

KEYWORD: Guideline B

DIGEST: Applicant left the employ of a Defense contractor in January 2012. Her need for a security clearance terminated prior to commencement of the hearing. Therefore, DOHA lacked jurisdiction. The Judge's decision is reversed in the sense of that it is vacated and all proceedings after January 2012 in this case are rendered void. Favorable decision reversed.

CASENO: 10-07695.a1

DATE: 09/21/2012

DATE: September 21, 2012

_____)	
In Re:)	
)	
-----)	ISCR Case No. 10-07695
)	
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 December 7, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 29, 2012, after the hearing, Administrative Judge Martin H. Mogul 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 vacated.

Applicant submitted her security clearance application (SCA) on March 19, 2009. She was seeking a clearance due to her employment by a Defense contractor. Applicant left the employ of the contractor in January 2012 and is unemployed. Tr. at 49-50, 55-56, and 63-67.

The Directive provides that actions pursuant to it “shall cease upon termination of the applicant’s need for access to classified information,” with exceptions not pertinent to this case. Directive ¶ 4.4. Department Counsel contends on appeal that DOHA lacked jurisdiction to issue a decision in this case, because Applicant no longer needed a clearance through her former contractor employer.

Lack of subject matter jurisdiction can be raised at any time in the proceedings, including on appeal. ISCR Case No. 02-24227 at 4 (App. Bd. Oct. 7, 2003). In this case, the record demonstrates that Applicant’s requirement for a security clearance had terminated prior to the date of the hearing. Therefore, DOHA processing of the case should have terminated prior to the hearing. Reversal in the sense of vacating the decision and rendering void all proceedings in this case after that date is mandated under these circumstances to correct this error. *See* 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).

Other issues raised by Department Counsel are rendered moot by this decision.

Order

The Judge’s decision to grant Applicant a security clearance is reversed. All DOHA processing in this case after January 23, 2012, shall be without legal effect.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, 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