

## **A Short Description of the Appeal Process:**

### **Step 1**

**The Notice of Appeal (NOA):** The party that lost in the Hearing Office Judge's decision must appeal to the Appeal Board within 15 days of the date that appears on the Judge's decision. The NOA should contain the case name, case number, social security number and the statement expressing a wish to appeal. Applicant's also must state their address, and whether they are represented. If represented they should give their representative's address. Late notices must explain why they are late.

### **Step 2**

**Appeal Brief: The appealing party MUST file an appeal brief with the Board within 45 days of the date on the Judge's decision.** The appeal brief should explain what the Judge did wrong and why that changed the outcome of the case. Evidence that was not before the Judge (new evidence) does not show error by the Judge. The Directive says, "No new evidence shall be received or considered by the Appeal Board." There are only a few cases where the appeal brief may rely on something other than error by the Judge, such as if documentary evidence was submitted by mail and the Judge's decision indicates that the evidence was never received. If a party needs additional time to file a brief, then requests for extensions should be filed as soon as possible with an explanation as to why additional time is needed.

### **Step 3**

**Reply brief:** The non-appealing party receives the appeal brief from the Appeal Board and has 20 days to file an optional reply brief with the Board.

### **Step 4**

**Appeal Board Decision:** The Appeal Board reviews the file that was before the Hearing Office Administrative Judge, the appeal brief and any reply brief and issues a written decision.

For a more detailed description of the Appeal process and specific procedures, please read the attached "Appeals of Judge's Decisions Under DOD Directive 5220.6." Questions? Please call (703) 696-4759 with any questions about the appeal process.

## APPEALS OF JUDGE'S DECISIONS UNDER DOD DIRECTIVE 5220.6

A copy of **DOD DIRECTIVE 5220.6** (the Directive) and DOHA Decisions can be found on line at [www.defenselink.mil/dodgc/doha/isp.html](http://www.defenselink.mil/dodgc/doha/isp.html)

1. About the Appeal Board: The Appeal Board (The Board) decides appeals from decisions issued by Defense Office of Hearings and Appeals (DOHA) Administrative Judges in industrial security clearance and ADP cases. These are cases involving federal contractors and their employees. The Board does not have authority over cases involving military members or civilian employees of the Department of Defense. The Board does not have authority to resolve issues until after the Judge issues his or her decision. The appeal process is governed by the Directive.
2. Communication with the Board: Communications should be addressed to Chairman, Appeal Board, P.O. Box 3656, Arlington VA 22203. Faxes are acceptable. The Board's fax number is (703) 696-1832. If you fax a document to the Board you should also send the original by regular mail. Use of certified or registered mail can slow down receipt of your communications.
3. Definition: All references to "days" means calendar days. If a due date falls on a Saturday, Sunday, or federal holiday, the due date will be considered to fall on the next business day.
4. Deadlines: To meet a deadline, a document must be received by the Board on or before the due date. A deadline is not satisfied just by sending or postmarking a document on or before the due date. Failure to meet a deadline could result in a loss of your appeal right.
5. Notice of Appeal: To appeal a decision by a Judge, one must file a Notice of Appeal (NOA). This notice must be *received* by the Board within 15 days of the date of the Judge's decision. You may fax the NOA and then send the original by regular mail. **The NOA should not be confused with the Appeal Brief (see Instruction 9 on page 2 of these instructions), which contains detailed reasons why the appealing party believes the Administrative Judge's decision is wrong, etc.**
- 6: Contents of Notice of Appeal:
  - a. Applicant's name;
  - b. Applicant's social security number;
  - c. The case number (for example, ISCR Case No. 07-12345);
  - d. Applicant's current mailing address;
  - e. Mailing address of Applicant's lawyer or personal representative, if he or she has one;
  - f. A one-sentence statement that the party is appealing the decision of the Administrative Judge.

7. Late Notice of Appeal: The NOA must be filed within 15 days of the date of the Administrative Judge's decision. The Board may allow a late NOA only upon a showing of good cause.

8. Withdrawal of Appeal: You can withdraw your appeal by notifying the Board in writing. Withdrawal of an appeal usually means that the Judge's decision becomes final.

9. Appeal Brief: This is a written statement explaining why the appealing party believes the Judge's decision is wrong. If at all possible, the brief should be typed. The brief should be printed on one side of the paper only and fastened by a staple or binder clip. Do not submit briefs in binders, notebooks, plastic folders, etc.

10 Contents of Appeal Briefs: The appealing party has the burden of demonstrating that the Judge's decision is in error. Therefore, the brief should raise all objections, issues, and/or reasons why the decision is in error. Failure to raise an issue may result in the Board concluding that error was not shown. The brief should include the following:

- a. Applicant's full name and social security number;
- b. The case number;
- c. Applicant's mailing address. If the applicant is represented by a lawyer or by a personal representative, then that person's address should be provided;
- d. Specific claims of factual and/or legal error that are being raised by the appealing party;
- e. Reasons, arguments, legal citations, and references to the record evidence that support the claims of error raised in the brief;
- f. The sort of relief desired, *i.e.*, reversal, remand, etc.

11. Submission of the Appeal Brief. **The appeal brief (original plus one copy) must be received by the Appeal Board within 45 days of the date of the Judge's decision.** Failure to submit a timely appeal brief may result in the Appeal Board affirming the decision of the Judge. This is called a default order. The Board may set aside a default order if the appealing party shows good cause for doing so.

12. Reply Brief. The Board will provide a copy of a timely appeal brief to the other party. This party may then decide to submit a reply brief. If the other party decides not to submit a reply brief, he or she should notify the Appeal Board in writing as soon as possible.

13. Contents of Reply Brief. If submitted, a reply brief should contain the following:

- a. The applicant's full name and social security number;
- b. The case number;
- c. If the applicant is the party filing the reply brief, the brief should contain the applicant's mailing address or, if the applicant is represented by a lawyer or personal representative, the mailing address of that person;
- d. Reasons, arguments, legal citations, and references to the record evidence that support the other party's responses to the errors raised by the appeal; support the non-appealing party's claim that the case can be affirmed on alternate grounds, or both.

14. Submission of the Reply Brief: The reply brief (original plus one copy) must be received by the Board within 20 days from the party's receipt of the appeal brief. If no reply brief is received within the specified time, the Board will notify the appealing party of that fact. The appeal will then be ready for consideration by the Appeal Board.

15. Cross-Appeal: In addition to having a right to file a reply brief, a party that won before the Hearing Office Judge may file a cross-appeal in a case where the losing party has filed a NOA. A cross-appeal is appropriate when the party that won wishes to raise errors that it feels may affect the outcome of the case on appeal. A notice of cross-appeal must be filed within 10 days of receiving the original notice of appeal. The contents of the notice of cross-appeal, as well as the cross-appeal brief, are similar to the contents of the notice of appeal and the appeal brief.

16. Additional Briefs: **No further briefs will be allowed except upon a showing of good cause.** The Chairman, or designee will decide whether there is good cause to accept any further briefs.

17. Appeal Board Decision. The Board will issue a written decision. It will send a copy of the decision to each party. Except for cases covered by Directive ¶ E3.1.23 there is no further appeal from an Appeal Board decision.

18. Variations from Appeal Procedures. The Chairman, or designee may vary the provisions of this document in a given case: (a) upon a showing of good cause; or (b) whenever necessary to provide for the fair and efficient handling of appeals under the Directive. Neither the Chairman nor any member of the Appeal Board has the authority to vary the provisions of the Directive.

19. Questions? Please call (703) 696-4759 with any questions about the appeal process.