

KEYWORD: Guideline H; Guideline E

DIGEST: The Judge the opportunity to consider Applicant's explanations for her failure to disclose the requested information. He was not bound as a matter of law to accept or reject those explanations. Adverse decision affirmed.

CASENO: 07-02163.a1

DATE: 02/28/2008

DATE: February 28, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-02163
)	
)	
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 May 11, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal 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 October 29, 2007, after considering the record, Administrative Judge Mark W. Harvey denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred in concluding Applicant's falsifications were deliberate.

Applicant argues that she did not deliberately falsify her security clearance application, executed on July 18, 2006, by failing to disclose an alcohol-related arrest which had occurred in March 2006. In support of that argument, Applicant contends that she failed to disclose the information because she misunderstood the question. She also argues that she did not deliberately make a false statement to a government investigator in her November 1, 2006 interview, when she explained that she had omitted the charge from her July 8, 2006 application because the final disposition of the charge had occurred at a later date. The charge had in fact been adjudicated and disposed of on June 27, 2006. Applicant's arguments do not demonstrate that the Judge erred.

The Judge had the opportunity to consider Applicant's explanations as to why she failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanations. The Judge considered Applicant's explanations in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. The Board does not review a case *de novo*. On this record, the Judge's findings of deliberate falsification are sustainable. *See* Directive ¶ E3.1.32.1. His ultimate unfavorable clearance decision under Guideline E is also sustainable.¹

Order

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

¹The Judge found in favor of Applicant under Guideline H and with respect to SOR paragraphs 2.a, 2.b, and 2.e. Those favorable findings are not at issue on appeal.

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board