



Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive).<sup>1</sup> Applicant requested a hearing. On May 29, 2007, after the hearing, Administrative Judge Juan J. Rivera denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

In her appeal brief, Applicant states that she feels she did not present sufficient information at the hearing as to why she did not list the criminal charges against her in her Security Clearance Application (SF-86). She therefore restates her testimony on that issue. She cites a Hearing Office decision in a case she believes is similar to hers. In that case, the applicant was granted a clearance. She also submits three letters of recommendation from supervisors.

To the extent that Applicant provides any evidence on appeal that was not presented at the hearing, the Board cannot consider it, since the Directive does not allow consideration of new evidence on appeal. *See* Directive ¶ E3.1.29. This applies to any additions to Applicant's testimony and the three letters of recommendation. Moreover, Hearing Office decisions in other cases are not binding on the Board or on other Hearing Office judges. Therefore, Applicant's ability to cite a Hearing Office decision in another case that appears to support Applicant's position does not demonstrate that the Judge's decision in this case is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 02-24062 at 4 (App. Bd. Jan. 31, 2005).

With regard to Applicant's restatement of her testimony, there is no indication in the transcript that Applicant was prevented during the hearing from presenting her explanation of her failure to disclose her criminal conduct on her SF-86. Moreover, the Judge included Applicant's explanation in his decision, although it is clear from the decision that the Judge did not find Applicant's explanation credible. Under the Directive, the Board must give deference to the Judge's credibility determinations. *See* Directive ¶ E3.1.32.1.

The Judge found that Applicant was involved in six criminal offenses between 1997 and 2003 and that she falsified her SF-86. The Judge had the opportunity to consider Applicant's explanation for her failure to disclose the information in question on her SF-86. The Judge was not bound, as a matter of law, to accept Applicant's explanation. *See, e.g.,* ISCR Case No. 05-01676 at 2 (App. Bd. Jun. 11, 2007). The Judge considered Applicant's explanation in light of the evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. On this record, the Judge's finding of deliberate falsification is sustainable. *See* Directive ¶ E3.1.32.1. Applicant has not demonstrated that the Judge's decision is arbitrary, capricious, or contrary to law.

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<sup>1</sup>The SOR was subsequently amended on the motion of the government.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairman, Appeal Board

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

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board