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April 8, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 13, 2009

Case Number: TSO-0852

This Decision concerns the eligibility of XXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time. [2]

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was issued a security clearance in connection with that employment. As part of a routine reinvestigation in 2009, the individual completed and signed a Questionnaire for National Security Positions (QNSP). On that QNSP, the individual acknowledged having recently experienced serious financial problems, including 10 delinquent accounts, due at least in part to gambling. DOE Exhibit (DOE Ex.) 10. The Local Security Office (LSO) determined that this information raised serious security concerns, and summoned the individual for an interview with a personnel security specialist in June 2009 in an unsuccessful attempt to resolve those concerns. Subsequent to this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

[2] Decisions issued by the Office of Hearings and Appeals (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 .

psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, which set forth the results of that evaluation, and sent it to the LSO. After reviewing this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 13 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced 11 exhibits, and presented the testimony of a mental health counselor in addition to testifying herself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (h) defines as derogatory information indicating that the individual has an illness or mental condition which, in the opinion of a psychiatrist, causes or may cause a significant defect in her judgement or reliability. 10 C.F.R. § 710.8(h). As support for this criterion, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Pathological Gambling, and his finding that that condition has caused, and is likely to continue to cause, a significant defect in her judgement and reliability. The letter also cites statements made by the individual indicating that (i) during the period from 2006 to 2007, she was visiting a casino almost every day, sometimes losing as much as $100 (from a bi-weekly take-home pay of about $800); (ii) her gambling has caused severe financial problems and serious strains on her relationships with her husband and with her daughter; (iii) despite these problems, she has continued to gamble one or two times a week, typically losing $100 to $150 a visit; and (iv) she visited a casino, losing approximately $200, two days before her psychiatric evaluation.

Under Criterion (l), information is derogatory if it indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation or duress which may cause her to act contrary to the best interest of the national security. Under this criterion, the Letter cites the individual's admissions that she has a long history of failing to meet her financial obligations due to gambling, including slow pay accounts, collection accounts, failure to file state and federal tax returns, bouncing checks on a monthly basis, and delinquencies in her phone bill, car loan, doctor's bills, utility bills and mortgage.

For the most part, the individual does not dispute these allegations. This derogatory information adequately justifies the DOE's invocation of criteria (h) and (l), and raises significant security concerns. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, 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 is a particular concern because it is a mental or emotional condition that can impair judgement, reliability or trustworthiness, and could lead to financial crimes, including espionage. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines F and I.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. Criterion (h)

Although the individual testified credibly that, as of the date of the hearing, she had not gambled for approximately four-and-a-half months and had been receiving therapy from her mental health counselor for approximately three months, Hearing Transcript (Tr.) at 63, 104, I find that she is not currently demonstrating adequate evidence of reformation or rehabilitation from her gambling

disorder. I base this finding primarily on the testimony of the two expert witnesses, the individual's counselor and the DOE psychiatrist.

The individual's counselor testified that he initially diagnosed the individual as being a "problem gambler." According to the counselor, problem gamblers are those "whose gambling has affected their total life, . . . their family, their finances, their social life. Problem gamblers typically give up all their relationships, they stop going to church, they stop going to social functions, they stop going to family functions. And they find themselves in financial distress and major family disorder, maybe looking at divorce, maybe having kids really concerned about . . . mom or dad being at the casino all the time." Tr. at 127. Pathological gamblers, he continued, have all of the symptoms of problem gamblers, with additional symptoms including suicide attempts or ideation. Tr. at 127-128. After working with the individual, he stated, he would conclude that she is more a problem gambler than a pathological gambler. Tr. at 129-130. He admitted, though, that the individual met the criteria for pathological gambling set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR) at the time of her evaluation by the DOE psychiatrist, and that she still meets those criteria today. Tr. at 130. Currently, the individual's gambling disorder is in remission, he added, and that as long as she stays in therapy and continues to work at her recovery, her "chances of staying gambling-free" are very good. Tr. at 132-133. He further concluded that an additional eight months of therapy and abstention from gambling (for a total of one year) would be needed for the individual to demonstrate adequate evidence of reformation or rehabilitation. Tr. at 141. "That would be about a year that she's been in [treatment]. And if she can stay gambling free for a year, . . . I think that her chances of not going back are excellent." Tr. at 141.

In his report, the DOE psychiatrist diagnosed the individual as suffering from Pathological Gambling, based on his application of the criteria for that condition set forth in the DSM-IV-TR. DOE Exhibit (DOE Ex.) 7. In order to demonstrate adequate evidence of reformation or rehabilitation, he concluded that the individual would have to participate in an outpatient gambling treatment program for a minimum of one year, and abstain from all gambling activity during that period. DOE Ex. 7 at 8. After examining the exhibits presented by the individual and listening to the testimony of the individual and her counselor, the DOE psychiatrist testified that he had seen nothing that would cause him to alter his diagnosis or his treatment recommendation. Tr. at 154. He said that he had no reason to doubt the individual's testimony that she had refrained from all gambling activity for four months, but that this meant that she was only in the early stages of her recovery. Tr. at 154-155.

I agree with the individual's counselor and with the DOE psychiatrist that the individual's claimed four months of abstinence from gambling is insufficient to demonstrate adequate evidence of reformation or rehabilitation. As an initial matter, the individual has unsuccessfully attempted to stop gambling on several occasions in the past. Tr. at 75. Moreover, the individual lives in close proximity to a casino, and essentially has to drive by it every day on her way to work. Tr. at 136. Given these factors, I believe that her chances of relapsing into gambling are still unacceptably high at this early stage of her recovery. The individual has not adequately addressed the DOE's security concerns under criterion (h).

B. Criterion (l)

At the hearing, the individual also testified about the current state of her finances. She stated that she had not yet filed her 2006 federal tax return, because she could not afford to pay a tax preparer to perform the task. She explained that, because she is no longer gambling, she now has the necessary funds, and that the 2006 return will be filed with her 2009 federal taxes. Tr. at 21-26.

She also discussed the current status of eight delinquent accounts that she disclosed on her March 2009 QNSP. DOE Ex. 10. Of those eight accounts, she has been able to establish and maintain a payment plan for four of them. She established a payment plan regarding a fifth account, but was unable to maintain the payment schedule. There are no payment plans for the remaining three accounts, and the individual is not even aware of how much she owes on one of these accounts. She testified that it is her intent to establish payment plans for all of the accounts and eventually pay off all outstanding debts. However, because of the minimal payments she is currently able to make, this payment process will take "quite a while." Tr. at 27-55. She further testified that her phone bill is currently past due, that she has repeatedly been unable to pay her mortgage on time, and that she has not sought the services of a debt counselor. Tr. at 56-62.

I find that substantial security concerns continue to exist regarding the individual's finances. As of the date of the hearing, the individual had not filed her 2006 federal tax return, nor was she aware of the total amount of her indebtedness, or of when she would be able to fully pay her debts. Tr. at 21, 38, 52. Her inability to maintain the payment schedule for one of her delinquent accounts and her repeated inability to make timely mortgage and utility payments are evidence of serious, and continuing, financial difficulties. Moreover, I am concerned that if the individual was to suffer a relapse into gambling, these difficulties would only be exacerbated. For these reasons, I conclude that valid security concerns remain under criterion (l).

V. CONCLUSION

After carefully considering all of the evidence in the record as outlined above, I conclude that the individual has not demonstrated that restoring her access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: April 8, 2010