

KEYWORD: Guideline F

DIGEST: Lack of subject matter jurisdiction can be raised at any time. Reversal in the sense of vacating and rendering void all proceedings after Applicant left contractor employment. Adverse decision reversed.

CASENO: 08-08860.a1

DATE: 04/02/2010

DATE: April 2, 2010

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-08860
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Tovah A. Minster, Esq., Department Counsel

FOR APPLICANT

Larry H. Colleton, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 23, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 7, 2009, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

For reasons stated below, the Judge’s decision is vacated.

Applicant submitted his security clearance application (SCA) on May 2, 2008. He was seeking a clearance due to his employment by a Defense contractor. Applicant left the employ of the contractor in September 2009 and began working for an agency of the U.S. government. He is currently employed by the government agency itself rather than by a contractor. Tr. at 27-28, 31-32. In response to a letter from DOHA dated September 29, 2009, the contractor provided a computer-generated document showing that Applicant had left the contractor’s employ on September 9, 2009.

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. Applicant contends on appeal that DOHA lacked jurisdiction to issue a decision in his case, because he no longer needed a clearance through his former contractor employer. Department counsel concurs.

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).

Order

The Judge’s decision to deny Applicant a security clearance is reversed. All DOHA processing in this case after September 9, 2009, 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