



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
WASHINGTON HEARING OFFICE
POST OFFICE BOX 3627
ARLINGTON, VIRGINIA 22203-3656
FAX (703) 696-1831



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MEMORANDUM FOR ALL APPELLANTS AND THEIR RESPECTIVE ATTORNEYS OR
PERSONAL REPRESENTATIVES IN PERSONAL APPEARANCES

SUBJECT: Guidance for Your Personal Appearance

This set of questions and answers is provided to help you and your attorney or personal representative to prepare for your personal appearance hearing before an administrative judge. This guidance supplements Department of Defense Manual 5200.02M, *Procedures for the DoD Personnel Security Program (PSP)*, issued in April 2017 and the adjudicative guidelines issued by the Director of National Intelligence in Security Executive Agent Directive 4 (SEAD 4) that became effective on June 8, 2017, and apply to your case.

The administrative judge did not participate in the Defense Counterintelligence and Security Agency Consolidated Adjudication Services' (CAS) decision to deny or revoke your eligibility for access to classified information or SCI. The administrative judge's role is to give you a fair opportunity to present additional evidence to support your case as fully as possible. He or she will be impartial and objective in evaluating the facts set forth in the record of the case supplied to him or her by the CAS, supplemented by what you say at the proceeding, what other witnesses say, and whatever additional documentary evidence you present. The administrative judge will prepare an independent recommended decision and forward it along with the record of your case to your component's Personnel Security Appeals Board (PSAB). The administrative judge will not announce his or her recommended decision. The PSAB may adopt the recommended decision or reverse or otherwise modify the CAS' decision after reviewing the administrative judge's recommendation. The PSAB decision is final.

1. Do I need to hire an attorney? This is a decision you will have to make. You may present your case by yourself. The proceeding is designed so that it can be understood by all DoD civilian employees and military personnel. Many appear personally and are successful without any assistance. If you wish, you may choose a co-worker, supervisor, friend, spouse, colleague, union representative or member of the clergy to assist you, or you may retain an attorney at no expense to the government. If you want to be represented by an attorney or anyone else, you must arrange for it immediately. Postponement of the personal appearance can be granted by the administrative judge only for *good cause*, and delays in finding an attorney or other representative is generally *not* a good reason to delay a scheduled personal appearance. If you do obtain an attorney or other person to represent you, please notify DOHA immediately.

To facilitate the exchange of correspondence, proposed evidence, the handling of preliminary matters, and the scheduling of hearings, any person representing an applicant should

send a written Notice of Appearance to both the Department Counsel and the DOHA Hearing Office. This should be sent by email to: osd.pentagon.ogc.mbx.doha-who-admin-support@mail.mil. Notice will also be accepted by fax or regular mail. The Hearing Office's fax number and mailing address appear at the top of this memorandum. No special form or format is required.

2. Hearing format. Hearings are usually conducted via an online platform (e.g., Microsoft Teams). In-person hearings are conducted in DOHA's hearing rooms in Arlington, Virginia, or Los Angeles, California, but may occasionally be conducted in a federal, state, county, or local hearing room, conference room, court room, or video teleconference center.

3. Will the Government be represented by an attorney at the proceeding? Aside from the person you may invite to assist or represent you during your personal appearance, the administrative judge assigned to your case may be the only other Government employee present. The Government may elect to have a department counsel participate in the proceeding and present evidence and argument in support of the CAS decision to deny or revoke your clearance. If you decide to hire an attorney, it is likely that the Government will assign a department counsel to participate in the case.

4. What are the steps of the proceeding? The administrative judge will preside at your personal appearance. The proceeding will be conducted so that it can be understood by a person with no legal training. You will have an opportunity to testify, submit additional documents, and present the testimony of any witnesses who are willing and able to testify for you. It is likely that the administrative judge will question you and any witnesses who testify. If you elect to have witnesses at the proceeding they will be sequestered (kept out of the hearing room) during the hearing until they testify, with the exception of you, the appellant, and any expert witnesses. Likewise, witnesses should not be in a room with any party during an online hearing except when testifying. The purpose of this rule is to ensure that witnesses testify based on their own knowledge and not based on what they have heard in the hearing.

At the end of the proceeding you or your representative will have an opportunity to sum up the evidence and tell the administrative judge why you believe it is clearly consistent with the national interest for you to be eligible for access to classified information, SCI, or the performance of sensitive duties. The department counsel, if one is present, will have the opportunity to argue for the opposite conclusion.

5. What should I do to prepare for my personal appearance? The personal appearance is your opportunity to provide oral comments and documents demonstrating that your eligibility for access to classified information, SCI, or performance of sensitive duties should be granted or reinstated. The administrative judge presiding at your personal appearance will have already reviewed your case file which was provided to him or her by the CAS that made the decision to deny or revoke your eligibility for access to classified information or performance of sensitive duties. Therefore, your goal should be to explain your reasons for having the CAS's decision reversed by providing additional information and documentation to the independent administrative judge rather than only repeating information which you had previously submitted.

If you intend to submit documents, you must make sufficient photocopies of each proposed exhibit so that separate complete copies can be offered to the administrative judge and the department counsel, if one is present. Photocopying must be completed before the scheduled

hearing date because there may not be any photocopying facilities available at the hearing location. Make sure that your documents are organized in the order that you want to present them and bring an extra copy of the documents so that you can refer to them if needed to answer questions that may be directed to you by your representative, the department counsel, if one elects to be present, or the administrative judge. If your personal appearance is conducted by video teleconference, copies of your documents should be provided to the Administrative Judge at least 24 hours in advance of your personal appearance.

6. What happens if one of my witnesses is not available to testify? Both you and department counsel may have witnesses testify if those witnesses have knowledge of facts relative to your eligibility or can attest to your character. If you have elected to have anyone appear on your behalf as a witness, it is your obligation to have that person present, in with dial-in or phone contact, and ready to testify during the proceeding on the day and time it has been scheduled. The proceeding will generally not be delayed because of a missing witness, regardless of the reason. If a witness is unable to attend in person, you may obtain and submit a letter or affidavit from that witness.

7. Will I be questioned at the personal appearance? You and your witnesses may be questioned by the administrative judge or a department counsel, if one is present. You will not be placed under oath, but you will be advised by the Administrative Judge that Section 1001 of Title 18 of the United States Code is applicable which makes it a criminal offense, punishable by a substantial fine and period of imprisonment, to knowingly and willfully make a false or misleading statement or representation to any department or agency of the United States.

8. Will the personal appearance be transcribed? The proceeding will be recorded by a court reporter. The court reporter will provide the administrative judge with a verbatim transcript and you will be given a copy of the transcript when the administrative judge issues the recommended decision or after the PSAB issues its final decision.

9. What will happen if I do not come to my personal appearance? It is your responsibility to attend the personal appearance at the agreed date, time, and location listed in the Notice of Personal Appearance sent to you with these questions and answers. If you are unable to appear at the agreed date, time, and place, you must ask the administrative judge for a postponement or change of location. Your request must be received by the administrative judge well before the date of the hearing, and you must provide a good reason for your request. If you have not been granted a postponement and fail to appear on the day, time, and place listed in the Notice of Personal Appearance, the administrative judge will forward the case file to the component PSAB and will recommend that the PSAB sustain the CAS's decision to deny or revoke your eligibility for access to classified information or SCI, or performance in sensitive duties.

Robert B. Blazewick

Robert B. Blazewick
Chief Administrative Judge