



Personal Security Appeals Board (PSAB)

The Clearance Appeals Process – Right Way and Wrong Way

Ms. Benita Jackson – President

CAPT JJ Parker, USN

Personal Security Appeals Board (PSAB)

- **DON PSAB**
 - Decides appeals of unfavorable personnel security determinations made by the DONCAF
- **DON PSAB Board**
 - President - minimum grade of GS-15
 - Military member - minimum grade of O-6 (Intel)
 - Third member - minimum military grade of O-5 or civilian grade of GS-14

DONCAF

The **D**epartment **O**f **N**avy **C**entral **A**djudications **F**acility: Adjudicates background investigations and identifies potentially disqualifying information and makes the initial suitability determination.

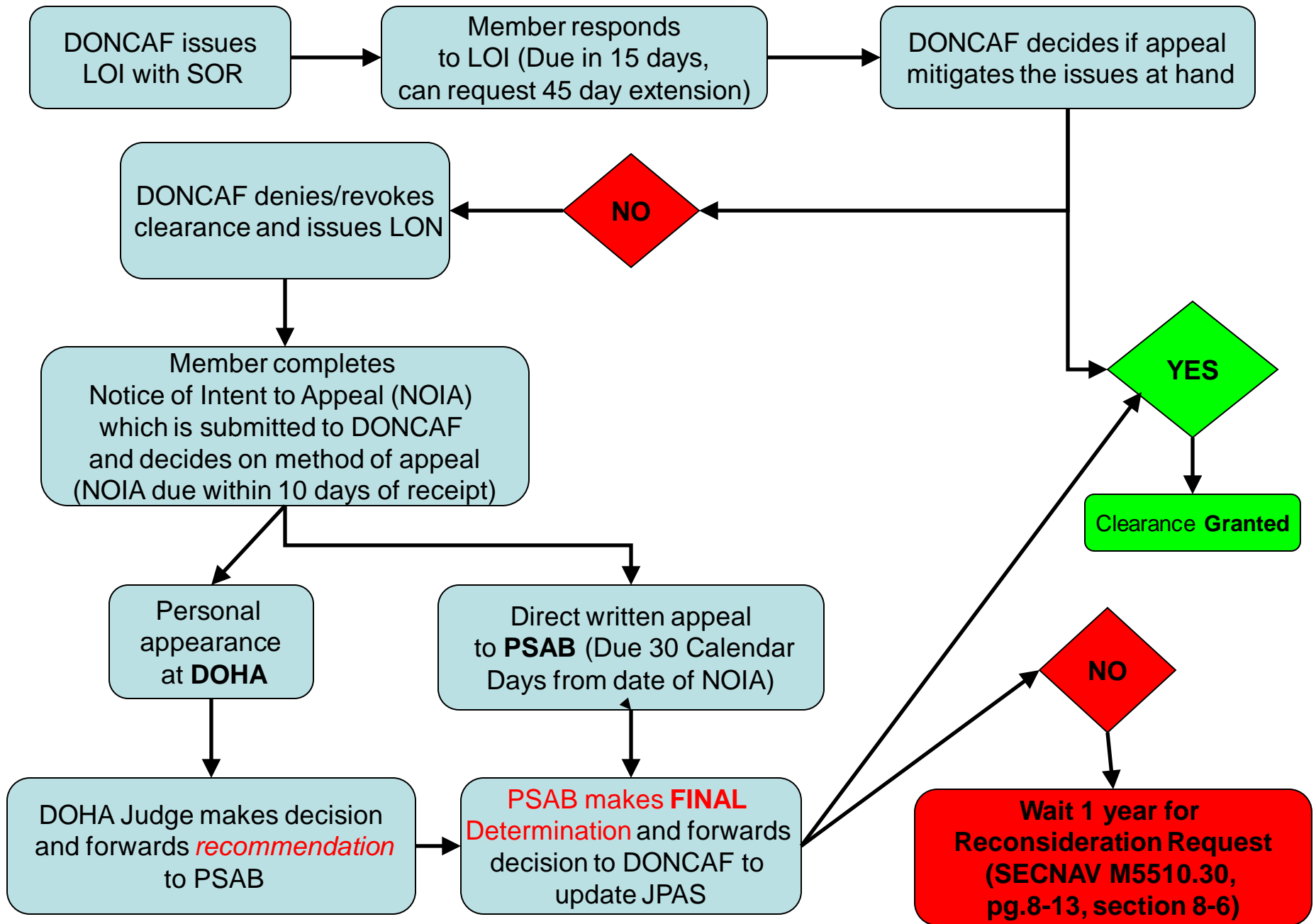
DOHA

The **D**efense **O**ffice of **H**earings and **A**ppeals: provides member an opportunity to make a personal appearance. DOHA then sends their *recommendation* to PSAB.

PSAB

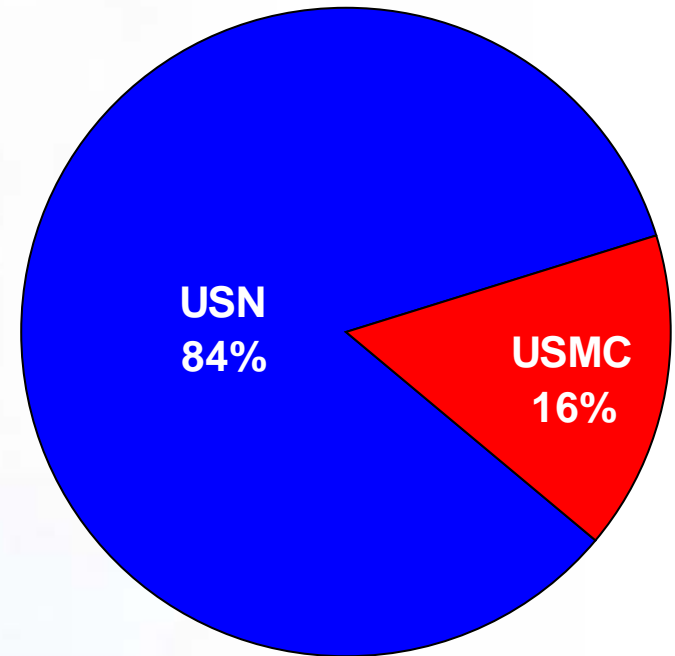
The **P**ersonnel **S**ecurity **A**ppeals **B**oard: The **Final Decision Authority** for all DoN unfavorable personnel security clearance appeals.

APPEALS PROCESS



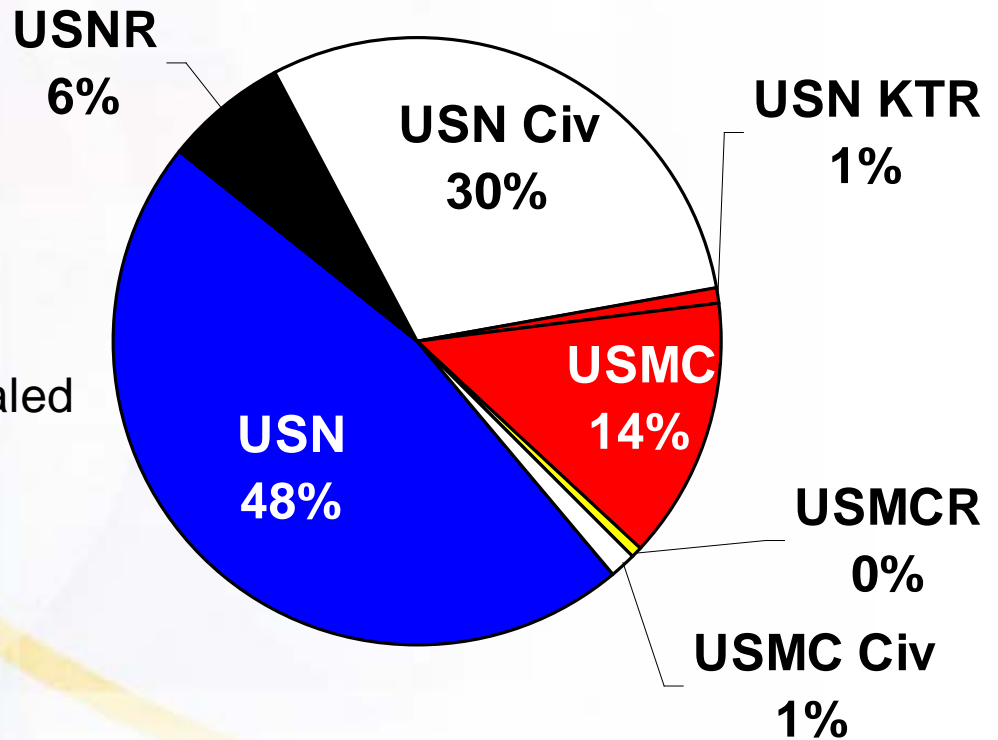
Personal Security Appeals by Component CY 2009

- DONCAF
 - CY09 LOIs – 4094
 - CY09 LONs
 - Unfavorable – 2788
 - Favorable - 1177
- 688 Appeals
 - 494 Appealed personally before DOHA Administrative Judge (AJ)
 - 252 Clearances granted / reinstated
 - 194 Appealed directly to PSAB
 - 86 Clearances granted / reinstated
- 49 Percent of clearances granted / reinstated (338)



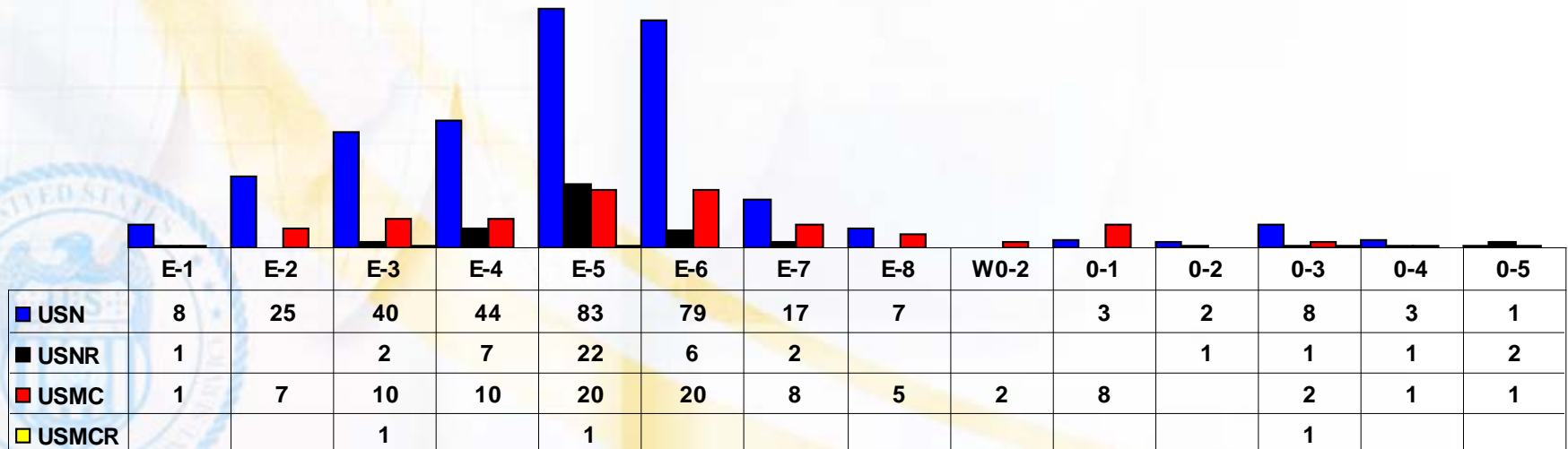
DON Personnel Security Appeals CY 2009

- 688 Appeals decided
- 580 Navy personnel appealed
 - 23 Officers
 - 1 Warrant Officers
 - 342 Enlisted
 - 207 Civilians
 - 7 Contractor (KTR)
- 108 Marine Corps personnel appealed
 - 13 Officers
 - 2 Warrant Officers
 - 83 Enlisted
 - 10 Civilians



Department of the Navy Military Appeals by Pay Grade CY 2009

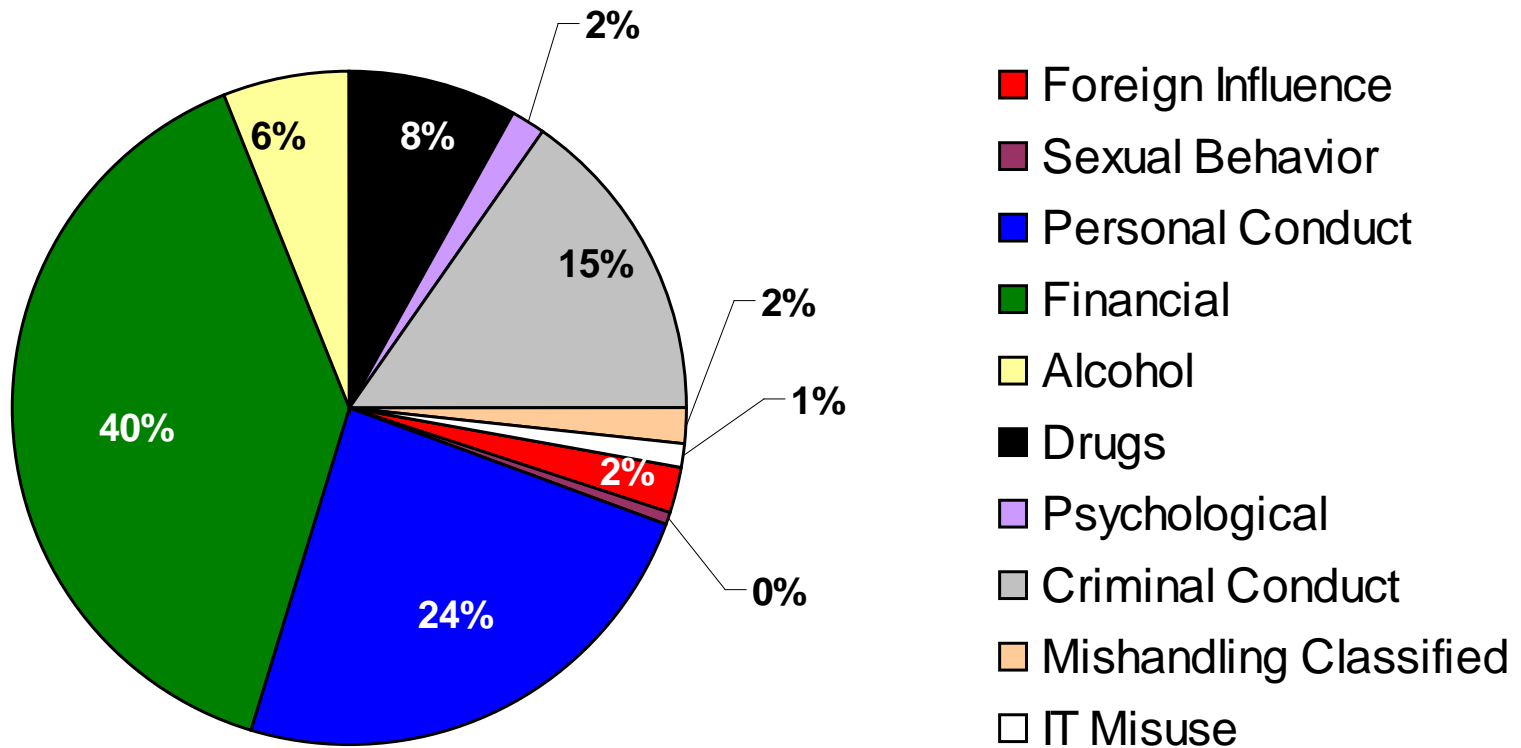
- Military members submitted 464 of the 688 appeals (67%)
 - Navy and Marine Corps active duty & reserve personnel
- 80% of military appeals were in the E-3 to E-7 pay grades (372)



13 Adjudicative Guidelines

- Allegiance to the United States
- Foreign Influence
- Foreign Preference
- Sexual Behavior
- Personal Conduct
- Financial Considerations
- Alcohol Consumption
- Drug Involvement
- Psychological Conditions
- Criminal Conduct
- Handling Protected Information
- Outside Activities
- Use of Information Technology Systems

Department of the Navy Issues Present in Denied Appeals CY 2009



The Appeal Process

- Appeal the case directly to PSAB
 - Thorough and detailed
- Appeal via DOHA
 - Listen to advice given
 - Be PREPARED



Letter of Intent (LOI)

- LOI - DONCAF is considering revoking the clearance.
 - “Shot over the bow”.
 - SOR - Statement of Reasons
- CRITICAL to take immediate action
- When appellant receives LOI with SOR it is vital that **immediate action is taken**. The SOR should be used as primary road map to write the appeal. The SOR will list issues that need to be mitigated before the security clearance can be granted or reinstated
 - provides insight as to types of documents that should be obtained and submitted with appeal

Common Explanations/Excuses Heard

- My wife/husband was supposed to be paying the bills
- I “plan”, “intend”, am “going to” pay these off down the road
- I’ll pay these as soon as I get my tax refund/reenlistment bonus/inheritance
- God has changed me
- I didn’t know there was marijuana in that rolled up cigarette my buddy handed me!
- My recruiter told me to lie about it
- It wasn’t my fault for....(no accountability for actions)
- There were illegal drugs in my car but my buddy borrowed it and they must be his

Letter of Notification (LON)

- LON

- Serves as notice that Security Clearance or access to a sensitive position has been officially denied or revoked.
- Original appeal to LOI/SOR was not sufficient and that more information is required to mitigate the issues listed
- LON lists overall issues (i.e. personal conduct and/or financial considerations) at hand and refers back to SOR issues that need to be mitigated.
- Upon receipt of LON access to classified information and/or assignment to sensitive duties will be immediately terminated (per the instructions for Handling the Letter of Notification.)

LON PROCESS

- Choose to make a personal appearance before Administrative Judge (AJ)
 - contacted by DOHA to schedule appearance.
 - Once hearing is completed AJ writes **recommendation**
 - forwarded to PSAB who makes **final determination**.
- Choose to make direct written appeal to PSAB
 - required to provide any/all mitigating documents, statements, command endorsement, etc. directly to the PSAB
 - within 30 calendar days of signing the Notice of Intent to Appeal (NOIA)

ONE KEY TO SUCCESSFUL APPEAL - **PROOF**

- Vast majority of denials/revocations are based on financial issues
 - If SOR lists a number of bad debts - need documentation to prove debt is satisfied or resolution is actively in progress.
 - Letter from creditor stating that debt has been satisfied is **BEST** proof
 - Letter from creditor documenting payment/s that have been made can show one is working towards resolution.
 - CANCELLED check payable to creditor is sufficient to document payments
 - copy of just front of the check does not suffice – need front and back to prove it is a cancelled check
 - Current credit report clearly stating that debt has been “Paid”, “Paid in full”, “Settled in Full” may also be sufficient
 - Provided account numbers can be verified as the same debt in question on SOR.

Documentation that does not satisfy the requirements:

- Copies of Money Orders
- Copy of only the front of a check written to your creditor
- Stating that the Debt has been satisfied (at this stage it is what can be proven – actions speak louder than words)
- If plan is to satisfy debts via Debt Management Plan
 - Simply enrolling in plan will not be sufficient
 - Need to provide documents that indicate which debts are included in the Debt Management Plan.
 - Have to show history of making required monthly payments (preferably a few months worth)

The earlier you begin this process the better as it gives more time to demonstrate good-faith effort to resolve debts.

PSAB FINAL DECISION

YES: If the PSAB decides to overturn the DONCAF denial, the clearance will be granted or reinstated. (May be a “conditional” reinstatement whereby certain conditions will be placed on the appellant for them to retain their clearance).

NO: If the PSAB decides to uphold the DONCAF decision the appeal process will be closed and the member will have to wait one year from the date of the final decision before they can request a reconsideration.

[SECNAV 5510.30, pg. 8-13, section 8-6]



PSAB Rationale

- The Board understands that life happens
- PSAB does NOT fault anyone for things beyond their control – just want to see that positive steps are being taken to correct the situation.
- **If** appropriate actions are taken and the Board feels an **earnest effort has been made**, *in most cases* a “conditional” clearance is granted and individual will be monitored and watched closely
- If not granted per SECNAV M.5510.30, Sec 8-6, Pg. 9=8-13 “Reconsideration Request” guidelines they can reapply again in one year

Issues and Recommendations

- LOI – need to **FOLLOW the guidelines**
- Firms that take advantage – should they be on a “Off Limits” list
- Command Financial Counselors and Security Managers can play a key role in the success of an appeal



WHAT CAN PSAB DO

- Track firms that are questionable in activity and report
- Conduct local training
- Develop Command briefs
- Develop Command Financial Counselor briefs and/or training modules relating to DONCAF/PSAB issues
- CALL US with questions



CAREER IMPACT

- Failure to maintain security clearance can have lasting effects throughout ones career and even personal life.
- For military there is possibility of rate conversion – would have significant impact on future advancement and promotion boards.
- Even if no rate conversion, working outside rate for a period of time due to clearance issues will most often have a negative effect on fitreps/evals.
- Possibility of being forced to retire or discharged from service.
- Difficulty gaining employment in private sector due to employment/clearance issues.
- If Command and/or Navy allows them to stay, once the clearance is denied/revoked there is a one year waiting period before request can be made for reconsideration per SECNAV M. 5510.30, Sec 8-6, page 8-13.

TIPS!

BE HONEST ON YOUR SECURITY QUESTIONNAIRE AND OPM INTERVIEWS!!!

Not listing arrests, financial issues, drug use, etc. on a security clearance application will come back to haunt them later if it is found they were being deceptive.

A credit report and criminal check will be pulled. Cannot hide this!

It is always a good idea to pull personal credit report in order get clear picture of current debts, before applying for a security clearance. And especially at the beginning of your appeal process assuming financial considerations is a concern.



PSAB

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