

KEYWORD: Guideline B; Guideline E; Guideline J

DIGEST: Given the record that was before him the Judge’s finding that Applicant’s omission was a deliberate falsification is sustainable. Adverse decision affirmed.

CASENO: 05-16743.a1

DATE: 04/11/2007

DATE: April 11, 2007

In Re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 05-16743
)	
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 February 2, 2006, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 11, 2006, after the hearing, Administrative Judge James A. Young denied Applicant’s request for a

security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.¹

Applicant raised the following issue on appeal: whether the Judge erred by concluding that Applicant intentionally made a false statement on her Security Clearance Application.

Applicant argues that the Judge erred by concluding that Applicant had intentionally made a false statement on her Security Clearance Application. Applicant contends that the omission occurred because she had not read the question properly. Applicant's argument does not demonstrate that the Judge erred.

Applicant's statements about her intent and state of mind when he executed the document in question were relevant evidence, but they were not binding on the Judge. *See, e.g.*, ISCR Case No. 01-19278 at 6-7 (App. Bd. Apr. 22, 2003). As the trier of fact, the Judge had to consider Applicant's statements in light of the record evidence as a whole, and Applicant's denial of any intent to provide false information did not preclude the Judge from weighing the record evidence and making findings that contradicted Applicant's denials. In this case, the Judge made sustainable findings that Applicant had omitted information of obvious security concern, relating to Applicant's conviction on a charge of "Shoplifting." Given the record that was before him, the Judge's conclusion that Applicant's omission were intentional is sustainable, and the Judge's ultimate unfavorable clearance decision under Guidelines E and J is not arbitrary, capricious or contrary to law.

¹The Judge found in favor of Applicant under Guideline B and with respect to SOR paragraph 2.a. Those favorable findings are not at issue on appeal.

Order

The decision of the Judge denying Applicant a 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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board