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The Agency understands that the House-Senate conference addressing the CIA's special retirement system may consider a proposal for non-CIARDS type CIA employees to continue having the right to appeal adverse retirement determinations to the Merit Systems Protection Board (MSPB). The underlying principle for this proposal stems from the fact that CIA employees presently covered by the Civil Service Retirement System have the right to appeal, to the MSPB, determinations made by the Office of Personnel Management.

This proposal acknowledges the fact that CIARDS employees do not have appeal rights and espouses the position that equivalent employees under the new system should not have appeal rights either. This last position disregards the fact that not all employees who are under cover or who are performing work of a sensitive nature are under CIARDS. There is an ever increasing number of CIA employees covered by the Civil Service Retirement System who would have to divulge sensitive information if they were to pursue an appeal before the MSPB and the federal courts.

It has been acknowledged by the intelligence committees that in order to improve the security of CIA functions, the CIA should administer all retirement systems as they apply to CIA employees. We are in agreement. However, we disagree with the logic that reasons that since non-CIARDS employees have an appeal right at present that they should automatically continue to enjoy said right. Unfortunately, any appeal case before the MSPB and the federal courts potentially lends itself to having security information released. Furthermore, there is an ever-increasing population of employees nearing retirement age who could appeal retirement decisions. Among these are independent contractors and contract agents who might seek creditable service for work done for the Agency (of a classified nature). Even one case of a non-CIARDS employee appealing an OPM denial of his application for disability retirement could prove difficult from a security standpoint if such employee were in a covert status, worked for a proprietary or were performing special functions for the Agency.

In recent years a number of current and former CIA employees have requested determinations of service credit

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arising out of "non-standard" service for CIA as agents, contractors, or employees. All of these cases rest on classified information and facts and circumstances which are unique to the intelligence community and CIA. Accordingly, a determination as to whether an individual's service met criteria for federal employment would, in my opinion, be no different from a "CIARDS" case, and properly rests with the DCI. This, coupled with the need to avoid the dissemination of sensitive information outside of CIA dictates that all cases which rest on classified CIA information be treated as CIARDS cases, be reviewed by the DCI, and not be appealable to the MSPB or the courts.

The issue is not how many cases there might be before the MSPB which could lead to releases of classified or sensitive information. The issue is that none of this information should be subjected to exposure. The need to improve the protection of the security of our functions extends to protecting any of our sensitive information from any releases to persons not aware of security concerns nor who have developed a security conscious mentality.