

DATE: March 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16958

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Edwin W. Loughran, Esq., Department Counsel

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

David P. Price, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 9, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct), of Department of Defense directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested the case be decided on the written record. On October 28, 2005, after considering the written record, Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Administrative Judge committed error by applying Personal Conduct Disqualifying Condition 2 [\(1\)](#)

under the facts of this case and by finding that Applicant's failure to file tax returns was "willful." The Judge found that under Guideline J (Criminal Conduct), Applicant failed to file federal and state income tax returns for the years 1997 through 2003. The Judge also found that under Guideline E (Personal Conduct) Applicant provided false and misleading information in a sworn statement during the investigation. Applicant admitted the allegations against him, but attempted to explain his actions. The Judge was bound to consider Applicant's explanation as part of the record as a whole, but she was not bound to accept Applicant's explanation at face value. There is adequate support in the record for the Judge's findings and conclusions, including the application of Personal Conduct Disqualifying Condition 2. While Applicant disputes the term "willfully" in connection with his failure to file tax returns, the Judge had a rational basis in the record as a whole for finding that Applicant's failure to file tax returns was willful. *See, e.g.*, ISCR Case No. 98-0761 at pp. 2-3 (App. Bd. Dec. 27, 1999).

Applicant also based his appeal on the fact that he now understands the importance of filing tax returns and that he had a perfect security record for over twenty years. Those pieces of information were not a part of the record evidence and therefore cannot be considered on appeal. *See* Directive ¶ E3.1.29. Moreover, the government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970). Even in the absence of any security violation, the government can deny or revoke access to classified information based on

the existence of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See, e.g.*, ISCR Case No. 99-0462 at pp. 4-5 (App. Bd. May 25, 2000).

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

1. "Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination." Directive, ¶ E2.A5.1.1.2.