

DATE: March 26, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 94-1153

**APPEAL BOARD DECISION**

Appearances

FOR GOVERNMENT

Matthew E. Malone, Esq.

Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Wilford H. Ross issued a decision, dated November 12, 1996, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the following issues: (1) whether the Administrative Judge erred by admitting Government Exhibit 4 into evidence over Applicant's objections; (2) whether the Internal Revenue Service used information in violation of its own statute, regulations, and procedure, or in violation of a specific state law, Sections 1863 and 1865 of Title 42 of the United States Code, or the 4th Amendment of the U.S. Constitution; and (3) whether the Administrative Judge's security clearance decision is arbitrary, capricious, or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated March 19, 1996 to Applicant. The SOR was based on Criterion J (Criminal Conduct) and Criterion E (Personal Conduct).

A hearing was held on August 14, 1996. The Administrative Judge subsequently issued a written decision in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Applicant's appeal from the Judge's unfavorable decision.

**Appeal Issues**

1. Whether the Administrative Judge erred by admitting Government Exhibit 4 into evidence over Applicant's objections. At the hearing, Department Counsel offered Government Exhibit 4, which is a December 15, 1995 letter

(with attachments) from the Internal Revenue Service to the Defense Investigative Service (DIS). Applicant objected to the admission of Government Exhibit 4, arguing that: (a) it contains various codes and not the documents to which the codes refer; (b) he requested copies of those documents from the IRS and was not given copies of them; and (c) Government Exhibit 4 was falsified. The Administrative Judge admitted Government Exhibit 4 over Applicant's objection.

On appeal, Applicant contends the Judge erred by admitting Government Exhibit 4 into evidence. In support of that contention, Applicant refers to the objections raised at the hearing, and argues that admission of Government Exhibit 4 gave the Internal Revenue Service and the Government "special privileges" not available to Applicant, in violation of the 14th Amendment of the U.S. Constitution. For the reasons that follow, Applicant's arguments lack merit.

On its face, the equal protection clause of the 14th Amendment of the U.S. Constitution applies to the states and not to the federal government. However, federal courts have held that the due process clause of the 5th Amendment of the U.S. Constitution contains an implicit equal protection component that is applicable to the federal government. *See, e.g., Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 542 n.2 (1983). Even assuming that Applicant intended the 5th Amendment, his arguments do not raise any colorable claim under the equal protection component of the 5th Amendment of the U.S. Constitution with respect to the admission of Government Exhibit 4.

There is no independent record evidence concerning the meaning of the codes listed in Government Exhibit 4. However, the codes cited by Applicant are three-digit numbers at the beginning of the lines in an IRS-produced document. Each line contains a clear explanation for each transaction and applicable date and money amount. In any event, whatever those codes refer to or signify, they are irrelevant to the Judge's findings that: (a) Applicant has not filed his federal income tax returns for tax years 1982, 1983, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, and (b) Applicant does not believe he is required to file federal income tax returns. Those findings are based on record evidence that is totally independent of Government Exhibit 4. *See, e.g.,* Government Exhibit 2 (Applicant's written statement); Hearing Transcript at pp. 26, 49-50, 55, 58, 142.

After Applicant objected to Government Exhibit 4, Department Counsel made a proffer at the hearing about the circumstances under which that document was obtained by DIS. *See* Hearing Transcript at p. 15. Department Counsel's proffer is wholly consistent with the December 15, 1995 cover letter that is the first page of Government Exhibit 4. There is a rebuttable presumption of good faith and regularity by federal officials. Applicant's unsubstantiated assertion that Government Exhibit 4 was falsified falls far short of raising a colorable objection to the admission of the document.

Considering the record as a whole, the Administrative Judge's admission of Government Exhibit 4 over Applicant's objection was a ruling that fell within the scope of his discretion under the Directive. Applicant's appeal brief fails to demonstrate the Judge's admission of that document was arbitrary, capricious, or contrary to law.

## 2. Whether the Internal Revenue Service used information in violation of its own statute, regulations, and procedures.

On appeal, Applicant contends the Internal Revenue Service (IRS) used "information in violation of its own procedures, regulations and code." Applicant also contends the IRS used information in violation of a specific state statute, Sections 1863 and 1865 of Title 42 of the U.S. Code, and the 4th Amendment of the U.S. Constitution. Applicant's contentions fail to demonstrate any error by the Administrative Judge.

Whatever the source of Applicant's dispute or disagreement with the IRS about how it uses information, Applicant cannot seek relief in his security clearance case. DOHA proceedings are intended to adjudicate industrial security clearance cases, not adjudicate disputes or disagreements that Applicant may have with the IRS. Applicant's contentions fail to demonstrate any error by the Administrative Judge in this case.

## 3. Whether the Administrative Judge's security clearance decision is arbitrary, capricious, or contrary to law.

On appeal, Applicant makes other arguments that the Board construes as follows: (a) the tax laws have been kept secret and Applicant cannot be expected to file income tax returns when he is not informed of his legal obligations; (b) he is not a "person" for purposes of 42 U.S.C. §2630; (c) Applicant's labor is a deductible cost and not taxable; and (d) it is a violation of due process to deprive Applicant of his privileges for not obeying secret law. For the reasons that follow, the Board concludes Applicant's arguments fail to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

During the proceedings below and on appeal, Applicant seeks to engage in a debate of the constitutionality and legality of the federal tax laws. If Applicant wishes to challenge the constitutionality and legality of the federal tax laws (and IRS regulations and practices), then he must seek redress elsewhere. Under the Directive, DOHA Administrative Judges and the Board are authorized to adjudicate industrial security clearance cases, not the constitutionality and legality of federal tax laws and IRS regulations and practices. In recognition of the limits of the jurisdiction of DOHA Administrative Judges and this Board under the Directive, the rulings of federal courts on the legality and constitutionality of the federal tax laws and IRS practices and procedures must be accepted and applied in DOHA proceedings.

In the past, the Board has noted that federal courts consistently have rejected challenges to the federal tax laws and IRS regulations and practices identical or similar to those raised by Applicant. *See, e.g.*, ISCR Case 94-0954 (October 16, 1995) at pp. 6-7 (discussing various federal court decisions). *See also Plant v. I.R.S.*, 944 F.Supp. 833, 836 (N.D. Ohio 1996)(rejecting claim that plaintiff was not required to pay federal income taxes on wages); *Watts v. I.R.S.*, 925 F.Supp. 271, 277 (D. N.J. 1996)(rejecting claim that IRS could not place tax lien on plaintiff's property without implementing regulations); *Liebig v. Kelley-Allee*, 923 F.Supp. 778, 782 (E.D. N.C. 1996)(rejecting claim that Internal Revenue Code does not have force or effect of law without implementing regulations); *Christensen v. United States*, 733 F.Supp. 844 (D.N.J. 1990)(rejecting various claims, including claims that: income from "occupation of common right" is not subject to federal taxation, federal tax liens are not valid without a court judgment, and IRS cannot determine plaintiff owes tax when plaintiff did not file an income tax return), *aff'd mem.*, 925 F.2d 416 (3d Cir. 1991). The consistent rejection, by federal courts, of claims identical or similar to those made by Applicant persuade the Board that the Administrative Judge did not act in a manner that was arbitrary, capricious, or contrary to law by concluding that Department Counsel met its burden of proving Applicant was legally obligated to file federal income tax returns and that his failure to do so for tax years 1982, 1983, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994 was a violation of 26 U.S.C. §2630.

Finally, Applicant's reliance on the Supreme Court's decision in *Cheek v. United States*, 498 U.S. 192 (1991) is misplaced. In that decision, the Supreme Court specifically rejected the claim that a person cannot be found guilty of violating the income tax law because that person believes the law is unconstitutional and does not impose any duty upon him. The Supreme Court went on to note that persons challenging the validity of the income tax law had various statutory options available to them and could not simply ignore those options. *See* 498 U.S. at pp. 204-07. Accordingly, Applicant's personal beliefs about the legality of the federal tax laws and IRS procedures and practices did not preclude the Administrative Judge from concluding that Applicant's failure to file federal income tax returns was willful within the meaning of 26 U.S.C. §2630.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's November 12, 1996 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

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