

KEYWORD: Guideline J

DIGEST: The Appeal Board does not have authority to grant waivers of 10 U.S.C. §986. 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.

CASENO: 06-19803.a1

DATE: 08/24/2007

DATE: August 24, 2007

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**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 29, 2006, DOHA issued a statement of reasons 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 March 15, 2007, after the hearing, Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant requests that he be granted a waiver of 10 U.S.C. 986 (The Smith Act) by the Director based upon the record in his case.<sup>1</sup> 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. Sep. 29, 2006).<sup>2</sup> 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.

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.

### Order

The Judge adverse security clearance decision 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

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<sup>1</sup>10 U.S.C. 986 (c) prevents the Department of Defense from granting or renewing a clearance to anyone who "... has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding one year, and was incarcerated as a result of that sentence for not less than one year."

<sup>2</sup>Only the Director, DOHA, or his designee has the authority to grant waivers in meritorious cases. *See* Memorandum from Under Secretary of Defense for Intelligence dated August 30, 2006, regarding "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, Sep. 12, 2006 ("... the Administrative Judge shall not opine whether a wavier of 10 U.S.C. 986 is merited, nor recommend whether to consider the case for a waiver of 10 U.S.C. 986.")

Administrative Judge  
Member, Appeal Board