

## **APPLYING FOR SCI ACCESS - BE FOREWARNED**

### **Problems with Reciprocal Clearances**

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If you presently hold a Confidential, Secret or Top Secret Security Clearance and are offered the opportunity to apply for SCI (Sensitive Compartmented Information) Access, you should consider the consequences of a denial before you apply; you might want to decline. Government rules adopted to require agencies to grant reciprocity to each other's clearances are now used to revoke based on other agencies' denials.<sup>2</sup> Failure to be approved for SCI Access could cause the loss of all of your security clearances, and even "Positions of Trust."

Government or contractor employees who deal with national security information are required to hold a Confidential, Secret or Top Secret clearance (known as a Collateral clearance) depending on the sensitivity of the information. For positions that deal with intelligence information a person is required, in addition, to be approved for SCI Access. Agencies that normally deal with such information are the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency (DIA) and the Federal Bureau of Investigation (FBI). Other agencies and offices such as the Treasury Department, the Drug Enforcement Agency (DEA) and certain White House support positions also require SCI Access approval for those persons dealing with intelligence information.

Agencies requiring SCI Access are generally more stringent in applying the government-wide Guidelines or standards than agencies requiring only Confidential, Secret or Top Secret level clearances.<sup>3</sup> While the Guidelines are the same throughout the government for all classified positions, the application of those Guidelines differs as the information being protected becomes more sensitive. This sometimes leads to people

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<sup>2</sup> Office of Personnel Memorandum, *Reciprocal Recognition of Existing Personnel Security Clearances*, Dec. 12, 2005; Director of National Intelligence, Policy Guidance No. ICPG 704.4, *Reciprocity of Personnel Security Clearance and Access Determinations*, 2 Oct. 2008.

<sup>3</sup> Adjudicative Guidelines for Determining Eligibility for Access to Classified Information 32 CFR Part 154, App. H.

being rejected for SCI Access where the very same behavior or background factors would not cause the denial of a Top Secret Clearance. For example, someone with one or two traffic convictions might still be approved for a Top Secret clearance, where the same conduct might be sufficient to deny SCI Access. Another example is where relatives in a foreign country, or other foreign contacts might not be considered sufficiently troublesome for a Secret Clearance, but could be a disqualifier under the more stringent standards of SCI Access. Thus, the same information that may have been disclosed and yet allowed for a Top Secret clearance may later become the reason for denial of SCI Access. That denial, based on the principle of reciprocity, would then be the basis to revoke a previously granted Top Secret or lower level clearance.

Not only are the Guidelines more stringently applied for SCI Access, but SCI Access also requires successfully passing a polygraph examination, which has its own set of problems. Two types of polygraph exams are used for SCI positions: a Counterintelligence (or CI) polygraph, and a “lifestyle” polygraph exam. The CI exam is fairly straight forward: have you engaged in espionage; have you given intelligence to the enemy; etc. The lifestyle polygraph goes into personal aspects of a person’s life that are not necessarily asked about or disclosed on a security clearance application such as: have you looked at pornography on a government computer; have you looked at or stored child pornography on a home computer; have you engaged in dishonest conduct that was not charged in a criminal proceeding, such as shop lifting. Affirmative answers to such questions will likely disqualify a person from SCI Access approval with the consequent effect of revoking a Collateral clearance.

Not only may the information that a person discloses during a polygraph exam lead to disqualification, but the examination process itself may be a source of disqualification for SCI Access. If a polygraph examiner concludes that the person being examined is not cooperating, or is withholding information, or is being deceptive, or is using “countermeasures,” the examiner may terminate the exam regardless of the information provided or withheld. That alone is sufficient reason to deny SCI Access. Although there have been rare cases where an applicant has been allowed a retest by another examiner, generally, once failed, completely failed.

When a person is initially denied SCI Access, that decision is reported by the examining agency to the Defense Security Service (DSS) and to the Defense Manpower Data Center which maintains the index of persons holding a security clearance, known as JPAS. Once DSS is notified that SCI Access has been denied, it will suspend all existing Collateral clearances until there is a final resolution of the decision denying SCI Access. That may mean immediate loss of employment if holding an active clearance is a job requirement. An appeal of decision denying SCI Access may take as long as five or six

years before it is finally resolved. During that time the employee will be out of work and unemployable in any job that requires a clearance, because his Collateral clearance, even though not revoked, will be suspended.

The effect of an SCI Access denial on a person's employability may extend beyond just jobs that require a security clearance. Jobs that do not deal with National Security Information, but are considered "sensitive," such as law enforcement or information technology positions, require disclosure of whether a person ever had a security clearance suspended or revoked.<sup>4</sup> Even for those positions, an applicant may be rejected based on an affirmative answer to that question. A rejection for such a position will be based on a "suitability" determination for which there is no right of appeal of an agency decision, rather than on a rejection for security clearance issues for which there are some due process appeal rights.<sup>5</sup>

Even though the Collateral clearance will be immediately suspended after notice of the denial of SCI access, it cannot be revoked without providing the employee the right to respond, and to a hearing or a personal appearance before an administrative judge. However, it may be years before a hearing is scheduled because the agency responsible for scheduling the hearing, the Defense Industrial Security Clearance Office(DISCO), will not do so until the last appeal of the SCI Access decision has become final.

If an employee does not appeal the SCI Access decision, that will hasten a hearing on the suspended Collateral clearance, but will present a no-win choice. The SCI Access decision will become final if not appealed within forty five days allowing a prompt review of the collateral clearance. However, not only the underlying information on which the SCI denial was based, but the decision itself will be used as evidence to support the revocation of the Collateral clearance. Furthermore, the facts alleged as the basis of the SCI decision, will be assumed to be true in any later appeal of a collateral revocation. Even if the SCI Access denial was not based on any adverse information about the employee, but instead on the person's failing the polygraph exam for technical reasons, the decision itself will still be used as evidence to deny a Collateral clearance.

On the other hand, if an employee does appeal the adverse SCI Access decision, a hearing on the Collateral clearance will be delayed for up to six years pending resolution of all SCI Access appeals, during which time the employee will be unemployable in any job requiring a clearance at any level.

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<sup>4</sup> See, Standard form 85-P, Questionnaire for Public Trust Positions.

<sup>5</sup> Executive Order 12968, part 5, Aug. 5, 1995.

The bottom line is that if you already have a clearance and have any doubt about passing a polygraph exam or disclosing information that you think may cause you to be denied SCI Access, you may want to consider not applying for a job requiring SCI Access. Instead of being a step up, it may be a step out the door. If an employer does not give you a choice of whether to apply for SCI Access because its next contract is with an intelligence agency, you may want to decline. Although you may lose that job, you can always take your Confidential, Secret or Top Secret clearance to another employer or agency dealing with classified, but non-intelligence information. Either way, an employee should seriously consider the possible outcome before starting the process of applying for SCI Access.