

DATE: March 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19311

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 15, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On January 30, 2006, after the hearing, Judge Paul J. Mason 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 erred in finding that Applicant falsified his security clearance application, and whether Applicant's record of properly safeguarding classified materials in the past entitles him to a security clearance. The Judge found that in 2002, Applicant requested separation and received an Other Than Honorable discharge from the Navy rather than undergo trial by court martial for 22 counts of inappropriate behavior toward women. In 2001, Applicant violated police orders not to contact his girlfriend. He failed to include these facts in the relevant sections of his security clearance application. The Judge found that the record contains multiple, inconsistent explanations from Applicant for his failure to include the Navy's charges against him in his security clearance application. The Judge had a duty to consider Applicant's explanations as part of the record as a whole, but he did not have to accept Applicant's explanations at face value. The Judge's findings of falsification are sustainable. With regard to Applicant's argument regarding his handling of classified information, the government need not wait until an applicant actually mishandles 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. 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