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

In the Matter of: Personnel Security Hearing)

Filing Date: February 27, 2014)

Case No.: PSH-14-0017

Issued: June 5, 2014

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) to hold a security clearance 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 discussed below, after carefully considering the record before me in light of the relevant regulations, I conclude that the Individual’s security clearance should be restored.

I. BACKGROUND

This administrative review proceeding began when a Local Security Office (LSO) issued a Notification Letter to the Individual. See 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. Specifically, the LSO stated that the Individual had been diagnosed by a Psychiatrist with Gambling Disorder, Episodic, and had engaged in a pattern of financial irresponsibility which brought into question her honesty, reliability, and trustworthiness.

The Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge¹ in order to resolve the substantial doubt regarding his eligibility for a

¹ Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was

security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on February 27, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, her mother, her first and second line supervisors, her coworker, and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. PSH-14-0017 (hereinafter cited as "Tr."). The LSO submitted 13 exhibits, marked as Exhibits 1 through 13, while the Individual submitted 24 exhibits, which is marked as Exhibits A through X.²

II. FINDINGS OF FACT

The Individual has a longstanding pattern of financial difficulties dating back to at least 1997, when she and her then-spouse filed for bankruptcy. Exhibit 11 at 9.

The LSO conducted a Personnel Security Interview (PSI) of the Individual on April 15, 2009. Exhibit 12 at 1. During this PSI, the Individual reported that she had filed for Bankruptcy under Chapter 13, in February 2009. Exhibit 12 at 7. The Individual explained that, at the time she filed, she was four months behind in her mortgage payments. Exhibit 12 at 9. She attributed her financial problems to two factors: (1) her former spouse stopped making his child support payments to her, and (2) her monthly adjustable rate mortgage (ARM) payment had increased by \$361 in October 2008. Exhibit 12 at 10. When the Individual asked if her financial problems were due to gambling, she answered "no." Exhibit 12 at 26-27.

The LSO conducted a PSI of the Individual on October 8, 2013. Exhibit 11 at 1. During this PSI, she again attributed her financial problems to two factors: (1) her former spouse stopped making his child support payments to her in 2008, and (2) her monthly adjustable rate mortgage (ARM) payment had increased. Exhibit 11 at 11. The Individual stated that she was expecting to make her last payment to the Bankruptcy Trustee soon and to have her discharge papers by the end of the year. Exhibit 11 at 12. She admitted that she had become delinquent in her payments to the Bankruptcy Trustee, but she was unable to recall how many payments she had missed. Exhibit 11 at 13, 15. Her bankruptcy was supposed to have been concluded in three years, but it was extended because of "her financial issues." Exhibit 11 at 13. She admitted that she had defaulted on two credit cards accounts and a loan. Exhibit 11 at 23, 30. She reported that she has a medical bill that she is unable to pay. Exhibit 11 at 31. She stated that she intended to pay her creditors back, but was not yet in a position to do so. Exhibit 11 at 45. She stated that when she finishes her payments to the Bankruptcy Trustee, she will begin to contact her non-bankruptcy estate creditors in order to enter into payment plans with them. Exhibit 11 at 32. The Individual reported that she has caught up on her mortgage payments by taking money out of her 401K account. Exhibit 11 at 37. The Individual contended that two of the past due accounts on her credit report were not her debts, and that she would need to investigate her credit report further. Exhibit 11 at 41. She admitted that she owed \$85 on a past-due medical account,

undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

² A number of these exhibits have been supplemented by additional exhibits marked as revised exhibits.

but “can’t afford to pay it.” Exhibit 11 at 43. She also admitted that she has owed \$300 to a casino since 2005, but does not “have the money to pay it.” Exhibit 11 at 44. The Individual reported that in 2011, she borrowed \$6,000 from her 401k account to buy a car (costing \$1,500) for her daughter. Exhibit 11 at 55-56.

When the interviewer asked the Individual if her financial problems had ever been the result of alcohol, gambling, or drugs, she initially answered “no.” Exhibit 11 at 57. However, when she was asked about gambling a second time, the Individual admitted that gambling had caused her a financial problem on one occasion, in 2005, when she had bounced a \$600 check to cover a gambling loss. Exhibit 11 at 57-58. The Individual subsequently made a number of significant admissions concerning her gambling. Specifically, she admitted that: she had gambled longer than she had planned on occasion; she had gambled to escape her problems; she had rationalized her gambling by thinking that she is going to win money rather than losing it; she had obtained a payday loan in order to gamble; she had lied to her family in order to hide her gambling; her daughter does not approve of her gambling; her mother expressed concern that the Individual has a gambling problem; she had experienced remorse after gambling; gambling had impacted her finances;³ and that she had gambled with the hope that she could resolve her debts by winning. Exhibit 11 at 65, 72, 79, 76, 82-83, 86, 91, 94. The Individual, however, denied she has a problem with gambling, stating that she can control her gambling. Exhibit 11 at 85-87. The Individual recognized that she had not acted responsibly, however. Exhibit 11 at 96.

At the request of the LSO, the Psychiatrist evaluated the Individual on November 21, 2013. Exhibit 8 at 1. After completing his evaluation of the Individual, the Psychiatrist issued a report on December 1, 2013, in which he diagnosed the Individual with Gambling Disorder, Episodic under the criteria set forth in the American Psychiatric Association’s Diagnostic and Statistical Manual-Fifth Edition (DSM-V). Exhibit 8 at 4. The Psychologist further found that the Individual:

Has a history consistent with a gambling disorder. She met five of nine DSM-5 criteria . . . for this condition. Based on the information available to me, she has not met full criteria for the diagnosis of this condition since 2005. This is a condition that had some potential to interfere with her judgment or reliability in the past, though I am not aware of any information suggesting it compromised her judgment or reliability except for her improper financial choices. It appears she has amended her gambling behavior since 2005. It has not recently caused any defect in her judgment or reliability. Though she continues to have substantial financial problems, it appears her gambling disorder plays only a small role in the overall pattern of her financial choices leading to her current debt.

Exhibit 8 at 5. The Psychiatrist did not offer any treatment recommendations.

III. STANDARD OF REVIEW

³ She then denied that gambling had impacted her finances when confronted with her statements to the contrary in a recent Questionnaire for National Security Positions. Exhibit 11 at 93-94.

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. See 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. See 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

Regarding Criterion H, the record shows that a Psychiatrist has diagnosed the Individual with Gambling Disorder. An opinion by a duly qualified mental health professional that the individual has “a condition . . . that may impair judgment, reliability, or trustworthiness” may raise a security concern and be disqualifying. Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, (Adjudicative Guidelines) Guideline I at ¶ 28.

The Individual's pattern of financial irresponsibility raises significant security concerns under Criterion L. The Adjudicative Guidelines state in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds Conditions that could raise a security concern and may be disqualifying include: (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis. . . . [and] (f) financial problems that are linked to . . . gambling problems, or other issues of security concern.

Adjudicative Guideline F at ¶¶ 18, 19.

V. ANALYSIS

A. Gambling Disorder

I find that the Individual has adequately mitigated the security concerns raised under Criteria H by her Gambling Disorder.

At the hearing, the Individual testified that she has “gambled too much in the past” but does not believe she has a gambling problem. Tr. at 97. The last time she gambled was September 2013. Tr. at 99, 101. The Individual testified that she plans to abstain from gambling, because she realizes how it has affected her life. Tr. at 101, 108. She testified that she no longer feels the need to gamble. Tr. at 101-102. She testified that she used gambling to cope with her feelings of inadequacy. Tr. at 101-102. The Individual testified that she is now a “happy person,” because she has built better relationships with her children and parents, and now has a support system. Tr. at 102, 105, 109. She testified that she has a “good life” now and she does not want to go back to gambling. Tr. at 105, 108. She testified that she used to gamble thinking she could win money to pay her debts, and she has learned that isn’t true. Tr. at 104. She recognized that her gambling had affected her judgment and reliability. Tr. at 108-109. She testified that she thought that gambling was one of the contributing factors to her financial problems, and that she would not be in her present position if she had never gambled. Tr. at 105. She convincingly testified: “I don’t gamble anymore, and I realize the problems that gambling has caused in my life, and like I said, I don’t want to go back to that anymore.” Tr. at 108.

At the hearing, the Psychiatrist listened to the testimony of each of the other witnesses before he testified. The Psychiatrist testified that the Individual met the DSM-V criteria for Gambling Disorder. Tr. at 132, 136-139. The Psychiatrist testified that a Gambling Disorder is a lifelong illness. Tr. at 134-136, 142-143. However, the Psychiatrist believed that the Individual is now in early remission, although she was not in remission at the time when he conducted his examination of her. Tr. at 134, 140. Even though she is in remission, she is at risk for relapse. Tr. at 142-143. Most of the behavior that led the Psychiatrist to diagnose the Individual with a Gambling Disorder occurred eight to nine years ago. Tr. at 135. The Psychiatrist testified “I think the bottom line is . . . I don’t think gambling has been a significant issue for her since 2005.” Tr. at 139-140. He testified that the Individual has changed her behavior. Tr. at 140. By admitting that she had a problem to her family, she made it easier to recover. Tr. at 141. The Psychiatrist testified that the Individual has made some “drastic and dramatic” changes. Tr. at 143. She has changed her behavior and is being more responsible. Tr. at 150. The Psychiatrist noted that the Individual’s efforts to pay off her bills, cessation of gambling, and development of a strong support system, are indications that she is in remission. Tr. at 147-148. The Psychiatrist testified that there is a low risk that the Individual will relapse, and “a low risk that her Gambling Disorder will impact her reliability in the foreseeable future.” Tr. at 149-151. The Psychiatrist testified that the Individual’s prognosis is “excellent.” Tr. at 150.

The Psychiatrist’s testimony has convinced me that the Individual is rehabilitated and reformed from her Gambling Disorder. Accordingly, the security concerns raised under Criteria H have been sufficiently mitigated and resolved.

B. Criterion L

The Individual's longstanding history of financial irresponsibility raises security concerns under Criteria L. These security concerns are exacerbated by their partial origin in the Individual's gambling. I find, however, that these concerns have been adequately mitigated.

The Notification Letter cites eight outstanding debts, owed to seven creditors, that it alleged were outstanding at the time that the Notification Letter was issued. During her hearing testimony, the Individual explained how each of these debts were either resolved or not owed by her. She explained that her debt to Creditor A was included in her recent Chapter 13 Bankruptcy. Tr. at 73. Exhibit B, a letter from the law firm representing the Individual in the bankruptcy, corroborates this testimony. She testified that she did not believe that she owed Creditor BC, as she indicated in both of her PSIs. Tr. at 78-79. She testified that she was unable to establish contact with Creditor BC despite her efforts to do so. Tr. at 79-80. She has submitted the summary from her latest credit report as Exhibit H. Tr. at 80. Exhibit H does not report either of these alleged debts. The Individual testified that she has paid Creditor D, and she has submitted Exhibit C which corroborates her testimony. Tr. at 85-86. The Individual testified that she has set up a payment plan with Creditor E. Tr. at 87. She has submitted Exhibit D which corroborates this testimony, and documents that she has made at least three payments pursuant to this plan. The Individual testified that she has set up a payment plan with Creditor F as well. Tr. at 88. She has submitted Exhibit E which corroborates this testimony, and documents that she has made at least three payments pursuant to this plan. The Individual testified that her debt to Creditor G was included in her recent Chapter 13 Bankruptcy. Tr. at 91. Exhibit F, a letter from the law firm representing the Individual in the bankruptcy, corroborates this testimony. The Individual testified that she is making payments to Creditor H through a credit management service. Tr. at 92-94. She has submitted Exhibit G corroborating this testimony.

The Individual further testified that she has taken a number of steps to reduce her monthly expenses. She testified that she has reduced her monthly grocery expenditures from \$400 to \$280, and reduced her car insurance by \$50 per month. Tr. at 95, 122. She is now saving money and testified with obvious pride in her financial turnaround. Tr. at 101, 104, 106, 109. She testified that she has learned that she needs to save in order to be ready for unexpected expenses. Tr. at 104, 109. She further testified that she has recently received a salary increase. Tr. at 107, 118. The Individual testified that her former spouse's failure to honor his child support obligations (this testimony is corroborated by Exhibit R) cost her thousands of dollars and added to her financial problems. Tr. at 113-114, 117, 124. The Individual has also taken a part-time second job. Tr. at 114. The Individual has finished making payments to the Bankruptcy Trustee and, as a result, now has \$325 a month to use to pay off her remaining creditors. Tr. at 121-122, 126.

Adjudicative Guideline F ¶ 20 sets forth six conditions that can mitigate security concerns. I find that three of those conditions are present in the instant case. The Individual's financial responsibility "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Guideline F at ¶ 20(a). I find that the Individual's successful (and documented) efforts to address each of her outstanding obligations, demonstrates reliability, trustworthiness and good judgment. Moreover, I believe her successful efforts to address the root cause of her financial problems, *i.e.* her

Gambling Disorder, has rendered a further occurrence of her financial irresponsibility unlikely to recur. The testimony of the DOE's expert witness, the Psychiatrist, that the Individual's Gambling Disorder is now in remission, and is unlikely to recur constitutes a clear indication that "the problem is being resolved or is under control." Adjudicative Guideline F at 20(c). Finally, the evidence in the record, set forth above, convincingly establishes that the Individual "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Adjudicative Guideline F at 20(d).

Accordingly, I find that the security concerns raised under Criterion L by the Individual's financial irresponsibility have been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has mitigated the Criteria H, and L security concerns. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: June 5, 2014