Security Clearance: The Duty to Self-Report

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Federal employees and government contractors often ask about their duty to self-report security concerns when holding a security clearance. In general, federal employees and government contractors holding a security clearance have a duty to self-report serious security concerns in a timely manner. Not reporting security concerns can lead to a loss of a security clearance.

As provided in guidance from an administrative judge at the Defense Office of Hearings and Appeals (DOHA) in [ISCR Case No 01-26137 (2001)], the concept of self-reporting is explained: “[I]t is the responsibility of security clearance holders to report events which negatively affect the status of the security clearance holder or the facility. As a general rule, any information under the National Industrial Program Operating Manual (NISPOM) that reflects adversely on the integrity or character of a security clearance holder should be reported to security personnel to avoid compromising situations that make the security clearance holder vulnerable to coercion, exploitation, or duress.” In this particular DOHA case, the administrative judge denied the security clearance where the clearance holder failed to self-report an arrest for driving under the influence until a year after the incident.

[Department of Defense (DoD) Directive 5200.2-R, C9.1.4 (Page 81)] further spells out the responsibility of individuals holding security clearances to self-report security concerns. DoD 5200.2-R, C9.1.4 provides that “individuals having access to classified information must report promptly to their security office . . . Any information of the type referred to in paragraph C2.2.1. or Appendix 8." Appendix 8 contains the [Adjudicative Guidelines] that list the potential security concerns (e.g., foreign influence, psychological conditions, financial considerations, personal conduct) that can trigger a duty to self-report. In sum, the duty to self-report is broad.

What is a Security Concern?

A security concern is an incident or potential incident that occurs that bears on one of the Adjudicative Guidelines for holding a security clearance. They apply to both government contractors and federal employees. Four security concern examples that could potentially trigger the duty to self-report include:

A clearance holder is arrested for theft. Once the individual is arrested, he or she should report the incident as soon as possible to his or her security officer or supervisor. Because criminal conduct falls under the Adjudicative Guidelines, the individual should report the alleged criminal conduct as soon as possible. One common mistake is to wait until the trial occurs to self-report.

A clearance holder files for bankruptcy. Because filing for bankruptcy bears on financial considerations under the Adjudicative Guidelines, the individual should report the filing as
soon as possible to his or her security officer or supervisor. A clearance holder marries a foreign citizen. Because marrying a foreign citizen can bear on foreign influence and many other types of issues in the Adjudicative Guidelines, he or she should report the marriage as soon as possible to his or her security officer of supervisor. A clearance holder has become addicted to pain medications. He or she has subsequently checked into a treatment facility for the addiction. Because this bears on psychological fitness in the Adjudicative Guidelines, he or she should report the medical concern to his or her security officer or supervisor.

Each federal agency has similar but slightly different rules for self-reporting security concerns. Some federal agencies do not provide specific guidance. When in doubt, it is usually advised that the federal employee or government contractor report the security concern given the significant risks of losing his or her security clearance for not doing so. We have seen a number of cases where individuals have been proposed for the loss of their security clearance for not promptly reporting security concerns.

When Should a Security Concern be Reported?

When a federal employee or government contractor who holds a security clearance determines that a security concern requires self-reporting, it is important to do so as soon as possible. The typical procedure for doing so is to notify one’s supervisor and/or security manager of the security concern.

Even if details of a security concern (i.e., an arrest for possession of drugs, assault, DUI, etc.) are not yet fully complete or there has not yet been a trial, it is critical to report even the allegation as soon as possible. Waiting until a trial has occurred to see if guilt is established, prior to reporting, can still be viewed as a security violation for delayed reporting.

What Should be Reported?

Each type of security concern is different and there may be concerns over what to report. The individual might also feel embarrassed to self-report. If a federal employee or government contractor has questions about what should be reported, he or she should seek legal advice from an attorney as soon as possible. The individual may also speak to his or her security manager or supervisor. For federal employees, we often find that many supervisors are unaware of how security concerns should be reported and have to seek advice from within their agency, usually through security or human resources. Enough information should be reported by the employee so that the security concern is fully explained. For example, if an arrest has occurred, it may be important to provide a copy of the arrest, citation, or other documentation. The agency will then expect the individual to provide updates as the matter is resolved.

Conclusion

Individuals who self-report a security concern should be as honest and straightforward as possible in providing the information. Reporting a security concern inaccurately can lead to
an allegation of dishonest conduct, which can cause even more significant security concerns than the failure to self-report.

When an individual is seeking advice about reporting a potential security violation to his or her security officer or manager, it is important to obtain legal advice. Doing so can provide needed guidance that can be very helpful at the early stages of a security clearance inquiry. Our law firm advises individuals in the security clearance process. We can be contacted at www.berrylegal.com or by telephone at (703) 668-0070. Please also visit and like us on Facebook.

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Security Clearance