved in these latter acts, the subject is affecting other persons and the effects on them cause a larger problem.

People try drugs on an experimental basis just to see what they are like. They are curious or sometimes there is peer pressure. People attend rehabilitation programs for three primary reasons as shown in Figure 5-9.

Reasons for Rehabilitation Programs

- o A court orders the subject into a rehabilitation program as a result of some criminal or civil act.
- o The subject is "talked into" going into a program by relatives, friends, counselors, ministers or others trying to help him/her.
- o The subject recognizes that he/she has a problem and voluntarily seeks help.

Figure 5-9

The adjudicator is interested in how the person got into a program and whether he/she successfully completed it. **People who successfully complete a program are better risks than people who fail to complete or even attend one.**

Review Assignment

Review paragraph 2-200n (page II-3) and the adjudication guideline for Drug Involvement (NOV 98 MEMO) before reading the examples. The three examples show information that you will see about drug abuse and how the disqualifying and mitigating conditions are applied.

Example 1

The subject is a newly selected civilian employee on whom a SSBI is being conducted for a Top Secret clearance. During the interview portion of the SSBI, the subject states that she uses marijuana about once or twice a month or at parties if it is offered. **The subject states that she will not use marijuana at work but will continue to use it as before.** She does not see anything wrong with its use if it does not affect the job.

A statement of intent to continue using drugs cannot be mitigated.

In this example, the subject's **stated intent** to continue using marijuana, even away from the job, is sufficient to cause an unfavorable decision. The subject has shown that she will continue to violate laws and be influenced by marijuana. The subject's **trustworthiness and reliability** are in question; therefore, **the decision is unfavorable.**

Example 2

A military member has a Secret clearance. The activity receives a criminal investigation report that shows the subject sold cocaine to undercover agents on two occasions. The subject was apprehended, the activity suspended the access to classified information and reported it to the CAF.

In the subject's statement to the agents, **she said that she wanted more money than the military was paying her, so she sold drugs to make the money.** She had been selling drugs to other military personnel for about six months. The subject was charged with a violation of the Uniform Code of Military Justice and a date was set for the court-martial.

In this example, the sale of drugs over a period of time is disqualifying in itself. **Due to the recency, there are no mitigating conditions** to apply in this case; therefore, an unfavorable decision would be made. The example points out three of the adjudicative guidelines for criminal conduct, financial considerations and drug involvement. Drug involvement information will also involve criminal information as possession or sale are criminal acts.

Example 3

The individual is a newly selected **summer hire** employee for a noncritical-sensitive position requiring a Secret clearance.

The subject listed his drug use on the SF 86 for the NACLIC. The activity let the employee come to work but did not grant the interim security clearance pending a CAF final determination. DSS expanded the NACLIC to obtain a

subject interview and record checks for information about his drug use.

The statement in the Expanded NACLIC indicated that the subject used marijuana for about four years on a "frequent" basis. The last time he used marijuana was about two years ago. The subject's parents placed him in a rehabilitation program which he successfully completed.

The subject indicated that he would never use illegal drugs again. The record check of the clinic showed the subject did successfully complete the rehabilitation program.

The local agency checks turned up no arrest or detention information about the subject.

In this example, the subject used marijuana on a frequent basis for four years. **Mitigating this is the successful rehabilitation program, the fact that the subject has not used marijuana for over two years, the subject's statement of no future use, and no arrests or other criminal information.** The subject has shown a positive improvement in the last two years. Based on this information, **a favorable determination could be made.**

Summarizing the Examples

The three examples all contain disqualifying information. **The first example** cannot be mitigated due to the subject's statement about future use. **The second example** is too recent in time to make any adjudicative decision other than an unfavorable one. **The third example** contains sufficient mitigating information to make a favorable determination.

If there is drug abuse, there is criminal conduct.

The drug abuse examples illustrate how more than one adjudicative guideline can be included in evaluating information. The focus has been on individual guidelines even though others may have been present.

The different guidelines have not been interrelated to the point that we must consider disqualifying and mitigating conditions of several guidelines at once.

The example in the "Multiple Issues" section of this lesson will combine information based on several of the adjudication guidelines.

PERSONAL CONDUCT

This adjudicative guideline addresses conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information. **This includes refusal to cooperate and falsification issues.**

First, we will discuss falsification issues.

Falsification is an attempt to conceal, misrepresent, omit or create false qualifications.

Falsification is used by a subject to deliberately conceal, misrepresent, omit information or create false qualifications when providing information to a Federal agency. The purpose of the falsification may be to conceal information from the agency which could prevent employment, granting of a clearance or some form of benefits or awards.

Or he/she may create false qualifications to get a job, security clearance, award or other benefit. In either case, the subject is intentionally not providing true and accurate information to the Federal agency. **This conduct calls into question the subject's trustworthiness and reliability.**

The subject may not provide information because he/she does not understand the questions, an oversight or because of improper instructions on how to complete the forms. In these cases, the subject is not intentionally falsifying the information. **The subject must be informed of the need for the information and given the opportunity to provide it.**

When you are reviewing a potential falsification issue, look at the relevance of the information. Is the information material to evaluating the subject's loyalty, trustworthiness

and reliability such as criminal activity, financial matters, fired from a job, etc. Or, is it immaterial to making the determination, such as an oversight of forgetting to list a seven-year old \$125 traffic fine.

When evaluating a personal conduct issue, ask yourself two questions. **Was the falsification deliberate or inadvertent? Is the information relevant or immaterial?** The answers make the difference between a favorable and unfavorable determination.

Deliberate Falsification

Falsification frequently involves hiding information relevant to a personnel security determination. Occasionally, it will involve the creation of qualifications needed to get a job when the subject does not actually possess them. You must use your **common sense** to determine if the falsification was deliberate, considering the available information.

Review Assignment

Review paragraph 2-200o (page II-3) and the adjudication guideline for Personal Conduct (NOV 98 MEMO) before reading the examples. The two examples show the types of information you will see and how the disqualifying and mitigating conditions are applied.

Example 1

The subject is completing the SF 86 as part of a SSBI package. The subject is supposed to list all convictions except those traffic violations which resulted in a fine of less than \$150 (unless it involves drugs). The subject forgets to list a traffic fine of \$200 for reckless driving seven years ago. The completed SSBI shows the reckless driving conviction.

Is this a serious enough falsification to make an adverse determination? If there is no other disqualifying

information or falsification in the case, then forgetting to list the one traffic conviction would not be serious enough to make an unfavorable determination. The omission of the conviction would appear to be something a person could reasonably forget due to the time period.

The mitigating conditions in the example would be:

The information was not material enough by itself for an adverse decision.
It was an isolated falsification.
The falsification was not willful.

Figure 5-10

***Use common sense.
Is it something that
is minor and easy to
forget?***

The instructions the subject received on completing the form may have given the impression that the traffic offenses were not what they were looking for. One of the problems in completing forms is that the instructions an official gives may not be correct. The subject may follow them in good faith even though the forms require the information. This example would result in a favorable determination.

Example 2

The activity is reviewing a completed ANACI on a new civilian employee selected for a noncritical-sensitive position. The employee is working in the position with an interim Secret clearance. When the interim clearance was granted, there was no derogatory information known. The completed ANACI contains a local agency check that shows the subject is currently on probation for felony theft. The activity security office suspends the access to classified information, but the activity personnel office makes a

favorable employment decision because the subject's criminal conduct would not affect the current job.

In this example, the omission of the criminal conduct and current probation is clearly a deliberate falsification. It is unlikely the subject could forget that he is currently on probation for a felony crime. **There are no mitigating conditions in this example; therefore, the decision would be unfavorable.**

PERSONAL CONDUCT, (CONTINUED)

A subject refuses to answer in order to hide something or believes it is no one else's concern.

This portion of the adjudicative guideline, Personal Conduct, involves the **refusal to provide information, or refusal to cooperate** with required security processing, investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination. A subject refuses to provide information because either he/she does not want the information known or believes it is not anyone else's business to know the information. Unless the disclosure of the information is precluded by law or regulation, the subject is required to provide to the government any relevant information needed to determine his/her trustworthiness, reliability or judgment.

Considering a Subject's Refusal to Cooperate

When considering a subject's refusal to provide information, or access to it, the subject must be informed of the potential consequences of the refusal. The following actions will be taken by the activity if the subject refuses to provide information or releases, or to authorize other persons to provide the information:

- **Suspend processing of the request for investigation and personnel security determination.**

- **If the subject has access or performs sensitive duties, suspend access to classified information until the information is provided,.**
- **Notify the CAF.**

Upon notification that the subject has refused to provide the information, the CAF must notify the subject of the potential consequences of his/her actions. The subject would not be eligible to have access to classified information or assignment to sensitive duties until the information is provided and evaluated. If the subject refuses to comply, the CAF would start an adverse personnel security determination per paragraph 8-201 of the regulation (See Lesson 4, Due Process.)

This action is taken because there is, or is believed to be, information available that must be considered in a personnel security determination. The subject has intentionally not provided the information or access to it; therefore, the adjudication would not be based on complete information. Since there was missing information, the determination could not be clearly consistent with the interests of national security as there is an unanswered question about the information.

A CAF may notify the subject by one of two means:

- **Upon notification by the activity that the subject has refused to provide the information, notify the subject in writing about the requirement and the consequences.**

If the subject provides the information, the processing will continue. If not, the CAF issues a Statement of Reasons (SOR) proposing the denial of security clearance or assignment to sensitive duties for the failure to provide information or

- **Upon notification by the activity that the subject has refused to provide the information, the CAF may send an SOR stating that the**

reason for the action is the subject's failure to provide the information.

The SOR would inform the subject of the requirement and consequences of the failure. If the subject provides the information, the SOR can be withdrawn and processing continues. If not, the CAF would make a final adverse determination.

Review Assignment

In 2R review paragraph 2-200p (page II-3) and the adjudication guideline for Personal Conduct (NOV 98 MEMO) before reading the examples. The two examples show the types of information you will see about refusing to provide information and how the disqualifying and mitigating conditions are applied.

Example 1

The subject refuses to provide a release authorization to obtain records about his hospitalization for a mental disorder. The activity informs the subject that the information is needed for a determination of his eligibility to be granted a security clearance. If it is not provided, processing of the investigation request will stop. He will not be eligible to have access to classified information or be able to perform sensitive duties until the information is provided and evaluated. Upon being notified of the requirement, the subject signs the release and the investigative process continues. The adjudication will be made based on evaluation of the PSI results, including the medical information.

Example 2

We will use the same circumstances as the first example except after being advised of the requirement and consequences, the subject still refuses to provide the release. The activity then suspends processing and notifies the CAF. The subject will not be permitted to have access to classified information or perform sensitive duties until

the information is provided. The CAF then formally notifies the subject of the requirement and consequences with an SOR. If the subject still refuses to provide the release, the CAF will make an unfavorable personnel security determination. The adverse decision will remain in effect until the information is made available and adjudicated. Then the decision will be based on evaluation of information, not a refusal to provide information.

Remember!

A key point to remember when a subject refuses to provide information/releases, or authorize others to release information, is that the subject must be aware of the requirement and the consequences of the refusal. If not, then a final action cannot be taken by the CAF until he/she is notified. In the majority of cases, the subject will provide the information when informed.

SEXUAL BEHAVIOR

Personal bias check!

This adjudicative guideline involves acts of sexual behavior or perversion which may indicate a personality or emotional disorder, poor judgment or criminal conduct. Information about sexual behavior is generally developed through police and medical information. Sexual orientation or preference may not be used as a basis for, or a disqualifying condition in, determining a person's eligibility for a security clearance.

Review Assignment

Review paragraph 2-200q (page II-3) and the adjudication guideline for Sexual Behavior (NOV 98 MEMO) before reading the examples. Three examples show the types of

information you will see involving sexual behavior and how the disqualifying and mitigating conditions are applied.

Example 1

The subject has been selected for a Non-Appropriated Fund position of trust as a day-care worker. The subject's SF 85P NACLIC did not contain any derogatory information; therefore, the subject was permitted to go to work in the military day-care center. The completed NACLIC contains an arrest record indicating the subject was convicted on three charges involving minor children. Nine years ago, the subject was convicted of child molestation (felony) and three years ago he was convicted of Lewd and Lascivious Acts and Contributing to the Delinquency of a Minor (both misdemeanors). DSS was requested to conduct an SII to obtain further information about the criminal acts and possible medical information. A subject interview disclosed he received counseling ordered by the court after the molestation conviction. The court records showed the subject had been the victim of child abuse and this was a contributing condition in the subject's conduct. The subject successfully completed the rehabilitation program with a medical opinion that he realized the problem and could now cope with it. There was little likelihood of any similar misconduct in the future. The two recent convictions involved sexual acts with minor children while working at a day-care center. There were no other counseling or therapy records available.

The CAF referred the SII to the activity for an employment determination. The activity removed the subject from the position as unsuitable to care for minor children.

If the case had required a personnel security determination, then several adjudicative issues were present:

- The subject had falsified the SF 85P by not listing the criminal or mental treatment information.
- There have been three instances of sexual behavior within the last nine years.

- The subject successfully completed a rehabilitation program with a favorable medical prognosis but subsequently committed two further acts of sexual behavior.
- There is no current medical information about the subject's condition.

In this example, there is a question about the subject's trustworthiness and reliability due to the incidents of sexual behavior. The original medical opinion is not supported by the recent events and the current medical status is unknown. If a personnel security determination had been requested, a current medical evaluation would not be beneficial because of the recent acts of sexual behavior. A period of time would be necessary before a review would be appropriate. The information in the example is sufficient to warrant an adverse determination.

Example 2

The subject has been selected for a critical-sensitive position to perform fiduciary duties as the deputy procurement officer. The subject's SF 86 for the SSBI shows he has been arrested three times for wife and child abuse. It also shows that he has received professional counseling for his problems. The activity requests the SSBI, but does not ask for an advance NAC for an emergency appointment. The subject is told not to report for work until the SSBI has been completed and adjudicated.

The completed SSBI is being reviewed at the CAF. The interview reveals the subject had gone through some difficult times about ten years ago due to his brother slowly dying from cancer and leukemia. The subject was upset because he would go to the hospital and become extremely frustrated that the doctors could not do more for his brother. He took out his frustrations on his wife and child in a one-month period by sexually assaulting his wife on one occasion and beating his wife and child on two other occasions. He was arrested each time but his wife would

not testify in court; therefore, the subject was not convicted of any crimes. The subject agreed to seek professional counseling because of the effects on the family. The brother died shortly after the subject entered counseling. The counseling helped the subject to recognize the problems and deal with the frustrations. The psychiatrist stated the reactions were situational due to the condition of his brother, but there should be no permanent effects or future problems with the subject. The subject should lead a normal life according to the doctor.

There have been no further incidents since the counseling about ten years ago. The subject states that he is able to recognize the problems and could deal with them in the future without harming himself and the family members. A favorable decision is made by the CAF and the subject is employed in the position.

In this example, there was sexual behavior, wife and child abuse ten years ago. The reason for the behavior was due to a temporary situation, but counseling helped the subject to recognize and deal with the problem. The medical opinion indicated that there should not be any future problems and there have been no incidents since that time. **There is sufficient mitigating information to make a favorable determination.**

Example 3

The subject occupies a noncritical-sensitive position with a Secret clearance. A local police report is received that shows the subject was recently arrested for two counts of rape. The access to classified information is temporarily suspended and the report is sent to the CAF. DSS is requested to conduct an SII to obtain details and disposition of the charges. The completed SII is being reviewed at the CAF. The subject had made a confession to the local police indicating he had liked the two women, spent time and money on them, and then forced them to have sexual relations with him. The subject stated a belief that if he spends time and money on a woman, he is entitled to have sex with her. The charges against the subject were dismissed because the police had not properly

advised the subject of his rights before he made the confession.

In this example, there is a statement by the subject that he did forcibly have sexual relations with the two women. He was not prosecuted due to a legal technicality. His statement raises questions about his future conduct as he believes he is entitled to have sex with a woman if he spends time and money on her. The conduct was intentional, criminal, forcible and there is a question about future behavior. There is no information to mitigate this right now. **The disqualifying information is sufficient to make an unfavorable determination.**

Summary of the Examples

Subjects are unwilling to Discuss their sexual activities.

The three examples show that sexual behavior information is generally surfaced by police or medical information. Subjects are often unwilling to disclose this type of information as it is both personal and embarrassing. This also makes the subject vulnerable to blackmail, pressure or coercion. Once the information is known, it will reduce the vulnerability, but not eliminate it. You should be aware that counseling is not always required by courts after the behavior. In many cases there will be private counseling, but no information about it is developed in the PSI. **The SII is a means to develop that type of information.**

OUTSIDE ACTIVITIES

This guideline pertains to certain types of outside employment or activities that DoD personnel may get involved with, that may be of a security concern, and how these types of activities and employment will be evaluated. The concern arises when an individual's employment or activity poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized DSS closure of classified information.

Foreign connections of any kind (relatives, friends, business interests, etc.) are to be thoroughly investigated as potential security issues. When the PSQ lists or the investigation develops these connections, efforts will be made to obtain as much information as possible through interviews or records checks.

Many times an individual will engage in outside employment or activity without realizing that it may pose a risk to the national security. An individual may be moonlighting with a company that sells products and commodities to foreign interests or may even be owned by foreign nationals.

Individuals in this type of situation must be made aware of the possible conflicts of interest, and attempts to obtain technical or scientific information from him or her, and similar considerations, because of their security responsibilities.

Individuals engaged in outside employment should evaluate the company or activity because of the potential risk involved. The individual may opt to DSS continue the employment or the activities after taking a closer look at the company or activity.

Special agents or security managers will advise the Subject regarding proper actions to be taken if he/she is ever approached to provide information to unauthorized personnel.

Evaluating Outside Activity Information

When evaluating information about outside activities, you must consider **any** service or employment (whether compensated or not) with: **any** foreign country; **any** foreign national; or **any** representative of a foreign interest.

Individuals who are associated with a foreign country, foreign national, or foreign representative, as mentioned above, would be more easily targeted by foreign intelligence than one who has no such contact.

Individuals with **any** type of association mentioned above must report this type of service to their security managers.

Any service or employment (whether compensated or not) with:

Any organization or person engaged in analysis, discussion, or publication of materials about intelligence, defense, foreign affairs, or protected technology.

In some cases, there may be a FOCI (Foreign Ownership, Control, or Influence) issue. A military member or civilian employee cannot, at the same time, be a representative of a foreign interest. By law, that is a conflict of interest because the individual would be looking out for the interests of a foreign country or corporation while their allegiance is to the U.S. for military or civilian service. For contractors, this is handled on a case-by-case basis.

When mitigating conditions are present, a favorable decision is possible . Mitigating conditions include:

- The employment or activity does not pose a conflict with the individual's security responsibilities.
- The individual terminates the employment or activities when notified that there is a potential conflict with the security responsibilities. After the individual terminates the employment or activity, there must be no further involvement with the former employer or activity.

Many questions will need to be addressed when the PSQ lists, or the investigation develops these issues, regarding outside activities.

These questions include the full identity of the activity or foreign connection; the degree, extent, and purpose of such activity or connection; any relationship of subject to persons associated with the activity or foreign connection; whether the activity or connection may make the subject and his/her immediate family vulnerable to coercion, influence, or pressure.

These are only a few of the questions that must be answered when outside activities indicate a potential for a conflict of interest due to issues mentioned in this adjudicative guideline.

Review Assignment

Review the adjudication guideline for Outside Activities (NOV 98 MEMO).

MISUSE OF INFORMATION TECHNOLOGY SYSTEMS

This guideline involves automated systems that the Department of Defense (DoD) relies on to accomplish the primary missions and support functions.

The misuse of information technology systems (ITS) is of security concern as it degrades the mission capability and confidence in the systems.

ITS are used for a variety of functions, both primary and support.

Primary Uses of ITS

- **Classified ADP.** This involves the use of secure systems to process classified information at all levels. ITS are used to process Sensitive Compartmented Information (SCI) and Special Access Programs (SAP) information.
- **Sensitive ADP.** This involves information that is protected, but not classified. Examples are: Privacy Act information; bid information; proprietary information; medical information; and high dollar value items.

- **Weapons systems.** Many of our “high tech” weapons systems and platforms are dependent upon ITS to operate. Examples are: aircraft; ships; submarines; missiles; artillery systems; and tanks.
- Also, other platforms depend on ITS for their operation. Examples are satellites and communication systems.

ITS is used in many of our support systems, such as supply operations. The concern here is the dollar value of equipment and materials that have to be replaced.

Misuse of ITS can have varying effects, from serious national security issues to dollar value losses.

Examples are:

- Classified information contained in ITS can be compromised.
- Unclassified, sensitive information may be copied from the ITS. This can result in the loss of protected information. Examples are: Privacy Act information; proprietary data; bid information; and other protected information.

It may be used for unauthorized purposes. An example is selling mailing lists of employees/military members to commercial firms.

- There can be a dollar value loss. If material is diverted and used for personal gain or other unauthorized uses, it must be replaced to meet its initial purpose. **Examples are:** computers; parts; and general supply items.
- Misuse can result in the compromise of a secure system or even its loss. Additional time and money is necessary to fix and re-test or re-certify the system.

- The system can be damaged by misuse. Additional time and money is necessary to fix and re-test or re-certify.
- Misuse can result in denial of access to the system. This would delay mission accomplishment and be costly to fix and re-test or re-certify.
- All of the above situations result in degraded mission capability.

An example of degrading mission capability occurred in 1995 at a DoD medical laboratory.

The mission of the laboratory was to evaluate drug testing samples. Two civilian employees falsified the results in the computer system by taking positive results and showing them as negative. Their intent was not to help people get around the drug screening, but to reduce their own workload. Positive results required additional work and they did not want to do the extra work. This practice was discovered when another employee noticed the quality control samples that were supposed to be positive were shown as negative in the system.

This resulted in questions being raised about the accuracy of the drug testing. Laboratory personnel had to go back over the results and re-test the samples to ensure they were accurate. This misuse of an ITS resulted in a loss of confidence in the system, additional work and money to correct the problems to bring the system back to where it should be.

Misuse or noncompliance with the rules and procedures pertaining to ITS may raise a security concern about the individual's trustworthiness, willingness, and ability to properly protect those systems.

Potentially disqualifying conditions include:

Illegal or unauthorized entry into any ITS. This is someone who gets into the system illegally, such as a hacker. It also involves people who get into the system without authorization, such as someone using another person's password, or getting into the system when an authorized user leaves the terminal temporarily without using the security procedures to protect the data.

- o Illegal or unauthorized modification, destruction, manipulation, or denial of access to information in an ITS.

In these situations:

- o **Data may be compromised.**
- o **Data may not be available or used for unauthorized purposes.**
- o **The system may be damaged or the use prevented or delayed.**

Other potentially disqualifying conditions are:

- o Removal or use of hardware, software, or media from any ITS without authorization or when prohibited by rules, procedures, guidelines, or regulations.
- o Introduction of hardware, software, or other media into any ITS without authorization or when prohibited by rules, procedures, guidelines, or regulations.

In these situations, the integrity of the ITS may be compromised or its intended use may be prevented. In the case removal, the individual may be converting it to personal or other unauthorized use.

Mitigating conditions include:

- The misuse was not recent or significant.
- The conduct was unintentional or inadvertent.
- The introduction or removal of media was authorized.
- The misuse was an isolated event.
- The misuse was followed immediately by a prompt, good faith effort to correct the situation.

MULTIPLE ISSUES

Multiple issues involve the inter-relationship of two or more guidelines.

Many of the cases you will see contain multiple issues. These are cases where the information involves more than one of the adjudicative guidelines. Some cases may involve several of them. There may be disqualifying information from each of the guidelines but there may not be mitigating information from each one. Several of the examples shown in the above guidelines contained multiple issues. This is because of interrelationship of the types of conduct and conditions. Multiple issue cases are decided by more senior adjudicators due to the complexity of the cases.

An Example

One example of a multiple issue case will be given to show some of the considerations in making a personnel security determination. In this example, the subject has been selected for a critical-sensitive position requiring a Top Secret clearance. The SSBI request package and local files check disclose no derogatory information. The activity requests an advance NAC so they can consider an emergency appointment and interim Top Secret clearance.

The NAC reveals quite a list of arrests without dispositions, so DSS starts expanding that information while the SSBI is running. The completed SSBI is sent to the CAF.

The information includes:

- Criminal Conduct
- Alcohol Consumption
- Drug Involvement
- Emotional, Mental and Personality Disorders
- Financial Considerations
- Personal Conduct
- Sexual Behavior

The PSI includes:

- Police reports
- Hospital and clinical reports
- Credit reports
- Court records
- Reports from previous employers
- Psychiatric evaluations
- Drug and alcohol counseling records
- Neighborhood information
- Confidential informants
- State unemployment reports

To sum up the information, the subject has a history of:

- Thirty-five arrests for rape, aggravated assault, robbery, bad checks, drug sales, drunk in public, unemployment fraud, etc., over the past fifteen years with twenty-one convictions.
- The subject has been diagnosed as a paranoid schizophrenic with periods of violent relapses. The subject mixes alcohol, cocaine and PCP with his nerve medicine to get a “high”.
- The subject collected state unemployment insurance when he was actually working.
- The subject wrote 31 bad checks. The subject failed to complete a court ordered mental health counseling program after an assault conviction.
- The subject would not discuss the treatment for mental illness with the DSS agent, only provided some releases, and there were other hospitalizations that DSS could not get releases for.
- The subject did not reveal any of this information on the SF 86.

Whew!

The information in this example was taken from an actual case received by a CAF for adjudication. There had been a favorable employment determination as the activity decided none of the information had a direct bearing on his job. Most multiple issue cases are not quite this involved, but some are. This is just an example of the type of cases adjudicators see and review for a final determination. By the way, the subject did not get the clearance.

SUMMARY

This lesson explained what types of information, disqualifying and mitigating, make up suitability issues. Examples were provided to show the types of information you will see and how it is evaluated. The lesson also explained the interrelationships of the guidelines and how cases may contain multiple issues. We did not go into detail on resolving all issues in the multiple issue case because senior adjudicators make determinations on those cases. We will talk about that in the resident phase of the Adjudicator's Course and in the Advanced Adjudicator's Resident Course.

Review Exercises

1. The security criteria of paragraph 2-200a-q are used to determine eligibility for clearance.
 - a. True
 - b. False

2. Which of the following PSIs would be used to obtain information on derogatory information received after the initial PSI had been conducted and adjudicated?
 - a. Personal Interview
 - b. SII
 - c. PR
 - d. SSBI

3. An individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior.
 - a. True
 - b. False

4. Information that a subject with a security clearance is involved in current criminal activity should be referred to DSS for an investigation.
 - a. True
 - b. False

5. What are the two major categories of adjudication issues?
_____ and _____

6. What are the nine conditions used in evaluating information?

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____
- g. _____
- h. _____
- i. _____

7. A pattern of negligent conduct in handling or storing classified documents may be a disqualifying condition of which adjudication guideline?

- a. Allegiance to the United States
- b. Foreign Preference
- c. Security Violations
- d. Foreign Influence

8. Lack of knowledge of the unlawful aims of an organization may be a mitigating condition of which adjudication guideline?

- a. Allegiance to the United States
- b. Foreign Preference
- c. Security Violations
- d. Foreign Influence

9. Allegiance issues are the most significant and potentially damaging issues to National Security an adjudicator will review.

- a. True
- b. False

10. What are the three adjudication guidelines most often associated with allegiance?

- a. _____
- b. _____
- c. _____

11. Suitability issues involve any behavior, condition, circumstance or other condition that directly affect the subject's trustworthiness or reliability.

- a. True
- b. False

12. A PSI will contain only one type of suitability issue.

- a. True
- b. False

13. What are the thirteen adjudication guidelines used to evaluate suitability information?

- a. _____
- b. _____
- c. _____
- d. _____

- e. _____
- f. _____
- g. _____
- h. _____
- i. _____
- j. _____
- k. _____
- l. _____
- m. _____

14. Review the following example. Identify the adjudication guideline(s) you would use to evaluate the information for a personnel security determination.

The subject is a native-born United States citizen who is a civilian employee and occupies a noncritical-sensitive position. He currently has a Secret security clearance. The subject secretly belongs to a group that believes in the unlawful overthrow of the current United States government. The group plans to violently disrupt the operations of a military base to draw attention to their cause. The subject uses his access to classified information to obtain a copy of the classified emergency plan of a military base. He gives the plan to the group leader. The plan will be used to identify targets on the base and security force response action/times. This will help the group's members to plan their operations and an escape route after the attack. End of example.

ANSWER:

15. Review the following example. Identify the adjudication guideline(s) you would use to evaluate the information for a personnel security determination.

The subject is a civilian employee in a critical-sensitive position with a Top Secret security clearance. The activity receives a report from the local police department indicating the subject was arrested for theft (felony) on January 5, 1988. On March 7, 1988, the subject pled guilty to a reduced charge of petty theft (misdemeanor), was fined \$250, and given a one-year suspended sentence. A CAF adjudication was requested. End of example.

ANSWER:

Solutions & References

1. a. True (DoD 5200.2R, para 2-200)
2. b. SII (DoD 5200.2R, para 2-306)
3. a. True (DoD 5200.2R, Appendix I, Lesson 5 page 12)
4. b. False (DoD 5200.2R, para 2-402d)
5. Allegiance and Suitability (Lesson 5, page 5-3)
6. (Lesson 5, page 5-10)
 - a. Nature, extent and seriousness of the conduct
 - b. Circumstances surrounding the conduct
 - c. Frequency and recency of the conduct
 - d. Age of the subject at the time of the conduct
 - e. Voluntariness of the participation
 - f. Presence or absence of rehabilitation
 - g. Motivation of the conduct
 - h. Potential for pressure, coercion, exploitation or duress
 - i. Likelihood of continuation or recurrence
7. c. Security Violations (NOV 98 MEMO)
8. a. Allegiance to the United States (NOV 98 MEMO)
9. a. True (Lesson 5, page 5-13)
10. (Lesson 5, page 5-14)
 - a. Allegiance to the United States
 - b. Foreign Preference
 - c. Security Violations
11. a. True (Lesson 5, page 5-20)

12. **b. False (Lesson 5, page 5-69)**
13. **(Lesson 5, page 5-3)**
 - a. **Security Violations**
 - b. **Criminal Conduct**
 - c. **Emotional, Mental and Personality Disorders**
 - d. **Misuse of Information Technology Systems**
 - e. **Financial Considerations**
 - f. **Alcohol Consumption**
 - g. **Drug Involvement**
 - h. **Personal Conduct**
 - i. **Outside Activities**
 - j. **Sexual Behavior**
 - k. **Allegiance to the U. S.**
 - l. **Foreign Influence**
 - m. **Foreign Preference**
14. **Allegiance, Security Violations and Criminal Conduct (NOV 98 MEMO)**
15. **Criminal Conduct (NOV 98 MEMO)**