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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: January 9, 2017) Case No.: PSH-17-0002
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Issued: April 11, 2017

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 discussed below, after carefully considering the record before me in light of the relevant regulations and 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), I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is a DOE employee who works in a position that requires that he hold a DOE security clearance. When completing a Questionnaire for National Security Positions in May 2015, the individual revealed to the local security office (LSO) that he was experiencing financial difficulties due to gambling from October 2013 to August 2014. Exploring this concern in Personnel Security Interviews (PSIs) conducted in March and April 2016, the LSO learned that the individual had incurred roughly \$45,000 in credit card debt, 80% of which, by his estimate, was due to his gambling habit. The individual also admitted during the March 2016 PSI that he had been extravagant in his spending on vacations, cruises, and concerts. Finally, in addition to his credit card debt, the individual has about \$1200 in unpaid debt that arose from medical expenses.

Following the PSIs, the LSO arranged for the individual to be evaluated by a DOE consultant clinical psychologist (DOE psychologist). On July 22, 2016, the individual met with the DOE

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.

psychologist, who provided the LSO with an evaluative report. In her report, the DOE psychologist stated that the individual met the criteria for Gambling Disorder, Mild, as set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5). She further noted that the individual's compulsive gambling has negatively and significantly affected his judgment.

On October 13, 2016, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8(h) and (l) (hereinafter referred to as Criterion H and L, respectively).²

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented the testimony of two witnesses—a supervisor and a co-worker who was also a friend, each a long-time acquaintance—and testified on his own behalf. After hearing the testimony of the other witnesses, the DOE psychologist testified on behalf of the DOE. In addition to the testimonial evidence, the LSO submitted 11 numbered exhibits into the record. The individual submitted six exhibits, which I have labeled Exhibits A-F. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or letter designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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 denials”); *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).

² Criterion H concerns information that a person suffers from “an 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). Criterion L concerns information that indicates that the individual has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility. . . .” 10 C.F.R. § 710.8(l).

The individual must come forward at the hearing with evidence to convince the DOE that restoring 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 evidence 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 the Administrative Judge’s Decision

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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two criteria as the bases for administrative review of the individual’s request for continued access authorization, Criteria H and L. Certain emotional, mental, and personality conditions can impair judgment, reliability or truthfulness. Adjudicative Guidelines at Guideline I, ¶ 27. For that reason, Criterion H addresses security concerns that arise from such conditions. The LSO supported its security concerns under Criterion H with the DOE psychologist’s diagnosis of the individual as suffering from a gambling disorder, and her finding that the disorder has caused a significant defect in his judgment.

With respect to Criterion L, it is well established that 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. Compulsive gambling, specifically, is a security concern “as it may lead to financial crimes including espionage.” Adjudicative Guidelines at Guideline F, ¶ 18.

In support of its security concerns under Criterion L, the LSO relied on the following information, all of which was provided by the individual:

- A. His gambling, particularly between October 2013 and August 2014, caused him financial problems, including about 80% of his credit card debt;
- B. His extravagant spending on vacations, cruises, and concerts also contributed to his financial difficulties; and

- C. His current delinquent debts include over \$31,000 owed to one credit-card company, over \$15,000 owed to a second credit-card company, and over \$1200 in disputed but unresolved claims from a medical services provider.

Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and L. The individual's gambling behavior, which the DOE psychologist has characterized as compulsive, has already created significant financial difficulty and, if it continues unchecked, will likely lead to even more. A spiral of indebtedness caused by a voluntary, non-essential activity demonstrates poor judgment and self-control and, despite the individual's best intentions, places him at risk for acting in a manner contrary to the interests of the national security.

IV. Findings of Fact

A. The Gambling Concern

The individual has gambled intermittently and recreationally for most of his life, during those periods when he lived in or near states that permitted legalized gambling. He reports that he gambled responsibly—that is, his gambling did not adversely affect his finances—until his third wife left him in early 2013. Tr. at 77. In 1993, he attended Gamblers Anonymous for a few months, but continued to gamble while he participated in the program. *Id.* at 80-81. Then in 2008, he again attended Gamblers Anonymous for a few months, and succeeded in stopping his gambling for three years, until 2011. *Id.* at 81. He realized that his gambling “was starting to create problems” though he was still able to pay his bills. *Id.* at 81-82.

The individual's success was short-lived. Beginning in 2011, he resumed gambling, after taking a cruise on a ship with a casino onboard. *Id.* at 82. Initially, his gambling losses placed a strain on his finances, but he managed to remain current on his household expenses. However, after his third marriage dissolved, he was lonely and bored, and had the urge to gamble. *Id.* at 77. He estimated at his March and April 2016 PSIs that he was gambling two to three times a week, spending about \$500 a week between 2011 and 2013 and about \$1000 a week between 2013 and 2016. Ex. 10 at 163, 166, 168; Ex. 9 at 10. He often obtained his cash for gambling by making ATM withdrawals on his credit cards, ultimately withdrawing the maximum allowable amounts on two of them. Ex. 10 at 170. By the time of the hearing, he had entered into repayment agreements with both credit card issuers, for about \$33,000 and \$15,000. Exs. A, B, D, F. He has consistently stated throughout the proceeding that he recognizes that his gambling has caused his financial difficulties. Ex. 10 at 203; Tr. at 83.

The individual has now rejected Gamblers Anonymous as a source of help for his gambling problem. He feels that the last time he stopped gambling, from 2008 through 2011, he controlled his behavior on his own, and he found that participation in Gamblers Anonymous sessions was embarrassing. He nevertheless has recognized that his gambling habit is not currently under control. Tr. at 87-88. To this end, he has an agreement with a close, non-gambling friend, who testified at the hearing, whom he may call whenever he feels the compulsion to gamble. The

arrangement, though well intentioned, has met with limited success; the friend has, on two occasions, managed to divert the individual's desire to gamble to other activities. *Id.* at 46. However, out of concern for infringing on his friend's time and own familial responsibilities, the individual has not consistently turned to the support system he set up for himself, and continues to gamble in significant amounts. *Id.* at 85-87. He testified at the hearing that he had last gambled four nights before the hearing and lost about \$1000. He did not call his friend for help. *Id.* at 83-84.

After hearing the testimony of the individual and his supporting witnesses, the DOE psychologist also testified at the hearing. From the individual's responses to a gambling screening device as well as other information, she determined in her evaluation that, while his gambling behavior was not serious enough to qualify as a pathological disorder, the individual nevertheless has sufficient problems that can be attributed to gambling to support her diagnosis of Gambling Disorder, Mild. *Id.* at 110-11. After considering the testimony of the other witnesses, the DOE psychologist stated that her diagnosis was still appropriate. *Id.* at 115. To treat this disorder, the DOE psychologist recommended that the individual seek individual counseling with a mental health professional who specializes in gambling disorders, meeting once a week initially, for as long as the professional deems appropriate. In addition, the individual should attend Gamblers Anonymous for at least six months, or as determined by his counselor. Finally, he should abstain from gambling indefinitely. *Id.* at 110-11. She stated that she has no concerns about his honesty. *Id.* at 112-13. Because, in her opinion, the individual had not yet shown rehabilitation or reformation from his gambling disorder, the DOE psychologist concluded that the individual has an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. *Id.* at 115.

B. The Other Financial Concerns

In its Notification Letter, the LSO listed, as a security concern in addition to its gambling concern, the individual's extravagant spending habits. It based this concern on information it obtained from the individual during his March 2016 PSI. Ex. 1 at II.B. The individual believes that the LSO's concern arises from a misunderstanding or misinterpretation of the statements he made at the PSI. At the hearing, the individual clarified those statements, conceding that he did engage in extravagant spending on cruises, vacations, and concerts shortly after his second wife's death. Tr. at 76-77. He testified, however, that this behavior stopped within a year, and pointed out that it had no adverse impact on his finances at the time; he had sufficient income to cover the expenses and continued to meet all his financial obligations. *Id.* at 77. He further testified that no portion of his credit card debt was the result of any purchases during this period of extravagant spending, but rather caused by gambling, for the most part, and some unexpected non-gambling expenses that were charged at the same time as he was building his gambling debt beginning in 2013. Tr. at 76.

The LSO's remaining concern arises from the individual's current debts. These debts fall into two categories, the two credit cards that have been charged to their respective maximums, and an unpaid medical bill. The individual has entered into a payment agreement with each of the credit card issuers. One agreement, with the company to which he owes over \$33,000, dates back to 2014. In that agreement, the individual committed to making 70 monthly payments, increasing

over time from \$200 to \$600. Ex. A. After making a limited number of payments, he was unable to meet the terms of the agreement, but through an oral arrangement sent \$25 monthly for many months. *Id.* at 65-67. In November 2016, he was instructed to start paying \$200 monthly, which he has done through February 2017, though no written agreement is currently in force. *Id.* at 67-68. The second agreement, with the company to which he owes about \$15,000, requires the individual to pay \$100 monthly beginning in January 2017. He has made two \$100 monthly payments in accordance with the agreement. Exs. C, F. He testified that he believes he can continue to make \$300 of monthly payments to these creditors and still meet his household expenses, provided he does not resort to gambling. Tr. at 73, 102.

As for the medical debt, the individual testified that he is willing to pay the debt if he can ascertain that it is legitimately one that he owes. He testified at the hearing that the current holder of the debt, a debt collection agency, has not provided him with sufficient information—such as the name of the medical services provider—for him to understand the nature of the debt and to pursue why his health insurance carrier has not covered the charge. The lack of cooperation toward resolving this debt is two-sided, however. The individual reported at the hearing that, when invited to the debt collection agency for a face-to-face discussion about the debt, the individual refused to accept. *Id.* at 56-60.

V. Analysis

I have thoroughly considered the record of 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should not be restored at this time. I cannot find that restoring 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. Criterion H

The LSO's Criterion H security concerns revolve around the DOE psychologist's diagnosis of Gambling Disorder. After reviewing the facts presented in the exhibits and elicited at the hearing, I find that the diagnosis is appropriate. Although the individual has crafted a support system of sorts, it is unreliable and has not achieved its intended purpose. There is no evidence of reformation or rehabilitation of his gambling disorder at this time. The individual does not challenge the diagnosis; he admits that he has a problem with gambling and that he is not in control of it. Tr. at 83, 88. At the hearing, he stated that he had spent about \$1000 gambling four nights before the hearing. *Id.* at 83-84.

In replying to the individual's questioning, the DOE psychologist acknowledged that she saw no evidence that his poor judgment regarding gambling extended to jeopardizing the national security. *Id.* at 116. She did, however, conclude that his gambling disorder constituted an illness or mental condition that causes or may cause a significant defect in judgment or reliability. Although the record does not reflect any use of poor judgment concerning security matters, I

must consider the potential risk of such behavior by a person with an illness or mental condition of this nature. I have reviewed the Adjudicative Guidelines' listing of conditions that could mitigate security concerns of this type. Adjudicative Guidelines, Guideline I at ¶ 29. Of the conditions that are applicable to this individual's situation, I find that none of them argue in favor of mitigation: the individual has not voluntarily entered into a counseling or treatment program; no mental health professional has stated that his condition is under control or in remission, and has a low probability of recurrence or exacerbation; and there continues to be indication of a current problem. *Id.* at ¶ 29(b), (c), (e).

B. Criterion L

Financial difficulties form the basis of the LSO's Criterion L concerns: outstanding debts and extravagant expenditures, both of which paint a picture of living beyond one's means. The individual is current making two monthly payments totaling \$300 on over \$45,000 of credit card debt. While he has kept current with his payments to his creditors in the last few months, given the balances of the two debts (about \$28,000 and about \$15,000), he will be making these payments for at least the next 140 months, or nearly 12 years. The individual has stated that he will be able to be financially responsible as long as he does not gamble. *Tr.* at 102. The record does not reassure me that he will be able to refrain from gambling for the next 12 years, as he was still gambling four days before the hearing. If he does gamble compulsively, to the degree that it poses a financial burden on him, it will likely take much more than 12 years to pay off these debts. Even if he succeeds in abstaining from gambling, he will continue to carry significant debt for a long time, and therefore, from a security perspective, will continue to present a risk for a long time as a financial problem linked to a gambling problem. Adjudicative Guidelines, Guideline F at ¶ 19(f).

As for the outstanding medical bill, the debt is a relatively low amount. He could probably repay it if he wished to do so. But he has not yet done so and, despite knowing that the LSO is concerned about this debt, he has not made significant progress toward resolving this matter. His behavior regarding this bill demonstrates an inability or unwillingness to satisfy a debt. *Id.* at ¶ 19(a).

The LSO's final concern regarding the individual's financial irresponsibility arose from his descriptions of extravagant spending. He has explained to my satisfaction that this behavior was short term, in reaction to his bereavement. There is no evidence that it is ongoing, nor that it contributed to his current debt status. I find that he has mitigated that basis for the LSO's concerns. Even discounting the claim of extravagance, however, the individual has placed himself in a financially unstable position. He admits that gambling has led to his financial problems. Until he successfully abstains from gambling, he will not eliminate the negative effect that gambling has had, and continues to have, on his finances. He will continue to be at risk for more financial shortfalls, and the vulnerability to national security that a financially overextended position creates.

At the hearing, the individual invoked his family's proud military history to demonstrate that he would never jeopardize the national security. *Tr.* at 97. In addition, nothing in the record indicates that his compulsive gambling has led to "financial crimes including espionage."

Adjudicative Guidelines, Guideline F at ¶ 18. While I recognize these positive factors, I must nevertheless resolve any doubt as to a person's access authorization eligibility in favor of the national security.

I have reviewed the mitigating factors set forth in the Adjudicative Guidelines regarding financial irresponsibility. *See* Adjudicative Guidelines, Guideline F at ¶ 20. Of the conditions listed, I cannot find that any of them apply to the facts of this case to mitigate the security concerns based on financial considerations: the behavior is ongoing and frequent; the conditions that created the financial problem were not beyond the individual's control; the individual is not receiving counseling for the problem; the individual did not engage in a good-faith effort to repay overdue creditors; and although the individual may have a reasonable basis to dispute the legitimacy of the past-due debt, in this case, the medical bill, he has not substantiated his efforts to resolve the debt. *Id.* at ¶ 20(a), (b), (c), (d), (e).

Accordingly, I find that the individual has not resolved the LSO's security concerns under Criteria H and L.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Criteria H and L of the Part 710 regulations. I also find that the individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the individual's DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the individual's DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: April 11, 2017