



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for January 30, 2015

BOARD DECISIONS

Appellant: Douglas W. Freeze
Agency: Department of the Navy
Decision Number: [2015 MSPB 9](#)
MSPB Docket No.: DC-0752-14-0495-I-1
Issuance Date: January 27, 2015
Appeal Type: Adverse Action
Action Type: Indefinite Suspension

Conditions Subsequent In Security Clearance Indefinite Suspensions

The appellant was indefinitely suspended from his position as an Intelligence Specialist after the agency suspended his security clearance. Before the agency finalized its decision on the revocation of his security clearance, the appellant appealed the imposition of his suspension to the Board. After the appellant requested to withdraw his appeal, the Board dismissed it with prejudice. Following the agency's final decision to revoke his clearance, the appellant filed a second appeal, this time alleging that the indefinite suspension was illegally imposed and had continued for an excessive length of time. The administrative judge dismissed the appeal based on a finding that the appellant's previous appeal of the same indefinite suspension had been dismissed, but made no findings on the allegation that the indefinite suspension continued for an excessive length of time. The appellant filed a petition for review, and while the petition was pending, the Department of Defense Personnel Security Appeals Board (PSAB) upheld the revocation of his security clearance. The appellant resigned from his position immediately

thereafter while his petition for review was still pending.

Holding: The Board affirmed the AJ's dismissal of the appeal from the indefinite suspension, found that the Board had jurisdiction over his appeal of the improper continuation of his indefinite suspension, and affirmed the agency's action.

1. The Board overruled a portion of its decision in *Ryan v. Department of Homeland Security*, 121 M.S.P.R. 460 (2014), to the extent it held that the Board could impose the restoration of an appellant's security clearance as a condition subsequent to trigger the end of an indefinite suspension where the suspension letter identifies a different condition subsequent. The Board cannot impose a condition subsequent different from the one identified by the agency in its decision imposing the indefinite suspension.

2. Here, the condition subsequent triggering the cessation of the appellant's indefinite suspension was the completion and disposition of all issues regarding his security clearance and the completion of the notice period of any possible subsequent adverse actions. Because the appellant resigned the day after he was notified that the PSAB upheld his security clearance revocation, there was no subsequent adverse action and the condition subsequent was therefore met by the agency. However, because the appellant did not show that the agency failed to act within a reasonable amount of time to terminate his suspension following the satisfaction of the condition subsequent, the Board affirmed the action.

- **The U.S. Court of Appeals for the Federal Circuit did not issue any decisions this week**