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Legal Beat: Furloughed Feds Could Lose Security Clearance Due to Debt

By Mathew B. TullyQ. I'm a

federal employee, and between all the furloughs brought by sequestration and the shutdown, I'm starting to have trouble paying my bills. I know financial problems can lead to the revocation of security clearance, but will one or two missed payments result in that outcome?

A.

Financial problems have sunk the careers of many federal employees who lost their security clearance. In many cases, however, the root of the revocation lies less in the fact that the employee incurred a debt that he or she did not immediately pay than in the fact that he or she did little or nothing to resolve the problem. Under the "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information," an :unwillingness or inability to satisfy debts" could disqualify an employee for security clearance.Employees, generally, should not expect to receive a Letter of Intent/Statement of Reasons (LOI/SOR) detailing the government's plan to revoke their security clearance right after they default on a payment. Usually an LOI/SOR will come after a reinvestigation, which could occur every five, 10 or 15 years, depending on the type of security clearance. What will make the difference between keeping or losing a security clearance will be the employee's efforts to satisfy his or her obligations. These efforts could include paying the debt in full, arranging with the creditor a payment plan or filing for bankruptcy.Above all, anyone who has received an LOI/SOR should request a hearing at the Defense Office of Hearings and Appeals (DOHA) or whichever other agency has jurisdiction to hear their security clearance appeal. Being represented by a qualified attorney with proven experience in security clearance litigation can also be very important, as is ensuring the DOHA administrative judge is provided with the most current and accurate financial information and is aware of all steps you have taken to improve your financial situation.Q. The government shutdown has brought much attention to the Anti-Deficiency Act. I'm an essential employee, so what do I have to know about this law?

A.

The Anti-Deficiency Act dates back to 1884 and was designed to guard the government against unauthorized spending. This law prohibits federal officials and employees from making or authorizing "an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation" along with involving the government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." It also prohibits the government from accepting voluntary services or employing unauthorized personnel services. Hence, essential federal employees exempt from the shutdown will eventually be paid for the work they perform.Although many media accounts describe the Anti-Deficiency Act as an "obscure" law, it is not something that has sat in the background and just emerged during the shutdown. The Government Accountability Office (GAO) each year issues a report detailing various types of the Anti-Deficiency Act amounts. The 2012 report outlines 19 violations with amounts ranging from $55,000 to $136 million. In

many cases, Anti-Deficiency Act violators received reprimands and were required to go through additional training. The GAO states that violations could result in administrative sanctions as severe as suspension or removal as well as penal sanctions, such as fines or imprisonment. However, the criminal prosecution of Anti- Deficiency Act violators is rare. The U.S. Court of Appeals for the District of Columbia Circuit said in the case of Clark et al v. U.S.

(1990): “Our research has failed to turn up a single prosecution under the Anti-Deficiency Act in its entire existence since 1905.”In fact, some federal employees find themselves being subjected to adverse actions – not for violating the Anti-Deficiency Act – but for blowing the whistle on believed violations of the law. Unfortunately, in many instances these whistleblowers discovered the Whistleblower Protection Act (WPA) did not protect them from retaliation because their disclosures to the Office of Special Counsel or other WPA-designated entities fell within their normal duties. However, that all changed with the president’s signing of the Whistleblower Protection Enhancement Act of 2012, which now protects such disclosures. Federal employees accused of violating the Anti-Deficiency Act or who have been subjected to reprisal for blowing the whistle on violations of the law should immediately consult with a federal employment law attorney.