

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant raised a jurisdictional issue that requires additional fact finding. We do not have authority to engage in fact finding. Adverse decision remanded.

CASE NO: 15-01138.a1

DATE: 09/19/2016

DATE: September 19, 2016

)	
In Re:)	
-----)	ISCR Case No. 15-01138
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 3, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 5, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant contends that he left his job as a contractor and is now employed as a Government civilian. Accordingly, he has raised an issue of whether DOHA has retained jurisdiction to decide

his case under the Directive. Applicant's brief makes assertions from outside the record (that he was not a Defense contractor on the date the decision was issued), and we can consider new evidence insofar as it bears upon threshold issues such as jurisdiction or due process. *See, e.g.*, ISCR Case No.14-00812 at 2 (App. Bd. Jul. 8, 2015). As a general rule, if an applicant's need for access to classified information terminates, then DOHA processing of his case must cease, although there are exceptions. Directive ¶ 4.4. In the case before us, resolution of the jurisdictional issue requires additional fact-finding, which we have no authority to do. Accordingly, we remand the case to the Judge to reopen the record to enable the parties to present evidence regarding applicant's employment status as it bears upon the issue of DOHA jurisdiction and for the Judge to make findings and conclusions on this matter. All other issues raised in Applicant's brief are not ripe for adjudication.

The Decision is **REMANDED**.

Signed: Michael Y. Ra'anan
Michael Y. 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