

Have a Plan to Protect Your Security Clearance

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An ever increasing number of federal law enforcement positions require possession of a national security clearance. If you fail to get a clearance or your clearance is revoked, you will likely be fired. Unfortunately, in today's tough economic climate, you may find your possession of a security clearance at risk. Unpaid bills, defaulted loans, and late mortgage payments can all reflect negatively on your access to a security clearance. But, with a plan, you may be able to combat any concerns regarding your access to a national security clearance.

For example, the Department of Defense, Defense Office of Hearings and Appeals (DOHA), recently granted an applicant's access to classified information, even though she had numerous unpaid debts going back many years, partly because she had a plan to address her previous financial delinquencies. *See* ISCR Case No. 08-08653. There, the applicant supported five children, had gone through a divorce and remarriage, had moved numerous times, and had experienced two periods of unemployment. Simply put, there were circumstances that caused her income to decline and her expenses to increase, and those circumstances were not necessarily entirely her fault. The Administrative Law Judge did not hold her entirely blameless for her financial difficulties; in fact, he found that the applicant "should have been more diligent and made greater efforts sooner to resolve her delinquent debts." However, in finding that she had mitigated any security concerns, he considered that she had a record void of security violations, was a law-abiding citizen, was current on her bills and had paid all debts that she could validate. He went on to emphasize that as a Budget Analyst, she had found a way to budget her money and pay off her debts; thus, establishing a "meaningful track record" of debt payments. In other words, the applicant had a plan.

Having a plan to protect your security clearance – be it to mitigate security concerns about your finances or to address contact with family members living abroad – is especially important because your Agency does not necessarily have influence over whether or not you maintain your clearance. The federal Executive Branch controls who receives and retains a national security clearance. The security clearance adjudication process seeks reasonable assurance that persons granted access to classified information are persons:

...whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.

Executive Order 12968, Access to Classified Information, (Aug. 4, 1995). Adjudicative decisions are made by applying broad principles, found in Executive Order 12968 and the

Adjudicative Guidelines, to a set of specific circumstances. A fundamental security principle is that all doubts concerning a person having access to classified information shall be resolved in favor of national security. Importantly, access to classified information is a privilege, not a right. No one has a right to a security clearance, but the government is required to follow its own rules so that any decision to deny is made through a reasonable and unbiased process.

Candidates for security clearance are evaluated under a "whole person" concept. All information, both favorable and unfavorable, is weighed. Three positive qualities are associated with trustworthiness, reliability, and being an overall good security risk. These are: 1) a strong sense of social responsibility; 2) self-control, or the ability to exercise responsible and rational control over one's impulses; and 3) the ability to maintain personal or job commitments over time. Thus, even if you do have a history of unpaid debts, under the "whole person" concept, you may be able to successfully overcome national security concerns.

Moreover, even if it is initially determined that you do not to meet the standards for access to classified information, you are entitled at a minimum to:

- A comprehensive and detailed written explanation of the basis for that determination;
- The documents, records, and reports upon which a denial or revocation is based;
- The right to be represented by counsel or other representative at your own expense;
- A reasonable opportunity to reply in writing to, and to request a review of, the determination; and
- An opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicative authority.

Executive Order 12968, Access to Classified Information, (Aug. 4, 1995). However, with a plan you may be able to mitigate concerns. Before your personal concerns become a security concern, Mahoney & Jeffrey, can help. Please call us at Mahoney & Jeffrey, PLLC at 202-312-7100 or www.MahoneyandMahoney.com.