

KEYWORD: Guideline B

DIGEST: Applicant's statement that he resigned from his job in January 2018 raises the issue of whether the processing of his case should have ceased at that point. Adverse decision remanded.

CASENO: 17-03090.a1

DATE: 10/26/2018

DATE: October 26, 2018

In Re:

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Applicant for Security Clearance

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) ISCR Case No. 17-03090  
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**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 September 29, 2017, DoD 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 decision on the written record. On August 21, 2018, after considering the record, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons set forth below, we remand the case to the Judge.

In his appeal brief, Applicant states, “I contest issues pertaining to ‘Foreign Influence.’” Appeal Brief at 1. He then proceeds to discuss his ties to a foreign country. In doing so, he neither challenges any of the Judge’s findings of fact nor raises any other allegations of error on the part of the Judge. However, he states that he resigned his job with the employer who was sponsoring him for a security clearance in January 2018, which was the same month that Department Counsel issued the File of Relevant Material and about seven months before the decision in this case was issued.

Although neither party raised subject matter jurisdiction as an issue in this case, it can be raised *sua sponte* by the Board, which is authorized to consider and resolve the threshold issue of whether there is subject matter jurisdiction to adjudicate a particular security clearance case under the Directive. *See, e.g.*, ISCR Case No. 08-09776 at 2 (App. Bd. Sep. 11, 2009). The Directive provides that actions commenced pursuant to it “shall cease upon termination of the applicant’s need for access to classified information except in those cases in which . . . [a] hearing has commenced . . . [a] clearance decision has been issued; or . . . [t]he applicant’s security clearance was suspended and the applicant provided a written request that the case continue.” Directive ¶ 4.4. Applicant’s statement that he resigned from his job in January 2018 raises the issue of whether the processing of his case should have ceased at that point. *See, e.g.*, ISCR Case No. 05-04831 at 2-6 (App. Bd. Nov. 29, 2006).

Given the paucity of evidence in the record on this jurisdictional issue, the appropriate course is to remand the case to the Judge for additional proceedings so that the parties have an opportunity to address this matter. Therefore, we remand the case to the Judge to reopen the record to allow the parties to present evidence as to the facts and circumstances regarding the jurisdictional issue outlined above, including the question of whether Applicant still possessed a need for access to classified information at the time the decision was issued.

**Order**

The Judge's adverse decision is **REMANDED**.

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

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board

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