

KEYWORD: Guideline J

DIGEST: Guideline JA Judge is not required to discuss every piece of evidence. The Board does not have authority to grant waivers to 10 USC 986. Adverse decision affirmed.

CASENO: 03-26908.a1

DATE: 03/16/2007

DATE: March 16, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 03-26908
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**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 September 16, 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 a hearing. On July 12, 2006, after the hearing, Administrative Judge Marc E. Curry

denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant complains that the Judge's decision fails to discuss significant evidence favorable to Applicant in evaluating the allegations in SOR paragraphs 1.a through 1.i. Applicant also requests that he be granted a waiver of 10 U.S.C. § 986, and presents new evidence in the form of statements supporting his request for waiver.

A Judge is not required to discuss each and every piece of record evidence. *See, e.g.*, ISCR Case No. 02-29608 at 4 (App. Bd. Dec. 17, 2003). Moreover, the Judge found in favor of Applicant with respect to SOR paragraphs 1.a through 1.i, so those allegations are not at issue on appeal. The Appeal Board does not have authority to grant waivers of 10 U.S.C. § 986. *See, e.g.*, ISCR Case No. 04-11041 at 2-3 (App. Bd. Sept. 29, 2006).<sup>1</sup> Nor does it have the authority to consider new evidence on appeal. *See* Directive ¶ E3.1.29.

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

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<sup>1</sup>After the 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 case. *See* "Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Dec. 29, 2005)." There is no provision for waiver recommendations by Judges 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").

Member, Appeal Board