

DATE: September 21, 2006

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 03-22427

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 24, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 14, 2006, after the hearing, Administrative Judge Philip S. Howe denied Applicant's request for a security clearance. ⁽¹⁾ Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge erred by not making an official recommendation as to whether Applicant's case should be considered for waiver under the provisions of 10 U.S.C. § 986(d).

In this case, the Administrative Judge found that the security concerns raised by Applicant's criminal conduct had been mitigated, but that Applicant could not be granted a security clearance because of 10 U.S.C. § 986. In his decision, the Administrative Judge stated he "would have recommended further consideration of the case for a waiver of 10 U.S.C. § 986," but he was not at liberty to disregard the Appeal Board's holding that Administrative Judges have no authority at the present time to make any recommendation, favorable or unfavorable, concerning waiver under section 986(d).

Applicant argues that the Administrative Judge's adverse decision should be reversed and that the Board should make a formal recommendation for waiver of the application of 10 U.S.C. § 986 for Applicant. The Board does not find this argument persuasive. Based on our recent discussion of this issue in ISCR Case No. 01-20970 at 3 (App. Bd. April 18, 2006), the Board concludes that neither the Judge nor the Board has authority at this time to make a formal recommendation of waiver. Accordingly, the Board concludes that Applicant has not demonstrated error.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant with respect to SOR paragraphs 1.a, and 2.a, through 2. d. Those favorable findings are not at issue on appeal.