

KEYWORD: Guideline F

DIGEST: Directive ¶ 4.4 provides that security clearance adjudications “shall cease upon termination of the applicant’s need for access to classified information,” with exceptions not pertinent to this case. Neither party raised the issue of jurisdiction on appeal. Lack of subject matter jurisdiction can be raised at any time in the proceedings, including sua sponte by the Appeal Board. In this case, it appears there is an issue as to whether Applicant’s need for an industrial security clearance terminated prior to the date of his security clearance hearing. The favorable decision is remanded.

CASE NO: 17-03083.a1

DATE: 01/24/2020

DATE: January 24, 2020

In Re:)	
)	
-----)	ISCR Case No. 17-03083
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea Corrales, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) Consolidated Adjudications Facility (CAF) declined to grant Applicant a security clearance. On December 21, 2017, DoD CAF issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 29, 2019, after the hearing, Administrative Judge Philip J. Katauskas granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, the Judge’s decision is remanded.

The Judge’s favorable findings under Guideline F were not raised as an issue on appeal. At issue is the Judge’s favorable finding under Guideline E that alleged Applicant’s employment with a defense contractor was terminated in December 2015 “because [he] gave the company false and/or misleading information to obtain and continue leave under the Family Medical Leave Act (FMLA).”

At the hearing, Applicant stated that he was currently working for a military agency, that he has held that position since December 2016, and that he has been granted a Top Secret security clearance since 1999. He also stated that a Federal contractor was sponsoring him for an employment position, but he did not intend to accept that position if he retained his security clearance. Tr. at 17-18.

Directive ¶ 4.4 provides that security clearance adjudications “shall cease upon termination of the applicant’s need for access to classified information,” with exceptions not pertinent to this case. Neither party raised the issue of jurisdiction on appeal. Lack of subject matter jurisdiction can be raised at any time in the proceedings, including *sua sponte* by the Appeal Board. *See, e.g.*, ISCR Case No. 02-24227 at 4 (App. Bd. Oct. 7, 2003). In this case, it appears there is an issue as to whether Applicant’s need for an industrial security clearance terminated prior to the date of his security clearance hearing.

Given these circumstances, we conclude that best course of action is to remand the case to the Judge to determine whether he had jurisdiction to issue his decision. The Judge may reopen the record to permit the parties the opportunity to offer evidence and arguments on the above jurisdictional issue. If the Judge in consultation with the parties determines that he lacked jurisdiction to issue the decision, he shall vacate that prior decision and indicate it is null and void and has no legal effect. *See, e.g.*, ISCR Case No. 05-04831 at 5 (App. Bd. Nov. 29, 2006) and ISCR Case No. 08-08860 at 2 (App. Bd. Apr. 2, 2010).

Order

The decision is **REMANDED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board