

KEYWORD: Guideline J

DIGEST: The Appeal Board does not have authority to recommend that Applicant be granted a waiver under 10 USC 986. Adverse decision affirmed.

CASENO: 06-03230.a1

DATE: 04/24/2007

DATE: April 24, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-03230
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD SUMMARY DISPOSITION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

M. Jefferson Euchler, Esq.

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 a hearing. On November 30, 2006, after the hearing, 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.

Applicant's appeal brief contains no assertion of error on the part of the Judge. It only contains a request that the Appeal Board concur in the Judge's findings and recommend that Applicant be granted a waiver of 10 U.S.C. § 986.

The Appeal Board does not have authority to recommend that Applicant be granted a waiver of 10 U.S.C. § 986.¹

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: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

¹Only 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").