

KEYWORD: Guideline J

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

CASENO: 06-16810.a1

DATE: 07/19/2007

DATE: July 19, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-16810
)	
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 August 31, 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 January 31, 2007, 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.

The Appeal Board construes Applicant's brief as requesting that he be granted a waiver of 10 U.S.C. § 986.¹ 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). Only 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 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").

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. The Board will refer Applicant's case to the Director DOHA for further consideration pursuant to the Under Secretary of Defense Memorandum dated August 30, 2006.

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

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

Signed: William S. Fields
William S. Fields
Administrative Judge

¹Applicant also argues that the Judge's adverse Formal Finding as to SOR ¶ 1.a was factual or legal error. The Board has reviewed the Judge's decision as a whole and concludes that the Judge considered Applicant's conduct mitigated under the relevant mitigating conditions and whole person factors, but that Applicant was disqualified from having a security clearance by application of 10 U.S.C. § 986 based upon the facts alleged in SOR ¶ 1.b. Accordingly, the Board need not address that issue.

Member, Appeal Board