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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing)
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Filing Date: March 7, 2016) Case No.: PSH-16-0012
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Issued: June 20, 2016

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be granted.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In October 2015, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his gambling. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in November 2015 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from a Gambling Disorder, Persistent and Severe in early remission. The

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

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DOE psychologist further concluded that the individual's Gambling Disorder is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In February 2016, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) (hereinafter referred to as Criterion H).²

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony and that of six witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE and the individual submitted a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for Administrative Judge's Decision

² Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites one criterion as the basis for denying the individual's security clearance: Criterion H. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Gambling Disorder, Persistent and Severe in early remission, and the expert's opinion that Gambling Disorder is a mental illness that could cause a significant defect in the individual's judgment and reliability. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's behavior under Criterion H. A mental condition such as Gambling Disorder can impair a person's judgment and reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

IV. Findings of Fact

During the course of his October 2015 PSI, the individual disclosed that he has a gambling problem. According to the individual, he began gambling in 1997 at the age of 35. Exh. 4. He was motivated by the thought that he could win money and "get ahead." The individual began risking \$200 to \$300 on a Friday or a Saturday once a week which would have been between \$10,400 and \$15,600 per year. *Id.* The individual stated that once every four to six weeks, he would gamble more and perhaps lose an additional \$1,000 to \$1,600. *Id.* Around 1998, the individual began going to the casino at least twice during the week and once or twice during the weekend, which led to significant credit card debt due to gambling cash advances. *Id.* He acknowledged that gambling became a compulsive activity for him that got out of control. In 2000, the individual filed for Chapter 7 bankruptcy which removed over \$50,000 in debts, the majority of which was due to his gambling. He admitted that while he sometimes won, "I never recouped anything substantially [like what] . . . I lost." *Id.* The individual also admitted that he became restless and irritable due to his losses. The individual further stated that he could not pay for unexpected expenses such as car repairs and admitted he borrowed money to use for gambling. *Id.*

After his bankruptcy in 2000, the individual's gambling slowed down because he was unemployed for a number of months. *Id.* However, when he returned to working full-time, he returned to gambling. He acknowledges that he had a "compulsion" and a "desire" to gamble. *Id.* According to the individual, he reached a "turning point" on July 25, 2015 when he asserts that he last

gambled. *Id.* The individual stated that he felt distressed and frustrated after spending money gambling that could have been spent on other things. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On November 30, 2015, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual met the Diagnostic Statistical Manual of the American Psychiatric Association, Fifth Edition, (DSM-5) criteria for Gambling Disorder. The DOE psychologist further concluded that the individual possesses an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 4.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be granted. Based on the facts in this record, I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Gambling Disorder

The individual does not dispute the DOE psychologist's diagnosis of Gambling Disorder. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

B. Evidence of Rehabilitation and Reformation from Gambling Disorder

During the hearing, the individual readily acknowledged his gambling problem and testified that he has not gambled since July 25, 2015. Transcript of Hearing (Tr.) at 65. He testified that on that day he became frustrated with losing money. *Id.* The individual further testified that he then took steps to end his gambling addiction and self-banned himself from going to a casino. *Id.* at 66. The individual sought the advice and support from the Employee Assistance Program (EAP) and began meeting with the EAP counselor once a week to assist him with strategies to end his gambling addiction. *Id.* He also joined Gambling Anonymous (GA) and began attending weekly meetings. *Id.* According to the individual, both his sessions with the EAP counselor and his attendance at GA meetings have been positive experiences for him. *Id.* at 67. The individual testified that his life has "turned around" in that he no longer has an urge to gamble and now has the financial resources to pay for items he needs. *Id.* He further testified that he has a good credit

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

score and has no credit accounts in arrears. *Id.* at 69 and 70. Finally, the individual testified that he plans to never gamble again. *Id.* at 73.

During the hearing, the individual also offered the testimony of his EAP counselor, his GA sponsor, two managers, a former co-worker and his significant other. The EAP counselor testified that the individual voluntarily came to him seeking assistance with his gambling addiction. *Id.* at 51. He testified that he worked with the individual on recognizing when he became anxious and more prone to gamble and tried various strategies to address his triggers. *Id.* at 52. The EAP counselor further testified that the individual voluntarily joined GA and banned himself from entering a casino prior to seeking his assistance. *Id.* at 53. He noted that the individual's attendance at GA has been a positive move for him and that the individual understands his triggers and the importance of remaining focused. *Id.* at 52. According to the EAP counselor, the individual is proud of his life improvements and has experienced a better quality of life. *Id.* at 56. He testified that the individual now has the ability to pay for various things and not be anxious about his finances. *Id.* The EAP counselor also noted that the individual takes a great deal of pride and responsibility in having the ability to take better care of his mother. *Id.* He testified that the individual, in his sessions with him, has never minimized how much money he lost when he was gambling and has taken full responsibility for his actions. *Id.* at 58. He noted that the individual realizes that working on his gambling addiction is a lifetime project and that he will always be vulnerable. *Id.* at 61. However, he testified that the individual has remained focused and committed to continuing counseling sessions. Finally, the EAP counselor testified that the individual has a good prognosis because he is very optimistic and has all of the motivating factors to succeed in recovery. *Id.* at 62.

The individual's GA sponsor testified that the individual started attending meetings in early January and is a regular participant at weekly meetings. *Id.* at 30. He believes the individual is in a "good place" because he is looking deep within himself to understand his illness. *Id.* at 32. The GA sponsor testified that GA has a 12-step program and that the individual is currently working on Step 11. *Id.* He believes the individual's counseling sessions have been helpful. *Id.* at 33. Both of the individual's managers testified that they have never seen the individual's gambling addiction as a problem. *Id.* at 14 and 25. They also testified that the individual is reliable and trustworthy and uses good judgment. *Id.* at 18 and 27. The individual's co-worker who was aware that the individual has a gambling problem, testified that the individual has admitted that he has a "fault" and realizes that he can no longer gamble. He further testified that he believes the individual takes care of his financial responsibilities and has learned from his mistakes with gambling. Finally, the individual's significant other, who has known the individual for 14 years, testified that the individual has not gambled since July 2015 when he banned himself from entering a casino. *Id.* at 44. She further testified that the individual keeps himself busy with projects and is committed to not gamble. *Id.* at 45.

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he evaluated the individual six months ago and believes the individual has met every recommendation he asked of him. *Id.* at 76. He testified that the individual is doing the right things and is mindful and understands the costs gambling has made to his personal life. *Id.* at 79. Although the DOE psychologist initially concluded that the individual should abstain from gambling for a year to be considered rehabilitated, he is now sufficiently confident, after listening

to the testimony of the EAP counselor and the individual's significant other, that the individual is at low risk of relapse moving forward. *Id.* at 80. He testified that the individual has been genuine and believes the individual has a good prognosis. *Id.* at 81.

C. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009)*.⁴ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has presented adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guideline I, ¶ 29*. In this case, the individual has satisfied the following mitigating factors: (1) the individual has readily acknowledged his gambling problem, and has demonstrated ongoing and consistent compliance with a treatment plan; (2) the individual is currently receiving counseling with a favorable prognosis by a duly qualified mental health professional; and (3) the DOE psychologist has opined that the individual's condition has a low risk of relapse. *Id.* For these reasons, I find that the individual has sufficiently resolved the DOE's security concerns under Criterion H.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criterion H. After considering all the relevant information, favorable and unfavorable in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to adequately resolve the security concerns associated with Criterion H. I therefore find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: June 20, 2016

⁴ Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.