Requesting Reconsideration After a Security Clearance is Denied

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When federal government contractors lose their security clearance or are unsuccessful in obtaining one, the most common question they ask is “When can I reapply for one?” This question comes up most frequently in the context of an adverse determination by the Defense Office of Hearings and Appeals (DOHA) resulting in a federal government contractor losing his or her access to classified information and being barred for a period of one year from seeking reconsideration on the security clearance decision.

The procedures for seeking reconsideration of an adverse security clearance decision for most federal government contractors are set forth in Department of Defense (DoD) Directive 5220.6, Enclosure 3. This Directive covers most DoD connected federal government contractors. However, some federal agencies such as the Central Intelligence Agency and National Security Agency follow their own procedures for individuals seeking to regain a previously lost security clearance.

Prior to seeking reconsideration for a negative security clearance determination from DOHA, there must be a final denial of the security clearance by DOHA. Directive 5220.6, Enclosure 3, E3.1.37, specifies that “an applicant whose security clearance has been finally denied or revoked by DOHA is barred from reapplication for 1 year from the date of the initial unfavorable clearance decision.” Specifically, reconsideration generally can occur a year after the date of (1) the DOHA administrative judge’s final decision denying the individual’s security clearance; or (2) an unfavorable decision from the DOHA Appeal Board on an appeal concerning the DOHA administrative judge’s adverse security clearance decision.

Even though a federal government contractor is barred for a period of one year from reapplying for a security clearance, it does not necessarily mean that he or she should immediately reapply when the 1-year waiting period has ended. The federal government contractor should reapply only when the original security concerns have been sufficiently mitigated as opposed to the first moment that he or she becomes eligible to seek reconsideration.

For instance, if the federal government contractor lost his or her security clearance due to previous alcohol issues, it would be important to show how his or her alcohol use has been successfully changed (e.g., successful treatment of alcoholism, lack of relapse, medical evidence supporting recovery, etc.). It is not recommended that reconsideration be sought until the federal government contractor has fully addressed the original security clearance issues that resulted in the denial.

The reconsideration process generally starts when a federal government contractor has waited at least a year to seek another position for which a security clearance is required to
access classified information. The typical reconsideration process usually occurs as follows:

1. A year has passed and the federal government contractor seeking the security clearance believes that he or she has mitigated or reduced the original security concerns that led to the denial by DOHA.
2. The federal government contractor then seeks a new employment position for which a security clearance is required and is hired for the position.
3. The federal government contractor completes a new SF-86/e-QIP package and submits it to the Defense Industrial Security Clearance Office (DISCO), along with a request seeking reconsideration.
4. The federal government contractor will then receive a notice from DISCO about 60 days later stating that he or she must provide the Director of DOHA with (1) a copy of the original security clearance decision denial; and (2) any evidence the employee wishes to submit that would provide a basis for reconsideration (i.e., any information about additional mitigation that has taken place since the original denial).
5. If the Director of DOHA, in his or her discretion, determines that sufficient changes have occurred since the original denial, he or she can grant reconsideration under Directive 5220.6 Enclosure 3, E.1.39. But, if the Director of DOHA determines that reconsideration is not warranted, the federal government contractor is barred from reapplying for reconsideration for an additional 1-year period from the date of the decision by the Director Pursuant to Directive 5220.6, Enclosure 3, E3.1.40.
6. If reconsideration is granted by the Director of DOHA, the Director can next determine whether the original security concerns have been mitigated. If the concerns have been found to be mitigated, the case is then processed as a new investigation with the older security concerns resolved.
7. If reconsideration is granted, but the Director of DOHA does not believe that the original security concerns have been fully mitigated, the investigation is sent to the DOHA hearings unit for further review and a new hearing.

It is important for federal government contractors to obtain legal advice from an attorney who is knowledgeable about security clearance law prior to seeking reconsideration in reference to a security clearance denial. Our law firm advises individuals in the security clearance reconsideration process. We can be contacted at www.berrylegal.com or by telephone at (703) 668-0070.

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Practice Areas
Security Clearance