

KEYWORD: Guideline F

DIGEST: The record contains without explanation a document entitled "Person Summary" the contents which present the possibility of a subject matter jurisdictional question. Adverse decision remanded.

CASENO: 08-09776.a1

DATE: 09/11/2009

DATE: September 11, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-09776
)	
)	
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 January 14, 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 July 13, 2009, after the hearing, Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge ignored record evidence favorable to Applicant and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. In addition, the Board raises a jurisdictional issue. For reasons set forth below, we remand the case to the Judge.

The Judge found that Applicant has three delinquent debts, two of which are for real estate mortgages, for which he had not provided sufficient evidence of mitigation to warrant the grant of a security clearance. In addition, the Judge found that, after the issuance of the SOR, Applicant’s government-contractor employer (contractor) terminated his employment because of security concerns, and Applicant has been unemployed since then.¹ Decision at 5. The record contains a document entitled a “Person Summary,” apparently obtained from the Joint Personnel Adjudications System (JPAS). This document states that Applicant left contractor’s employ in March 2009. The record contains no explanation as to if, when, or how the “Person Summary” was entered into the record. Although it is not consistent with Applicant’s hearing testimony as to the date he lost his job, both Applicant’s testimony and the JPAS document indicate that the job loss occurred well before the commencement of the hearing in this case.

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.” ISCR Case No. 02-24227 at 4 (App. Bd. Oct. 7, 2003). 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 testified that his former employer wanted to hire him back if he could get a clearance, and that it was “sponsoring” his efforts to obtain one. Tr. at 96. However, record evidence and the JPAS document permit a reasonable inference that DOHA had actually been divested of jurisdiction prior to the hearing and that further processing of the case should have ceased.

¹See Tr. at 64: “I’m no longer employed with [contractor] as of January [2009].”

Although the Board is authorized to resolve jurisdictional questions, due to the ambiguities presented by the record, the appropriate course is to remand the case to the Judge for additional proceedings. 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 by the time of the hearing. Other issues raised by Applicant on appeal are not ripe for adjudication.

Order

The Judge's adverse security clearance decision is REMANDED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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