

Lawyer Decries Lack of Fairness in Revoked Clearance

The Defense Department agency that handles appeals of contractor security clearance denials is facing rare public criticism from a lawyer who practices before it.

Virginia attorney Sheldon Cohen blasted the Defense Office of Hearings and Appeals for deciding to revoke his client's clearance partly because of information gleaned from CIA polygraph exams in connection with an earlier clearance investigation.

His client, Cohen wrote in a paper posted on his firm's website, denied some of the statements attributed to him by the CIA in the agency's redacted summary of the polygraph results and said others were misrepresentations. Nonetheless, a three-judge DOHA appeal board agreed with an earlier judge's ruling to revoke the DoD contractor's clearance, Cohen said.

In this case, "anonymous redacted reports and other [agencies' decisions] are enough to deny or revoke a DoD clearance regardless of contrary evidence," he added. The man, not identified in the March appeal board decision, has since lost his job with a defense contractor, Cohen said in an interview.

In its ruling, DOHA said the contractor's DoD clearance should be revoked following his admission during the 2008 polygraph test that he viewed pornography on government computer systems and watched child pornography at home.

During the DOHA hearing, however, the applicant denied watching child pornography at home and said he accessed adult pornography at work only as part of his official duties.

The three-judge DOHA panel sided with DoD's explanation of why it sought to revoke the contractor's clearance. It also cited other corroborating evidence, such as the contractor's failure to prove that his job required him to look at pornography. In an email, Pentagon spokesman Army Lt. Col. Todd Breasseale said the decision in the case was "sound."

Other Washington lawyers who handle clearance appeals offered mixed assessments of Cohen's criticisms. His concerns regarding the handling of polygraph exam summaries are "absolutely" justified, said Chris Graham, a former DOHA administrative judge now at the firm Tully Rinckey.

"It's not just DOHA," Graham said. "This is a problem especially with the intelligence agencies because they are generally the ones who use the polygraph a lot." Following the polygraph test, the agency's report on the results is often heavily blacked out, Graham said, meaning that the clearance applicant has no way to challenge whether the report is accurate.

"If a person makes a mistake, there's no penalty, but it sure has an impact on the individual," Graham said.

Mark Zaid, another attorney, agreed that polygraph results are "always" an issue, but had no

immediate worries that DOHA is now making other agencies' clearance decisions the basis for its own. In his practice, Zaid said, he has had numerous clients who received secret or top secret clearances through DOHA after being turned down by an intelligence agency.

"The fact of the matter is that every federal agency should be able to rely on information obtained by another federal agency in its clearance investigation," Zaid said.

Cohen declined to make the applicant available for an interview. According to the appeal board ruling, he is a Navy veteran who had received numerous awards in his work as a computer systems troubleshooter.