

Introduction to Adjudication

Table of Contents

Adjudicative Process	1
Whole Person Concept	2
Evaluating Sources and Information.....	3

Adjudicative Process

The 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. " Source: Executive Order 12968, Access to Classified Information, dated August 4, 1995.

Adjudicative decisions are made by applying broad principles to a set of specific circumstances. Executive Order 12968 and the Adjudicative Guidelines establish the principles. The background resources in this desktop reference provide information to assist in the identification and evaluation of behaviors and circumstances that are relevant to security decisions. The information here illustrates how these principles might be applied to the circumstances of specific cases.

Neither the Adjudicative Guidelines nor this desktop reference provides specific thresholds which tell the adjudicator when to approve or disapprove access to classified information in any individual case. The complexity of human behavior severely limits any ability to codify such thresholds for making adjudicative decisions. The adjudicator in each case must make what is called a whole-person judgment based on all available information about an individual's reliability and trustworthiness. This includes favorable information, unfavorable information, circumstances that may mitigate the unfavorable information, and circumstances that may affect the credibility of the information.

A fundamental security principle is that all doubts concerning personnel having access to classified data shall be resolved in favor of national security. An equally fundamental legal principle is that 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.

The adjudicator is not just a reviewer and reporter of information. The adjudicator is an analyst who forms his or her conclusions and recommendations based on a review of all available information. Executive Order 12968 states that an adjudicative determination "is a discretionary security decision based on judgments by appropriately trained adjudicative personnel."

Making judgments that affect the lives and livelihoods of other people imposes a heavy responsibility on adjudicators to protect the rights of individuals as well as the national interest. This responsibility can be unsettling when the proper decision is uncertain.

The adjudicator must make a conscientious effort to be sufficiently knowledgeable about the individual, to evaluate the facts fairly and objectively, to seek counsel from knowledgeable supervisors and specialists as appropriate, and to make a balanced and succinct presentation of all relevant factors in each case.

History shows that most U.S. Government employees who have spied for a foreign country did not enter government service with the intention of being disloyal. They *became* disloyal only after they were employed and gained a security clearance. This is why the applicant clearance process focuses on risk factors that indicate a potential for future betrayal as well as current loyalty. It also demonstrates the importance of continuing evaluation and the periodic reinvestigation.

Perfect security cannot be achieved and would not be affordable if it could be. There will always be some balancing between security requirements, personnel needs, civil liberties, and budget realities.

Whole Person Concept

Candidates for security clearance are evaluated under a system which provides a balanced assessment of affirmative or positive qualities as well as potentially disqualifying behaviors. These two approaches come together in the "whole person" concept, which is fundamental to the adjudicative process. All information, both favorable and unfavorable, is weighed. A person's strengths are evaluated to assess whether the strengths outweigh the weaknesses.

Three positive qualities, among others, 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. These positive qualities may outweigh some unfavorable information. A person with these qualities may not be a security risk even if, for example, he or she were to develop an alcohol problem or serious financial debt.

- **Social Responsibility:** Maintaining security requires following the rules for protection of classified information. The socially responsible person has appropriate respect for authority, comfortably accepts ordinary rules and regulations, and deals fairly with others. This is the opposite of the antisocial person who resists rules and regulations, finds it difficult to conform to society's expectations, and exploits and manipulates other persons.
- **Self-Control:** Security requires the exercise of sound judgment in protecting classified information. Employees whose behavior is under conscious control think before acting, take their duties seriously, and are able to delay immediate gratification of their desires in order to achieve some longer-term goal. They have the self-discipline generally required for success in an academic or career environment. They seldom make impulsive decisions that they regret later.
- **Capacity for Making Commitments:** Obligations that accompany a security clearance involve a lifetime commitment to maintain secrecy. Evidence of ability to maintain commitments to people or organizations is a strong plus in the whole-person judgment. It indicates that the employee-employer relationship, too, is likely to withstand the inevitable rocky periods that crop up in most relationships and which might otherwise cause the employee to turn against the employer. It gets to the very heart of the security issue: Is the subject capable, over a long period of time, of maintaining a commitment to protect classified information under all circumstances?

Evaluating Sources and Information

Several general rules or principles apply to evaluation of sources and information.

A source's impressions, opinions, or interpretations are useful to investigators as clues to things that require further investigation, but they are generally not used as a basis for adjudicative action unless they are substantiated by examples of specific behaviors. For example, a source's opinion that the subject is irresponsible should be substantiated by description of specific examples of the subject's irresponsibility, such as moving out of a rental apartment without notice. A source's impression that subject is vindictive could be substantiated by description of threats or destruction of property.

Unfavorable information is more useful when time and frequency are expressed in specific rather than general terms: last week or last year, rather than recently; twice a week or twice a year, rather than frequently.

Most people try to conceal their involvement in illegal, immoral, or otherwise embarrassing activities. It follows that such information will be known to few people, and that these are likely to be close associates such as family members, lovers, best friends, teammates, or close work colleagues.

The quality and completeness of investigation can be judged, in part, by the extent to which people who have been very close to subject are available as sources. One knowledgeable source who reports credible adverse information may outweigh many acquaintances who claim never to have seen evidence of such behavior. If adverse information comes from a single source, it is necessary to evaluate both the credibility of the source's access to that information and any possible ulterior motives for providing that information.