



National Employment Law Project

From the National Employment Law Project

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Delays in Federal Background Checks Leave Thousands of Port Workers Jobless During Recession, Report Finds

Silver Lining in Model Worker Protections – 24,000 Successful Appeals to Security Clearance Denials Provide a Lifeline to Continued Employment for Port Workers of Color

Oakland, CA – Today the National Employment Law Project released a new report finding that delays in the Transportation Security Administration’s post-9/11 port worker background checks have left thousands of longshoremen, truck drivers and other port employees jobless as they remain caught up in a backlogged, inefficient and often inaccurate screening process.

In the first evaluation of the Transportation Worker Identification Credential (TWIC) program’s worker protections, the NELP report concludes that thousands of workers – disproportionately African American and Latino men – have had to wait an average of seven months while their applications are reviewed, leaving them unable to work and support their families in the midst of a devastating recession. At the same time, the report finds that port workers of color, while disproportionately denied jobs initially, significantly benefit from model worker protections adopted by Congress that allow them to appeal flawed eligibility assessments.

“Due to serious problems with the FBI’s records, insufficient staffing and poor TSA screening protocols, there have been major processing delays for workers at ports, which means that large numbers of hard-working families are being left out in the cold at the worst possible time,” said Laura Moskowitz, an attorney with the National Employment Law Project and a co-author of the report.

The Transportation Worker Identification Credential requirement was imposed by Congress shortly after the 9/11 attacks to secure background checks on the 1.5 million workers employed in the nation’s ports. After years of implementation delays, by April 2009 all workers were required to have their TWIC cards to enter the ports and continue working.

To be approved for access to the ports, applicants are subject to criminal background checks using the FBI’s database, immigration status and other security checks. However, as the NELP report documents, 50% of the FBI’s rap sheets are incomplete or out of date. Contrary to the federal law, TSA denies TWICs in an overly broad range of cases such as open arrests, even if they have been dismissed or otherwise disposed of.

The good news, the report finds, is that worker challenges to initial denials were successful in nearly 100 percent of the cases, thus preserving their right to work at the ports. Over 24,000 workers, largely African American and Latinos, were able to keep their jobs with the help of the special protections for workers who are initially denied a TWIC based on their record. Two-thirds of those successful challenges came from people of color.

The bad news, however, is that over 10,000 workers had lost their jobs while awaiting TSA approval of the TWIC cards after the April 14th compliance deadline passed.

“TSA and the FBI put the entire burden on the worker to collect the necessary information to clear their records and navigate the process all on their own, which then leaves thousands of workers falling through the cracks of the TWIC program,” Ms. Moskowitz stated.

Mr. Johnny Johnson, featured in the report, worked on the docks in Baton Rouge for two years, loading and unloading barges. He applied for his TWIC card and was denied by TSA months later, based on a battery arrest for which there was no disposition on his FBI rap sheet. After gathering the records for TSA showing the charges were dropped, Mr. Johnson waited over two months more for TSA to grant his appeal and approve his TWIC card. During that time, Mr. Johnson lost his job because he was unable to access the petroleum plant where he worked without a TWIC card.

The NELP report documents the following severe impact of the TWIC processing delays:

- **Workers Left Jobless 69 Days During Lengthy TSA Delays:** Workers who were left unemployed because their port went into compliance before they were approved waited an average 69 days as their TWIC applications, appeals or waivers languished at TSA. This affected some 10,000 workers.
- **Workers Wait Nearly Four Months for the Initial TWIC Decision:** On average, it has taken almost four months (112 days) for TSA to issue an initial denial.
- **Workers Challenging Initial Denials Waited Seven Months for their TWIC:** It took an average of over seven months (211 days) until the TWIC was approved for those workers who had a criminal record or immigration/citizenship issue that triggered an initial denial by TSA.
- **Workers of Color Wait Longest for TSA Approval of their TWIC:** On average, White applicants were approved for their TWIC within six months (180 days), African American applicants in almost seven months (200 days) and Latino port workers took over eight months (243 days).

The NELP report offers a series of recommendations for TWIC reform, including expediting the cases of workers who have been shut out of the ports, tracking down missing FBI information before issuing denials, adopting strict timeframes for processing applications, and better handling of applications from foreign-born workers.

“The fact that there are provisions in place that have proven successful in helping workers with a record keep their jobs is a major accomplishment. With better staffing and screening protocols, the background checks instituted for port workers could be a model for other situations where employment background checks are required,” said Ms Moskowitz.

The report examines data collected from over 450 workers over the past two years, as well as published reports by the Department of Homeland Security. It draws on cases of port workers from across the country, including Seattle, Los Angeles, Philadelphia, Baltimore, Baton Rouge and other major port communities.

A full copy of the report, “A Scorecard on the Post-9/11 Port Worker Background Checks,” can be viewed here: <http://www.nelp.org/page/-/SCLP/PortWorkerBackgroundChecks.pdf>.

Mr. Johnson and other workers featured in the report are available to speak with reporters on request.

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