

DATE: December 12, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03289

APPEAL BOARD SUMMARY DISPOSITION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 20, 2005, DOHA issued a statement of reasons (SOR) 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 the case be decided on the written record. On June 16, 2006, after considering the record, Administrative Judge Kathryn Moen Braeman denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant's appeal brief contains no assertion of error on the part of the Administrative Judge. It only contains a request that the Appeal Board grant Applicant a waiver of 10 U.S.C. § 986.

The Appeal Board does not have authority to grant waivers of 10 U.S.C. § 986. *See* ISCR Case No. 04-11041 at 2-3 (App. Bd. Sept. 29, 2006). [\(1\)](#)

The Appeal Board's authority to review a case is limited to cases in which the appealing party has alleged the Administrative Judge committed harmful error. Applicant has not made an allegation of harmful error. Therefore, the decision of the Administrative Judge denying Applicant a security clearance is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

1. After the Administrative Judge's decision was issued the Defense Department began to implement new rules for adjudicating security clearance cases. Under these new rules, the Director, DOHA or his designee has the authority to grant waivers in meritorious cases. *See* "Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Dec. 29, 2005)." There is no provision for waiver recommendations by Administrative Judge's or others. *See* DOHA Operating Instruction 64, as revised, Sept. 12, 2006 (. . . the Administrative Judge shall not opine whether a waiver of 10 U.S.C. 986 is merited, nor recommend whether to consider the case for a waiver of 10 U.S.C. 986").