

KEYWORD: Guideline J

DIGEST: The Appeal Board does not have authority to grant waivers under §10 USC 986. Adverse decision affirmed.

CASENO: 06-02669.a1

DATE: 05/07/2007

DATE: May 7, 2007

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In Re: )  
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 ----- ) ISCR Case No. 06-02669  
 SSN: ----- )  
 )  
 Applicant for Security Clearance )  
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**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 June 22, 2006, 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 November 17, 2006, after considering the

record, Administrative Judge Jacqueline T. Williams 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 requests that he be granted a waiver of 10 U.S.C. § 986 by the Director, and presents new evidence in the form of an additional statement citing facts supportive of his request.

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  
Member, Appeal Board

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<sup>1</sup>Only 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").